

Examined and certified:

Clerk of the House of Representatives

*In the name and on behalf of Her Majesty Queen Elizabeth
the Second I hereby assent to this Act this 21st day
of June 2005*

Governor-General.

Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005

Public Act 2005 No 79

Contents

1	Title	12	New heading and section CX 43B inserted
2	Commencement		<i>Environmental restoration</i>
	Part 1		<i>CX 43B Refund from environmental restoration account</i>
	Amendments to Income Tax Act 2004		
3	Income Tax Act 2004	13	Commercial bills before 31 July 1986
4	New section CB 6B inserted CB 6B Disposal: Land used for landfill, if notice of election	14	Expenses of failed or withdrawn application for resource consent
5	New heading and section CB 24B inserted <i>Environmental restoration</i> CB 24B Environmental restoration accounts	15	Amounts paid for non-compliance and change in use
6	Section CB 26 replaced CB 26 Sale of patent applications or patent rights	16	Research or development
7	Royalties	17	Patent rights acquired on or after 1 April 1993
8	Elections to make bonus issue into dividend	18	Preventing pollution of environment
9	Returns of capital: off-market share cancellations	19	Section DB 37 replaced DB 37 Avoiding, remedying, or mitigating effects of discharge of contaminant
10	Recovered expenditure or loss	20	Cost of timber
11	New section CW 45B inserted CW 45B Non-resident company involved in exploration and development activities	21	Heading to subpart DQ
		22	New section DQ 4 added DQ 4 Environmental restoration accounts scheme
		23	Enhancements to land unamortised at end of 2004–05 year

24	Section EC 4 repealed		EK 5 Details to be provided with payment to environmental restoration account
25	Depreciation methods		
26	Calculation rule: income year in which item disposed of		EK 6 Interest on payments to envi- ronmental restoration account
27	Annual rate for fixed life intangible property		EK 7 Deduction for payment
28	New sections EE 27B to EE 27E inserted		EK 8 Deduction for transfer
	EE 27B Annual rate for patents: applications lodged with com- plete specifications before 1 April 2005		EK 9 Refund of payment if excess, lacking details
	EE 27C Annual rate for patent applications lodged with com- plete specifications on or after 1 April 2005		EK 10 Certain refunds not income
	EE 27D Annual rate for patents: applications lodged with com- plete specifications on or after 1 April 2005		EK 11 Application for refund
	EE 27E Annual rate for plant vari- ety rights		EK 12 Refund
29	Section EE 28 replaced		EK 13 Income when refund given on request
	EE 28 Special rate or provisional rate		EK 14 Application for transfer
30	Items no longer used		EK 15 Transfer on request
31	Transfer of depreciable property on or after 24 September 1997		EK 16 Transfer on death, bank- ruptcy, or liquidation
32	Consideration for purposes of section EE 37		EK 17 Minimum refund or transfer
33	Events for purposes of section EE 37		EK 18 Payments from which refunds come
34	Effect of disposal or event	43	EK 19 Environmental restoration account of amalgamating company
35	Meaning of annual rate	44	EK 20 Environmental restoration account of member of consol- idated group
36	Main income equalisation account	45	EK 21 Commissioner may require notice in electronic format
37	Refund on death	46	EK 22 Meaning of maximum payment
38	Other definitions	47	EK 23 Other definitions
39	Refund on death	48	When calculation of base price adjustment required
40	Thinning operations income equal- isation account	49	Consideration when person exits from rules: accrued entitlement
41	Other definitions	50	Section EW 39 repealed
42	New subpart EK inserted	51	Consideration when person exits from rules: accrued obligation
	Subpart EK—Environmental restoration accounts	52	Consideration when person enters rules: accrued entitlement
	EK 1 Environmental Restoration Funds Account	53	Section EW 44 repealed
	EK 2 Persons who may make pay- ment to environmental resto- ration account	54	Section EX 55 repealed
	EK 3 Payments to environmental restoration account		Disposal of trading stock
	EK 4 Environmental restoration account		Rules for personal property lease asset during term of finance lease
			Premiums paid to residents of Swit- zerland and the Netherlands
			Patent rights
			Entities to which apportionment rule potentially applies

55	Section FG 3 replaced FG 3 When interest apportioned under section FG 8 or annual total deduction adjusted under section FG 8B	FI 9	Death occurring before 1 October 2005
56	Rules for calculating New Zealand group debt percentage	FI 10	Value of property acquired by beneficiary of trust before 1 October 2005
57	Apportionment of interest deductions	FI 11	Disposal of certain financial arrangements on death
58	New sections FG 8B to FG 8J inserted FG 8B Adjustment of annual total deduction—reporting bank FG 8C New Zealand banking group of registered bank FG 8D Reporting bank for New Zealand banking group FG 8E Measurement periods and measurement days FG 8F Financial value and regula- tory value FG 8G New Zealand net equity of New Zealand banking group FG 8H Net equity threshold FG 8I Valuation of debt and risk- weighted exposures FG 8J Treatment of temporary change in New Zealand net equity or net equity threshold	61	Imputation: arrangement to obtain tax advantage
59	Circumstances in which group excess interest allocation required	62	Attributing interests in FIFs
60	New subpart FI inserted Subpart I—Effect of certain disposals and resulting acquisitions FI 1 Disposals and resulting acqui- sitions to which subpart FI applies FI 2 Disposal and resulting acqui- sition of property treated as occurring at market value FI 3 Date on which disposal and resulting acquisition treated as occurring FI 4 Disposal and resulting acqui- sition of property by spouse or de facto partner on death of person FI 5 Distributions of property to close relatives and others FI 6 Disposal and resulting acqui- sition of timber FI 7 Relationship of section FI 2(2) to subpart CB FI 8 Relationship of subpart FI to unexpired prepayments	63	Section GD 2 repealed
		64	Interpretation
		65	Income of beneficiaries
		66	Liability for tax payable by com- pany left with insufficient assets
		67	Rebate for gifts of money
		68	Determination of amount of credit in certain cases
		69	Credit of tax for imputation credit
		70	Section LC 15 repealed
		71	Resident withholding tax deductions to be credited against income tax assessed
		72	Special rules for holding companies
		73	Amount of provisional tax payable
		74	Section MB 6 replaced MB 6 Voluntary payments
		75	Credits arising to imputation credit account
		76	Debits arising to imputation credit account
		77	New sections ME 9B and ME 9C inserted ME 9B Imputation credit account company leaving wholly- owned group ME 9C Imputation credit account company joining wholly- owned group
		78	Application of specific imputation provisions to consolidated imputa- tion groups
		79	Debits arising to dividend withhold- ing payment account
		80	Policyholder credit account compa- nies and dividend withholding pay- ment credits
		81	Deduction of resident withholding tax
		82	New section NF 2AA inserted NF 2AA Election to be RWT proxy
		83	Election to apply higher rate of deduction

84	Payment of deductions of resident withholding tax to Commissioner	FG 8I	Valuation of debt and risk-weighted exposures
85	Certificates of exemption	FG 8J	Treatment of temporary change in New Zealand net equity or net equity threshold
86	Payment and recovery of dividend withholding payment		
87	Definitions		
88	Determination of residence of company	104	Circumstances in which group excess interest allocation required
89	New schedule 6B inserted	105	Imputation—arrangement to obtain tax advantage
90	Schedule 13—Month for payment of provisional tax and terminal tax	106	Resident withholding tax deductions to be credited against income tax assessed
91	Schedule 17—Depreciable intangible property	107	Section MB 6 replaced MB 6 Voluntary payments
92	Schedule 22A—Identified policy changes	108	Credits arising to imputation credit account
93	Schedule 23 amended	109	Debits arising to imputation credit account
	Part 2	110	New sections ME 9B and ME 9C inserted
	Amendments to Income Tax Act 1994	ME 9B	Imputation credit account company leaving wholly-owned group
94	Income Tax Act 1994	ME 9C	Imputation credit account company joining wholly-owned group
95	New section CB 16 inserted CB 16 Non-resident company involved in exploration and development activities	111	Application of specific imputation provisions to consolidated imputation groups
96	Expenditure incurred by superannuation funds	112	Deduction of resident withholding tax
97	Expenditure to prevent or combat pollution of environment	113	New section NF 2AA inserted NF 2AA Election to be RWT proxy
98	Expenditure on unsuccessful application for resource consent	114	Election to apply higher rate of deduction
99	Entities to which apportionment rule potentially applies	115	Payment of deductions of resident withholding tax to Commissioner
100	Section FG 3 replaced FG 3 When interest apportioned under section FG 8 or annual total deduction adjusted under section FG 8B	116	Certificates of exemption
101	Rules for calculating New Zealand group debt percentage	117	Definitions
102	Apportionment of interest deductions	118	Determination of residence of company
103	New sections FG 8B to FG 8J inserted FG 8B Adjustment of annual total deduction—reporting bank FG 8C New Zealand banking group of registered bank FG 8D Reporting bank for New Zealand banking group FG 8E Measurement periods and measurement days FG 8F Financial value and regulatory value FG 8G New Zealand net equity of New Zealand banking group FG 8H Net equity threshold		Part 3
			Amendments to Tax Administration Act 1994
		119	Tax Administration Act 1994
		120	Interpretation
		121	Court orders for production of information or return
		122	New sections 20B to 20G inserted 20B No requirement to disclose tax advice document 20C Treatment of book or document

20D	Claim that book or document is tax advice document	139	Applications for determinations
20E	Book or document or part of book or document included in tax advice document	140	New section 91AAN and heading inserted
20F	Person must disclose tax contextual information from tax advice document		<i>Determinations relating to environmental restoration expenditure</i>
20G	Challenge to claim that book or document is tax advice document		91AAN Determinations on rates for diminishing value of environmental expenditure
123	Resident withholding tax deduction tax certificates	141	Commissioner to make private rulings on request
124	Records to be kept for purposes of resident withholding tax	142	Taxpayer assessment
125	Provision of tax file numbers	143	New section 101B inserted
126	Annual returns of income not required		101B Assessment of additional income tax
127	New section 36BC inserted	144	Time bar for amendment of income tax assessment
	36BC Electronic format for details required under subpart EK of Income Tax Act 2004	145	Definitions
128	Particulars furnished in electronic format	146	Imputation penalty tax payable where end of year debit balance
129	Statement of payment of deductions of withholding tax	147	Unacceptable tax position
130	Resident withholding tax deduction reconciliation statements	148	Reduction of penalties for previous behaviour
131	Disclosure of interest in foreign company or foreign investment fund	149	Increased penalty for obstruction
132	Annual imputation return	150	Publication of names
133	Officers to maintain secrecy	151	Write-off of tax by Commissioner
134	New section 81B inserted	152	Obligation to pay tax on foreign investment fund income able to be suspended
	81B Disclosure of information concerning actions of tax advisor	153	Remission in circumstances of qualifying event
135	New sections 85H and 85I inserted		Part 4
	85H Disclosure of information for purposes of Parental Leave and Employment Protection Act 1987		Amendments to other enactments
	85I Use of Parental Leave and Employment Protection Act 1987 and parental tax credit information to determine entitlement		<i>Amendments to Goods and Services Tax Act 1985</i>
136	Further secrecy requirements	154	Goods and Services Tax Act 1985
137	Election of small claims jurisdiction of Taxation Review Authority	155	Meaning of term supply
138	Determination on special rates and provisional rates	156	Imposition of goods and services tax on imports
		157	Credit and debit notes
		158	Section 26A replaced
			26A Factored debts
		159	Refund of excess tax
		160	Cancellation of registration
			<i>Amendment to Student Loan Scheme Act 1992</i>
		161	Interpretation

	<i>Amendment to Taxation Review Authorities Act 1994</i>	Schedule New schedule 6B inserted in Income Tax Act 2004
162	Small claims jurisdiction of Authorities	
	<i>Amendment to Income Tax (Social Assistance Suspensory Loans) Order 1995</i>	
163	Social assistance suspensory loans	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005.

2 Commencement

- (1) This Act comes into force on the day on which it receives the Royal assent, except as provided in this section.
- (2) Section 155 is treated as coming into force on 1 October 1986.
- (3) Section 107 is treated as coming into force on 1 April 1995.
- (4) Section 118 is treated as coming into force on 1 July 2001.
- (5) Section 117(11) is treated as coming into force on 1 July 2002.
- (6) Section 95 is treated as coming into force on 1 January 2004.
- (7) Section 117(3) and (15) is treated as coming into force on 25 August 2004.
- (8) Sections 105, 108(1) and (2), 109(1) and (3), 110, 111, and 117(2), (22), and (23), 143, and 146 are treated as coming into force on 16 November 2004.
- (9) Sections 106, 112 to 115, 117(4) and (20), 123 to 125, 126(1), (2), (3), 129, 130, 148, and 159 are treated as coming into force on 21 December 2004.
- (10) Sections 16, 23, 26, 38, 41, 47, 52, 64, 65, 70, 72, 73, 76(2), 79, 87(3), 87(16), 87(17), 87(18), 87(22), 87(27), 90(1), 92, 93, 120(4), 131, 132, 144(2), 149, 152, 153, and 161 are treated as coming into force on 1 April 2005.
- (11) Sections 54 to 59, 87(12), (13), (14), (15), (20), (21), (23) to (25), (30) to (32), (37), 99 to 104, 117(5), (6), (7) to (10), (12), (14), (17) to (19), (21), and (24) come into force on 1 July 2005.

- (12) Sections 4 to 15, 18 to 22, 24, 25, 27 to 37, 39, 40, 42 to 46, 48 to 51, 60 to 63, 68, 69, 71, 74, 75, 76(1) and (3), 77, 78, 80 to 84, 85, 86, 87(2) to (11), (19), (26) to (29), (33), (34), (35), and (36), 88, 89, 91, 126, 138, 139, 142, 144, and 151 come into force on 1 October 2005.

Part 1

Amendments to Income Tax Act 2004

3 Income Tax Act 2004

- (1) This Part amends the Income Tax Act 2004.
- (2) A section in this Part applies for income years corresponding to the 2005–06 and later tax years if the section does not provide for a different application.

4 New section CB 6B inserted

After section CB 6, the following is inserted:

“CB 6B Disposal: Land used for landfill, if notice of election

An amount that a person derives from disposing of land is income of the person if—

- “(a) the person uses the land as a landfill before disposing of the land; and
- “(b) at the time of disposal, the land is not being used as a landfill; and
- “(c) the person acquiring the land is not an associated person under section OD 7; and
- “(d) the person gives written notice to the Commissioner of an election that the land be subject to this section by the day that is the later of the following:
- “(i) the day that is 12 months after the day on which the person acquires the land;
- “(ii) 24 June 2006; and
- “(e) the person makes an election under paragraph (d) for all land that the person acquires and uses as a landfill; and
- “(f) any person associated with the person makes an election under paragraph (d) for all land that the associated person acquires and uses as a landfill.

“Defined in this Act: associated person, Commissioner, dispose”.

5 New heading and section CB 24B inserted

After section CB 24, the following is inserted:

“Environmental restoration**“CB 24B Environmental restoration accounts*****“Income from refund***

- “(1) A person who receives a refund for a tax year under section EK 12 (Refund on request) derives for the person’s corresponding income year an amount of income calculated using the formula—

$$\frac{\text{refund}}{\text{tax rate.}}$$

“Income from transfer from environmental restoration account

- “(2) If there is a transfer from a person’s environmental restoration account under section EK 15 (Transfer on request), EK 16 (Transfer on death, bankruptcy, or liquidation), or EK 19 (Environmental restoration account of amalgamating company), the person derives for the corresponding income year an amount of income calculated using the formula—

$$\frac{\text{transfer}}{\text{tax rate.}}$$

“Definitions of items in formulas

- “(3) The items in the formulas are defined in subsections (4) to (6).

“Refund

- “(4) **Refund** is the amount of the refund.

“Tax rate

- “(5) **Tax rate** is the highest rate of income tax on taxable income that—

“(a) is stated in schedule 1; and

“(b) would apply to the person for the tax year if the person had sufficient taxable income.

“Transfer

- “(6) **Transfer** is the amount in the environmental restoration account that is transferred.

“Income arising from renewal of resource consent

- “(7) A person who incurs expenditure of a type listed in schedule 6B, part A, paragraphs 2 to 5 (Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant) and not in schedule 6B, part C derives income under subsection (8) if—
- “(a) the deduction under section DB 37 (Avoiding, remedying, or mitigating effects of discharge of contaminant) for the expenditure is determined by the period for which a resource consent is granted; and
 - “(b) the period of the grant of the resource consent is extended by more than 50% in a later income year or a new resource consent is granted for a period that is more than 50% of the total period of the resource consent.

“Amount of income

- “(8) The person derives for the income year in which the period of the resource consent is extended, or the new resource consent is granted, an amount of income equal to the greater of zero and the difference between—
- “(a) the total deduction under section DB 37 (Avoiding, remedying, or mitigating effects of discharge of contaminant) for the person for the period from the grant of the resource consent to the beginning of the income year:
 - “(b) the total deduction for the expenditure that the person would have had under section DB 37 for the period referred to in paragraph (a), if the period of the resource consent at the time of the grant had been 35 years.

“Defined in this Act: corresponding income year, environmental restoration account, income, income tax, taxable income, tax year”.

6 Section CB 26 replaced

- (1) Section CB 26 is replaced by the following:

“CB 26 Sale of patent applications or patent rights

If a person derives an amount from the sale of a patent application with a complete specification or from the sale of patent rights, the amount is income of the person.

“Defined in this Act: amount, income, patent rights”.

- (2) Subsection (1) applies to patent applications lodged for the first time after the date on which this Act receives the Royal assent.

7 Royalties

In section CC 9(2)(a), “patent,” is replaced by “patent, plant variety rights,”.

8 Elections to make bonus issue into dividend

- (1) Section CD 7(1), other than the heading, is replaced by the following:

“(1) A bonus issue that is not a bonus issue in lieu is a dividend if—

“(a) the bonus issue—

“(i) is issued fully paid from reserves of the company:

“(ii) if a dividend, would not be exempt income under section CW 10 (Dividend within New Zealand wholly-owned group) or CW 11 (Dividend of conduit tax relief holding company); and

“(b) the company chooses under this section to treat the bonus issue as a dividend.”

- (2) Subsection (1) applies for an issue of shares made on or after 16 November 2004.

9 Returns of capital: off-market share cancellations

- (1) Section CD 14(5), other than the heading, is replaced by the following:

“(5) If a company is an unlisted widely-held trust not resident in New Zealand and a shareholder cannot obtain sufficient information to calculate the available subscribed capital per share under the ordering rule,—

“(a) the share is treated as if it were issued under subsection (4) on terms that the slice rule applies; and

“(b) the available subscribed capital under the slice rule is—

- “(i) the amount paid for the issue of the share, if subparagraph (ii) does not apply; or
- “(ii) the value of the money or property in which a beneficial interest would have vested in the shareholder had the share not been issued, if the share is a taxable bonus issue under paragraph (d) of the definition of the term.”

10 Recovered expenditure or loss

In the list of defined terms in section CG 4, “, loss” is inserted after “income year”.

11 New section CW 45B inserted

The following is inserted after section CW 45:

“CW 45B Non-resident company involved in exploration and development activities

“*Exempt income*

- “(1) An amount of income derived by a non-resident company from exploration and development activities in an offshore permit area is exempt income if it is derived in the period that—
 - “(a) starts on the beginning of the 2005–06 income year for the non-resident company; and
 - “(b) ends on 31 December 2009.

“*Some definitions*

- “(2) In this section,—
 - “**exploration and development activities** means the following activities undertaken for the purposes of identifying and developing exploitable petroleum deposits or occurrences in an offshore permit area:
 - “(a) operating a ship to provide seismic survey readings;
 - “(b) drilling an exploratory well or other well
 - “**offshore permit area** means an area of land that is—
 - “(a) in New Zealand; and
 - “(b) on the seaward side of the mean high-water mark; and
 - “(c) a permit area or part of a permit area.

“Defined in this Act: amount, exempt income, exploration and development activities, exploratory well, New Zealand, non-resident company, offshore permit area, permit area”.

12 New heading and section CX 43B inserted

- (1) After section CX 43, the following is inserted:

“Environmental restoration**“CX 43B Refund from environmental restoration account**

A refund to a person under section EK 9 (Refund of payment if excess, lacking details, or after earlier payment or request for refund) is excluded income of the person.

“Defined in this Act: excluded income”.

- (2) Subsection (1) applies for a refund made to a person in an income year starting on or after 10 June 2005.

13 Commercial bills before 31 July 1986

Section CZ 6(3) is repealed.

14 Expenses of failed or withdrawn application for resource consent

In section DB 13B(1)(b), “a resource consent that is depreciable property” is replaced by “depreciable property, or otherwise a deduction,”.

15 Amounts paid for non-compliance and change in use

- (1) Section DB 16(1)(b)(iv) is replaced by the following:

“(iv) in the absence of section DB 37 (Avoiding, remedying, or mitigating effects of discharge of contaminant), no other provision of this Act would allow the lessor a deduction for the expenditure.”

- (2) Subsection (1) applies for expenditure incurred by a person in an income year starting on or after 10 June 2005.

16 Research or development

- (1) In section DB 26(5), “for a tax year” is replaced by “in an income year”.
- (2) In section DB 26(7), “tax year” is replaced by “income year”.
- (3) In section DB 26, in the list of defined terms,—
- (a) “income year,” is inserted:
- (b) “, tax year” is repealed.

17 Patent rights acquired on or after 1 April 1993

- (1) In the heading to section DB 31, “Patent rights” is replaced by “Patent applications or patent rights”.
- (2) In section DB 31(1), “a patent application with a complete specification or” is inserted before “patent rights”.
- (3) In section DB 31(2), “patent application with a complete specification or” is inserted before “patent rights”.
- (4) In section DB 31(4), “patent application with a complete specification or” is inserted before “patent rights” in both places where it appears.
- (5) Subsections (1) to (4) apply for patent applications lodged for the first time on or after the date on which this Act receives the Royal assent.

18 Preventing pollution of environment

- (1) In section DB 37(1)(b), “industrial waste” is replaced by “waste”.
- (2) Subsection (1) applies for expenditure incurred by a person in the 2005–06 income year if the income year starts before 10 June 2005.

19 Section DB 37 replaced

- (1) Section DB 37 is replaced by the following:

“DB 37 Avoiding, remedying, or mitigating effects of discharge of contaminant

“When this section applies

- “(1) This section applies if a person—
- “(a) carries on a business in New Zealand; and
 - “(b) the person incurs, in the business or in ending the operations of the business, expenditure that is—
 - “(i) of a type listed in schedule 6B (Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant) and not in schedule 6B, part C; and
 - “(ii) not incurred in relation to revenue account property other than land that is subject to section CB 6B (Disposal: land used for landfill, if notice of election); and

“(c) no other provision allows a deduction for the expenditure.

“Amount and timing of deduction

“(2) The person is allowed for an income year a deduction for the expenditure of,—

“(a) if paragraphs (b) and (c) do not apply, an amount that is calculated using the formula—

rate × value:

“(b) if the operations of the business for which the expenditure was incurred come to an end in the income year, the diminished value or adjusted tax value of the expenditure for the income year:

“(c) if an improvement on which the expenditure was incurred is destroyed, or is rendered useless for the purposes for which the expenditure was incurred, and paragraph (b) does not apply, the diminished value or adjusted tax value of the expenditure for the income year.

“Definition of items in formula

“(3) The items in the formula in subsection (2)(a) are defined in subsections (4) and (5).

“Rate

“(4) **Rate** is—

“(a) 100%, if the expenditure is of a type listed in schedule 6B, part A, item 1, or part B (Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant) and the rate is not given by paragraph (b) or (c):

“(b) the appropriate rate given by subsection (5) if—

“(i) the expenditure is of a type listed in schedule 6B, part A, items 2 to 5; and

“(ii) no applicable rate is given by paragraph (c):

“(c) the rate for the type of expenditure, the income year, the valuation method adopted under subsection (6), and the person, determined by the Commissioner under section 91AAN of the Tax Administration Act 1994, if such a rate is determined.

“Banded straight-line rate or corresponding diminishing value rate

- “(5) The rate for expenditure if subsection (4)(b) is satisfied is—
- “(a) the straight-line rate given in schedule 11, column 2 that is nearest to the rate calculated for the expenditure using the formula in subsection (7), if the person elects to use the straight-line method:
 - “(b) the diminishing value rate given in schedule 11, column 1 that corresponds to the straight-line rate given by paragraph (a), if the person elects to use the diminishing value method.

“Value

- “(6) **Value** is—
- “(a) the adjusted tax value of the expenditure, if the person elects to use the straight-line method:
 - “(b) the diminished value of the expenditure for the income year, if the person elects to use the diminishing value method.

“Formula for rate for expenditure with assumed life

- “(7) The formula for the straight-line rate for a type of expenditure to which subsection (4)(b) applies is—
- $$\frac{100\%}{\text{assumed life.}}$$

“Definition of item in formula

- “(8) In the formula in subsection (7), **assumed life** for expenditure and an income year is,—
- “(a) for expenditure associated with a business activity that does not require a resource consent, 35:
 - “(b) for expenditure associated with a business activity that requires a resource consent, the lesser of 35 and the number of the years in the period of the resource consent that include or follow the time at which the expenditure is incurred.

“Link with subpart DA

- “(9) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

“Defined in this Act: amount, business, capital limitation, deduction, diminished value, general limitation, general permission, income year, New Zealand”.

- (2) Subsection (1) applies for expenditure incurred by a person in an income year starting on or after 10 June 2005.

20 Cost of timber

- (1) Section DP 10(1)(b) is replaced by the following:

“(b) in the absence of section DB 37 (Avoiding, remedying, or mitigating effects of discharge of contaminant), no other provision of this Act would allow the person a deduction for the amount; and”

- (2) Subsection (1) applies for expenditure incurred by a person in an income year starting on or after 10 June 2005.

21 Heading to subpart DQ

In the heading to subpart DQ, “**and environmental restoration accounts scheme**” is added.

22 New section DQ 4 added

- (1) After section DQ 3, the following is added:

“DQ 4 Environmental restoration accounts scheme

“Deduction for payment

- “(1) A person is allowed a deduction of the amount given by section EK 7 (Deduction for payment) if the person has made a payment to the Commissioner for an income year under section EK 2 (Persons who may make payment to environmental restoration account) that is not refunded under section EK 9 (Refund of payment if excess, lacking details).

“Timing of deduction

- “(2) A deduction under subsection (1) is allocated to the income year given by section EK 7 (Deduction for payment).

“Deduction for transfer

- “(3) A person is allowed a deduction for an income year of the amount given by section EK 8 (Deduction for transfer) if in the income year the person receives—
- “(a) a transfer under section EK 15 (Transfer on request) that is treated under section EK 15(4) as being a payment by the person:
 - “(b) a transfer under section EK 16(3)(b) (Transfer on death, bankruptcy, or liquidation):
 - “(c) a transfer under section EK 19 (Environmental restoration account of amalgamating company).

“Timing of deduction

- “(4) A deduction under subsection (3) is allocated to the income year given by section EK 8 (Deduction for transfer).

“Link with subpart DA

- “(5) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

“Defined in this Act: capital limitation, deduction, general limitation, general permission, income year, pay, supplement”.

- (2) Subsection (1) applies for expenditure incurred by a person in an income year starting on or after 10 June 2005.

23 Enhancements to land unamortised at end of 2004–05 year

- (1) Section DZ 13(1)(a) is replaced by the following:
- “(a) a person is allowed under section DO 4(1) of the Income Tax Act 1994 a deduction of an amount given by section DO 4(3)(a) or (c) of that Act for expenditure incurred in carrying on a farming or agricultural business on land in New Zealand; and”.
- (2) In section DZ 13(1)(b), “claimed as a deduction in later income years; and” is replaced by “allowed as a deduction in later income years.”
- (3) Section DZ 13(1)(c) is repealed.
- (4) Section DZ 13(2) is replaced by the following:

“(2) The person is allowed a deduction for the unamortised balance of expenditure in the income year in which the expenditure is of benefit to the business.”

24 Section EC 4 repealed

Section EC 4 is repealed.

25 Depreciation methods

In section EE 12(1), “loss.” is replaced by “loss, and includes a rate determined by the Commissioner under section 91AAF, 91AAG, or 91AAL of the Tax Administration Act 1994.”

26 Calculation rule: income year in which item disposed of

In section EE 11(5), “subsection” is replaced by “section”.

27 Annual rate for fixed life intangible property

In section EE 27(1), “(not including an item of excluded depreciable property, for which a rate is set in section EZ 14 (Annual rate for excluded depreciable property: 1992–93 tax year)).” is replaced by “, not including—” and the following is added:

- “(a) an item of excluded depreciable property for which a rate is set in section EZ 14 (Annual rate for excluded depreciable property: 1992–93 tax year):
- “(b) a patent or patent application for which a rate is set in sections EE 27B or EE 27D:
- “(c) plant variety rights for which a rate is set in section EE 27E.”

28 New sections EE 27B to EE 27E inserted

After section EE 27, the following is inserted:

“EE 27B Annual rate for patents: applications lodged with complete specifications before 1 April 2005

“When this section applies

“(1) This section applies if—

- “(a) an application for a patent with a complete specification is lodged with the Intellectual Property Office of New Zealand or a similar office in another jurisdiction; and

- “(b) the application is lodged with the complete specification before 1 April 2005; and
- “(c) the patent is granted to a person in an income year of the person that corresponds to the 2005–06 or a later tax year.

“Income years for which usual rate applies

- “(2) The rate given by subsection (3) applies for the patent for an income year that begins—
 - “(a) after the date on which the patent is granted; and
 - “(b) before the date that is 240 months after the patent application date.

“Usual rate

- “(3) The rate is calculated using the formula—
$$\frac{\text{months}}{\text{depreciation months}}$$

“Rate for first income year of use

- “(4) For the patent and the income year that includes the date on which the patent is granted, the rate is found by adding together the following rates:
 - “(a) the rate calculated using the formula—
$$\frac{\text{months before grant}}{\text{depreciation months}}$$
 - “(b) the rate calculated for the income year under subsection (3).

“Effect of change in ownership of patent application

- “(5) If the patent is granted to a person who does not lodge the application for the patent with the complete specification, the rates calculated under subsections (3) and (4) for the person depend on the period between the date on which the person acquires the application and the date on which the patent is granted.

“Definition of items in formulas in subsections (3) and (4)

- “(6) The items in the formulas in subsections (3) and (4) are defined in subsections (7) to (9).

“Months

- “(7) **Months** is the number in the income year of months, beginning on or a whole number of months after the beginning of the income year,—
- “(a) in which the patent is used or is available for use; and
 - “(b) that include or begin after the date on which the patent is granted; and
 - “(c) that end before the date that is 240 months after the patent application date.

“Depreciation months

- “(8) **Depreciation months** is,—
- “(a) if subsection (5) does not apply, 240:
 - “(b) if subsection (5) applies, 240 reduced by the number of months, beginning on or a whole number of months after the beginning of an income year of the person, that—
 - “(i) include or begin after the patent application date; and
 - “(ii) end before the date on which the person acquires the application.

“Months before grant

- “(9) **Months before grant** is the number of months, beginning on or a whole number of months after the beginning of an income year of the person, that,—
- “(a) if subsection (5) does not apply,—
 - “(i) include or begin after the patent application date; and
 - “(ii) end before the date on which the patent is granted:
 - “(b) if subsection (5) applies—
 - “(i) include or begin after the date on which the person acquires the application; and
 - “(ii) end before the date on which the patent is granted.

“Defined in this Act: amount, income year, patent application date

“EE 27C **Annual rate for patent applications lodged with complete specifications on or after 1 April 2005**

“*When this section applies*

“(1) This section applies if—

- “(a) an application for a patent with a complete specification is lodged with the Intellectual Property Office of New Zealand or a similar office in another jurisdiction; and
- “(b) the application is lodged with the complete specification on or after 1 April 2005.

“*Income years for which rate applies*

“(2) The rate given by subsection (3) applies for a patent application for an income year that—

- “(a) includes or begins after the patent application date; and
- “(b) begins before the date on which—
 - “(i) the patent is granted; or
 - “(ii) the patent application is refused or withdrawn.

“*Rate*

“(3) The rate is calculated using the formula—

$$\frac{\text{months}}{\text{depreciation months.}}$$

“*Months*

“(4) **Months** is the number in the income year of months, beginning on or a whole number of months after the beginning of the income year, that—

- “(a) include or begin after the patent application date; and
- “(b) end before the date on which—
 - “(i) the patent is granted; or
 - “(ii) the patent application is refused or withdrawn.

“*Depreciation months*

“(5) **Depreciation months** is,—

- “(a) if subsection (6) does not apply, 240;
- “(b) if subsection (6) applies, 240 reduced by the number of months, beginning on or a whole number of months after the beginning of an income year of the person, that—

- “(i) include or begin after the patent application date; and
- “(ii) end before the date on which the person acquires the application.

“Effect of change in ownership of patent application

- “(6) If the person who owns the patent application when the patent is granted, or when the patent application is refused or withdrawn, is not the person who lodges the application for the patent with the complete specification, the rate calculated under subsection (3) for the person depends on the period between the patent application date and the date on which the person acquires the application.

“Defined in this Act: amount, income year, patent application date

“EE 27D Annual rate for patents: applications lodged with complete specifications on or after 1 April 2005

“When this section applies

- “(1) This section applies if—
- “(a) an application for a patent with a complete specification is lodged with the Intellectual Property Office of New Zealand or a similar office in another jurisdiction; and
 - “(b) the application is lodged with the complete specification on or after 1 April 2005; and
 - “(c) the patent is granted to a person in an income year of the person that corresponds to the 2005–06 or a later tax year.

“Income years for which rate applies

- “(2) The rate given by subsection (3) applies for a patent for an income year that—
- “(a) includes or begins after the date on which the patent is granted; and
 - “(b) begins before the date that is 240 months after the patent application date.

“Rate

- “(3) The rate is calculated using the formula—
- $$\frac{\text{months}}{\text{depreciation months}}.$$

“Months

- “(4) **Months** is the number in the income year of months, beginning on or a whole number of months after the beginning of the income year, that—
- “(a) include or begin after the date on which the patent is granted; and
 - “(b) end before the date that is 240 months after the patent application date.

“Depreciation months

- “(5) **Depreciation months** is,—
- “(a) if subsection (6) does not apply, 240;
 - “(b) if subsection (6) applies, 240 reduced by the number of months, beginning on or a whole number of months after the beginning of an income year of the person, that—
 - “(i) include or begin after the patent application date; and
 - “(ii) end before the date on which the person acquires the application.

“Effect of change in ownership of patent application

- “(6) If the patent is granted to a person who does not lodge the application for the patent with the complete specification, the rate calculated under subsection (3) for the person depends on the period between the patent application date and the date on which the person acquires the application.

“Defined in this Act: amount, income year, patent application date

“EE 27E Annual rate for plant variety rights*“When this section applies*

- “(1) This section applies if—
- “(a) a plant variety right is given provisional protection; and
 - “(b) the plant variety right is granted to a person in an income year that corresponds to the 2005–06 or a later tax year.

“Income years for which usual rate applies

- “(2) The rate given by subsection (3) applies for the plant variety right for an income year that begins—

- “(a) after the date on which the plant variety right is granted;
and
- “(b) before the date on which the plant variety right expires.

“*Usual rate*

- “(3) The rate is calculated using the formula—
- $$\frac{\text{months}}{\text{depreciation months}}.$$

“*Rate for first income year of use*

- “(4) For the plant variety right and the income year that includes the date on which the plant variety right is granted, the rate is found by adding together the following rates:
- “(a) the rate calculated using the formula—
$$\frac{\text{months before grant}}{\text{depreciation months}};$$
 - “(b) the rate calculated for the income year under subsection (3).

“*Definition of items in formulas in subsections (3) and (4)*

- “(5) The items in the formulas in subsections (3) and (4) are defined in subsections (6) to (8).

“*Months*

- “(6) **Months** is the number in the income year of months, beginning on or a whole number of months after the beginning of the income year,—
- “(a) in which the plant variety right is used or available for use; and
 - “(b) that end before the date on which the plant variety right expires.

“*Depreciation months*

- “(7) **Depreciation months** is,—
- “(a) if subsection (9) does not apply, the number of months in the period for which the plant variety right is granted plus the number of months, beginning on or a whole number of months after the beginning of an income year of the person,—

- “(i) in which the plant variety right has provisional protection; and
- “(ii) ending before the date on which the plant variety right is granted:
- “(b) if subsection (9) applies, the number of months referred to in paragraph (a) reduced by the number of months, beginning on or a whole number of months after the beginning of an income year of the person, that—
 - “(i) include or begin after the date on which the plant variety right is given provisional protection; and
 - “(ii) end before the date on which the person acquires the application.

“Months before grant

- “(8) **Months before grant** is the number of months, beginning on or a whole number of months after the beginning of an income year of the person, that,—
 - “(a) if subsection (9) does not apply,—
 - “(i) include or begin after the date on which the plant variety right is given provisional protection; and
 - “(ii) end before the date on which the plant variety right is granted:
 - “(b) if subsection (9) applies,—
 - “(i) include or begin after the date on which the person acquires the application; and
 - “(ii) end before the date on which the plant variety right is granted.

“Effect of change in ownership of application for plant variety right

- “(9) If the plant variety right is granted to a person who does not lodge the application for the plant variety right, the rates calculated under subsections (3) and (4) for the person depend on the period between the date on which the person acquires the application and the date on which the plant variety right is granted.

“Defined in this Act: amount, income year, plant variety right”.

29 Section EE 28 replaced

Section EE 28 is replaced by the following:

“EE 28 Special rate or provisional rate

“Rate set for item of depreciable property

- “(1) A special rate or a provisional rate is set for an item of depreciable property under sections 91AAG to 91AAJ of the Tax Administration Act 1994.

“No special rate for excluded depreciable property

- “(2) A special rate may not be set for an item of excluded depreciable property.

“No provisional rate for fixed life intangible property or excluded depreciable property

- “(3) A provisional rate may not be set for an item of fixed life intangible property or an item of excluded depreciable property.

“Defined in this Act: depreciable property, excluded depreciable property, fixed life intangible property, provisional rate, special rate”.

30 Items no longer used

Section EE 32(1) is replaced by the following:

“When this section applies

- “(1) This section applies when a person in an income year has an item of depreciable property that—
- “(a) is no longer used; and
 - “(b) is not a building, unless the item satisfies subsection (1B); and
 - “(c) has not been depreciated using the pool method.

“Buildings

- “(1B) This section applies to a building that satisfies subsection (1)(a) and (c) if—
- “(a) the building has been irreparably damaged and rendered useless for the purpose of deriving income; and
 - “(b) the damage occurs—
 - “(i) in the 2005–06 or a subsequent income year:

- “(ii) as a result of the extreme climatic conditions that occurred during the month of February 2004 in New Zealand:
- “(iii) as a result of the storm event that occurred during the month of July 2004 in the Bay of Plenty area; and
- “(c) the damage is caused other than as a result of the action or failure to act of the person, an agent of the person, or an associated person.”

**31 Transfer of depreciable property on or after
24 September 1997**

After section EE 34(5), the following is inserted:

“Link with subpart FI

- “(6) If a disposal of property to which subpart FI applies is at market value, this section does not apply to the bequest of property.”

32 Consideration for purposes of section EE 37

After section EE 38(2), the following is inserted:

“Link with subpart FI

- “(2B) Subsection (2) does not apply to a disposal of property to which any of sections FI 4 and FI 5 applies.”

33 Events for purposes of section EE 37

Section EE 40(7) is repealed.

34 Effect of disposal or event

- (1) In section EE 41(2), the second sentence is repealed and the following is added:

“When this section does not apply

- “(3) This section does not apply if the item is a building unless—
 - “(a) the building has been irreparably damaged and rendered useless for the purpose of deriving income; and
 - “(b) the damage occurs—
 - “(i) in the 2005–06 or a subsequent income year:
 - “(ii) as a result of the extreme climatic conditions that occurred during the month of February 2004 in New Zealand:

- “(iii) as a result of the storm event that occurred during the month of July 2004 in the Bay of Plenty area; and
- “(c) the damage is caused other than as a result of the action or failure to act of the person, an agent of the person, or an associated person.”
- (2) In the list of defined words in section EE 41, “qualifying event” is repealed.

35 Meaning of annual rate

After section EE 52(4), the following is inserted:

“Patents, applications: complete specification before 1 April 2005

- “(4B) The rate is the rate set by section EE 27B if the item is a patent and section EE 27B applies to the item and the person.

“Patent applications: lodged with complete specification on or after 1 April 2005

- “(4C) The rate is the rate set by section EE 27C if the item is a patent application and section EE 27C applies to the item and the person.

“Patents: application lodged with complete specification on or after 1 April 2005

- “(4D) The rate is the rate set by section EE 27D if the item is a patent and section EE 27D applies to the item and the person.

“Plant variety rights

- “(4E) The rate is the rate set by section EE 27E if the item is a plant variety right and section EE 27E applies to the item and the person.”

36 Main income equalisation account

In section EH 5(4), in the words preceding paragraph (a), “Amounts” is replaced by “Despite section FI 3 (Date on which disposal and resulting acquisition treated as occurring), amounts”.

37 Refund on death

In section EH 19(2), “The Commissioner” is replaced by “Despite section FI 3 (Date on which disposal and resulting acquisition treated as occurring), the Commissioner”.

38 Other definitions

In section EH 37, in the definition of **specified period**, in the 3 places in paragraphs (a) and (b) in which it appears, “tax year” is replaced by “accounting year that corresponds to the tax year”.

39 Refund on death

In section EH 50(2), “The Commissioner” is replaced by “Despite section FI 3 (Date on which disposal and resulting acquisition treated as occurring), the Commissioner”.

40 Thinning operations income equalisation account

In section EH 67(4), in the words preceding paragraph (a), “Amounts” is replaced by “Despite section FI 3 (Date on which disposal and resulting acquisition treated as occurring), amounts”.

41 Other definitions

In section EH 81, in the definition of **specified period**, in the 3 places in paragraphs (a) and (b) in which it appears, “tax year” is replaced by “accounting year that corresponds to the tax year”.

42 New subpart EK inserted

(1) After subpart EJ, the following is inserted:

“Subpart EK—Environmental restoration accounts

“EK 1 Environmental Restoration Funds Account

“Account

“(1) There is a Crown Bank Account called the Environmental Restoration Funds Account that is operated under the Public Finance Act 1989.

“Payments from person paid into account

- “(2) Every payment a person makes to the Commissioner under section EK 2—
- “(a) is public money; and
 - “(b) must be paid into the Environmental Restoration Funds Account.

“Defined in this Act: Commissioner

“EK 2 Persons who may make payment to environmental restoration account*“Business required to restore environment*

A person may make a payment to the Commissioner for entry in the person’s environmental restoration account for an income year if the person—

- “(a) carries on a business in New Zealand; and
- “(b) expects to incur, for a later income year, expenditure that—
 - “(i) is not on revenue account property, other than land to which section CB 6B applies; and
 - “(ii) is of a type listed in schedule 6B, part B (Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant); and
 - “(iii) is of a type not listed in schedule 6B, part C; and
- “(c) makes a provision for such expenditure in financial statements that are—
 - “(i) prepared for external reporting purposes; and
 - “(ii) audited by an accountant who is a chartered accountant or has equivalent professional qualifications; and
 - “(iii) given by the accountant a standard audit opinion, without qualifications on matters relating to the effect of this subpart.

“Defined in this Act: business, Commissioner, environmental restoration account, income year, revenue account property

“EK 3 Payments to environmental restoration account*“Upper limit of payment*

- “(1) A person must not make a payment for an income year of more than the person’s maximum payment for the income year.

“Lower limit of payment

- “(2) A person must not make a payment for an income year of less than \$1,000.

“Time for making payment

- “(3) A payment made after the day that is 6 months after the end of an income year is not made for the income year unless—
- “(a) the Commissioner has allowed a longer period for the payment; and
 - “(b) the payment is made within the period allowed by the Commissioner.

“Defined in this Act: Commissioner, income year, maximum payment

“EK 4 Environmental restoration account*“Person’s account*

- “(1) The Commissioner must keep an environmental restoration account in the name of every person who makes a payment to the Commissioner under section EK 2.

“Payments in account

- “(2) Every payment under section EK 2 that a person makes to the Commissioner must be entered in the person’s environmental restoration account.

“Amounts in account

- “(3) The only amounts that may be entered in a person’s environmental restoration account are—
- “(a) payments made by the person to the Commissioner under section EK 2;
 - “(b) transfers made to the account under subsection (6);
 - “(c) interest paid under section EK 6.

“Amounts not available to others

- “(4) Amounts entered in a person’s environmental restoration account may not, while they are in the account,—
- “(a) be assigned or charged in any way:
 - “(b) pass by operation of law to, or into the custody or control of, someone else, except when the person is bankrupt or has been put into liquidation:
 - “(c) be assets for the payment of the person’s debts or liabilities, except when the person is bankrupt or has been put into liquidation:
 - “(d) be assets for the payment of the debts or liabilities of a dead person’s estate.

“Amounts not available except for refunds or transfers

- “(5) An amount entered in a person’s environmental restoration account may not be removed from the environmental restoration account except by a refund under section EK 9 or EK 12 or by a transfer under subsection (6).

“Transfers of amounts

- “(6) An amount may be transferred from the environmental restoration account of a person—
- “(a) to an environmental restoration account of a person to whom the amount has been transferred under section EK 15 or EK 16(3)(b):
 - “(b) to the department that is at the time responsible for the administration of the Environment Act 1986, if the amount has been transferred under section EK 16(3)(a):
 - “(c) to an environmental restoration account of an amalgamated company to which the amount has been transferred under section EK 19.

“Commissioner may close empty account

- “(7) The Commissioner may close an environmental restoration account of a person if the amount in the environmental restoration account is zero.

“Defined in this Act: amalgamating company, amount, Commissioner, environmental restoration account, interest, liquidation

“EK 5 Details to be provided with payment to environmental restoration account

- “(1) A person making a payment to an environmental restoration account must provide the Commissioner with a notice, in a form prescribed by the Commissioner, giving—
- “(a) the name of the person; and
 - “(b) the income year for which the payment is made; and
 - “(c) a calculation of the maximum payment for the person and the income year; and
 - “(d) any additional information that the Commissioner requires.
- “(2) The person must provide the information required by subsection (1) within 2 working days from the day of the payment.

“Defined in this Act: Commissioner, environmental restoration account, income year, maximum payment

“EK 6 Interest on payments to environmental restoration account*“Interest payable*

- “(1) Interest is payable by the Commissioner on—
- “(a) a payment under section EK 2 to an environmental restoration account;
 - “(b) an amount that is treated under section EK 15 or EK 19 as being a payment to an environmental restoration account.

“Period

- “(2) Interest is computed with daily rests from the day after the date of the payment until the day before the date on which the payment is included in a refund under section EK 12 or in a transfer under section EK 15, EK 16, or EK 19.

“Date to which interest accrues

- “(3) Interest that has accrued on a payment is payable to the person who has the environmental restoration account on the earlier of—
- “(a) 31 March in each year:

“(b) the day on which the payment is included in a refund under section EK 12 or in a transfer under section EK 15, EK 16, or EK 19.

“*Rate*

“(4) The interest rate is 3% per year.

“Defined in this Act: Commissioner, environmental restoration account, interest, year

“**EK 7 Deduction for payment**

“*When this section applies*

“(1) This section applies if a person is allowed a deduction under section DQ 4 (Environmental restoration accounts scheme) for a payment to the person’s environmental restoration account under section EK 2.

“*Amount of deduction*

“(2) The amount of the deduction is calculated using the formula—
$$\frac{\text{payment}}{\text{tax rate}}.$$

“*Definitions of items in formula*

“(3) The items in the formula are defined in subsections (4) and (5).

“*Payment*

“(4) **Payment** is the lesser of—

“(a) the person’s payment to the Commissioner under section EK 2 for the income year; and

“(b) the person’s maximum payment for the income year.

“*Tax rate*

“(5) **Tax rate** is the highest rate of income tax on taxable income that—

“(a) is stated in schedule 1; and

“(b) would apply to the person for the tax year if the person had sufficient taxable income.

“Timing of deduction

- “(6) The person is allowed the deduction for the income year for which the payment is made.

“Defined in this Act: Commissioner, deduction, environmental restoration account, income tax, income year, maximum payment, tax year, taxable income

“EK 8 Deduction for transfer*“When this section applies*

- “(1) This section applies if a person is allowed a deduction under section DQ 4 (Environmental restoration accounts scheme) for a transfer to the person’s environmental restoration account under section EK 15, EK 16, or EK 19.

“Amount of deduction

- “(2) The amount of the deduction is calculated using the formula—

$$\frac{\text{transfer}}{\text{tax rate.}}$$

“Definitions of items in formula

- “(3) The items in the formula are defined in subsections (4) and (5).

“Transfer

- “(4) **Transfer** is the amount of the transfer to the person’s environmental restoration account that is treated as a payment by the person under section EK 15(3), EK 16, or EK 19.

“Tax rate

- “(5) **Tax rate** is the highest rate of income tax on taxable income that—

“(a) is stated in schedule 1; and

“(b) would apply to the person for the tax year if the person had sufficient taxable income.

“Timing of deduction

- “(6) The person is allowed the deduction for the income year for which the transfer is made.

“Defined in this Act: deduction, environmental restoration account, income tax, income year, maximum payment, tax year, taxable income

“EK 9 Refund of payment if excess, lacking details

“When this section applies

- “(1) This section applies if a person’s payment under section EK 2 for an income year is—
- “(a) more than the person’s maximum payment for the income year:
 - “(b) made without providing the details required by section EK 5.

“Refund

- “(2) As soon as practicable after the date on which the payment is received, the Commissioner must refund to the person—
- “(a) the excess, if the payment is more than the person’s maximum payment for the income year:
 - “(b) the payment, if the payment is described by subsection (1)(b).

“No interest payable by Commissioner

- “(3) No interest is payable by the Commissioner under section EK 6 on the amount of the payment.

“Defined in this Act: Commissioner, income year, interest, maximum payment

“EK 10 Certain refunds not income

A refund under section EK 9 is excluded income under section CX 43B (Refund from environmental restoration account).

“Defined in this Act: excluded income

“EK 11 Application for refund

“Who may apply

- “(1) A person may apply to the Commissioner for a refund under section EK 12 of an amount in the person’s environmental restoration account if the refund—
- “(a) corresponds to expenditure incurred by the person of a type that is listed in schedule 6B, part B (Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant) and not in schedule 6B, part C:
 - “(b) represents an excess in the person’s environmental restoration account over the maximum account balance for

the person's environmental restoration account for the income year.

“Application

- “(2) An application for a refund must—
- “(a) be in writing; and
 - “(b) state the grounds on which the application is made; and
 - “(c) provide evidence satisfactory to the Commissioner verifying the existence of the grounds; and
 - “(d) state the amount of the refund that the applicant wants.

“Defined in this Act: Commissioner, environmental restoration account, income year

“EK 12 Refund

“When this section applies

- “(1) This section applies when—
- “(a) a person wants a refund of some or all of the amount in the person's environmental restoration account and none of sections EK 9, EK 15, EK 16, and EK 19 applies;
 - “(b) the amount in the person's environmental restoration account exceeds the maximum account balance for an income year.

“Refund if request made

- “(2) The Commissioner must make a refund under this section to a person if—
- “(a) the person applies for a refund and has incurred expenditure—
 - “(i) of a type that is listed in schedule 6B, part B (Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant) and not in schedule 6B, part C; and
 - “(ii) of an amount equal to or greater than the amount given by subsection (3) for the amount of the refund; and
 - “(iii) after the first date on which the person made to the Commissioner a payment under section EK 2 for entry in the person's environmental restoration account or a transfer under section EK 15,

EK 16, or EK 19 was made to the person's environmental restoration account:

- “(b) the maximum account balance for the latest complete income year for the person's environmental restoration account is less than the amount in the environmental restoration account at the end of that income year.

“Minimum amount of expenditure incurred

- “(3) The amount of expenditure incurred that corresponds to the amount of a refund is calculated using the formula—

$$\frac{\text{amount}}{\text{tax rate.}}$$

“Definitions of items in formula

- “(4) The items in the formula are defined in subsections (5) and (6).

“Amount

- “(5) **Amount** is the amount of the refund.

“Tax rate

- “(6) **Tax rate** is the highest rate of income tax on taxable income that—

- “(a) is stated in schedule 1; and
“(b) would apply to the person for the tax year if the person had sufficient taxable income.

“Amount of refund if expenditure incurred

- “(7) If a person is entitled to a refund under subsection (2)(a), the amount that the Commissioner must refund to the person is the smallest of—

- “(a) the refund for which the person applies;
“(b) the contents of the person's environmental restoration account at the time of the refund;
“(c) the refund corresponding to the person's expenditure that satisfies subsection (2)(a)(i) to (iii).

“Amount of refund if maximum account balance decreases

- “(8) If a person is entitled to a refund under subsection (2)(b), the amount that the Commissioner must refund to the person is the lesser of—
- “(a) the refund for which the person applies;
 - “(b) the difference at the end of the latest complete income year between—
 - “(i) the amount in the person’s environmental restoration account, after any transfer under section EK 15, EK 16, or EK 19 for the income year;
 - “(ii) the person’s maximum account balance for that income year.

“Section EK 17 overrides subsections (7) and (8)

- “(9) Section EK 17 overrides subsections (7) and (8).

“Defined in this Act: amount, Commissioner, environmental restoration account, income tax, income year, maximum account balance, tax year, taxable income

“EK 13 Income when refund given on request

A refund under section EK 12 is income, of the amount given by section CB 24B (Environmental restoration accounts), derived by the person in the income year in which the person receives the refund.

“Defined in this Act: Commissioner, income, income year

“EK 14 Application for transfer

“Who may apply

- “(1) A person may apply to the Commissioner for a transfer under section EK 15 from the amount in the person’s environmental restoration account.

“Application

- “(2) An application for a transfer must—
- “(a) be in writing; and
 - “(b) state the grounds on which the application is made; and
 - “(c) state the amount of the transfer that the applicant wants.

“Defined in this Act: Commissioner, environmental restoration account

“EK 15 Transfer on request

“When this section applies

“(1) This section applies if—

“(a) a person applies under section EK 14 for a transfer of some or all of the amount in their environmental restoration account to a person who is nominated in the application; and

“(b) the person has transferred to the nominated person the obligations to which the amount relates; and

“(c) none of sections EK 9, EK 12, EK 16, and EK 19 applies.

“Transfer if request made

“(2) The Commissioner must make a transfer under this section to an environmental restoration account of the person nominated in the application.

“Transfer treated as payment by nominated person if transfer of obligations verified

“(3) A transfer under subsection (2) is treated as being a payment by the nominated person to the nominated person’s environmental restoration account if the nominated person satisfies the Commissioner that—

“(a) the obligations to which the transferred amount relates have been transferred to the nominated person; and

“(b) in the absence of the transfer, the nominated person would be entitled to make a payment, of the amount of the transfer, to the nominated person’s environmental restoration account.

“Commissioner to reverse transfer if not satisfied under subsection (3)

“(4) If the nominated person does not satisfy the requirements of subsection (3) in relation to an amount, the Commissioner must transfer the amount to the environmental restoration account of the person who made the application under subsection (1)(a).

“Timing of reversal

- “(5) The transfer under subsection (4) is treated as taking place at the time of the original transfer under subsection (2).

“Defined in this Act: Commissioner, environmental restoration account

“EK 16 Transfer on death, bankruptcy, or liquidation*“When this section applies*

- “(1) This section applies if a person—
- “(a) has an environmental restoration account; and
 - “(b) does one of the following:
 - “(i) dies;
 - “(ii) becomes bankrupt;
 - “(iii) is put into liquidation.

“Transfer to other person

- “(2) Subsection (3) applies if the Commissioner is informed, by the administrator of the person’s estate, the Official Assignee, or the person’s liquidator, that the obligation to which the balance in the person’s environmental restoration account relates has been transferred to another person.

“Transfer to Crown or other person

- “(3) The Commissioner must transfer the amount referred to in subsection (4) to—
- “(a) the department that is at the time responsible for the administration of the Environment Act 1986, if the transfer is to Her Majesty the Queen in right of New Zealand; or
 - “(b) an environmental restoration account of the person to whom the obligation has been transferred, if paragraph (a) does not apply.

“Amount of transfer

- “(4) The Commissioner must transfer under subsection (3) the amount that is in the person’s environmental restoration account—
- “(a) on the date on which the person dies, if subsection (1)(b)(i) applies;
 - “(b) on the date on which the person becomes bankrupt, if subsection (1)(b)(ii) applies;

“(c) on the date on which the person is put into liquidation, if subsection (1)(b)(iii) applies.

“*Section EK 17 overrides subsection (4)*

“(5) Section EK 17 overrides subsection (4).

“*Year of income*

“(6) The amount of a transfer under this section is income, under section CB 24B (Environmental restoration accounts), derived by the person on the day before the day on which the amount of the transfer is determined under subsection (4).

“Defined in this Act: amount, Commissioner, environmental restoration account, income, liquidation

“**EK 17 Minimum refund or transfer**

The Commissioner must not give a refund or make a transfer under any of sections EK 9, EK 12, EK 15, EK 16, and EK 19 that is less than the lesser of—

“(a) \$1,000; and

“(b) the balance in the person’s environmental restoration account on the date on which the refund or transfer is made.

“Defined in this Act: Commissioner, environmental restoration account

“**EK 18 Payments from which refunds come**

Each refund to a person is treated as coming from the total amount in the person’s environmental restoration account in the order in which the person made the payments into the account.

“Defined in this Act: amount, environmental restoration account

“**EK 19 Environmental restoration account of amalgamating company**

If an amalgamating company with an environmental restoration account ceases to exist because of an amalgamation during an income year,—

- “(a) the contents of the environmental restoration account of the amalgamating company are transferred to an environmental restoration account of the amalgamated company on the date of the amalgamation:
- “(b) the amalgamated company is treated as having—
 - “(i) made to the amalgamated company’s environmental restoration account the payments that the amalgamating company made before the amalgamation to the amalgamating company’s environmental restoration account; and
 - “(ii) made from the amalgamated company’s environmental restoration account the transfers that the amalgamating company made before the amalgamation from the amalgamating company’s environmental restoration account; and
 - “(iii) received from the amalgamated company’s environmental restoration account the refunds that the amalgamating company received before the amalgamation from the amalgamating company’s environmental restoration account.

“Defined in this Act: amalgamated company, amalgamating company, amalgamation, environmental restoration account, income year

“EK 20 Environmental restoration account of member of consolidated group

“Member may have environmental restoration account

- “(1) A member of a consolidated group may have an environmental restoration account.

“Nominated company for group may act on behalf of member

- “(2) The nominated company for the consolidated group may make payments and applications and receive refunds under this subpart on behalf of the member.

“Use of consolidated financial statements for group

- “(3) In making payments and applications under this subpart, the nominated company may rely on the audited consolidated financial statements for the consolidated group.

“Use of consolidated figures for liabilities anticipated and expenditure incurred

- “(4) If the nominated company relies on the audited consolidated financial statements for the consolidated group, the consolidated figures for the anticipated liabilities and incurred expenditure of the consolidated group are attributed to the members on the basis of the individual obligations of the members to incur expenditure of a type listed in schedule 6B, part B (Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant) and not in schedule 6B, part C.

“Defined in this Act: consolidated group, environmental restoration account, nominated company

“EK 21 Commissioner may require notice in electronic format

The Commissioner may require a person to provide a notice under this subpart in an electronic format that the Commissioner prescribes under section 36BC of the Tax Administration Act 1994.

“Defined in this Act: Commissioner

“EK 22 Meaning of maximum payment

“Meaning of maximum payment

- “(1) In this subpart, **maximum payment** means the maximum payment that under subsection (2) a person may make to the person’s environmental restoration account for an income year.

“Amount of maximum payment

- “(2) The maximum payment that a person may make for an income year is the lesser of—
- “(a) the amount by which the maximum account balance for the income year for the environmental restoration account exceeds the amount in the environmental restoration account at the end of the income year:
 - “(b) the amount, if any, given for the person and the income year by subsection (3).

“Maximum payment for first 5 years of environmental restoration funds scheme

- “(3) If a person has a maximum account balance for the 2005–06 income year that is more than zero, the amount given by this subsection for the person and for that income year, and for each of the later income years before the 2010–11 income year, is the amount given by the formula—

level increase + (year × 0.2 × initial level) – contents.

“Definitions of items in formula

- “(4) In the formula,—

“(a) **level increase** is the greater of zero and the amount by which the maximum account balance for the income year exceeds the maximum account balance for the 2005–06 income year:

“(b) **year** is 1 for the 2005–06 income year and increases by 1 for each successive income year to a maximum of 5 for the 2009–10 income year:

“(c) **initial level** is the maximum account balance for the 2005–06 income year:

“(d) **contents** is the amount in the environmental restoration account at the end of the income year.

“Defined in this Act: amount, business, environmental restoration account, income year, maximum payment

“EK 23 Other definitions

“Meaning of maximum account balance

- “(1) In this subpart, **maximum account balance** for a person and an income year means—

“(a) if the person does not satisfy section EK 2 for the income year, zero:

“(b) if the person satisfies section EK 2 for the income year, the amount calculated using the formula—

provision × tax rate.

“Definitions of items in formula

- “(2) In the formula in subsection (1)(b)—

“(a) **provision** is the provision in the person’s financial statements for future expenditure that—

- “(i) is of a type listed in schedule 6B, part B (Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant); and
- “(ii) is not of a type listed in schedule 6B, part C:
- “(b) **tax rate** is the highest rate of income tax on taxable income that—
 - “(i) is stated in schedule 1; and
 - “(ii) would apply to the person for the tax year if the person had sufficient taxable income.

“Meaning of environmental restoration account

- “(3) In this subpart, **environmental restoration account**, for a person, means the account that the Commissioner keeps in the person’s name under section EK 4.

“Defined in this Act: business, Commissioner, environmental restoration account, income tax, income year, taxable income”.

- (2) Subsection (1) applies for expenditure incurred by a person in an income year starting on or after 10 June 2005.

43 When calculation of base price adjustment required

In section EW 29—

- (a) section EW 29(13) is repealed;
- (b) in the item “Defined in this Act:”, “New Zealand resident, trustee” is replaced by “New Zealand resident”.

44 Consideration when person exits from rules: accrued entitlement

Section EW 36(1)(b)(i) is repealed.

45 Section EW 39 repealed

Section EW 39 is repealed.

46 Consideration when person exits from rules: accrued obligation

Section EW 41(1)(b)(i) is repealed.

- 47 Consideration when person enters rules: accrued entitlement**
In section EW 42, the list of sections in the compare note is replaced by “ss EH 24(3)(c), EH 50(1A), (2)”.
- 48 Section EW 44 repealed**
Section EW 44 is repealed.
- 49 Section EX 55 repealed**
Section EX 55 is repealed.
- 50 Disposal of trading stock**
In section FB 3, “(whether by way of exchange, or gift, or distribution in terms of a will or on an intestacy, or otherwise” is replaced by “(whether by way of exchange, or otherwise, other than by a disposition of property that is not at market value because of the operation of any of sections FI 4 to FI 6”.
- 51 Rules for personal property lease asset during term of finance lease**
- (1) In section FC 8B(2), “lease term” is replaced by “term of the lease”.
 - (2) In section FC 8B(3), “lease term” is replaced by “term of the lease”.
- 52 Premiums paid to residents of Switzerland and the Netherlands**
- (1) In the heading to section FC 17, “**and the Netherlands**” is omitted.
 - (2) Section FC 17(1)(c) is replaced by the following:
“(c) the insurer or other person is treated as being resident in Switzerland for the purposes of a double tax agreement between the government of New Zealand and the government of Switzerland.”
- 53 Patent rights**
- (1) The heading to section FF 8 is replaced by “**Patent applications and patent rights**”.

- (2) In section FF 8, “patent rights” is replaced by “patent applications with complete specifications or patent rights” wherever it appears.
- (3) Subsections (1) and (2) apply to patent applications that are lodged for the first time on or after the date on which this Act receives the Royal assent.

54 Entities to which apportionment rule potentially applies

- (1) The heading to section FG 2 is replaced by “**Entities to which interest deduction rules potentially apply**”.
- (2) Section FG 2(1) is replaced by the following:
 - “(1) A taxpayer is not subject for a tax year to the interest apportionment rule in section FG 8 or the adjustment of annual total deduction in section FG 8B unless, at a time in the taxpayer’s income year, the taxpayer—
 - “(a) is a non-resident who is not a company:
 - “(b) is a company that is a non-resident in which—
 - “(i) no person who is resident in New Zealand has a direct ownership interest that is equal to or greater than 50%:
 - “(ii) a non-resident has a direct ownership interest that, when aggregated with the direct ownership interests of persons associated with the non-resident, is equal to or greater than 50%:
 - “(c) is a company that is resident in New Zealand—
 - “(i) in which a non-resident has an ownership interest that is equal to or greater than 50%:
 - “(ii) of which a non-resident has control by any other means:
 - “(d) is the trustee of a non-qualifying trust for which 50% or more in value of the settlements on the trust is settled by—
 - “(i) a non-resident:
 - “(ii) persons who are associated with the non-resident.”
- (3) Section FG 2(7) is omitted.

55 Section FG 3 replaced

Section FG 3 is replaced by the following:

“FG 3 When interest apportioned under section FG 8 or annual total deduction adjusted under section FG 8B

- “(1) A taxpayer who is not excluded by section FG 2 from the application of section FG 8 for a tax year is required to make an apportionment under section FG 8 of interest expenditure incurred during the corresponding income year of the taxpayer if the taxpayer—
- “(a) at no time in the income year—
 - “(i) is a reporting bank for a New Zealand banking group;
 - “(ii) is part of a New Zealand banking group for the purpose of section FG 8C; and
 - “(b) has a New Zealand group debt percentage for the income year that—
 - “(i) is greater than 75%; and
 - “(ii) if the taxpayer is a company or a trustee, exceeds the number obtained by multiplying the worldwide group debt percentage of the taxpayer by 1.1.
- “(2) A taxpayer who is not excluded by section FG 2 from the application of section FG 8B for a tax year is treated as having an annual total deduction for the tax year of an amount that is given by section FG 8B if—
- “(a) at a time in the taxpayer’s corresponding income year the taxpayer is the reporting bank for a New Zealand banking group; and
 - “(b) the New Zealand banking group has a New Zealand net equity, as defined in section FG 8G, of less than the net equity threshold for the New Zealand banking group, as defined in section FG 8H, on a measurement day for the taxpayer’s corresponding income year, as defined in section FG 8E.”

56 Rules for calculating New Zealand group debt percentage

- (1) In section FG 4(12)(b), “New Zealand parent.” is replaced by “New Zealand parent; and” and the following is added:

- “(c) are not members of the New Zealand banking group of a registered bank.”
- (2) In section FG 4(14C)(b)(iii), “New Zealand parent.” is replaced by “New Zealand parent; and” and the following is added:
- “(c) are not members of the New Zealand banking group of a registered bank.”
- (3) In section FG 4(14D), before paragraph (a), the following is inserted:
- “(aa) none of the taxpayer and the other companies is a member of a New Zealand banking group; and”.

57 Apportionment of interest deductions

- (1) In the heading to section FG 8, “—**taxpayer not in New Zealand banking group**” is added after “**deductions**”.
- (2) In section FG 8(1), “taxpayer is not in a New Zealand banking group and the” is inserted after “if a”.

58 New sections FG 8B to FG 8J inserted

After section FG 8, the following is inserted:

“FG 8B Adjustment of annual total deduction—reporting bank

- “(1) For a taxpayer that is a reporting bank and under section FG 3(2) has an annual total deduction for a tax year given by this section, the taxpayer’s annual total deduction for the tax year is,—
- “(a) if the New Zealand banking group of the reporting bank has a group funding debt for the tax year that is not zero, the amount calculated using the formula—
unadjusted annual total deduction – adjustments:
- “(b) if the New Zealand banking group of the reporting bank has a group funding debt for the tax year of zero, the annual total deduction for the tax year that the taxpayer would have had in the absence of this section and section FG 3(2).

- “(2) In the formula in subsection (1)(a),—
- “(a) **unadjusted annual total deduction** is the annual total deduction for the tax year that the taxpayer would have had in the absence of this section and section FG 3(2):
- “(b) **adjustments** is the sum of the income adjustment amounts that are given by subsection (4) for the measurement periods for the corresponding income year of the reporting bank.
- “(3) The group funding debt for a tax year for the New Zealand banking group of a reporting bank means the amount calculated using the formula—

$$\frac{\text{SFI} + \text{FID} - \text{FTE}}{\text{NQ}}$$

where—

SFI is the sum of the amounts for the tax year, each of which is the financial value for the New Zealand banking group of interest-bearing debt calculated under generally accepted accounting practice for a group quarter day

FID is the sum of the amounts for the tax year, each of which is the financial value for the New Zealand banking group, on a group quarter day, of financial arrangements—

- (a) for which the consolidated financial statements of the New Zealand banking group would show, in the corresponding income year of the reporting bank, a deduction—
- (i) under 1 or more of sections DB 6 to DB 8; and
- (ii) other than as a consequence of a fluctuation in the value of a currency of a country relative to the value of a currency of another country; and
- (b) that do not contribute to item **SFI**

FTE is the sum of the amounts for the tax year, each of which is the financial value for the New Zealand banking group, on a group quarter day, of shares that contribute to item **SFI**

NQ is the number of group quarter days in the corresponding income year of the registered bank.

“(4) For a measurement day in an income year of a reporting bank, the adjustment amount for a reporting bank is the amount calculated using the formula—

$$(\text{NET} - \text{NZE}) \times \frac{\text{I}}{\text{GFD}} \times \frac{\text{PD}}{\text{YD}}$$

where—

NET is the net equity threshold for the New Zealand banking group for the measurement day

NZE is the lesser of—

- (a) the net equity threshold for the New Zealand banking group for the measurement day;
- (b) the New Zealand net equity for the New Zealand banking group for the measurement day

I is the financial value for the New Zealand banking group, on the last day of the income year, of expenditure that—

- (a) is incurred by a member of the New Zealand banking group in the income year; and
- (b) is an interest expense under generally accepted accounting practice, incurred other than in relation to a share that contributes to item SFI, or is a deduction referred to in paragraph (a) of the definition of item FID in subclause (3)

GFD is the group funding debt for the tax year for the New Zealand banking group

PD is the number of days in the measurement period that corresponds to the measurement day

YD is the number of days in the income year.

“(5) If this Act requires that the annual total deduction for a reporting bank for an income year be apportioned between 2 or more parts of the income year, the adjustment amount under subsection (4) for a measurement day in the income year is attributed to the part containing the measurement day.

“(6) In this section, **group quarter day** for a registered bank and a tax year means a day—

- “(a) that is the last day of a quarter in the corresponding income year of the registered bank; and
- “(b) on which the registered bank is a reporting bank.

“FG 8C New Zealand banking group of registered bank

- “(1) The **New Zealand banking group** of a registered bank for a measurement period consists of every person or fixed establishment that on the measurement day for the measurement period is—
- “(a) a member under subsection (2) or a potential member under subsection (3) or (4); and
 - “(b) not excluded by an election under subsection (8).
- “(2) If the registered bank—
- “(a) is resident in New Zealand, the registered bank is a member:
 - “(b) is not resident in New Zealand, a fixed establishment in New Zealand of the registered bank is treated as being a person who is—
 - “(i) separate from the registered bank; and
 - “(ii) a member.
- “(3) A person who is a New Zealand resident is a potential member if—
- “(a) the person satisfies subsection (5) and—
 - “(i) the registered bank is resident in New Zealand; and
 - “(ii) there is no non-resident who is an ultimate parent of the registered bank under subsection (9):
 - “(b) the person satisfies subsection (6) and—
 - “(i) the registered bank is a non-resident; and
 - “(ii) there is no non-resident who is an ultimate parent of the registered bank under subsection (9):
 - “(c) the person satisfies subsection (7) and there is a non-resident who is an ultimate parent of the registered bank under subsection (9).
- “(4) A fixed establishment in New Zealand of a non-resident is treated as being a person who is separate from the non-resident and a potential member if—
- “(a) the fixed establishment satisfies subsection (6) and—
 - “(i) the registered bank is a non-resident; and
 - “(ii) there is no non-resident who is an ultimate parent of the registered bank under subsection (9):
 - “(b) the fixed establishment satisfies subsection (7) and there is a non-resident who is an ultimate parent of the registered bank under subsection (9).

- “(5) A person satisfies this subsection if,—
- “(a) under generally accepted accounting practice, consolidated group accounts—
 - “(i) are required to include the person and the registered bank:
 - “(ii) would be required to include the person and the registered bank but for relevant materiality thresholds:
 - “(b) the person is in the same group of companies as the registered bank under section IG 1(2).
- “(6) A person or fixed establishment satisfies this subsection if,—
- “(a) under generally accepted accounting practice, the person or fixed establishment would be required to be included in consolidated group accounts with the registered bank if—
 - “(i) the registered bank were resident in New Zealand; and
 - “(ii) the relevant materiality thresholds were satisfied:
 - “(b) the person is in the same group of companies as the registered bank under section IG 1 (2).
- “(7) A person or fixed establishment satisfies this subsection if,—
- “(a) under generally accepted accounting practice, the person or fixed establishment would be required to be included in consolidated group accounts with the ultimate parent of the registered bank if—
 - “(i) the ultimate parent were resident in New Zealand; and
 - “(ii) the relevant materiality thresholds were satisfied:
 - “(b) the person is in the same group of companies as the ultimate parent under section IG 1 (2).
- “(8) A reporting bank may elect under this subsection to exclude from the New Zealand banking group of the reporting bank—
- “(a) a person or a fixed establishment, whose main activity is the providing of life insurance:
 - “(b) a person who—
 - “(i) is resident in New Zealand; and
 - “(ii) has a voting interest of 100% in a person who is excluded by an election under paragraph (a); and
 - “(iii) does not have a main activity that is banking, financing or leasing; and

- “(iv) does not have a main activity that involves the ownership or control of entities having a main activity of banking, financing or leasing:
- “(c) a fixed establishment of a non-resident, if—
 - “(i) the non-resident has a voting interest of 100% in a person who is excluded by an election under paragraph (a); and
 - “(ii) the fixed establishment has a main activity of financing the person who is excluded by the election under paragraph (a); and
 - “(iii) the fixed establishment does not have a main activity that is banking, financing or leasing, other than the activity referred to in subparagraph (ii); and
 - “(iv) the fixed establishment does not have a main activity that involves the ownership or control of entities having a main activity of banking, financing or leasing:
- “(d) a person who—
 - “(i) is resident in New Zealand; and
 - “(ii) under generally accepted accounting practice is required for the making of financial reports to be included in consolidated group accounts with a person or fixed establishment who is excluded by an election under paragraph (a) or (b); and
 - “(iii) does not have a main activity that is banking, financing or leasing; and
 - “(iv) does not have a main activity that involves the ownership or control of entities having a main activity of banking, financing or leasing.
- “(9) For the purposes of this section, the **ultimate parent** of a registered bank is a company—
 - “(a) that has an ownership interest in the registered bank, calculated under section FG 2, of 50% or more; and
 - “(b) in which no ownership interest, as calculated under section FG 2, is held by a company that holds an ownership interest in the registered bank, calculated under section FG 2, of 50% or more.
- “(10) For the purposes of this section, the **ultimate parent** of a fixed establishment in New Zealand of a registered bank is the registered bank.

“FG 8D Reporting bank for New Zealand banking group

- “(1) For a New Zealand banking group that on a day includes a single registered bank, or includes no registered bank but includes a fixed establishment of a single registered bank, the reporting bank for the day is the registered bank.
- “(2) For a New Zealand banking group that on a day includes more than 1 registered bank, the reporting bank for the day is—
- “(a) the registered bank that first gives notice to the Commissioner of an election to be the reporting bank, if the Commissioner receives such a notice by the day that is 6 months after the end of the tax year in which the day occurs:
 - “(b) the registered bank chosen by the Commissioner, if paragraph (a) does not apply.
- “(3) For a New Zealand banking group that on a day includes no registered bank but includes fixed establishments of more than 1 registered bank, the reporting bank for the day is—
- “(a) the registered bank that first gives notice to the Commissioner of an election to be the reporting bank, if the Commissioner receives such a notice by the day that is 6 months after the end of the tax year in which the day occurs:
 - “(b) the registered bank chosen by the Commissioner, if paragraph (a) does not apply.

“FG 8E Measurement periods and measurement days

- “(1) For the New Zealand banking group and income year of a reporting bank, the **measurement periods** are—
- “(a) the quarters in the income year, if the reporting bank does not make an election under paragraph (b) or (c):
 - “(b) each calendar month of the income year, if the reporting bank elects that the New Zealand banking group have such measurement periods:
 - “(c) each day of the income year, if the reporting bank elects that the New Zealand banking group have such measurement periods.
- “(2) For the New Zealand banking group and income year of a reporting bank, the **measurement days** are each last day of each measurement period if the measurement periods are given by subsection (1)(a) or (b).

- “(3) If there is a change in the identity of the reporting bank for a New Zealand banking group, the measurement period corresponding to the first measurement day for the new reporting bank begins on the day after the last measurement day for the former reporting bank.

“FG 8F **Financial value and regulatory value**

- “(1) In sections FG 8B to FG 8J, the **financial value** of an item for a New Zealand banking group at a time is the amount that would be recorded for the item in financial statements for the New Zealand banking group that—
- “(a) related to the time; and
 - “(b) were prepared for external reporting purposes; and
 - “(c) were produced consistently with generally accepted accounting practice at the time by—
 - “(i) consolidating the financial statements for the members of the New Zealand banking group that are in the same group of companies; and
 - “(ii) if more than 1 consolidation is required under subparagraph (i), combining the consolidated financial statements so as to eliminate inter-group transactions.
- “(2) In sections FG 8B to FG 8J, the **regulatory value** of an item for a New Zealand banking group at a time is the total risk-weighted value for the item that would be obtained for the New Zealand banking group if the New Zealand banking group were a banking group for the purposes of the Capital Adequacy Framework that is issued by the Reserve Bank of New Zealand acting in the prudential supervision of registered banks under the Reserve Bank of New Zealand Act 1989.

“FG 8G **New Zealand net equity of New Zealand banking group**

- “(1) The **New Zealand net equity** of the New Zealand banking group of a registered bank for a measurement day is given by the following formula:

$$\text{EQV} - \text{FRS} - \text{EID} - \text{UPB} - \text{INTG} - \text{CGA} - \text{REV} - \text{TXB} \\ - \text{CEFA} - \text{NAFA} - \text{EOI} - \text{NOIA} - \text{AEQ} - \text{AEQI}$$

where—

EQV is the sum of the following amounts for the New Zealand banking group:

- (a) the financial value for the measurement day of—
 - (i) the shareholders' equity for the New Zealand banking group; and
 - (ii) the branch equity relating to fixed establishments of the New Zealand banking group;
- (b) the financial value for the measurement day of shares, each of which—
 - (i) is issued by a member of the taxpayer's New Zealand banking group; and
 - (ii) does not contribute to the amount referred to in paragraph (a):
- (c) the financial value for the measurement day of financial arrangements, each of which is a loan, or the provision of funds by a non-resident to its fixed establishment that—
 - (i) is not taken into account in the calculation of the group funding debt of the New Zealand banking group; and
 - (ii) is made by a non-resident who is not a member of the New Zealand banking group and is associated with a member of the New Zealand banking group under section OD 7 or OD 8(3); and
 - (iii) is made to a member of the New Zealand banking group; and
 - (iv) does not contribute to the amount referred to in paragraph (a); and
 - (v) does not give rise to interest expenditure other than as a result of a fluctuation in the value of a currency of a country relative to the value of a currency of another country; and
 - (vi) does not relate to a supply of goods or services

FRS is the financial value for the measurement day of fixed rate shares, each of which is—

- (a) issued by a member of the New Zealand banking group; and
- (b) owned by a person who is resident in New Zealand; and
- (c) included in the value of item EQV; and
- (d) issued by the member—
 - (i) on or after 1 January 2005;
 - (ii) before 1 January 2005, if the measurement period begins on or after 1 January 2010

EID is the financial value for the measurement day of financial arrangements, each of which—

- (a) is taken into account under paragraph (a) or (b) of the definition of item EQV in calculating the value of that item; and
- (b) gives rise to a deduction for the tax year under 1 or more of sections DB 6 to DB 8 for a member of the New Zealand banking group

UPB is the financial value for the measurement day of unvested policyholder benefit liabilities and policyholder retained profits that contribute to the value of item EQV

INTG is the financial value for the measurement day of intangible assets, other than—

- (a) goodwill relating to a business that is not banking, financing, leasing, or life insurance and that—
 - (i) is acquired from a person who, at the time of acquisition, is not associated under section OD 7 or OD 8(3) with a member of the New Zealand banking group;
 - (ii) relates to an entity that is acquired from a person who is not associated under section OD 7 or OD 8(3) with a member of the New Zealand banking group;
- (b) a film or film right;
- (c) property that is depreciable property or is expected to become depreciable property

- CGA** is the sum for the measurement day of capital gain amounts, each of which arises for the 2004–05 or a later tax year from a transfer of an intangible asset between a member of the New Zealand banking group and a person who—
- (a) is not a member of the New Zealand banking group; and
 - (b) is associated with a member of the New Zealand banking group under section OD 7 or OD 8(3)
- REV** is the financial value for the measurement day of revaluation reserves that contribute to the value of item EQV
- TXB** is the financial value for the measurement day of net future tax benefits that are taken into account in determining the value of item EQV and arise from—
- (a) net losses for the tax year:
 - (b) losses carried forward from an earlier tax year:
 - (c) timing or temporary differences to the extent that the items giving rise to the timing or temporary differences would contribute to a net loss for the tax year if the items were deductible in the tax year
- CEFA** is the financial value for the measurement day of the credit enhancements provided by members of the New Zealand banking group, each of which is, for the purpose of the Capital Adequacy Framework that is issued by the Reserve Bank of New Zealand,—
- (a) a credit enhancement that is provided to an associated funds management and securitisation scheme of a non-member:
 - (b) a credit enhancement that is provided to an affiliated insurance group that is a non-member and has not been expensed
- NAFA** is the financial value for the measurement day of advances by members of the New Zealand banking group, each of which is, for the purpose of the Capital Adequacy Framework that is issued by the Reserve Bank of New Zealand, an advance of a capital nature to a connected person who is not a member of the New Zealand banking group

EOI is the amount that would, if the New Zealand banking group included the potential members of the New Zealand banking group and before any set-off allowed under generally accepted accounting practice, be the financial value for the measurement day of shares in non-residents that—

- (a) are held by—
 - (i) a member or potential member of the New Zealand banking group;
 - (ii) a company resident in New Zealand in which a member or potential member of the New Zealand banking group holds a direct voting interest of 10% or more and that, in the income year, pays to the member or potential member a dividend to which a conduit tax relief credit is attached; and
- (b) are not interests in foreign investment funds for which the FIF income or loss is calculated using the comparative value method or the deemed rate of return method; and
- (c) are not shares in a grey list company that—
 - (i) are listed on the official list of a recognised exchange; and
 - (ii) are revenue account property; and
 - (iii) would not be a sufficient interest in the offshore company if the class of the shares were the only class of share issued by the offshore company

NOIA is the notional offshore investment amount for the New Zealand banking group for the income year of the reporting bank, as defined in subsection (4)

AEQ is the financial value for the measurement day of interests, each of which is taken into account in calculating item EQV and is held by a person who—

- (a) is not a member of the New Zealand banking group; and
- (b) is not a member of the New Zealand banking group because of an election under section FG 8C(8); and

- (c) is resident in New Zealand or holds the interest through a fixed establishment in New Zealand
- AEQI is the financial value for the measurement day of—
- (a) shares in persons who are not members of the New Zealand banking group because of an election under section FG 8C(8):
- (b) loans, other than on arm's-length terms, to persons who are not members of the New Zealand banking group because of an election under section FG 8C(8).
- “(2) Subsection (3) applies if a component of an item, other than the item NOIA, that is subtracted from the item EQV under subsection (1) is a component of 1 or more other such items.
- “(3) The value of the component is included in a single item for which the value of the component is not less than the value of the component for each of the other items.
- “(4) The **notional offshore investment amount** for a New Zealand banking group for an income year of the reporting bank for the New Zealand banking group is the greater of zero and the amount given by the following formula:

$$\frac{(\text{FTC} - \text{DMT}) \times 12}{\text{CRT} \times \text{IRR} \times \text{NM}}$$

where—

- FTC is the total for the tax year of foreign tax credits each of which—
- (a) is claimed as a credit against the income tax liability for the tax year of—
- (i) a member of the New Zealand banking group:
- (ii) a person who is excluded from the New Zealand banking group by an election under section FG 8C(7); and
- (b) does not arise from attributed CFC income or from FIF income; and
- (c) does not arise from income derived before 1 July 2005

DMT is the amount—

- (a) set by the Governor-General by Order in Council as the threshold amount for the application of this subsection; or

- (b) equal to \$5,000,000, if no threshold amount is set under paragraph (a) and paragraph (c) does not apply; or
 - (c) equal to \$416,667 multiplied by the number of months beginning on or after 1 July 2005 in the corresponding income year for the reporting bank, if the corresponding income year includes that date and no threshold amount is set under paragraph (a)
- CRT** is the rate of tax for companies referred to in schedule 1, part A, item 5 for the tax year
- IRR** is the amount—
- (a) set by the Governor-General by Order in Council as the interest rate of return for the purposes of this subsection; or
 - (b) of 7% per year, if no interest rate of return is set under paragraph (a)
- NM** is the number of months beginning on or after 1 July 2005 in the income year of the reporting bank for the New Zealand banking group.
- “(5) The Governor-General may, from time to time by Order in Council,—
- “(a) specify a type of instrument that is included in item EQV for the purposes of subsection (1):
 - “(b) specify a type of instrument that is not included in item EQV for the purposes of subsection (1):
 - “(c) set, replace, or repeal a figure for a threshold amount for a value of an instrument, or aggregate value of a type of instrument, held by a person or group of persons for the purposes of a specification under paragraph (a) or (b):
 - “(d) amend or delete a specification under paragraph (a) to (c):
 - “(e) set, replace, or repeal a figure for the threshold amount for the purposes of paragraph (a) of the definition of item DMT in subsection (4):
 - “(f) set, replace, or repeal a figure for the interest rate of return for the purposes of paragraph (a) of the definition of item IRR in subsection (4).
- “(6) An Order in Council under subsection (5) may—
- “(a) come into effect on or after 1 July 2005:

- “(b) apply for measurement periods and quarters that—
- “(i) are in the 2005–06 or a subsequent income year;
 - and
 - “(ii) commence on or after 1 July 2005.

“FG 8H **Net equity threshold**

- “(1) The **net equity threshold** for a measurement day for the New Zealand banking group of a registered bank is given by the following formula:

$$0.04 \times (\text{RWE} - \text{DEQ})$$

where—

RWE is the sum of the following values for the measurement day:

- (a) for an asset that is included in a balance sheet, the regulatory value of the asset;
- (b) for an exposure that is not included in a balance sheet, the regulatory value of the exposure;
- (c) for goodwill that is not taken into account in calculating item INTG in determining the New Zealand net equity of the New Zealand banking group, the financial value of the goodwill

DEQ is the total of the regulatory values for the measurement day of items, other than item NOIA, that are deducted from item EQV in determining the New Zealand net equity of the New Zealand banking group.

- “(2) For the purposes of subsection (1), the assets of a fixed establishment include the assets that are treated as being the assets of the fixed establishment under generally accepted accounting practice.

“FG 8I **Valuation of debt and risk-weighted exposures**

For the purposes of sections FG 8B to FG 8H, the value on a day of a financial arrangement or risk-weighted exposure that is denominated in a foreign currency must be determined—

- “(a) in New Zealand currency; and
- “(b) using the close of trading spot exchange rate for the foreign currency on the day.

“FG 8J Treatment of temporary change in New Zealand net equity or net equity threshold

A change in a quantity that, but for this subsection, would produce a temporary change in the New Zealand net equity or net equity threshold of the New Zealand banking group of a registered bank does not affect the value of the New Zealand net equity or net equity threshold if the change is produced by an arrangement that has an effect of defeating the intent and application of sections FG 8B to FG 8I.”

59 Circumstances in which group excess interest allocation required

Section FH 1(1) is replaced by the following:

- “(1) Subject to subsection (2), the group excess interest allocation rules in sections FH 5 to FH 8 apply for a tax year to a company that—
- “(a) for the imputation year that corresponds with the tax year—
 - “(i) is a dividend withholding payment account company or a conduit tax relief company; and
 - “(ii) is not a member of a New Zealand banking group for a registered bank; and
 - “(b) in the corresponding income year—
 - “(i) derives foreign attributed income:
 - “(ii) is paid a dividend from which the company must deduct an amount of dividend withholding payment or would have to deduct such an amount but for section NH 7.”

60 New subpart FI inserted

After subpart H of Part F, the following is inserted:

**“Subpart I—Effect of certain disposals and
resulting acquisitions**

“FI 1 Disposals and resulting acquisitions to which subpart FI applies

- “(1) The purpose of this subpart is to provide a disposal value in respect of the disposals and a cost price in respect of the resulting acquisitions of property for transactions to which subsections (2) and (3) refer.

- “(2) This subpart applies to a transaction that is of a type referred to in subsection (3).
- “(3) This subpart applies to a transaction that is—
- “(a) a distribution of property made by a trustee of a trust to a beneficiary of that trust:
 - “(b) a distribution in kind made by a company—
 - “(i) to a shareholder of that company, or to a person in a shareholding relationship with that company; and
 - “(ii) to which section CD 5 applies; and
 - “(iii) that is a transfer of value to which section CD 3(1)(a) refers:
 - “(c) a gift made by one person to another person:
 - “(d) a transfer of an estate of a deceased person to an administrator or executor of the estate occurring as a result of the death of a person:
 - “(e) a distribution of property made by an administrator, executor, or trustee of the estate of a deceased person to a person who is beneficially entitled to receive the property under a will or an intestacy:
 - “(f) a settlement of property by one trust on another trust, if authorised—
 - “(i) under a trust instrument as a power of advancement or resettlement:
 - “(ii) under section 41 of the Trustees Act 1956 as the payment of money or the application of property.

“FI 2 Disposal and resulting acquisition of property treated as occurring at market value

- “(1) A transaction to which this subpart applies is to be treated as—
- “(a) a disposal at market value by the person who disposes of the property; and
 - “(b) an acquisition at market value by the recipient of the property.
- “(2) In this Act, the market value of property that a person receives from a transaction to which this subpart applies is the market value of the property for the person from whom the property was received.

“FI 3 Date on which disposal and resulting acquisition treated as occurring

- “(1) Unless subsection (2) applies, the person who disposes of property in a transaction to which section FI 1 refers and the person who receives the property must treat the disposal as occurring on the date on which the transaction occurs.
- “(2) On the happening of a transaction to which section FI 1(3)(d) refers, the personal representatives of the deceased person and the recipient of the property must treat the disposal as occurring immediately before the person died.

“FI 4 Disposal and resulting acquisition of property by spouse or de facto partner on death of person

On the death of a person, a disposal under the terms of a will or intestacy to the surviving spouse or de facto partner of the deceased person of property to which section FI 1(3)(d) or (e) refers is treated as a matrimonial property disposition to which subpart FF applies, unless—

- “(a) a person who is not within the second degree of relationship to the deceased is beneficially entitled to property; and
- “(b) the property is—
- “(i) revenue account property;
 - “(ii) an interest in a FIF;
 - “(iii) a financial arrangement other than a financial arrangement in respect of which the deceased person or a trustee of the deceased person was a cash basis person;
 - “(iv) an item in respect of which a person has an amount of depreciation loss under section EE 1(2).

“FI 5 Distributions of property to close relatives and others

- “(1) This section applies to a transaction to which section FI 1(3)(e) refers if persons who are related within the second degree of relationship to the deceased person, or persons who are exempt under section CW 36, are—
- “(a) the sole beneficiaries of the property of the deceased person;
 - “(b) beneficiaries of the deceased person and the sole beneficiaries of property of the deceased person that is—

- “(i) revenue account property;
 - “(ii) an interest in a FIF;
 - “(iii) a financial arrangement other than a financial arrangement in respect of which the deceased person or a trustee of the deceased person was a cash basis person;
 - “(iv) an item in respect of which a person has an amount of depreciation loss under section EE 1(2).
- “(2) A disposal and acquisition of property to which this section applies is treated as a transaction to which subpart FF applies, if—
- “(a) the terms of the testamentary instrument or intestacy of the deceased person establish no life interest; and
 - “(b) other than for the period in which the property is subject to administration or executorship, the terms of the testamentary instrument or intestacy of the deceased person require that no property of the deceased person be held in trust; and
 - “(c) in a tax year during which the property is subject to administration or executorship or in which the property is held in trust, the net income of the estate is distributed beneficially to the maximum extent that is allowable under the terms of the will or intestacy and that is consistent with the legal obligations of the trustee.

“FI 6 Disposal and resulting acquisition of timber

If a transaction to which section FI 1(3)(d) or (e) refers involves the disposal and acquisition of property that is timber, standing timber, or the right to take timber, the disposal is treated as a transaction to which subpart FF applies if the recipient of the property is within the second degree of relationship to the deceased person.

“FI 7 Relationship of section FI 2(2) to subpart CB

- “(1) This section applies to a transaction to which section FI 1(3)(d) or (e) refer if—
- “(a) persons who are related within the second degree of relationship to the deceased person receive an interest in property that is land; and

- “(b) the sale of the interest in the land, if sold by the deceased person, would result in income to the deceased person under any of sections CB 7, CB 8, CB 9, or CB 10.
- “(2) When this section applies, sections CB 7, CB 8, CB 9, and CB 10 do not apply to a transaction to which any of section FI 1(3)(d) or (e) refers.
- “(3) If a disposal of an interest in land by an administrator or executor or beneficiary of the estate of a deceased person within 10 years of its acquisition by the deceased person results in income under any of sections CB 7, CB 8, CB 9, or CB 10, the cost of the interest in the land to the administrator or executor or beneficiary is the cost of the interest to the deceased person plus all other costs incurred by the deceased person and the administrator or executor or beneficiary not previously deducted under this Act.

“FI 8 Relationship of subpart FI to unexpired prepayments

If property subject to section EA 3 is disposed of in a transaction to which section FI 1(3)(d) or (e) refers and would be valued under section FI 2 in the absence of this section, the property must be valued under section EA 3(4) to (7), as the circumstances require, as if the date of valuation is the end of an income year.

“FI 9 Death occurring before 1 October 2005

- “(1) This section applies to a transaction to which section FI 1 refers that involves the disposal of property to an administrator, or executor, or trustee on the death of a person if—
- “(a) the death occurred before 1 October 2005; and
- “(b) in the year in which the transaction occurred,—
- “(i) each beneficiary of the deceased person is a New Zealand resident; and
- “(ii) no amount of the income of the beneficiary is exempt income under section CW 36; and
- “(c) the tax returns of the deceased person and of the resulting estate that are provided to the Commissioner in respect of the income year in which the death occurred are calculated on the basis that all the property of the

deceased person was disposed of immediately before death—

- “(i) at market values; or
 - “(ii) at the values given by subpart FF for property of that type; or
 - “(iii) at a combination of the values in subparagraphs (i) and (ii); and
 - “(d) the administrator or executor adopted for taxation purposes the value referred to in paragraph (c) for the property.
- “(2) For the purposes of the Income Tax Act 1994 and this Act, the value used in the tax returns of the deceased person and the estate for the disposal value and the cost price of the property involved in the transaction is treated as correct.
- “(3) Despite subsection (2), if an enactment contained in the Income Tax Act 1994 or this Act prescribes the adoption of a market value on a disposal by an administrator or executor or trustee of the estate of the deceased person on the death of the deceased person, that market value must be adopted in a tax return provided to the Commissioner.

“FI 10 Value of property acquired by beneficiary of trust before 1 October 2005

- “(1) This section applies to a transaction to which section FI 1 refers that involves the disposal of property to a beneficiary by an administrator or executor or trustee if—
- “(a) the transaction occurred before 1 October 2005; and
 - “(b) the beneficiary was a New Zealand resident when the beneficiary acquired the property; and
 - “(c) no amount of the income of the beneficiary is exempt income under section CW 36; and
 - “(d) the tax returns of the estate and of the beneficiary provided to the Commissioner in respect of the income year in which the transaction occurred are calculated on the basis that—
 - “(i) the distributed property was disposed of at market value; or
 - “(ii) the disposition of the estate was a disposition and acquisition of the property at values given by subpart FF for property of that type; or

- “(iii) the value of the property was a combination of the values given by paragraphs (d)(i) or (ii); and
- “(e) the beneficiary adopted for taxation purposes the value referred to in paragraph (d) for the property.
- “(2) For the purposes of the Income Tax Act 1994 and this Act, the value used in the tax returns of the estate and the beneficiary for the disposal value and the cost price of the property involved in the transaction is treated as correct.
- “(3) Despite subsection (2), if an enactment contained in the Income Tax Act 1994 or this Act prescribes the adoption of a market value on a disposal by an administrator or executor or trustee of the estate of a deceased person, that market value must be adopted by the administrator, executor, or trustee, and a beneficiary in the tax returns they provide to the Commissioner.

“FI 11 Disposal of certain financial arrangements on death

If property is disposed of in a transaction to which section FI 1(3)(d) or (e) refers and the trustee of the deceased person’s estate is a cash basis person under section EW 60(1), the property must be valued at cost and not under section FI 2.”

61 Imputation: arrangement to obtain tax advantage

- (1) In section GC 22(4)(b), “both a tax credit advantage and” is omitted.
- (2) Subsection (1) applies for arrangements entered on or after 16 November 2004.

62 Attributing interests in FIFs

Section GD 14(3)(c) is replaced by the following:

“(c) the consideration (if any) is not equal to the market value of the interest at the time.”

63 Section GD 2 repealed

Section GD 2 is repealed.

64 Interpretation

In section HH 1(7), “paragraph (b) of” is inserted before “the definition”.

65 Income of beneficiaries

In section HH 3(4), the formula is replaced by the following:

$$\frac{a \times b}{c}.$$

66 Liability for tax payable by company left with insufficient assets

(1) Section HK 11(1)(b) is replaced by the following:

“(b) an effect of that arrangement is that the company is unable to satisfy under this Act a liability (called in this section the **tax liability**) of the company, whether arising before or after the arrangement is entered, for—

“(i) income tax:

“(ii) a civil penalty:

“(iii) an amount payable under Part 7 of the Tax Administration Act 1994; and”.

(2) In section HK 11(4)(c), “(exclusive of any late payment penalty or interest arising under this Act or the Tax Administration Act 1994 for late payment of any part of the tax liability)” is replaced by “(excluding a civil penalty or an amount payable under Part 7 of the Tax Administration Act 1994 that is part of the tax liability)”.

(3) In section HK 11(4)(d),—

(a) “any late payment penalty or interest arising under this Act or the Tax Administration Act 1994 for late payment, which comprises part of the tax liability” is replaced by “a civil penalty or an amount payable under Part 7 of the Tax Administration Act 1994 that is part of the tax liability”:

(b) “(exclusive of any such late payment penalty or interest)” is replaced by “(excluding the civil penalty or the amount payable under Part 7 of the Tax Administration Act 1994)”.

67 Rebate for gifts of money

In section KC 5(1)(co), “Trust.” is replaced by “Trust:” and the following is added:

“(cp) Habitat for Humanity New Zealand Limited.”

68 Determination of amount of credit in certain cases

After section LB 1(1)(h), the following is inserted:

“(hb) in the case of an imputation credit carried forward to a later income year under section LB 2(3C) as a credit of tax, the amount of the credit of tax carried forward reduced by any amount of the credit that is extinguished by the Commissioner under section 177C of the Tax Administration Act 1994:”.

69 Credit of tax for imputation credit

(1) After section LB 2(2), the following is inserted:

“(2B) Subsection (3) applies to a taxpayer that is—

“(a) a company:

“(b) a trustee (other than the Maori Trustee):

“(c) a Maori authority:

“(d) a taxpayer whose imputation credit giving rise to the credit of tax is category A income of the trustee of a group investment fund.”

(2) In section LB 2(3)—

(a) “There is no refund to the taxpayer of any credit of tax under this section” is replaced by “For a taxpayer referred to in subsection (2B), no refund of a credit of tax under this section is available”:

(b) in the definition of item b of the formula—

(i) in subparagraph (iia), “year; and” is replaced by “year.”:

(ii) subparagraph (iv) is omitted.

(3) After section LB 2(3A), the following is inserted:

“(3B) For a taxpayer other than a taxpayer referred to in subsection (2B), no refund of a credit of tax under this section is available, but if the whole of the credit of tax is not credited under subsection (2) against the taxpayer’s income tax liability for the income year, subsection (3C) applies to the amount of the credit of tax that remains.

“(3C) The remaining credit of tax for an income year is treated in the following ways, applied in the alphabetical order of the paragraphs so far as the credit of tax extends:

“(a) carried forward as a credit of tax to the next income year:

- “(b) reduced by any amount extinguished under section 177C(5B) of the Tax Administration Act 1994 by the Commissioner in that next income year:
- “(c) reduced by any amount credited against the taxpayer’s income tax liability for that next income year:
- “(d) treated under this subsection as a remaining credit of tax for that next income year.”

70 Section LC 15 repealed

Section LC 15 is repealed.

71 Resident withholding tax deductions to be credited against income tax assessed

- (1) In the heading to section LD 3, “**deductions**” is replaced by “**payments**”.
- (2) In section LD 3(2), in the words before paragraph (a),—
 - (a) “deducted from” is replaced by “paid in relation to”:
 - (b) “deduction” is replaced by “payment”.
- (3) In section LD 3(2), in the words after paragraph (d), “deducted” is replaced by “payments”.

72 Special rules for holding companies

In section LE 3(3)(e), “are exempt income” is replaced by “are exempt income other than”.

73 Amount of provisional tax payable

Section MB 2(1)(aa) and (ab) is repealed.

74 Section MB 6 replaced

Section MB 6 is replaced by the following:

“MB 6 Voluntary payments

A taxpayer may at any time make voluntary payments to the Commissioner as provisional tax of such amounts as the taxpayer thinks fit, being—

- “(a) tax in respect of the taxpayer’s income tax liability for a tax year:
- “(b) tax in excess of the provisional tax payable by the taxpayer for a tax year:
- “(c) tax in excess of the taxpayer’s income tax liability for a tax year.”

75 Credits arising to imputation credit account

- (1) After section ME 4(1)(c), the following is inserted:
- “(cb) the amount of any credit arising in the imputation credit account as a result of an election under section ME 9B(2)(a)(ii):
 - “(cc) the amount of any payment of additional income tax for which the company is liable under section ME 9B(6):
 - “(cd) the amount of any payment of additional income tax for which the company is liable under section ME 9C(7):”.
- (2) After section ME 4(2)(b), the following is inserted:
- “(bb) in the case of a credit referred to in subsection (1)(cb), on the date on which the leaving company ceases to be a member of the wholly-owned group of companies:
 - “(bc) in the case of a credit referred to in subsection (1)(cc), on the date on which the company makes the payment to the Commissioner:
 - “(bd) in the case of a credit referred to in subsection (1)(cd), on the date on which the company makes the payment to the Commissioner:”.

76 Debits arising to imputation credit account

- (1) After section ME 5(1)(f), the following is inserted:
- “(fb) the amount of any debit arising in the imputation credit account as a result of an election under section ME 9B(2)(a)(i):”.
- (2) In section ME 5(1)(h), “section LD 8(1)(a)” is replaced by “section LD 8(1)(c)”.
- (3) After section ME 5(2)(f), the following is inserted:
- “(fb) in the case of a debit referred to in subsection (1)(fb), on the date on which the leaving company ceases to be a member of the wholly-owned group of companies:”.

77 New sections ME 9B and ME 9C inserted

- (1) After section ME 9, the following is inserted:
- “ME 9B Imputation credit account company leaving wholly-owned group**
- “(1) This section applies to an imputation credit account company (called the **leaving company**) if, at a time in the income year of the leaving company that corresponds to a tax year,—

- “(a) there is a change in the ultimate owners of the leaving company; and
 - “(b) as a result of the change, the leaving company ceases to be a member of a wholly-owned group of companies (called the **former group**); and
 - “(c) the total amount of the available net losses from the previous tax year for the members of the former group exceeds \$1,000,000.
- “(2) If the leaving company at the time has a debit balance in its imputation credit account, the leaving company—
- “(a) may elect that an amount that is not more than the debit balance be—
 - “(i) a debit in the imputation credit account of another imputation credit account company that is a member of the former group and for which there is no change in ultimate owners at the time; and
 - “(ii) a credit in the imputation credit account of the leaving company:
 - “(b) may elect to pay an amount of tax by way of additional income tax that is equal to—
 - “(i) the amount of the debit balance, if the leaving company makes no election under paragraph (a):
 - “(ii) the amount by which the debit balance exceeds the amount that is subject to the election under paragraph (a).
- “(3) If the leaving company at the time is entitled to an amount in a pooling account or would be entitled, in the absence of section MD 2, to a refund under section MD 1 of an amount of excess tax, subsection (4) applies to the following amount (called the **excess entitlement**):
- “(a) zero, if at the time the credit balance in the imputation credit account of the leaving company equals or exceeds the total of the following amounts:
 - “(i) the amount that would be the entitlement under section MD 1:
 - “(ii) the amount in a tax pooling account that has been provided by or for the benefit of the leaving company and would exceed the liability at the time of the leaving company to pay income tax or provisional tax:

- “(b) the total of the amounts referred to in paragraph (a)(i) and (ii), if at the time there is no credit balance in the imputation credit account of the leaving company:
 - “(c) the amount by which the credit balance in the imputation credit account of the leaving company at the time is exceeded by the total of the amounts referred to in paragraph (a)(i) and (ii), if neither of paragraphs (a) and (b) applies.
- “(4) If the leaving company at the time has an excess entitlement, the leaving company—
- “(a) may elect that an amount that is not more than the excess tax payment for the company be—
 - “(i) treated as having been paid, as income tax or provisional tax, on behalf of another imputation credit account company that is a member of the former group and for which there is no change in ultimate owners at the time; and
 - “(ii) not treated as having been paid as income tax or provisional tax by the leaving company:
 - “(b) may elect to pay an amount of tax by way of additional income tax equal to—
 - “(i) the amount of the excess entitlement, if the leaving company makes no election under paragraph (a); or
 - “(ii) the amount by which the excess tax payment exceeds the amount that is subject to the election under paragraph (a).
- “(5) A leaving company or a former group may satisfy a liability to pay additional income tax under subsection (2) or (4) by treating an excess tax payment of the leaving company or the former group as a payment towards the satisfaction of the liability.
- “(6) If the leaving company elects to pay an amount of additional income tax under subsection (2)(b) or (4)(b) that exceeds the amount of any payment under subsection (5), the additional income tax must be paid to the Commissioner by the 20th day of the month following the month in which the leaving company leaves the former group.
- “(7) The former group is jointly liable with the leaving company for additional income tax payable under subsection (6).

- “(8) A payment of additional income tax under subsection (2) or (4) does not satisfy any other liability of the leaving company or the former group.
- “(9) An election under subsection (2) or (4) must be—
- “(a) in a form the Commissioner may require; and
 - “(b) made by the leaving company; and
 - “(c) accompanied by notice of agreement from the company who receives the debit under subsection (2) or is treated under subsection (4) as having the benefit of the excess tax payment; and
 - “(d) be made before the company leaves the group or within a further period that the Commissioner may allow if satisfied that the company had insufficient information to make an appropriate election at the time the company left the group.
- “(10) In this section,—
- “(a) an **ultimate owner** of a company means a person—
 - “(i) who has an ownership interest in the company, calculated under section FG 2; and
 - “(ii) in whom no ownership interest, as calculated under section FG 2, is held by a person who holds an ownership interest in the company, calculated under section FG 2, of 50% or more:
 - “(b) **excess tax payment**, for a company at a time, means the amount at the time by which payments made by or on behalf of the company to the Commissioner for income tax or provisional tax exceed the liability at the time of the company to pay income tax and provisional tax.

“ME 9C **Imputation credit account company joining wholly-owned group**

- “(1) This section applies to an imputation credit account company (called the **joining company**) if, at a time in the income year of the joining company that corresponds to a tax year,—
- “(a) the joining company becomes a member of a wholly-owned group of companies (called the **new group**); and
 - “(b) the joining company was formerly a member of a wholly-owned group (called the **former group**) having ultimate owners that differed from the ultimate owners of the new group; and

- “(c) the total amount of the available net losses from the previous tax year for the members of the former group exceeds \$1,000,000.
- “(2) Subsection (3) applies to the joining company if—
- “(a) the joining company at the time has a debit balance in its imputation credit account; and
- “(b) the debit balance includes debits (called the **former group debits**)—
- “(i) that arose in the imputation credit account when the joining company was a member of the former group; and
- “(ii) upon which additional income tax under section ME 9B(2) was not paid by the joining company or former group.
- “(3) The joining company must pay an amount of tax by way of additional income tax that is equal to the amount of the former group debits.
- “(4) If the joining company at the time is entitled to an amount in a pooling account or would be entitled, in the absence of section MD 2, to a refund under section MD 1 of an amount of excess tax relating to a time when the joining company was in the former group, subsection (5) applies to the following amount (called the **excess entitlement**):
- “(a) zero, if at the time the credit balance in the imputation credit account of the joining company equals or exceeds the total of the following amounts:
- “(i) the amount that would be the entitlement under section MD 1:
- “(ii) the amount in a tax pooling account that has been provided by or for the benefit of the joining company and would exceed the liability at the time of the joining company to pay income tax and provisional tax:
- “(b) the total of the amounts referred to in paragraph (a)(i) and (ii), if at the time there is no credit balance in the imputation credit account of the joining company:
- “(c) the amount by which the credit balance in the imputation credit account of the joining company at the time is exceeded by the total of the amounts referred to in paragraph (a)(i) and (ii), if neither of paragraphs (a) and (b) applies.

- “(5) If the joining company at the time has an excess entitlement, the joining company must pay an amount of tax by way of additional income tax equal to the amount of the excess entitlement.
- “(6) A joining company or a new group may satisfy a liability to pay additional income tax under subsection (3) or (5) by treating an excess tax payment of the joining company or the new group as a payment towards the satisfaction of the liability.
- “(7) If the joining company must pay an amount of additional income tax under subsection (3) or (5) that exceeds the amount of any payment under subsection (6), the additional income tax must be paid to the Commissioner by the 20th day of the month following the month in which the joining company joins the new group.
- “(8) The new group is jointly liable with the joining company for additional income tax payable under subsection (3) or (5).
- “(9) A payment of additional income tax under subsection (3) or (5) does not satisfy any other liability of the joining company or the new group.
- “(10) In this section,—
- “(a) an **ultimate owner** of a company means a person—
- “(i) who has an ownership interest in the company, calculated under section FG 2; and
- “(ii) in whom no ownership interest, as calculated under section FG 2, is held by a person who holds an ownership interest in the company, calculated under section FG 2, of 50% or more:
- “(b) **excess tax payment**, for a company at a time, means the amount at the time by which payments made by or on behalf of the company to the Commissioner for income tax or provisional tax exceed the liability at the time of the company to pay income tax and provisional tax.”
- (2) Subsection (1) applies for a company that leaves a wholly-owned group on or after 16 November 2004.

78 Application of specific imputation provisions to consolidated imputation groups

After section ME 14(3), the following is inserted:

- “(3B) Sections ME 9B and ME 9C and sections 97, 101, 139B, 140B, 140D, and 180 of the Tax Administration Act 1994 apply, with any necessary modifications, to a consolidated imputation group and its imputation credit account as if—
- “(a) it were a single company; and
 - “(b) each reference to a provision of this Act were a reference to the equivalent provision applicable to consolidated imputation groups; and
 - “(c) each reference to liability of a company for additional income tax, late payment penalty, or imputation penalty tax were (subject to the application of section HB 1(2) to (5)) a reference to joint and several liability for that tax of each company which is a member of the group at the time the additional income tax, late payment penalty, or imputation penalty tax becomes payable.”

79 Debits arising to dividend withholding payment account

In section MG 5(1)(e), “section LD 8(1)(a)” is replaced by “section LD 8(1)(c)”.

80 Policyholder credit account companies and dividend withholding payment credits

- (1) In section MG 8B(4),—
 - (a) in the definition of **policyholder DWP ratio**, in the definition of item “c”, “dividend withholding payment credit account” is replaced by “dividend withholding payment account”;
 - (b) in the definition of **reduced deficit debit**, in the definition of item “c”, “imputation credit account” is replaced by “dividend withholding payment account”.
- (2) Subsection (1) applies for the 2005–06 and subsequent income years.

81 Deduction of resident withholding tax

- (1) The heading before section NF 2 is replaced by “**Liability to pay resident withholding tax**”.

- (2) The heading to section NF 2 is replaced by “**Liability to pay resident withholding tax**”.
- (3) Before section NF 2(1), the following is inserted:
- “(1A) A person is liable to pay to the Commissioner, in relation to a payment that is or includes resident withholding income, a tax (called **resident withholding tax**) of an amount given by subsection (1) or (1B) if—
- “(a) the person makes the payment and is required to make a deduction of resident withholding tax from the payment:
- “(b) the person is an RWT proxy for the payer of the resident withholding income, the recipient of the resident withholding income, and the resident withholding income.
- “(1AB) A person who makes a payment that is or includes resident withholding income must deduct resident withholding tax from the payment if the person is not excluded by the rest of this section from liability to make the deduction.”
- (4) In section NF 2(1), the words before paragraph (a) are replaced by “If a person makes a payment that is or includes resident withholding income and is required to deduct resident withholding tax from the payment, the person must make a deduction—”.
- (5) After section NF 2(1), the following is inserted:
- “(1B) A person who is an RWT proxy for a payer of resident withholding income and a payment of resident withholding income in the form of a dividend must pay to the Commissioner the amount of resident withholding tax given by the following formula:

$$\frac{a \times b}{1 - a}$$

where—

- a is the appropriate rate of resident withholding tax, expressed as a percentage, specified in schedule 14, clause 1:
- b is the amount paid to the recipient of the dividend.”

82 New section NF 2AA inserted

After section NF 2, the following is inserted:

“NF 2AA Election to be RWT proxy

- “(1) A person is an **RWT proxy** for a payer of resident withholding income and a payment that is or includes the resident withholding income if—
- “(a) the person gives to the Commissioner a notice of election under subsection (2); and
 - “(b) the payer is a unit trust who is a non-resident; and
 - “(c) the recipient is a natural person or a trustee of a qualifying trust; and
 - “(d) the recipient has requested the person to act as an RWT proxy in relation to the payer and the resident withholding income; and
 - “(db) the person has agreed to act as an RWT proxy in relation to the recipient; and
 - “(e) the resident withholding income is a dividend; and
 - “(f) the payment is made while the election in the notice is effective.
- “(2) A notice of election must be in writing and contain—
- “(a) an election by the person to be an RWT proxy for dividends distributed by the payer; and
 - “(b) the name and postal address of the payer; and
 - “(c) the date from which the election is effective.
- “(3) An election by a person to be an RWT proxy is effective from the date nominated in the notice of election until the later of the following:
- “(a) the date nominated in a written notice of cancellation of the election that the Commissioner receives from the person;
 - “(b) the date on which the Commissioner receives from the person a written notice of cancellation of the election.”

83 Election to apply higher rate of deduction

- (1) Section NF 2A(1) is replaced by the following:

- “(1) A person entitled to receive a payment to which section NF 2(1) or (1B) relates may elect, in the manner required by the payer or RWT proxy, that the payment be subject to resident withholding tax at a rate specified in schedule 14, clause 1(a), (b), or (c).”

- (2) In section NF 2A(3),—
- (a) “each deduction” is replaced by “each deduction or payment under section NF 2(1B)”:
 - (b) “the deduction” is replaced by “the deduction or payment”.

84 Payment of deductions of resident withholding tax to Commissioner

After section NF 4(8), the following is added:

- “(9) For the purposes of this section, an RWT proxy who is required to pay resident withholding tax in relation to a payment of resident withholding income is treated as having deducted the resident withholding tax from the payment at the time of the payment.”

85 Certificates of exemption

In section NF 9(1)(i), “CW 43” is replaced by “CW 44”.

86 Payment and recovery of dividend withholding payment

In section NH 3(4)(b), “penalty under section 150” is replaced by “late payment penalty under section 139B”.

87 Definitions

- (1) This section amends section OB 1.
- (2) After the definition of **additional capital**, the following is inserted:

“**additional income tax** means tax arising under section ME 9B (Imputation credit account company leaving wholly-owned group) or ME 9C (Imputation credit account company joining wholly-owned group)”.
- (3) In paragraph (b)(ii) of the definition of **beneficiary income**, “section CC 3” is replaced by “section CC 3(2)”.
- (4) After the definition of **child tax credit**, the following is inserted:

“**civil penalty** is defined in section 3(1) of the Tax Administration Act 1994”.
- (5) After the definition of **consolidation rules**, the following is inserted:

“**contaminant** means a contaminant as defined in section 2(1) of the Resource Management Act 1991”.

- (6) The definition of **diminished value** is replaced by the following:

diminished value, for an income year, means the amount calculated using the formula—

$$a + b - c$$

where—

- a is the amount of expenditure—
- (a) on an improvement described in section DO 4 (Improvements to farm land), DO 4C (Expenditure on land: planting of listed horticultural plants), DO 4D (Expenditure on land: horticultural replacement planting), DO 6 (Improvements to aquacultural business), or DP 3 (Improvements to forestry land); or
 - (b) of a type described in section DB 37 (Avoiding, remedying, or mitigating effects of discharge of contaminant):
- b is the total amount of income derived under section CB 24B(8) (Environmental restoration accounts) in relation to the expenditure:
- c is the total of every amount allowed as a deduction for the expenditure to any person—
- (a) in any earlier income year under this Act or an earlier Act:
 - (b) in the income year under this Act, except an amount allowed in the income year under section DB 37 (Avoiding, remedying, or mitigating effects of discharge of contaminant), section DO 4C (Expenditure on land: planting of listed horticultural plants), DO 4D (Expenditure on land: horticultural replacement planting), DO 6 (Improvements to aquacultural business), or DP 3 (Improvements to forestry land).
- (7) In the definition of **dispose**, in paragraph (e), “destroy” is replaced by “destroy:” and the following is added:

- “(f) in subpart FI (Effect of certain disposals and resulting acquisitions), means a disposal of property in the manner provided for in section FI 1 (Disposals and resulting acquisitions to which subpart FI applies)”.
- (8) In the definition of **eligible period**, paragraph (e) is replaced by—
- “(e) the composition of a subpart KD credit does not change, other than on the first, or as applicable, the last day”.
- (9) After the definition of **entitlement period**, the following is inserted:
- “**environmental restoration account** is defined in section EK 23 (Other definitions) for the purposes of subpart EK (Environmental restoration accounts)”.
- (10) After the definition of **expenditure on account of an employee**, the following is inserted:
- “**exploration and development activities** is defined in section CW 45B (Non-resident company involved in exploration and development activities) for the purposes of that section”.
- (11) The definition of **finance lease** is replaced by the following:
- “**finance lease** means a lease of a personal property lease asset entered by a person on or after 20 May 1999 that,—
- “(a) when the person enters the lease, involves or is part of an arrangement that involves—
- “(i) the transfer of the ownership of the asset to the lessee or an associate of the lessee during or at the end of the term of the lease:
- “(ii) the lessee or an associate of the lessee having the option of acquiring the asset for an amount that is likely to be substantially lower than the asset’s market value on the date of acquisition:
- “(iii) a right of an associate of the lessee to acquire the asset, or a right of the lessor to require an associate of the lessee to acquire the asset, during the term of the lease under an arrangement that does not entitle the associate to receive all of the personal property lease payments that may fall due after the acquisition:

- “(b) when the person enters the lease or from a later time, involves a term of the lease that is more than 75% of the asset’s estimated useful life as defined in section EE 54 (Meaning of estimated useful life)”.
- (12) After the definition of **financial statements**, the following is inserted:
“**financial value** for the New Zealand banking group of a registered bank is defined in section FG 8F (Financial value and regulatory value) for the purposes of subpart FG (Apportionment of interest costs)”.
- (13) Paragraph (e) of the definition of **fixed rate share** is replaced by the following:
“(e) in sections FG 8G (New Zealand net equity of New Zealand banking group) and LF 2 (Granting of foreign underlying tax credit) has the meaning given in section LF 2(3)”.
- (14) After the definition of **gross tax deductions**, the following is inserted:
“**group funding debt** is defined in section FG 8B (Adjustment of annual total deduction—reporting bank) for the purposes of subpart FG (Apportionment of interest costs)”.
- (15) After the definition of **group of persons**, the following is inserted:
“**group quarter day** is defined in section FG 8B (6) (Adjustment of annual total deduction—reporting bank) for the purposes of that section”.
- (16) In the definition of **interest**, in paragraph (d)(ii), the reference to the title of section DB 1(1)(c) is replaced by “(Taxes, other than GST, and penalties)”.
- (17) In the definition of **lessee’s outstanding balance**, the formula is replaced by the following:
$$a - b + c.$$
- (18) In the definition of **lessor’s outstanding balance**, the formula is replaced by the following:
$$a - b + c.$$
- (19) After the definition of **maturity**, the following is inserted:

“**maximum account balance** is defined in section EK 23 (Other definitions) for the purposes of subpart EK (Environmental restoration accounts)

“**maximum payment** is defined in section EK 22 (Meaning of maximum payment) for the purposes of subpart EK (Environmental restoration accounts)”.

- (20) After the definition of **maximum pooling value**, the following is inserted:

“**measurement day**, for an income year of a reporting bank, means 1 of the measurement days for the income year defined in section FG 8E (Measurement periods and measurement days) for the purposes of subpart FG (Apportionment of interest costs)

“**measurement period**, for an income year of a reporting bank, means 1 of the measurement periods for the income year defined in section FG 8E (Measurement periods and measurement days) for the purposes of subpart FG (Apportionment of interest costs)”.

- (21) After the definition of **net balance due**, the following is inserted:

“**net equity threshold** for the New Zealand banking group of a registered bank is defined in section FG 8H (Net equity threshold) for the purposes of subpart FG (Apportionment of interest costs)”.

- (22) In paragraph (a) of the definition of **net loss**, “amount written off by the Commissioner under section 177C(4)” is replaced by “amount extinguished by the Commissioner under section 177C(5)”.

- (23) After the definition of **New Zealand**, the following is inserted:

“**New Zealand banking group**, for a registered bank, means the New Zealand banking group that is given for the registered bank by section FG 8C (New Zealand banking group of registered bank) for the purposes of subpart FG (Apportionment of interest costs)”.

- (24) After the definition of **New Zealand group debt percentage**, the following is inserted:

“**New Zealand net equity**, for a New Zealand banking group, is defined in section FG 8G(1) (New Zealand net equity of

- New Zealand banking group) for the purposes of subpart FG (Apportionment of interest costs)”.
- (25) After the definition of **notional income tax liability**, the following is inserted:
- “**notional offshore investment amount**, for a reporting bank, is defined in section FG 8G(4) (New Zealand net equity of New Zealand banking group) for the purposes of subpart FG (Apportionment of interest costs)”.
- (26) After the definition of **offshore development**, the following is inserted:
- “**offshore permit area** is defined in section CW 45B (Non-resident company involved in exploration and development activities) for the purposes of that section”.
- (27) After the definition of **partnership net income**, the following is inserted:
- “**patent application date**, for a patent and an application for a patent, means the date on which the application for the patent with a complete specification is lodged with the Intellectual Property Office of New Zealand or a similar office in another country or territory”.
- (28) The definition of **payment period** is replaced by:
- “**payment period** means the period of 56 days beginning after the date on which an application is made to receive the parental tax credit”.
- (29) After the definition of **physical cost of production**, the following is inserted:
- “**plant variety rights** means proprietary rights granted for a plant variety under the Plant Variety Rights Act 1987 or similar rights given similar protection under the laws of a country or territory other than New Zealand”.
- (30) After the definition of **registered**, the following is inserted:
- “**registered bank** means a registered bank as defined in section 2 of the Reserve Bank of New Zealand Act 1989”.
- (31) After the definition of **registered security**, the following is inserted:
- “**regulatory value** for the New Zealand banking group of a registered bank is defined in section FG 8F (Financial value

- and regulatory value) for the purposes of subpart FG (Apportionment of interest costs)".
- (32) After the definition of **replacement permit**, the following is inserted:
- “**reporting bank** for a New Zealand banking group, means the reporting bank that is given for the New Zealand banking group by section FG 8D (Reporting bank for New Zealand banking group)”.
- (33) In the definition of **resident withholding tax**, “Deduction of resident withholding tax” is replaced by “Liability to pay resident withholding tax”.
- (34) After the definition of **residual income tax**, the following is inserted:
- “**resource consent** means a resource consent as defined in section 2 of the Resource Management Act 1991”.
- (35) After the definition of **royalty**, the following is inserted:
- “**RWT proxy** is defined in section NF 2AA (Election to be RWT proxy)”.
- (36) After the definition of **type**, the following is inserted:
- “**ultimate owner** is defined in—
- “(a) section ME 9B (Imputation credit account company leaving wholly-owned group) for the purposes of that section:
- “(b) section ME 9C (Imputation credit account company joining wholly-owned group) for the purposes of that section”.
- (37) Before the definition of **unadjusted income tax liability**, the following is inserted:
- “**ultimate parent** is defined in section FG 8C (New Zealand banking group of registered bank) for the purposes of that section”.

88 Determination of residence of company

- (1) In section OE 2(1), in the words before paragraph (a), “that is not referred to in subsection (1B)” is inserted after “A company”.
- (2) After section OE 2(1), the following is inserted:

“(1B) For the purposes of this Act, a company acting as trustee of the Cook Islands National Superannuation Fund, as established by the Cook Islands National Superannuation Trust Deed under the Cook Islands National Superannuation Act 2000 (Cook Islands), is not resident in New Zealand.”

89 New schedule 6B inserted

After schedule 6, schedule 6B in the schedule of this Act is inserted.

90 Schedule 13—Month for payment of provisional tax and terminal tax

- (1) In schedule 13, the list of shoulder numbers is replaced by “ss EF 3, MB 4, MB 5A, MC 1, OB 1”.
- (2) In schedule 13, part A, clause 1, in the heading to column C, “month preceding the balance date” is replaced by “month of the balance date”.

91 Schedule 17—Depreciable intangible property

- (1) In schedule 17, after item 3, the following is added:
“3b a patent application with a complete specification lodged on or after 1 April 2005”.
- (2) In schedule 17, after item 10, the following is added:
“11 plant variety rights granted under the Plant Variety Rights Act 1987 or similar rights given similar protection under the laws of a country or territory other than New Zealand
“12 a right to use plant variety rights granted under the Plant Variety Rights Act 1987 or a similar right under the laws of a country or territory other than New Zealand”.

92 Schedule 22A—Identified policy changes

- (1) In schedule 22A, after the entry relating to section DO 5, the following is inserted:
“DZ 13 A deduction is allowed for expenditure of an amount given by section DO 4(3)(a) or (c) of the Income Tax Act 1994 and allowed as a deduction under section DO 4(1) of that Act, being expenditure incurred in carrying on a farming or agricultural business on land in New Zealand.”

- (2) Subsection (1) commences on 1 April 2005.

93 Schedule 23 amended

- (1) In schedule 23, Part A,—
- (a) in the entry corresponding to section CN 4—
 - (i) in column 2, “(3)(a)”, “(3)(b)” and “(3)(c)” are repealed:
 - (ii) in column 3, “FC 16(3)” is replaced by “FC 16(4)–(6)”:
 - (iii) in column 3, “FC 16(4)”, “FC 16(5)”, and “FC 16(6)” are repealed.
 - (b) for section CN 4(4)(a), in column 3, “FC 16(2), (3)”.
- (2) In schedule 23, Part B,—
- (a) in the entry for section CQ 2, the first section number in column 2 is replaced by “CG 6(1)(a)”:
 - (b) in the entry for section CX 3, the entry in column 2 is replaced by “new”:
 - (c) in the entry for section DT 10, the entry in column 2 is replaced by “DM 1(7)(a)”.

Part 2

Amendments to Income Tax Act 1994

94 Income Tax Act 1994

This Part amends the Income Tax Act 1994.

95 New section CB 16 inserted

The following is inserted after section CB 15:

“CB 16 Non-resident company involved in exploration and development activities

- “(1) An amount of income derived by a non-resident company from exploration and development activities in an offshore permit area is exempt income if it is derived in the period that starts on 1 January 2004 and ends on 31 December 2009.

- “(2) In this section,—

“**exploration and development activities** means the following activities undertaken for the purposes of identifying and developing exploitable petroleum deposits or occurrences in an offshore permit area:

- “(a) operating a ship to provide seismic survey readings:

“(b) drilling an exploratory well or other well

“**offshore permit area** means an area of land that is—

“(a) in New Zealand; and

“(b) on the seaward side of the mean high-water mark; and

“(c) a permit area or part of a permit area.”

96 Expenditure incurred by superannuation funds

(1) After section DI 3(2), the following is inserted:

“(2B) Subsection (2C) applies if,—

“(a) for the 2000–01 income year, the balance date of the second superannuation fund is earlier than the balance date of the first superannuation fund; and

“(b) the first superannuation fund has incurred expenditure of a kind described in subsection (2)(b) in the period that starts on the second superannuation fund’s 2000–01 balance date and ends on the first superannuation fund’s 2000–01 balance date.

“(2C) Despite subsection (2)(c), the second superannuation fund may deduct under subsection (2)(d) the expenditure referred to in subsection (2)(b) in whichever of the 2000–01 income year and the 2001–02 income year that the second superannuation fund elects by including the expenditure as a deduction in a return of income for the elected income year.”

(2) Subsection (1) applies for the 2000–01 and 2001–02 income years.

97 Expenditure to prevent or combat pollution of environment

(1) In section DJ 10(1), “industrial waste” is replaced by “waste”.

(2) Subsection (1) applies to a taxpayer for an income year that is the 1995–96 or a subsequent income year if—

(a) the taxpayer, before 16 November 2004, makes a return of income, issues a notice of proposed adjustment or response notice, or requests a reassessment, that relates to the income year; and

(b) the correctness of the tax position adopted by the taxpayer in the return, notice, or request depends on the interpretation of the meaning of “industrial waste” in section DJ 10; and

- (c) the taxpayer's interpretation of "industrial waste" in the return, notice, or request, is consistent with the meaning of section DJ 10 as amended by subsection (1).

98 Expenditure on unsuccessful application for resource consent

- (1) In section DJ 14B(b), "a resource consent that is depreciable property" is replaced by "depreciable property, or allowed as a deduction,".
- (2) Subsection (1) applies for an application by a taxpayer that is refused or withdrawn in the 2004–05 or a subsequent income year.

99 Entities to which apportionment rule potentially applies

- (1) The heading to section FG 2 is replaced by "**Entities to which interest deduction rules potentially apply**".
- (2) Section FG 2(1) is replaced by the following:
 - “(1) A taxpayer is not subject for a tax year to the interest apportionment rule in section FG 8 or the adjustment of annual total deduction in section FG 8B unless, at a time in the taxpayer's income year, the taxpayer—
 - “(a) is a non-resident who is not a company:
 - “(b) is a company that is a non-resident in which—
 - “(i) no person who is resident in New Zealand has a direct ownership interest that is equal to or greater than 50%:
 - “(ii) a non-resident has a direct ownership interest that, when aggregated with the direct ownership interests of persons associated with the non-resident, is equal to or greater than 50%:
 - “(c) is a company that is resident in New Zealand—
 - “(i) in which a non-resident has an ownership interest that is equal to or greater than 50%:
 - “(ii) of which a non-resident has control by any other means:
 - “(d) is the trustee of a non-qualifying trust for which 50% or more in value of the settlements on the trust is settled by—
 - “(i) a non-resident:

“(ii) persons who are associated with the non-resident.”

(3) Section FG 2(7) is omitted.

100 Section FG 3 replaced

Section FG 3 is replaced by the following:

“FG 3 When interest apportioned under section FG 8 or annual total deduction adjusted under section FG 8B

“(1) A taxpayer who is not excluded by section FG 2 from the application of section FG 8 for a tax year is required to make an apportionment under section FG 8 of interest expenditure incurred during the corresponding income year of the taxpayer if the taxpayer—

“(a) at no time in the income year—

“(i) is a reporting bank for a New Zealand banking group:

“(ii) is part of a New Zealand banking group for the purpose of section FG 8C; and

“(b) has a New Zealand group debt percentage for the income year that—

“(i) is greater than 75%; and

“(ii) if the taxpayer is a company or a trustee, exceeds the number obtained by multiplying the worldwide group debt percentage of the taxpayer by 1.1.

“(2) A taxpayer who is not excluded by section FG 2 from the application of section FG 8B for a tax year is treated as having an annual total deduction for the tax year of an amount that is given by section FG 8B if—

“(a) at a time in the taxpayer’s corresponding income year the taxpayer is the reporting bank for a New Zealand banking group; and

“(b) the New Zealand banking group has a New Zealand net equity, as defined in section FG 8G, of less than the net equity threshold for the New Zealand banking group, as defined in section FG 8H, on a measurement day for the taxpayer’s corresponding income year, as defined in section FG 8E.”

101 Rules for calculating New Zealand group debt percentage

- (1) In section FG 4(12)(b), “New Zealand parent.” is replaced by “New Zealand parent; and” and the following is added:
“(c) are not members of a New Zealand banking group for a registered bank.”
- (2) In section FG 4(14C)(b)(iii), “New Zealand parent.” is replaced by “New Zealand parent; and” and the following is added:
“(c) are not members of a New Zealand banking group for a registered bank.”
- (3) In section FG 4(14D), before paragraph (a), the following is inserted:
“(aa) none of the taxpayer and the other companies is a member of a New Zealand banking group; and”.

102 Apportionment of interest deductions

- (1) In the heading to section FG 8, “—**taxpayer not in New Zealand banking group**” is added after “**deductions**”.
- (2) In section FG 8(1), “taxpayer is not in a New Zealand banking group and the” is inserted after “if a”.

103 New sections FG 8B to FG 8J inserted

After section FG 8, the following is inserted:

“FG 8B Adjustment of annual total deduction—reporting bank

- “(1) For a taxpayer that is a reporting bank and under section FG 3(2) has an annual total deduction for a tax year given by this section, the taxpayer’s annual total deduction for the tax year is—
 - “(a) if the New Zealand banking group of the reporting bank has a group funding debt for the tax year that is not zero, the amount calculated using the formula—
unadjusted annual total deduction – adjustments:
 - “(b) if the New Zealand banking group of the reporting bank has a group funding debt for the tax year of zero, the annual total deduction for the tax year that the taxpayer

would have had in the absence of this section and section FG 3(2).

“(2) In the formula in subsection (1)(a),—

“(a) **unadjusted annual total deduction** is the annual total deduction for the tax year that the taxpayer would have had in the absence of this section and section FG 3(2):

“(b) **adjustments** is the sum of the income adjustment amounts that are given by subsection (4) for the measurement periods for the corresponding income year of the reporting bank.

“(3) The **group funding debt** for a tax year for the New Zealand banking group of a reporting bank means the amount calculated using the formula—

$$\frac{\text{SFI} + \text{FID} - \text{FTE}}{\text{NQ}}$$

where—

SFI is the sum of the amounts for the tax year, each of which is the financial value for the New Zealand banking group of interest-bearing debt calculated under generally accepted accounting practice for a group quarter day

FID is the sum of the amounts for the tax year, each of which is the financial value for the New Zealand banking group, on a group quarter day, of financial arrangements—

(a) for which the consolidated financial statements of the New Zealand banking group would show, in the corresponding income year of the reporting bank, a deduction—

(i) under 1 or more of sections DD 1(1)(b), DD 1(2) to (4), and DD 3; and

(ii) other than as a consequence of a fluctuation in the value of a currency of a country relative to the value of a currency of another country; and

(b) that do not contribute to item SFI

FTE is the sum of the amounts for the tax year, each of which is the financial value for the New Zealand banking group, on a group quarter day, of shares that contribute to item SFI

NQ is the number of group quarter days in the corresponding income year of the registered bank.

- “(4) For a measurement day in an income year of a reporting bank, the adjustment amount for a reporting bank is the amount calculated using the formula—

$$(\text{NET} - \text{NZE}) \times \frac{\text{I}}{\text{GFD}} \times \frac{\text{PD}}{\text{YD}}$$

where—

NET is the net equity threshold for the New Zealand banking group for the measurement day

NZE is the lesser of—

- (a) the net equity threshold for the New Zealand banking group for the measurement day;
- (b) the New Zealand net equity for the New Zealand banking group for the measurement day

I is the financial value for the New Zealand banking group, on the last day of the income year, of expenditure that—

- (a) is incurred by a member of the New Zealand banking group in the income year; and
- (b) is an interest expense under generally accepted accounting practice, incurred other than in relation to a share that contributes to item SFI, or is a deduction referred to in paragraph (a) of the definition of item FID in subclause (3)

GFD is the group funding debt for the tax year for the New Zealand banking group

PD is the number of days in the measurement period that corresponds to the measurement day

YD is the number of days in the income year.

- “(5) In this section, **group quarter day** for a registered bank and a tax year means a day—

- “(a) that is the last day of a quarter in the corresponding income year of the registered bank; and
- “(b) on which the registered bank is a reporting bank.

“FG 8C New Zealand banking group of registered bank

- “(1) The **New Zealand banking group** of a registered bank for a measurement period consists of every person or fixed establishment that on the measurement day for the measurement period is—
- “(a) a member under subsection (2) or a potential member under subsection (3) or (4); and
 - “(b) not excluded by an election under subsection (8).
- “(2) If the registered bank—
- “(a) is resident in New Zealand, the registered bank is a member:
 - “(b) is not resident in New Zealand, a fixed establishment in New Zealand of the registered bank is treated as being a person who is—
 - “(i) separate from the registered bank; and
 - “(ii) a member.
- “(3) A person who is a New Zealand resident is a potential member, if—
- “(a) the person satisfies subsection (5) and—
 - “(i) the registered bank is resident in New Zealand; and
 - “(ii) there is no non-resident who is an ultimate parent of the registered bank under subsection (9):
 - “(b) the person satisfies subsection (6) and—
 - “(i) the registered bank is a non-resident; and
 - “(ii) there is no non-resident who is an ultimate parent of the registered bank under subsection (9):
 - “(c) the person satisfies subsection (7) and there is a non-resident who is an ultimate parent of the registered bank under subsection (9).
- “(4) A fixed establishment in New Zealand of a non-resident is treated as being a person who is separate from the non-resident and a potential member if—
- “(a) the fixed establishment satisfies subsection (6) and—
 - “(i) the registered bank is a non-resident; and
 - “(ii) there is no non-resident who is an ultimate parent of the registered bank under subsection (9):
 - “(b) the fixed establishment satisfies subsection (7) and there is a non-resident who is an ultimate parent of the registered bank under subsection (9).

- “(5) A person satisfies this subsection if—
- “(a) under generally accepted accounting practice, consolidated group accounts—
 - “(i) are required to include the person and the registered bank:
 - “(ii) would be required to include the person and the registered bank but for relevant materiality thresholds:
 - “(b) the person is in the same group of companies as the registered bank under section IG 1(2).
- “(6) A person or fixed establishment satisfies this subsection if—
- “(a) under generally accepted accounting practice, the person or fixed establishment would be required to be included in consolidated group accounts with the registered bank if—
 - “(i) the registered bank were resident in New Zealand; and
 - “(ii) the relevant materiality thresholds were satisfied:
 - “(b) the person is in the same group of companies as the registered bank under section IG 1(2).
- “(7) A person or fixed establishment satisfies this subsection if—
- “(a) under generally accepted accounting practice, the person or fixed establishment would be required to be included in consolidated group accounts with the ultimate parent of the registered bank if—
 - “(i) the ultimate parent were resident in New Zealand; and
 - “(ii) the relevant materiality thresholds were satisfied:
 - “(b) the person is in the same group of companies as the ultimate parent under section IG 1(2).
- “(8) A reporting bank may elect under this subsection to exclude from the New Zealand banking group of the reporting bank—
- “(a) a person or fixed establishment whose main activity is the providing of life insurance:
 - “(b) a person who—
 - “(i) is resident in New Zealand; and
 - “(ii) has a voting interest of 100% in a person who is excluded by an election under paragraph (a); and
 - “(iii) does not have a main activity that is banking, financing or leasing; and

- “(iv) does not have a main activity that involves the ownership or control of entities having a main activity of banking, financing or leasing:
- “(c) a fixed establishment of a non-resident, if—
 - “(i) the non-resident has a voting interest of 100% in a person who is excluded by an election under paragraph (a); and
 - “(ii) the fixed establishment has a main activity of financing the person who is excluded by the election under paragraph (a); and
 - “(iii) the fixed establishment does not have a main activity that is banking, financing or leasing, other than the activity referred to in subparagraph (ii); and
 - “(iv) the fixed establishment does not have a main activity that involves the ownership or control of entities having a main activity of banking, financing or leasing:
- “(d) a person who—
 - “(i) is resident in New Zealand; and
 - “(ii) under generally accepted accounting practice is required for the making of financial reports to be included in consolidated group accounts with a person or fixed establishment who is excluded by an election under paragraph (a) or (b); and
 - “(iii) does not have a main activity that is banking, financing or leasing; and
 - “(iv) does not have a main activity that involves the ownership or control of entities having a main activity of banking, financing or leasing.
- “(9) For the purposes of this section, the **ultimate parent** of a registered bank is a company—
 - “(a) that has an ownership interest in the registered bank, calculated under section FG 2, of 50% or more; and
 - “(b) in which no ownership interest, as calculated under section FG 2, is held by a company that holds an ownership interest in the registered bank, calculated under section FG 2, of 50% or more.
- “(10) For the purposes of this section, the **ultimate parent** of a fixed establishment in New Zealand of a registered bank is the registered bank.

“FG 8D Reporting bank for New Zealand banking group

- “(1) For a New Zealand banking group that on a day includes a single registered bank, or includes no registered bank but includes a fixed establishment of a single registered bank, the reporting bank for the day is the registered bank.
- “(2) For a New Zealand banking group that on a day includes more than 1 registered bank, the reporting bank for the day is—
- “(a) the registered bank that first gives notice to the Commissioner of an election to be the reporting bank, if the Commissioner receives such a notice by the day that is 6 months after the end of the tax year in which the day occurs:
 - “(b) the registered bank chosen by the Commissioner, if paragraph (a) does not apply.
- “(3) For a New Zealand banking group that on a day includes no registered bank but includes fixed establishments of more than 1 registered bank, the reporting bank for the day is—
- “(a) the registered bank that first gives notice to the Commissioner of an election to be the reporting bank, if the Commissioner receives such a notice by the day that is 6 months after the end of the tax year in which the day occurs:
 - “(b) the registered bank chosen by the Commissioner, if paragraph (a) does not apply.

“FG 8E Measurement periods and measurement days

- “(1) For the New Zealand banking group and income year of a reporting bank, the **measurement periods** are—
- “(a) the quarters in the income year, if the reporting bank does not make an election under paragraph (b) or (c):
 - “(b) each calendar month of the income year, if the reporting bank elects that the New Zealand banking group have such measurement periods:
 - “(c) each day of the income year, if the reporting bank elects that the New Zealand banking group have such measurement periods.
- “(2) For the New Zealand banking group and income year of a reporting bank, the **measurement days** are each last day of each measurement period if the measurement periods are given by subsection (1)(a) or (b).

- “(3) If there is a change in the identity of the reporting bank for a tax year for a New Zealand banking group, the measurement period corresponding to the first measurement day for the new reporting bank begins on the day after the last measurement day for the former reporting bank.

“FG 8F **Financial value and regulatory value**

- “(1) In sections FG 8B to FG 8J, the **financial value** of an item for a New Zealand banking group at a time is the amount that would be recorded for the item in financial statements for the New Zealand banking group that—
- “(a) related to the time; and
 - “(b) were prepared for external reporting purposes; and
 - “(c) were produced consistently with generally accepted accounting practice at the time by—
 - “(i) consolidating the financial statements for the members of the New Zealand banking group that are in the same group of companies; and
 - “(ii) if more than 1 consolidation is required under subparagraph (i), combining the consolidated financial statements so as to eliminate inter-group transactions.
- “(2) In sections FG 8B to FG 8J, the **regulatory value** of an item for a New Zealand banking group at a time is the total risk-weighted value for the item that would be obtained for the New Zealand banking group if the New Zealand banking group were a banking group for the purposes of the Capital Adequacy Framework that is issued by the Reserve Bank of New Zealand acting in the prudential supervision of registered banks under the Reserve Bank of New Zealand Act 1989.

“FG 8G **New Zealand net equity of New Zealand banking group**

- “(1) The **New Zealand net equity** of the New Zealand banking group of a registered bank for a measurement day is given by the following formula:

$$\text{EQV} - \text{FRS} - \text{EID} - \text{UPB} - \text{INTG} - \text{CGA} - \text{REV} - \text{TXB} \\ - \text{CEFA} - \text{NAFA} - \text{EOI} - \text{NOIA} - \text{AEQ} - \text{AEQI}$$

where—

EQV is the sum of the following amounts for the New Zealand banking group:

- (a) the financial value for the measurement day of—
 - (i) the shareholders' equity for the New Zealand banking group; and
 - (ii) the branch equity relating to fixed establishments of the New Zealand banking group;
- (b) the financial value for the measurement day of shares, each of which—
 - (i) is issued by a member of the taxpayer's New Zealand banking group; and
 - (ii) does not contribute to the amount referred to in paragraph (a):
- (c) the financial value for the measurement day of financial arrangements, each of which is a loan, or the provision of funds by a non-resident to its fixed establishment that—
 - (i) is not taken into account in the calculation of the group funding debt of the New Zealand banking group; and
 - (ii) is made by a non-resident who is not a member of the New Zealand banking group and is associated with a member of the New Zealand banking group under section OD 7 or OD 8(3); and
 - (iii) is made to a member of the New Zealand banking group; and
 - (iv) does not contribute to the amount referred to in paragraph (a); and
 - (v) does not give rise to interest expenditure other than as a result of a fluctuation in the value of a currency of a country relative to the value of a currency of another country; and
 - (vi) does not relate to a supply of goods or services

FRS is the financial value for the measurement day of fixed rate shares, each of which is—

- (a) issued by a member of the New Zealand banking group; and
 - (b) owned by a person who is resident in New Zealand; and
 - (c) included in the value of item EQV; and
 - (d) issued by the member—
 - (i) on or after 1 January 2005;
 - (ii) before 1 January 2005, if the measurement period begins on or after 1 January 2010
- EID** is the financial value for the measurement day of financial arrangements, each of which—
- (a) is taken into account under paragraph (a) or (b) of the definition of item EQV in calculating the value of that item; and
 - (b) gives rise to a deduction for the tax year under 1 or more of sections DB 6 to DB 8 for a member of the New Zealand banking group
- UPB** is the financial value for the measurement day of unvested policyholder benefit liabilities and policyholder retained profits that contribute to the value of item EQV
- INTG** is the financial value for the measurement day of intangible assets, other than—
- (a) goodwill relating to a business that is not banking, financing, leasing, or life insurance and that—
 - (i) is acquired from a person who, at the time of acquisition, is not associated under section OD 7 or OD 8(3) with a member of the New Zealand banking group;
 - (ii) relates to an entity that is acquired from a person who is not associated under section OD 7 or OD 8(3) with a member of the New Zealand banking group;
 - (b) a film or film right;
 - (c) property that is depreciable property or is expected to become depreciable property

- CGA** is the sum for the measurement day of capital gain amounts, each of which arises for the 2004–05 or a later tax year from a transfer of an intangible asset between a member of the New Zealand banking group and a person who—
- (a) is not a member of the New Zealand banking group; and
 - (b) is associated with a member of the New Zealand banking group under section OD 7 or OD 8(3)
- REV** is the financial value for the measurement day of revaluation reserves that contribute to the value of item EQV
- TXB** is the financial value for the measurement day of net future tax benefits that are taken into account in determining the value of item EQV and arise from—
- (a) net losses for the tax year;
 - (b) losses carried forward from an earlier tax year;
 - (c) timing or temporary differences to the extent that the items giving rise to the timing or temporary differences would contribute to a net loss for the tax year if the items were deductible in the tax year
- CEFA** is the financial value for the measurement day of the credit enhancements provided by members of the New Zealand banking group, each of which is, for the purpose of the Capital Adequacy Framework that is issued by the Reserve Bank of New Zealand,—
- (a) a credit enhancement that is provided to an associated funds management and securitisation scheme of a non-member;
 - (b) a credit enhancement that is provided to an affiliated insurance group that is a non-member and has not been expensed
- NAFA** is the financial value for the measurement day of advances by members of the New Zealand banking group, each of which is, for the purpose of the Capital Adequacy Framework that is issued by the Reserve Bank of New Zealand, an advance of a capital nature to a connected person who is not a member of the New Zealand banking group

EOI is the amount that would, if the New Zealand banking group included the potential members of the New Zealand banking group and before any set-off allowed under generally accepted accounting practice, be the financial value for the measurement day of shares in non-residents that—

- (a) are held by—
 - (i) a member or potential member of the New Zealand banking group;
 - (ii) a company resident in New Zealand in which a member or potential member of the New Zealand banking group holds a direct voting interest of 10% or more and that, in the income year, pays to the member or potential member a dividend to which a conduit tax relief credit is attached; and
- (b) are not interests in foreign investment funds for which the FIF income or loss is calculated using the comparative value method or the deemed rate of return method; and
- (c) are not shares in a grey list company that—
 - (i) are listed on the official list of a recognised exchange; and
 - (ii) are revenue account property; and
 - (iii) would not be a sufficient interest in the offshore company if the class of the shares were the only class of share issued by the offshore company

NOIA is the notional offshore investment amount for the New Zealand banking group for the income year of the reporting bank, as defined in subsection (4)

AEQ is the financial value for the measurement day of interests, each of which is taken into account in calculating item EQV and is held by a person who—

- (a) is not a member of the New Zealand banking group; and
- (b) is not a member of the New Zealand banking group because of an election under section FG 8C(8); and

- (c) is resident in New Zealand or holds the interest through a fixed establishment in New Zealand
- AEQI is the financial value for the measurement day of—
- (a) shares in persons who are not members of the New Zealand banking group because of an election under section FG 8C(8):
- (b) loans, other than on arm's-length terms, to persons who are not members of the New Zealand banking group because of an election under section FG 8C(8).
- “(2) Subsection (3) applies if a component of an item, other than the item NOIA, that is subtracted from the item EQV under subsection (1) is a component of 1 or more other such items.
- “(3) The value of the component is included in a single item for which the value of the component is not less than the value of the component for each of the other items.
- “(4) The **notional offshore investment amount** for a New Zealand banking group for an income year of the reporting bank for the New Zealand banking group is the greater of zero and the amount given by the following formula:

$$\frac{(\text{FTC} - \text{DMT}) \times 12}{\text{CRT} \times \text{IRR} \times \text{NM}}$$

where—

FTC is the total for the tax year of foreign tax credits each of which—

- (a) is claimed as a credit against the income tax liability for the tax year of—
- (i) a member of the New Zealand banking group:
- (ii) a person who is excluded from the New Zealand banking group by an election under section FG 8C(7); and
- (b) does not arise from attributed CFC income or from FIF income; and
- (c) does not arise from income derived before 1 July 2005

DMT is the amount—

- (a) set by the Governor-General by Order in Council as the threshold amount for the application of this subsection; or

- (b) equal to \$5,000,000, if no threshold amount is set under paragraph (a), and paragraph (c) does not apply; or
 - (c) equal to \$416,667 multiplied by the number of months beginning on or after 1 July 2005 in the corresponding income year for the reporting bank, if the corresponding income year includes that date and no threshold amount is set under paragraph (a)
- CRT** is the rate of tax for companies referred to in Schedule 1, Part A, item 5 for the tax year
- IRR** is the amount—
- (a) set by the Governor-General by Order in Council as the interest rate of return for the purposes of this subsection; or
 - (b) of 7% per year, if no interest rate of return is set under paragraph (a)
- NM** is the number of months beginning on or after 1 July 2005 in the income year of the reporting bank for the New Zealand banking group.
- “(5) The Governor-General may, from time to time by Order in Council,—
- “(a) specify a type of instrument that is included in item EQV for the purposes of subsection (1):
 - “(b) specify a type of instrument that is not included in item EQV for the purposes of subsection (1):
 - “(c) set, replace, or repeal a figure for a threshold amount for a value of an instrument, or aggregate value of a type of instrument, held by a person or group of persons for the purposes of a specification under paragraph (a) or (b):
 - “(d) amend or delete a specification under paragraph (a) to (c):
 - “(e) set, replace, or repeal a figure for the threshold amount for the purposes of paragraph (a) of the definition of item DMT in subsection (4):
 - “(f) set, replace, or repeal a figure for the interest rate of return for the purposes of paragraph (a) of the definition of item IRR in subsection (4).
- “(6) An Order in Council under subsection (5) may—
- “(a) come into effect on or after 1 July 2005:

“(b) apply for measurement periods and quarters that commence on or after 1 July 2005.

“FG 8H **Net equity threshold**

“(1) The **net equity threshold** for a measurement day for the New Zealand banking group of a registered bank is given by the following formula:

$$0.04 \times (\text{RWE} - \text{DEQ})$$

where—

RWE is the sum of the following values for the measurement day:

- (a) for an asset that is included in a balance sheet, the regulatory value of the asset;
- (b) for an exposure that is not included in a balance sheet, the regulatory value of the exposure;
- (c) for goodwill that is not taken into account in calculating item INTG in determining the New Zealand net equity of the New Zealand banking group, the financial value of the goodwill

DEQ is the total of the regulatory values for the measurement day of items that are—

- (a) excluded from the calculation of item NOIA; and
- (b) deducted from item EQV in determining the New Zealand net equity of the New Zealand banking group.

“(2) For the purposes of subsection (1), the assets of a fixed establishment include the assets that are treated as being the assets of the fixed establishment under generally accepted accounting practice.

“FG 8I **Valuation of debt and risk-weighted exposures**

For the purposes of sections FG 8B to FG 8H, the value on a day of a financial arrangement or risk-weighted exposure that is denominated in a foreign currency must be determined—

- “(a) in New Zealand currency; and
- “(b) using the close of trading spot exchange rate for the foreign currency on the day.

“FG 8J Treatment of temporary change in New Zealand net equity or net equity threshold

A change in a quantity that, but for this subsection, would produce a temporary change in the New Zealand net equity or net equity threshold of the New Zealand banking group of a registered bank does not affect the value of the New Zealand net equity or net equity threshold if the change is produced by an arrangement that has an effect of defeating the intent and application of sections FG 8B to FG 8I.”

104 Circumstances in which group excess interest allocation required

Section FH 1(1) is replaced by the following:

- “(1) Subject to subsection (2), the group excess interest allocation rules in sections FH 5 to FH 8 apply for a tax year to a company that—
- “(a) for the imputation year that corresponds with the tax year—
 - “(i) is a dividend withholding payment account company or a conduit tax relief company; and
 - “(ii) is not a member of a New Zealand banking group for a registered bank; and
 - “(b) in the corresponding income year—
 - “(i) derives foreign attributed income:
 - “(ii) is paid a dividend from which the company must deduct an amount of dividend withholding payment or would have to deduct such an amount but for section NH 7.”

105 Imputation—arrangement to obtain tax advantage

In section GC 22(4)(b), “both a tax credit advantage and” is omitted.

106 Resident withholding tax deductions to be credited against income tax assessed

- (1) In the heading to section LD 3, “**deductions**” is replaced by “**payments**”.
- (2) In section LD 3(2), in the words before paragraph (a),—
 - (a) “deducted from” is replaced by “paid in relation to”:
 - (b) “deduction” is replaced by “payment”.

- (3) In section LD 3(2), in the words after paragraph (d), “deducted” is replaced by “payments”.

107 Section MB 6 replaced

- (1) Section MB 6 is replaced by the following:

“MB 6 Voluntary payments

A taxpayer may at any time make voluntary payments to the Commissioner as provisional tax of such amounts as the taxpayer thinks fit, being—

- “(a) tax in respect of the taxpayer’s income tax liability for a tax year:
“(b) tax in excess of the provisional tax payable by the taxpayer for a tax year:
“(c) tax in excess of the taxpayer’s income tax liability for a tax year.”

- (2) Subsection (1) applies for the 1995–96 and later income years.

108 Credits arising to imputation credit account

- (1) After section ME 4(1)(c), the following is inserted:

- “(cb) the amount of any credit arising in the imputation credit account as a result of an election under section ME 9B(2)(a)(ii):
“(cc) the amount of any payment of additional income tax for which the company is liable under section ME 9B(6):
“(cd) the amount of any payment of additional income tax for which the company is liable under section ME 9C(7):”.

- (2) After section ME 4(2)(b), the following is inserted:

- “(bb) in the case of a credit referred to in subsection (1)(cb), on the date on which the leaving company ceases to be a member of the wholly-owned group of companies:
“(bc) in the case of a credit referred to in subsection (1)(cc), on the date on which the company makes the payment to the Commissioner:
“(bd) in the case of a credit referred to in subsection (1)(cd), on the date on which the company makes the payment to the Commissioner:”.

109 Debits arising to imputation credit account

- (1) After section ME 5(1)(f), the following is inserted:

- “(fb) the amount of any debit arising in the imputation credit account as a result of an election under section ME 9B(2)(a)(i):”.
- (2) In section ME 5(1)(h), “section LD 8(1)(a)” is replaced by “section LD 8(1)(c)”.
- (3) After section ME 5(2)(f), the following is inserted:
“(fb) in the case of a debit referred to in subsection (1)(fb), on the date on which the leaving company ceases to be a member of the wholly-owned group of companies:”.

110 New sections ME 9B and ME 9C inserted

- (1) After section ME 9, the following is inserted:
“ME 9B Imputation credit account company leaving wholly-owned group
- “(1) This section applies to an imputation credit account company (called the **leaving company**) if, at a time in the income year of the leaving company,—
- “(a) there is a change in the ultimate owners of the leaving company; and
- “(b) as a result of the change, the leaving company ceases to be a member of a wholly-owned group of companies (called the **former group**); and
- “(c) the total amount of the available net losses from the previous tax year for the members of the former group exceeds \$1,000,000.
- “(2) If the leaving company at the time has a debit balance in its imputation credit account, the leaving company—
- “(a) may elect that an amount that is not more than the debit balance be—
- “(i) a debit in the imputation credit account of another imputation credit account company that is a member of the former group and for which there is no change in ultimate owners at the time; and
- “(ii) a credit in the imputation credit account of the leaving company;
- “(b) may elect to pay an amount of tax by way of additional income tax that is equal to—
- “(i) the amount of the debit balance, if the leaving company makes no election under paragraph (a):

- “(ii) the amount by which the debit balance exceeds the amount that is subject to the election under paragraph (a).
- “(3) If the leaving company at the time is entitled to an amount in a pooling account or would be entitled, in the absence of section MD 2, to a refund under section MD 1 of an amount of excess tax, subsection (4) applies to the following amount (called the **excess entitlement**):
- “(a) zero, if at the time the credit balance in the imputation credit account of the leaving company equals or exceeds the total of the following amounts:
- “(i) the amount that would be the entitlement under section MD 1:
- “(ii) the amount in a tax pooling account that has been provided by or for the benefit of the leaving company and would exceed the liability at the time of the leaving company to pay income tax or provisional tax:
- “(b) the total of the amounts referred to in paragraph (a)(i) and (ii), if at the time there is no credit balance in the imputation credit account of the leaving company:
- “(c) the amount by which the credit balance in the imputation credit account of the leaving company at the time is exceeded by the total of the amounts referred to in paragraph (a)(i) and (ii), if neither of paragraphs (a) and (b) applies.
- “(4) If the leaving company at the time has an excess entitlement, the leaving company—
- “(a) may elect that an amount that is not more than the excess tax payment for the company be—
- “(i) treated as having been paid, as income tax or provisional tax, on behalf of another imputation credit account company that is a member of the former group and for which there is no change in ultimate owners at the time; and
- “(ii) not treated as having been paid as income tax or provisional tax by the leaving company:
- “(b) may elect to pay an amount of tax by way of additional income tax equal to—

- “(i) the amount of the excess entitlement, if the leaving company makes no election under paragraph (a); or
 - “(ii) the amount by which the excess tax payment exceeds the amount that is subject to the election under paragraph (a).
- “(5) A leaving company or a former group may satisfy a liability to pay additional income tax under subsection (2) or (4) by treating an excess tax payment of the leaving company or the former group as a payment towards the satisfaction of the liability.
- “(6) If the leaving company elects to pay an amount of additional income tax under subsection (2)(b) or (4)(b) that exceeds the amount of any payment under subsection (5), the additional income tax must be paid to the Commissioner by the 20th day of the month following the month in which the leaving company leaves the former group.
- “(7) The former group is jointly liable with the leaving company for additional income tax payable under subsection (6).
- “(8) A payment of additional income tax under subsection (2) or (4) does not satisfy any other liability of the leaving company or the former group.
- “(9) An election under subsection (2) or (4) must be—
 - “(a) in a form the Commissioner may require; and
 - “(b) made by the leaving company; and
 - “(c) accompanied by notice of agreement from the company who receives the debit under subsection (2) or is treated under subsection (4) as having the benefit of the excess tax payment; and
 - “(d) be made before the company leaves the group or within a further period that the Commissioner may allow if satisfied that the company had insufficient information to make an appropriate election at the time the company left the group.
- “(10) In this section,—
 - “(a) an **ultimate owner** of a company means a person—
 - “(i) who has an ownership interest in the company, calculated under section FG 2; and
 - “(ii) in whom no ownership interest, as calculated under section FG 2, is held by a person who holds

an ownership interest in the company, calculated under section FG 2, of 50% or more:

- “(b) **excess tax payment**, for a company at a time, means the amount at the time by which payments made by or on behalf of the company to the Commissioner for income tax or provisional tax exceed the liability at the time of the company to pay income tax and provisional tax.

“ME 9C **Imputation credit account company joining wholly-owned group**

- “(1) This section applies to an imputation credit account company (called the **joining company**) if, at a time in the income year of the joining company—
- “(a) the joining company becomes a member of a wholly-owned group of companies (called the **new group**); and
 - “(b) the joining company was formerly a member of a wholly-owned group (called the **former group**) having ultimate owners that differed from the ultimate owners of the new group; and
 - “(c) the total amount of the available net losses from the previous tax year for the members of the former group exceeds \$1,000,000.
- “(2) Subsection (3) applies to the joining company if—
- “(a) the joining company at the time has a debit balance in its imputation credit account; and
 - “(b) the debit balance includes debits (called the **former group debits**)—
 - “(i) that arose in the imputation credit account when the joining company was a member of the former group; and
 - “(ii) upon which additional income tax under section ME 9B(2) was not paid by the joining company or former group.
- “(3) The joining company must pay an amount of tax by way of additional income tax that is equal to the amount of the former group debits.
- “(4) If the joining company at the time is entitled to an amount in a pooling account or would be entitled, in the absence of section MD 2, to a refund under section MD 1 of an amount of excess

tax relating to a time when the joining company was in the former group, subsection (5) applies to the following amount (called the **excess entitlement**):

- “(a) zero, if at the time the credit balance in the imputation credit account of the joining company equals or exceeds the total of the following amounts:
 - “(i) the amount that would be the entitlement under section MD 1:
 - “(ii) the amount in a tax pooling account that has been provided by or for the benefit of the joining company to pay income tax and provisional tax and would exceed the liability at the time of the joining company:
 - “(b) the total of the amounts referred to in paragraph (a)(i) and (ii), if at the time there is no credit balance in the imputation credit account of the joining company:
 - “(c) the amount by which the credit balance in the imputation credit account of the joining company at the time is exceeded by the total of the amounts referred to in paragraph (a)(i) and (ii), if neither of paragraphs (a) and (b) applies.
- “(5) If the joining company at the time has an excess entitlement, the joining company must pay an amount of tax by way of additional income tax equal to the amount of the excess entitlement.
- “(6) A joining company or a new group may satisfy a liability to pay additional income tax under subsection (3) or (5) by treating an excess tax payment of the joining company or the new group as a payment towards the satisfaction of the liability.
- “(7) If the joining company must pay an amount of additional income tax under subsection (3) or (5) that exceeds the amount of any payment under subsection (6), the additional income tax must be paid to the Commissioner by the 20th day of the month following the month in which the joining company joins the new group.
- “(8) The new group is jointly liable with the joining company for additional income tax payable under subsection (3) or (5).

- “(9) A payment of additional income tax under subsection (3) or (5) does not satisfy any other liability of the joining company or the new group.
- “(10) In this section,—
- “(a) an **ultimate owner** of a company means a person—
 - “(i) who has an ownership interest in the company, calculated under section FG 2; and
 - “(ii) in whom no ownership interest, as calculated under section FG 2, is held by a person who holds an ownership interest in the company, calculated under section FG 2, of 50% or more:
 - “(b) **excess tax payment**, for a company at a time, means the amount at the time by which payments made by or on behalf of the company to the Commissioner for income tax or provisional tax exceed the liability at the time of the company to pay income tax and provisional tax.”
- (2) Subsection (1) applies for a company that leaves a wholly-owned group on or after 16 November 2004.

111 Application of specific imputation provisions to consolidated imputation groups

After section ME 14(3), the following is inserted:

- “(3B) Sections ME 9B and ME 9C and sections 97, 101, 139B, 140B, 140D, and 180 of the Tax Administration Act 1994 apply, with any necessary modifications, to a consolidated imputation group and its imputation credit account as if—
- “(a) it were a single company; and
 - “(b) each reference to a provision of this Act were a reference to the equivalent provision applicable to consolidated imputation groups; and
 - “(c) each reference to liability of a company for additional income tax, late payment penalty, or imputation penalty tax were (subject to the application of section HB 1(2) to (5)) a reference to joint and several liability for that tax of each company which is a member of the group at the time the additional income tax, late payment penalty, or imputation penalty tax becomes payable.”

112 Deduction of resident withholding tax

- (1) The heading before section NF 2 is replaced by “*Liability to pay resident withholding tax*”.
- (2) The heading to section NF 2 is replaced by “**Liability to pay resident withholding tax**”.
- (3) Before section NF 2(1), the following is inserted:
- “(1A) A person is liable to pay to the Commissioner, in relation to a payment that is or includes resident withholding income, a tax (called **resident withholding tax**) of an amount given by subsection (1) or (1B) if—
- “(a) the person makes the payment and is required to make a deduction of resident withholding tax from the payment:
- “(b) the person is an RWT proxy for the payer of the resident withholding income, the recipient of the resident withholding income, and the resident withholding income.
- “(1AB) A person who makes a payment that is or includes resident withholding income must deduct resident withholding tax from the payment if the person is not excluded by the rest of this section from liability to make the deduction.”
- (4) In section NF 2(1), the words before paragraph (a) are replaced by “If a person makes a payment that is or includes resident withholding income and is required to deduct resident withholding tax from the payment, the person must make a deduction—”.
- (5) After section NF 2(1), the following is inserted:
- “(1B) A person who is an RWT proxy for a payer of resident withholding income and a payment of resident withholding income in the form of a dividend must pay to the Commissioner the amount of resident withholding tax given by the following formula:
- $$\frac{a \times b}{1 - a}$$
- where—
- a is the appropriate rate of resident withholding tax, expressed as a percentage, specified in schedule 14, clause 1:
- b is the amount paid to the recipient of the dividend.”

113 New section NF 2AA inserted

After section NF 2, the following is inserted:

“NF 2AA Election to be RWT proxy

“(1) A person is an **RWT proxy** for a payer of resident withholding income and a payment that is or includes the resident withholding income if—

“(a) the person gives to the Commissioner a notice of election under subsection (2); and

“(b) the payer is a unit trust who is a non-resident; and

“(c) the recipient is a natural person or a trustee of a qualifying trust; and

“(d) the recipient has requested the person to act as an RWT proxy in relation to the payer and the resident withholding income; and

“(e) the person has agreed to act as an RWT proxy in relation to the recipient; and

“(f) the resident withholding income is a dividend; and

“(g) the payment is made while the election in the notice is effective.

“(2) A notice of election must be in writing and contain—

“(a) an election by the person to be an RWT proxy for dividends distributed by the payer; and

“(b) the name and postal address of the payer; and

“(c) the date from which the election is effective.

“(3) An election by a person to be an RWT proxy is effective from the date nominated in the notice of election until the later of the following:

“(a) the date nominated in a written notice of cancellation of the election that the Commissioner receives from the person:

“(b) the date on which the Commissioner receives from the person a written notice of cancellation of the election.”

114 Election to apply higher rate of deduction

(1) Section NF 2A(1) is replaced by the following:

“(1) A person entitled to receive a payment to which section NF 2(1) or (1B) relates may elect, in the manner required by the payer or RWT proxy, that the payment be subject to resident withholding tax at a rate specified in schedule 14, clause 1(a), (b), or (c).”

- (2) In section NF 2A(3),—
- (a) “each deduction” is replaced by “each deduction or payment under section NF 2(1B)”:
 - (b) “the deduction” is replaced by “the deduction or payment”.

115 Payment of deductions of resident withholding tax to Commissioner

After section NF 4(8), the following is added:

- “(9) For the purposes of this section, an RWT proxy who is required to pay resident withholding tax in relation to a payment of resident withholding income is treated as having deducted the resident withholding tax from the payment at the time of the payment.”

116 Certificates of exemption

- (1) In section NF 9(1)(i), “and paragraph (l)” is replaced by “, (l), and (m)”.
- (2) Subsection (1) applies for the 2004–05 tax year.

117 Definitions

- (1) This section amends section OB 1.
- (2) After the definition of **additional capital**, the following is inserted:
“**additional income tax** means tax arising under section ME 9B or ME 9C”.
- (3) After the definition of **expenditure portion**, the following is inserted:
“**exploration and development activities** is defined in section CB 16(2) for the purposes of that section”.
- (4) The definition of **finance lease** is replaced by the following:
“**finance lease** means a lease of a lease asset entered by a taxpayer on or after 20 May 1999 that,—
“(a) when the taxpayer enters the lease, involves or is part of an arrangement that involves—
“(i) the transfer of the ownership of the lease asset to the lessee or an associate of the lessee during or at the end of the lease term:

- “(ii) the lessee or an associate of the lessee having the option of acquiring the lease asset for an amount that is likely to be substantially lower than the lease asset’s market value on the date of acquisition:
- “(iii) a right of an associate of the lessee to acquire the lease asset, or a right of the lessor to require an associate of the lessee to acquire the lease asset, during the lease term under an arrangement that does not entitle the associate to receive all of the lease payments that may fall due after the acquisition:
- “(b) when the taxpayer enters the lease or from a later time, involves a lease term that is more than 75% of the lease asset’s estimated useful life”.
- (5) After the definition of **financial statements**, the following is inserted:
- “**financial value** for the New Zealand banking group of a registered bank is defined in section FG 8F for the purposes of Part FG”.
- (6) Paragraph (b) of the definition of **fixed rate share** is replaced by the following:
- “(b) is defined in section LF 2(3) for the purposes of that section and section FG 8G”.
- (7) After the definition of **gross tax deductions**, the following is inserted:
- “**group funding debt** is defined in section FG 8B for the purposes of Part FG”.
- (8) After the definition of **group of persons**, the following is inserted:
- “**group quarter day** is defined in section FG 8B(6) for the purposes of that section”.
- (9) The definition of **measurement day** is replaced by the following:
- “**measurement day**,—
- “(a) in relation to a calendar year, means each of 31 March, 30 June, 30 September, and 31 December, except for the purposes of Part FG:

“(b) for an income year of a reporting bank, means 1 of the measurement days for the income year defined in section FG 8E for the purposes of Part FG

“**measurement period**, for an income year of a reporting bank, means 1 of the measurement periods for the income year defined in section FG 8E for the purposes of Part FG”.

- (10) Before the definition of **net gain**, the following is inserted:
“**net equity threshold** for the New Zealand banking group of a registered bank is defined in section FG 8H for the purposes of Part FG”.
- (11) In the definition of **net loss**, “written off by the Commissioner under section 177C(4)” is replaced by “extinguished by the Commissioner under section 177C(5)”.
- (12) After the definition of **New Zealand**, the following is inserted:
“**New Zealand banking group**, for a registered bank, is defined in section FG 8C for the purposes of Part FG”.
- (13) After the definition of **New Zealand group debt percentage**, the following is inserted:
“**New Zealand net equity**, for a New Zealand banking group, is defined in section FG 8G(1) for the purposes of Part FG”.
- (14) After the definition of **notional income tax liability**, the following is inserted:
“**notional offshore investment amount**, for a reporting bank, is defined in section FG 8G(4) for the purposes of Part FG”.
- (15) After the definition of **offshore development**, the following is inserted:
“**offshore permit area** is defined in section CB 16(2) for the purposes of that section”.
- (16) After the definition of **partnership net income**, the following is inserted:
“**patent application date**, for an application for a patent, means the date on which the application with a complete specification is lodged with the Intellectual Property Office of New Zealand or a similar office in a country or territory other than New Zealand”.
- (17) After the definition of **registered**, the following is inserted:

- “**registered bank** means a registered bank as defined in section 2 of the Reserve Bank of New Zealand Act 1989”.
- (18) After the definition of **registered security**, the following is inserted:
- “**regulatory value** for the New Zealand banking group of a registered bank is defined in section FG 8F for the purposes of Part FG”.
- (19) After the definition of **replacement price option**, the following is inserted:
- “**reporting bank**, for a New Zealand banking group, means the reporting bank that is given for the New Zealand banking group by section FG 8D”.
- (20) After the definition of **royalty**, the following is inserted:
- “**RWT proxy** is defined in section NF 2AA (Election to be RWT proxy)”.
- (21) In the definition of **sufficient interest**, “in Part LF” is replaced by “in Part FG, Part LF,”.
- (22) In the definition of **taxable bonus issue**, paragraph (b) is replaced by the following:
- “(b) any bonus issue that—
- “(i) is issued fully paid from reserves of the company and, if a dividend, would not be exempt income under section CB 10(2) to (5); and
- “(ii) the company elects in accordance with section CF 8(a) (or with section 3(3)(a)(i) of the Income Tax Act 1976) to be a bonus issue that will be treated as a dividend for the purposes of this Act”.
- (23) After the definition of **type**, the following is inserted:
- “**ultimate owner** is defined in—
- “(a) section ME 9B for the purposes of that section:
- “(b) section ME 9C for the purposes of that section”.
- (24) Before the definition of **unadjusted income tax liability**, the following is inserted:
- “**ultimate parent** is defined in section FG 8C for the purposes of that section”.
- (25) Subsection (4) applies for arrangements entered on or after 29 March 2004.

- (26) Subsection (22) applies for an issue of shares made on or after 16 November 2004.

118 Determination of residence of company

- (1) In section OE 2(1), in the words before paragraph (a), “that is not referred to in subsection (1B)” is inserted after “A company”.
- (2) After section OE 2(1), the following is inserted:
- “(1B) For the purposes of this Act, a company acting as trustee of the Cook Islands National Superannuation Fund, as established by the Cook Islands National Superannuation Trust Deed under the Cook Islands National Superannuation Act 2000 (Cook Islands), is not resident in New Zealand.”

Part 3

Amendments to Tax Administration Act 1994

119 Tax Administration Act 1994

This Part amends the Tax Administration Act 1994.

120 Interpretation

- (1) This section amends section 3(1) of the Tax Administration Act 1994.
- (2) After the definition of **amount payable**, the following is inserted:
- “**approved advisor group** is defined in section 20B(5)”.
- (3) After the definition of **incremental late payment penalty**, the following is inserted:
- “**information holder** is defined in section 20B(1) for the purposes of sections 20B to 20F”.
- (4) In the definition of **shortfall penalty**, “141A” is replaced by “141AA”.
- (5) After the definition of **tax**, the following is inserted:
- “**tax advice document** is defined in section 20B(3)
- “**tax advisor** is defined in section 20B(4)”.
- (6) After the definition of **tax agent**, the following is inserted:
- “**tax contextual information** is defined in section 20F(3)”.

121 Court orders for production of information or return

In section 17A(7)(b)(ii), “law).” is replaced by “law); and” and the following is added:

“(iii) whether or not the information is contained in a tax advice document; and

“(iv) if the information is contained in a tax advice document, whether or not the information is required to be disclosed under section 20E, 20F, or 20G.”

122 New sections 20B to 20G inserted

(1) After section 20, the following is inserted:

“20B No requirement to disclose tax advice document

“(1) A person (called in this section and sections 20C to 20G an **information holder**) who is required under 1 or more of sections 16 to 19 to disclose information in relation to the information holder or another person is not required to disclose a book or document that is a tax advice document for the person to whom the information relates.

“(2) A book or document is eligible to be a tax advice document for a person if the book or document—

“(a) is confidential; and

“(b) is created by—

“(i) the person for the main purpose of instructing a tax advisor to act for the person by giving advice to the person, if the advice is to be about the operation and effect of tax laws:

“(ii) a tax advisor or, where the tax advisor is in public practice, an employee of the tax advisor’s firm, for the main purpose of recording research and analysis, if the research and analysis is performed for the main purpose of enabling the tax advisor to give advice to the person about the operation and effect of tax laws:

“(iii) a tax advisor or, where the tax advisor is in public practice, an employee of the tax advisor’s firm, for the main purpose of the giving of advice by the tax advisor to the person, or the recording of advice given by the tax advisor to the person, if

the advice is about the operation and effect of tax laws; and

- “(c) is created for purposes that do not include a purpose of committing, or promoting or assisting the committing of, an illegal or wrongful act.
- “(3) A book or document is a **tax advice document** for a person if—
- “(a) the book or document is eligible under subsection (2) to be a tax advice document for the person; and
 - “(b) the person makes a claim, under section 20D, that the book or document is a tax advice document; and
 - “(c) the person satisfies the requirements of sections 20E and 20F for the book or document.
- “(4) A **tax advisor** is a natural person who is subject to the code of conduct and disciplinary process, referred to in subsection (5)(a)(ii) and (iii), of an approved advisor group.
- “(5) An **approved advisor group** is a group that—
- “(a) includes natural persons who—
 - “(i) have a significant function of giving advice on the operation and effect of tax laws; and
 - “(ii) are subject to a professional code of conduct in giving the advice; and
 - “(iii) are subject to a disciplinary process that enforces compliance with the code of conduct; and
 - “(b) is approved by the Commissioner for the purposes of this definition.

“20C **Treatment of book or document**

- “(1) This section applies to a book or document that is—
- “(a) included in a request for information in relation to a person; and
 - “(b) possibly eligible to be a tax advice document for the person.
- “(2) The book or document must be treated as being a tax advice document for the person—
- “(a) from the time of the request for information:
 - “(b) until the earlier of—
 - “(i) the time by which the person is required by section 20D to claim that the book or document is a tax advice document for the person:

- “(ii) the time at which the person informs the Commissioner that the person does not claim that the book or document is a tax advice document for the person.
- “(3) If the person makes a claim under section 20D that the book or document is a tax advice document for the person, the book or document must be treated as being a tax advice document for the person from the time of the claim until—
- “(a) the District Court rules that the book or document is not a tax advice document for the person:
 - “(b) the person agrees in writing that the book or document is not eligible to be a tax advice document for the person:
 - “(c) the person withdraws in writing the claim that the book or document is a tax advice document for the person:
 - “(d) an approved advisor group informs the Commissioner that a tax advisor is not or was not a member of the approved advisor group at a time—
 - “(i) at which the tax advisor is claimed by the person or the tax advisor to be a member of the approved advisor group; and
 - “(ii) at which the tax advisor would be required to be a member of an approved advisor group for the document to be a tax advice document.
- “(4) If a book or document must be treated under this section as being a tax advice document for a person, a copy of the book or document must be held in a secure place for the periods referred to in subsections (2) and (3) by a tax advisor.

“20D Claim that book or document is tax advice document

- “(1) A claim by a person that a book or document is a tax advice document for the person must be made by the person or by a tax advisor who is authorised to act on behalf of the person for the purposes of sections 20C to 20G.
- “(2) A claim that a book or document created by a person is a tax advice document for the person must contain the following information:
 - “(a) a brief description of the form and contents of the book or document; and

- “(b) the name of the tax advisor for whom the book or document was intended; and
 - “(c) the date on which the book or document was created.
- “(3) A claim that a book or document created by a tax advisor, or by an employee of a tax advisor’s firm, is a tax advice document for a person must contain the following information:
- “(a) a brief description of the form and contents of the book or document; and
 - “(b) the name of the tax advisor giving the tax advice in relation to which the book or document was created; and
 - “(c) the approved advisor group to which the tax advisor belonged when the book or document was created; and
 - “(d) the statute or other enactment and the type of revenue that was the subject of the tax advisor’s advice in relation to which the book or document was created; and
 - “(e) the date on which the book or document was created.
- “(4) A claim that a book or document is a tax advice document for a person must be made—
- “(a) if the requirement to disclose information is under 1 or both of sections 16 and 16B—
 - “(i) on the day on which the Commissioner or an officer of the Department exercises the right of inspection or removal that leads to the claim:
 - “(ii) by a later date to which the Commissioner agrees:
 - “(b) if the requirement to disclose information is under section 17, by the date that is the later of the following:
 - “(i) the date that is given by the Commissioner in the request for disclosure of the information:
 - “(ii) the date that is 28 days after the date of the request by the Commissioner for disclosure of the information:
 - “(c) if the requirement to disclose information is under section 17A or section 18, by the date on which the Court requires the production of information:
 - “(d) if the requirement to disclose information is under section 19, by the date on which the Commissioner requires the production of information.
- “(5) If a tax advisor acting on behalf of a person claims that a book or document is a tax advice document for the person, the claim must include written confirmation from the tax advisor that

the tax advisor is authorised to act on behalf of the person for the purposes of sections 20C to 20G.

“20E Book or document or part of book or document included in tax advice document

An information holder who is required to disclose information in relation to a person is required to provide a copy of a book or document or part of a book or document that—

- “(a) is attached to a book or document that is eligible under section 20B(2) to be a tax advice document for the person; and
- “(b) is not eligible under section 20B(2) to be a tax advice document for the person.

“20F Person must disclose tax contextual information from tax advice document

- “(1) An information holder who is required to disclose information relating to a person must disclose under subsection (2) a description of tax contextual information from a book or document that the person claims, under section 20D, to be a tax advice document for the person.
- “(2) A disclosure under subsection (1) of a description of tax contextual information from a book or document must be made—
 - “(a) if the requirement to disclose information is under 1 or both of sections 16 and 16B, by the date that is determined by the Commissioner:
 - “(b) if the requirement to disclose information is under section 17 and the requirement is accompanied or followed by a requirement for disclosure of a description of tax contextual information, by the date that is the later of—
 - “(i) the date that is given by the Commissioner in the requirement for disclosure of the description:
 - “(ii) the date that is 28 days after the date of the requirement by the Commissioner for disclosure of the description:
 - “(c) if the requirement to disclose information is under section 17A or section 18, by the date on which the Court requires the production of information:

- “(d) if the requirement to disclose information is under section 19, by the date on which the Commissioner requires the production of information.
- “(3) **Tax contextual information** for a tax advice document for a person is—
- “(a) a fact or assumption relating to a transaction that has occurred or is postulated by the person creating the tax advice document:
- “(b) a description of a step involved in the performance of a transaction that has occurred or is postulated by the person creating the tax advice document:
- “(c) advice that does not concern the operation and effect on the person of tax laws:
- “(d) advice that concerns the operation and effect on the person of tax laws relating to the collection by the Commissioner of debts payable to the Commissioner:
- “(e) a fact or assumption relating to advice that is referred to in paragraph (c) or (d):
- “(f) a fact or assumption from, or relating to the preparation of,—
- “(i) financial statements of the person:
- “(ii) a document containing information that the person is required to provide to the Commissioner under an Inland Revenue Act.
- “(4) A disclosure by a person or tax advisor of tax contextual information from a tax advice document for the person must be in a statutory declaration that—
- “(a) is made by a tax advisor who has not been barred under subsection (5) from making statutory declarations under this subsection; and
- “(b) states that the tax advisor is authorised to act on behalf of the person for the purposes of sections 20C to 20G; and
- “(c) is in the prescribed form.
- “(5) The Commissioner may apply to a District Court Judge for an order that a tax advisor be barred from making statutory declarations under this section, if the tax advisor is convicted of an offence under—
- “(a) section 111 of the Crimes Act 1961:
- “(b) section 143(1)(b):
- “(c) section 143A(1)(b) or (c):

“(d) section 143B(1)(b) or (c):

“(e) section 143H.

“20G Challenge to claim that book or document is tax advice document

“(1) If a person claims that a book or document is a tax advice document for the person, the Commissioner or the person may apply to a District Court Judge for an order determining whether—

“(a) the book or document is a tax advice document for the person:

“(b) information provided by the person is tax contextual information in relation to the book or document:

“(c) the person should provide a more detailed or better description of tax contextual information in relation to the book or document.

“(2) For the purposes of determining an application under this section, the District Court Judge may require the book or document to be produced to the District Court Judge.

“(3) An application under this section may be made in the course of an inquiry under section 18 to the District Court Judge who is holding the inquiry.”

(2) Subsection (1) applies to a requirement to disclose information for which notice of the requirement is given after the date on which this Act receives the Royal assent.

123 Resident withholding tax deduction tax certificates

After section 25(10), the following is inserted:

“(11) In this section, a dividend that is resident withholding income under section NF 2(1A)(b) of the Income Tax Act 2004 is treated as being interest.”

124 Records to be kept for purposes of resident withholding tax

(1) In section 26(1),—

(a) in the words preceding paragraph (a), “deductions of resident withholding tax from” is replaced by “payments of resident withholding tax in relation to”:

(b) in paragraph (a), “deduction” is replaced by “payment”:

- (c) in paragraph (b), “deduction” is replaced by “payment”.
- (2) In section 26(2),—
 - (a) in the words preceding paragraph (a), “deduct resident withholding tax from” is replaced by “pay resident withholding tax in relation to”:
 - (b) in paragraph (a), “deduction” is replaced by “payment”.

125 Provision of tax file numbers

In section 27(1),—

- (a) “resident withholding tax deduction” is replaced by “resident withholding tax payment”:
- (b) “by a payer” is omitted.

126 Annual returns of income not required

- (1) In section 33A(1)(b)(iv), “Interest” is replaced by “Interest or a dividend that is resident withholding income under section NF 2(1A)(b) of the Income Tax Act 2004”.
- (2) In section 33A(1)(b)(x), subparagraph (B) is replaced by the following:
 - “(B) was not resident withholding income under section NF 2(1A)(b); and”.
- (3) In section 33A(2), paragraphs (cb)(ii) and (f) are repealed.
- (4) In section 33A(2), the following is inserted after paragraph (k):
 - “(kb) has carried forward to the income year a credit of tax under section LB 2(3C) of the Income Tax Act 2004:”.
- (5) Subsection (4) applies for the 2005–06 and subsequent income years.

127 New section 36BC inserted

After section 36BB, the following is inserted:

“36BC Electronic format for details required under subpart EK of Income Tax Act 2004

The Commissioner may prescribe 1 or more electronic formats in which details that must be provided under subpart EK of the Income Tax Act 2004 may be provided by electronic means.”

128 Particulars furnished in electronic format

In section 36C(1), “or 36BB” is replaced by “, 36BB, or 36BC”.

129 Statement of payment of deductions of withholding tax

In section 50,—

- (a) the section heading is replaced by “**Statement of payment of resident withholding tax**”:
- (b) “deduction” is replaced by “payment” wherever it appears.

130 Resident withholding tax deduction reconciliation statements

After section 51(6), the following is added:

- “(7) In this section, a dividend that is resident withholding income under section NF 2(1A)(b) of the Income Tax Act 2004 is treated as being interest.”

131 Disclosure of interest in foreign company or foreign investment fund

In section 61(1), in the words before paragraph (a), “interest in a foreign investment fund” is replaced by “attributing interest in a foreign investment fund”.

132 Annual imputation return

In section 69(1)(ea)(ii), “Part MI” is replaced by “subpart MI”.

133 Officers to maintain secrecy

In section 81(4)(p), “Commission.” is replaced by “Commission:”, and the following is added:

- “(q) communicating, for the purpose of section 85H, information to a person who is an officer, employee, or agent of the department for the time being responsible for the administration of the Parental Leave and Employment Protection Act 1987 and who is authorised to receive the information by the chief executive of that department.”

134 New section 81B inserted

After section 81, the following is inserted:

“81B Disclosure of information concerning actions of tax advisor

Despite section 81, the Commissioner may supply information to an approved advisor group about an action or omission—

- “(a) by a person who is, or purports to be, a member of the approved advisor group; and
- “(b) that the Commissioner considers to be a breach of a member’s responsibilities under sections 20B to 20G.”

135 New sections 85H and 85I inserted

After section 85G, the following are inserted:

“85H Disclosure of information for purposes of Parental Leave and Employment Protection Act 1987

- “(1) The purpose of this section is to facilitate the exchange of information between the Commissioner and the responsible department for the purposes of providing to the responsible department, applicant information that the Commissioner considers necessary to enable the responsible department to—
 - “(a) verify an entitlement to parental leave payments:
 - “(b) investigate possible overpayment of parental leave payments.
- “(2) For the purpose of subsection (1), an employee or agent of the responsible department who is authorised to do so by the chief executive of the responsible department may from time to time supply to the Commissioner information that is held by the responsible department in relation to an applicant, or the spouse of an applicant, for a parental leave payment.
- “(3) For the purpose of subsection (1), the Commissioner may compare applicant information contained in an application for payment of paid parental leave made under section 71I of the Parental Leave and Employment Protection Act 1987, or compare applicant information supplied under subsection (2), and information held by the Commissioner that relates to the applicant.
- “(4) Where the Commissioner has made a comparison under subsection (3), the Commissioner may communicate applicant

information to the chief executive of the responsible department if the Commissioner considers the communication to be necessary for the purposes set out in subsection (1).

“(5) In this section and in section 85I,—

“**applicant** means a person who has made an application for a parental leave payment under section 71I of the Parental Leave and Employment Protection Act 1987

“**applicant information**, for an applicant, means—

“(a) information that relates to the circumstances of the applicant that are relevant to the eligibility of the applicant for parental leave payments under Part 7A of the Parental Leave and Employment Protection Act 1987:

“(b) the applicant’s name and tax file number:

“(c) the name and tax file number of the applicant’s employer

“**parental leave** has the meaning in section 2 of the Parental Leave and Employment Protection Act 1987

“**responsible department** means the department for the time being responsible for the administration of the Parental Leave and Employment Protection Act 1987.

“85I **Use of Parental Leave and Employment Protection Act 1987 and parental tax credit information to determine entitlement**

“(1) For the purpose of section 71G(1) of the Parental Leave and Employment Protection Act 1987, if the Commissioner as a delegate under section 71ZA of that Act receives an application for parental leave payments in relation to a child, the Commissioner may—

“(a) compare applicant information and information held by the Commissioner:

“(b) refuse the application for payment of parental leave if a comparison under paragraph (a) indicates that the employee or his or her spouse has received a payment of parental tax credit in respect of the child.

“(2) The Commissioner may treat information obtained while acting as a delegate of the responsible department under section 71ZA of the Parental Leave and Employment Protection Act 1987 as information obtained for the purposes of administering the Inland Revenue Acts.

“(3) The Commissioner may refuse or recover a parental tax credit under section KD 2AB(1) of the Income Tax Act 2004 in respect of a child if a parental leave payment under Part 7A of the Parental Leave and Employment Protection Act 1987 is to be paid or has been paid to the applicant in respect of the child.”

136 Further secrecy requirements

In section 87(5)(a)(i), “and (i)” is replaced by “, (i) and (q)”.

137 Election of small claims jurisdiction of Taxation Review Authority

- (1) In section 89E(1)(a), “89D” is replaced by “89D or 89DA”.
- (2) Subsection (1) applies for disputes that begin under Part IVA of the Tax Administration Act 1994 on or after 1 April 2005.

138 Determination on special rates and provisional rates

- (1) In section 91AAG(2), “must have regard to—” and paragraphs (a) and (b) are replaced by “may have regard to any factors that are relevant in determining the item’s estimated useful life, including an estimate based on a depreciation method or on a valuer’s report, or a rate of depreciation that the person uses for the item for financial reporting purposes”.
- (2) In section 91AAG(3), “after having regard to the factors in subsection (2)” is replaced by “using either the formula in section EE 25(4) of the Income Tax Act 2004 or the straight-line method for an item of property”.
- (3) After section 91AAG(5), the following is inserted:

“(5B) A determination setting a special rate for an item and a person may also be expressed to apply to items, of the same kind as the item, for which the Commissioner considers the special rate is appropriate.”
- (4) Subsections (1) to (3) apply for the 2005–06 and subsequent income years.

139 Applications for determinations

- (1) In section 91AAM(2), “Within” is replaced by “Unless subsection (2B) applies, within”.

- (2) After section 91AAM(2), the following is inserted:
“(2B) Despite subsection (2), a person making an application may agree to an extension of the 6-month time limit within which the Commissioner must respond.”
- (3) Subsections (1) and (2) apply for the 2005–06 and subsequent income years.

140 New section 91AAN and heading inserted

After section 91AAM, the following is inserted:

*“Determinations relating to environmental
restoration expenditure*

**“91AAN Determinations on rates for diminishing value of
environmental expenditure**

- “(1) A person or a group of persons may request the Commissioner in writing to set a rate or an assumed life for the purpose of section DB 37 of the Income Tax Act 2004.
- “(2) The Commissioner may determine that the person, group, or a class of persons is to use for a type of expenditure listed in schedule 6B, part A of the Income Tax Act 2004 or, for expenditure that is part of such a type of expenditure, for the purposes of section DB 37(4)(c) of that Act,—
- “(a) a diminishing value rate that is a banded rate set out in column 1 of schedule 11 of the Income Tax Act 2004:
- “(b) a straight-line rate that is a banded rate set out in column 2 of schedule 11 of the Income Tax Act 2004.
- “(3) The Commissioner may decline to issue a determination under subsection (1) if—
- “(a) the information that is supplied to the Commissioner by the person or group is insufficient for the calculation of an appropriate rate:
- “(b) the Commissioner considers that the alternative rate for the expenditure differs from the banded rate set out for the expenditure in schedule 6B of the Income Tax Act 2004, or in an existing applicable determination, by less than half the difference between that banded rate and the banded rate that is next closest to the alternative rate.
- “(4) In making a determination, the Commissioner may take into account—

- “(a) the length of time for which the expenditure may reasonably be expected to be effective for the purpose for which it was incurred:
 - “(b) the length of time for which the expenditure may reasonably be expected to be effective for the purpose of earning income:
 - “(c) the treatment of the expenditure in the person’s financial reports:
 - “(d) the life of any resource consent that is associated with the expenditure:
 - “(e) an estimate based on a depreciation method or on a valuer’s report.
- “(5) The determination may set out the income year or income years for which it is to apply, but may not apply for income years before the 2005–06 income year.
- “(6) The determination may provide for the extension, limitation, variation, cancellation, or revocation of an earlier determination.
- “(7) A person affected by a determination made under this section may dispute or challenge the determination under Parts 4A and 8A.
- “(8) Within 30 days of issuing a determination under subsection (1), the Commissioner must give notice of the determination to the person or group who requested the determination.
- “(9) Within 30 days of issuing a determination under subsection (1) that is expressed to apply to a class of persons, the Commissioner must publish a notice in the *Gazette* that—
- “(a) gives notice that the determination has been issued; and
 - “(b) states where copies of the determination can be obtained.”

141 Commissioner to make private rulings on request

Section 91E(6) is repealed.

142 Taxpayer assessment

- (1) Section 92(4) is repealed.
- (2) Subsection (1) applies for the 2005–06 and later tax years.

143 New section 101B inserted

After section 101, the following is inserted:

“101B Assessment of additional income tax

- “(1) The Commissioner may, in respect of any company liable to pay additional income tax under section ME 9C of the Income Tax Act 2004, make an assessment of the amount of the additional income tax that in the Commissioner’s judgment ought to be imposed, and the company shall be liable to pay the additional income tax so assessed except so far as the company establishes in proceedings challenging the assessment that the assessment is excessive or that the company is not chargeable with the additional income tax.
- “(2) Sections 109, 111, and 113 apply, so far as may be, with respect to every assessment made under this section as if—
- “(a) in those sections, the term “taxpayer” included a company which is chargeable with additional income tax; and
 - “(b) in section 113, the term “tax already assessed” included the additional income tax already assessed under this section.
- “(3) An assessment made under this section is subject to challenge in the same manner as an assessment of income tax and Part VIIIA of this Act shall apply, so far as may be, to a challenge to an assessment made under this section as if the terms “income tax” and “tax” in that Part included the additional income tax for which a company may be chargeable under section ME 9C of the Income Tax Act 2004.”

144 Time bar for amendment of income tax assessment

- (1) Section 108(1B) is repealed.
- (2) Section 108(3B) is repealed.
- (3) Subsections (1) and (2) apply for the 2005–06 and later tax years.

145 Definitions

- (1) In section 120C(1), in the definition of **date interest starts**, the following is added:
 - “(f) for unpaid tax, being terminal tax for the tax year in which a disposition of property to which section FI 4 of

the Income Tax Act 2004 refers, the due date for the deceased person's terminal tax, if all instalments of provisional tax (including terminal tax) payable by the deceased person are paid by their due date".

- (2) In section 120C(1), in the definition of **interest period**, paragraph (b)(iii) is repealed.
- (3) Subsection (2) applies for the 2004–05 and later tax years.

146 Imputation penalty tax payable where end of year debit balance

- (1) In section 140B(1), "or additional income tax under section ME 9C of that Act" is inserted after "debit balance".
- (2) Section 140B(2) is replaced by the following:
 - “(2) The amount of the imputation penalty tax payable by a company is 10% of the amount of—
 - “(a) further income tax that gives rise to the liability for further imputation penalty tax:
 - “(b) additional income tax that gives rise to the liability for further imputation penalty tax.”

147 Unacceptable tax position

- (1) In section 141B(5), "interpretation of a tax law" is replaced by "tax position".
- (2) Section 141B(6) is replaced by the following:
 - “(6) The time at which a taxpayer takes a tax position for a return period is—
 - “(a) the time at which the taxpayer provides the return containing the taxpayer's tax position, if the taxpayer provides a tax return for the return period:
 - “(b) the due date for providing the tax return for the return period, if the taxpayer does not provide a tax return for the return period.”

148 Reduction of penalties for previous behaviour

In section 141FB(5), in the words before paragraph (a), "subsection (2)" is replaced by "subsections (1) and (2)".

149 Increased penalty for obstruction

In section 141K(1), "141A" is replaced by "141AA".

150 Publication of names

- (1) Section 146 is repealed.
- (2) Subsection (1) applies to publication that, but for this section, would be required after the date on which this Act receives the Royal assent.

151 Write-off of tax by Commissioner

- (1) In section 177C, the following is inserted after subsection (5):
“(5B) If the Commissioner writes off outstanding tax for a taxpayer who has a credit of tax carried forward under section LB 2(3C) of the Income Tax Act 2004, the Commissioner must extinguish all or part of the credit of tax on a dollar-for-dollar basis.
“(5C) If a taxpayer has both a net loss to which subsection (5) applies and a credit of tax carried forward to which subsection (5B) applies, the Commissioner must extinguish the net loss under subsection (5) before extinguishing any credit of tax under subsection (5B).”
- (2) Subsection (1) applies for the 2005–06 and subsequent income years.

152 Obligation to pay tax on foreign investment fund income able to be suspended

- (1) In section 183(1)(a), “has in a fund an interest” is replaced by “has in a foreign investment fund an attributing interest”.
- (2) Subsection (1) applies for the 2005–06 and subsequent income years.

153 Remission in circumstances of qualifying event

- (1) In section 183ABA(1), “Income Tax Act 1994” is replaced by “Income Tax Act 2004”.
- (2) In section 183ABA(4), “Income Tax Act 1994” is replaced by “Income Tax Act 2004”.
- (3) Subsections (1) and (2) apply for the 2005–06 and subsequent income years.

Part 4

Amendments to other enactments

Amendments to Goods and Services Tax Act 1985

154 Goods and Services Tax Act 1985

Sections 155 to 159 amend the Goods and Services Tax Act 1985.

155 Meaning of term “supply”

After section 5(6A), the following is inserted:

“(6AB) For the purposes of this Act, a levy that is paid to the New Zealand Fire Service Commission under section 48 of the Fire Service Act 1975 and is not a penalty surcharge or interest payable under that Act is treated as being consideration for a supply of services to the insured person in the course or furtherance of a taxable activity carried on by the Commission.”

156 Imposition of goods and services tax on imports

In section 12(4)(d)(ii), “does not qualify for an input tax credit in relation to” is replaced by “is not entitled to make an input tax deduction under section 20(3) in respect of”.

157 Credit and debit notes

In section 25(2)(a), “tax charged by that supplier in relation to a taxable supply” is replaced by “tax charged on a taxable supply made by that supplier and be”.

158 Section 26A replaced

Section 26A is replaced by the following:

“26A Factored debts

“(1) This section applies to a registered person who—

“(a) sells a debt to another person during a taxable period; and

“(b) is required to account for tax payable on a payments basis.

“(2) The sale of the debt is treated as being a taxable supply—

“(a) that is made by the registered person during the taxable period; and

“(b) on which the amount of tax charged is the tax fraction of the remaining book value of the debt.”

159 Refund of excess tax

- (1) In section 45(1)(a), “properly assessed” is replaced by “properly payable”.
- (2) In section 45(1)(b), “expired” is replaced by “ended”.
- (3) In section 45(2)(a), “assessment that changed” is replaced by “amendment to an assessment that increased”.
- (4) In section 45(2)(b), “properly assessed” is replaced by “properly payable”.
- (5) In section 45(2)(c), “made has not expired” is replaced by “amended has not ended”.
- (6) In section 45(3), paragraph (a) and the words before paragraph (a) are replaced by the following:

“(3) Despite section 20(5), the Commissioner must refund an amount to a person if—”.
- (7) Section 45(3)(c) is replaced by the following:

“(c) the Commissioner is satisfied that the person was entitled to receive the amount at the time of the refund but did not; and”.
- (8) In section 45(3)(d), “expired” is replaced by “ended”.
- (9) Subsections (1) to (8) apply for taxable periods beginning on or after 1 April 2005.

160 Cancellation of registration

- (1) After section 52(5A), the following is inserted:

“(7) In subsections (5) and (5A), for a person who is a non-resident, a taxable activity means a taxable activity carried on in New Zealand.”
- (2) Subsection (1) applies to a person who becomes registered under the Goods and Services Tax Act 1985 on or after the date on which this Act receives the Royal assent.

Amendment to Student Loan Scheme Act 1992

161 Interpretation

In section 2 of the Student Loan Scheme Act 1992, after the definition of **student loan scheme**, the following is inserted:

“**tax year**, in respect of the income of a person, means a **tax year** as defined in section OB 1 of the Income Tax Act 2004”.

Amendment to Taxation Review Authorities Act 1994

162 Small claims jurisdiction of Authorities

- (1) In section 13B(1)(b) of the Taxation Review Authorities Act 1994, “of precedent” is replaced by “, the decision of which affects or may affect the outcome of a separate and unrelated dispute between the Commissioner and a taxpayer other than the disputant”.
- (2) Subsection (1) applies for disputes that begin under Part 4A of the Tax Administration Act 1994 on or after 1 April 2005.

*Amendment to Income Tax (Social Assistance Suspensory
Loans) Order 1995*

163 Social assistance suspensory loans

In clause 2 of the Income Tax (Social Assistance Suspensory Loans) Order 1995, “EH 53” is replaced by “EW 47”.

s 89

Schedule**New schedule 6B inserted in Income Tax Act 2004**ss EK 2, EK 12, EK 20,
EK 23**Schedule 6B****Expenditure in avoiding, remedying, or mitigating
detrimental effects of discharge of contaminant****Part A**

Expenditure relating to activity or improvement to land

- 1 expenditure on investigating and testing locations and methods, before a decision is made to use a location or method, for an activity or improvement that is intended to avoid, remedy, or mitigate future detrimental effects on the environment from the discharge of a contaminant
- 2 expenditure, in the construction of an improvement on land in New Zealand, incurred in order to avoid or mitigate future detrimental effects on the environment from the discharge of a contaminant
- 3 expenditure on screen planting, on land in New Zealand, incurred in association with the construction of an improvement to the land that is intended to avoid, or mitigate future detrimental effects on the environment from the discharge of a contaminant
- 4 expenditure on riparian planting, on land in New Zealand, incurred in order to avoid or mitigate future detrimental effects on the environment from the discharge of a contaminant
- 5 expenditure on an activity that is intended to avoid or mitigate the future discharge of a contaminant

Part B

Expenditure relating to monitoring, remedies, and mitigation

- 1 expenditure related to monitoring the discharge of a contaminant
- 2 expenditure related to monitoring detrimental effects on the environment from the discharge of a contaminant
- 3 expenditure, incurred after the discharge of a contaminant, on avoiding, remedying, or mitigating detrimental effects on the environment from the discharged contaminant

Schedule 6B—continued**Part B**—*continued*

- 4 expenditure, incurred after the discharge of a contaminant, on removing an improvement to land in New Zealand for the purpose of avoiding, remedying, or mitigating detrimental effects on the environment from the discharged contaminant
- 5 expenditure, incurred after the discharge of a contaminant, on the installation of impermeable surfaces on land in New Zealand with the purpose of avoiding, remedying, or mitigating detrimental effects on the environment from the discharged contaminant
- 6 expenditure, incurred after the discharge of a contaminant, on replanting land in New Zealand in association with expenditure to avoid, remedy, or mitigate detrimental effects on the environment from the discharged contaminant
- 7 expenditure, incurred in the cessation of a business, on disposing of a stored substance that is a potential contaminant in a way that avoids detrimental effects on the environment

Part C**Excluded expenditure**

- 1 expenditure related to land reclamation
- 2 expenditure relating to dredging, other than dredging for the principal purpose of remedying or mitigating detrimental effects on the environment from a discharged contaminant
- 3 expenditure related to the acquisition of land

Legislative history

16 November 2004	Introduction (Bill 231–1)
14 December 2004	First reading and referral to Finance and Expenditure Committee
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14 June 2005	Second reading, committee of the whole House, third reading
