

Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Bill

Government Bill

Explanatory note

General policy statement

This bill introduces important changes to current taxation law.

Amendments to the Income Tax Act 2004 will amend the provisional tax calculation and payment systems by aligning the three current provisional tax payments to GST due dates and providing an alternative method of calculating provisional tax by basing it on a percentage of GST taxable supplies.

Another group of amendments will change the tax depreciation rules so that tax depreciation rates are closer to estimates of economic depreciation for assets. The amendments change the way that depreciation rates are calculated and reduce the investment biases that favour investments in long-life assets over investments in short-life assets. For plant and equipment, the double declining balance method (producing an increase in depreciation rates for plant and equipment with short economic lives) is introduced. For buildings, straight-line depreciation with a declining balance equivalent (producing a lower depreciation rate) is introduced. Compliance costs associated with the current tax depreciation rules are reduced by increasing the low-value asset threshold.

There are also amendments that give effect to a set of changes to fringe benefit tax (FBT). The changes, which arise from the first major review of FBT since the tax was introduced in 1985, were signalled in the government discussion document *Streamlining the taxation of fringe benefits*, released in December 2003. They are

designed to reduce compliance costs and remove anomalies in the rules while maintaining the objectives of FBT.

Amendments will be made to provide that companies bringing in new equity investors will have better access to tax deductions for research and development expenditure. Technology companies, in particular, often have a long lead-in period in which they incur major expenditure without realising income as a result. Under current law, the companies can lose deductions for expenditure on research and development if they bring in new investors after the initial development stage. The changes will allow deductions for expenditure on research and development to be matched with income from the expenditure. They will cater for the growth cycle of technology companies and remove a barrier to investment in research and development.

A small group of amendments will provide certainty on the treatment of regrassing and fertilising expenditure, particularly if it is incurred as part of a farm conversion.

Further amendments address the issue of corporate migration. Amendments in the bill treat migrating companies in the same manner that liquidating companies are currently treated. A migrating company will be treated as having disposed of its property at market value and having distributed all shareholder funds (including the disposal proceeds) to its shareholders as if it were making a distribution on its liquidation. The usual treatment of a distribution by a company to its shareholders will apply. Technical consequential amendments are also made to the conduit and dividend withholding payment rules.

Other amendments: reform the tax treatment of securities lending to bring the New Zealand treatment into line with the international treatment of these transactions and address tax avoidance concerns related to the current treatment of securities lending transactions; provide additional relief from the New Zealand foreign investment fund rules for new migrants and returning New Zealanders who have interests in employment-related foreign superannuation schemes; and enable New Zealand persons with interests in foreign hybrid investment vehicles to claim credits in New Zealand for foreign tax paid by these entities.

Amendments to the Income Tax Act 2004 and the Tax Administration Act 1994 will establish a framework for the payment of subsidies to payroll intermediaries who perform PAYE and related obligations on behalf of small employers.

Amendments are proposed to the Tax Administration Act 1994 to require New Zealand resident trustees of foreign trusts to disclose to Inland Revenue prescribed information relating to each foreign trust of which they are a trustee, to keep prescribed financial records relating to foreign trusts for New Zealand tax purposes, and to provide access to these financial records to Inland Revenue, if requested. These amendments will enable New Zealand to meet its international commitments and obligations under its double tax agreements to exchange information relating to foreign trusts.

Part 1

Annual rates of income tax for 2005-06 tax year

This provision sets the annual income tax rates that will apply for the 2005-06 tax year. The rates that will apply are those in Schedule 1 of the Income Tax Act 2004.

Part 2

Amendments to Income Tax Act 2004

Aligning provisional tax payments with GST payments

These reforms are intended to address concerns with the management of taxpayers' cash-flows and the timing, size, and number of tax payments required to be made by (generally) business taxpayers. Aligning provisional tax dates to GST dates will become mandatory for all provisional taxpayers. At present, the vast majority of GST taxpayers have their GST taxable periods aligned to their balance date. However, a small percentage of GST registered persons will be required to change their GST taxable periods to align with their balance date. These costs could have offsetting benefits to taxpayers as better financial information will be available with GST information matching the time period of other financial information.

Provisional taxpayers who are registered for GST on a monthly or two-monthly basis will pay provisional tax three times a year, linked to every second GST payment date (fourth GST payment date for monthly GST payers). Taxpayers who account for GST on a six-monthly basis will pay provisional tax every six months. Non-GST

registered provisional taxpayers will pay three provisional tax payments each year.

Taxpayers will have to pay GST up to three days earlier as a result of the changes. However, this will be offset by taxpayers having the use of the provisional tax money for longer as the new provisional tax payment dates defers the payment of provisional tax. Also, taxpayers' compliance costs will be reduced by the concentration of their tax compliance efforts, the removal of the need for separate provisional tax payments, and fewer payment dates.

Taxpayers that qualify to base their provisional tax payments on a percentage of their GST taxable supplies will be able to match their provisional tax payments with receipt of their income. The ratio will be based on their residual income tax divided by their taxable supplies for the corresponding year. This option will be available only to taxpayers who account for GST on a monthly or two-monthly basis. Provisional tax payments will be required six times a year linked to each of their GST returns (every second return for monthly payers).

Allocation of research and development tax deductions

Amendments will allow taxpayers to allocate certain research and development (R&D) tax deductions to income years after the year in which the related expenditure (including a depreciation loss) is incurred. This means that deductions will not be lost if there is a shareholding change between when the expenditure is incurred and when the deduction is recognised by the taxpayer. This tax treatment will be optional. However, those who choose this approach must allocate R&D deductions against income resulting from the R&D expenditure.

Companies that bring in new equity investors will have better access to tax deductions for R&D expenditure under the proposed amendments. Technology companies, in particular, often have a long lead-in period in which they incur major expenditure before realising income from it, but under current law they can lose R&D tax deductions if they bring in new investors after their initial development stage. The changes will better suit the growth cycle of technology companies and remove a barrier to R&D investment by allowing R&D tax deductions to be matched with related income. The amendments will apply from the 2005-06 income year.

Corporate migration

The corporate migration amendments will remove incentives for companies to migrate from New Zealand for tax reasons. A company resident in New Zealand is liable to New Zealand tax on its worldwide income. However, currently companies may migrate without being required to pay tax on income that was earned while the company was resident. Amendments in the bill treat migrating companies in the same manner that liquidating companies are currently treated. A migrating company will be treated as disposing of its property at market value and making a distribution to shareholders as if in a liquidation. The company will be required to pay withholding tax on the value of the deemed dividends under the resident withholding tax rules or the non-resident withholding tax rules as appropriate. The company will be allowed to attach imputation credits to the deemed dividends. To provide relief from double tax in the event of an actual distribution, the distribution can be treated as an additional amount of tax paid share capital that can be returned to shareholders tax-free in certain circumstances.

For consistency with current imputation rules on migration, a company that ceases to be resident will also cease to be a dividend withholding payment account company and a conduit tax relief account company.

The amendments will apply to companies that become non-residents on or after 1 April 1997.

Depreciation

These amendments are intended to improve the current tax depreciation rules by moving the tax depreciation rates closer to estimates of economic depreciation for assets by changing the way that depreciation rates are calculated. For plant and equipment, the double declining balance method (which produces an increase in depreciation rates for plant and equipment with short economic lives) will apply; for buildings, the straight-line depreciation method with a declining balance equivalent (which produces a lower depreciation rate) will apply.

A central policy objective is reducing investment biases that favour investments in long-life assets over short-life assets. The increase in the low-value asset threshold will reduce compliance costs associated with the current tax depreciation rules.

Farm conversions

Amendments will provide the extent to which regrassing and fertilising expenditure associated with a “significant capital activity”, such as a farm conversion, is to be amortised over a number of years. The rate for amortising this expenditure will be up-dated to reflect that modern farming practices increasingly make use of short pasture rotation cycles. The amendments will also provide that such expenditure, if not required to be amortised, will be fully deductible in the year that it is incurred.

Fringe benefit tax

Amendments to the Income Tax Act 2004 will give effect to changes which arose from the review of FBT and that were either signalled in the Government discussion document *Streamlining the taxation of fringe benefits*, released in December 2003, or arose out of submissions made on that document. The purpose of the review has been to assess the operation of the fringe benefit tax rules, which have remained substantially unchanged since their introduction in 1985, and, where feasible, address taxpayers’ concerns about the way the tensions between simplicity, comprehensiveness, costs (including compliance costs) and equity have been balanced under those rules. Several of the main changes included in the bill as a result of the review are described below.

The main changes include allowing owners of motor vehicles the choice of calculating the benefit based on the vehicle’s tax book value (with a minimum value) or, as at present, its cost. Also, the valuation rate will be reduced to reflect lower real motoring costs since the rate was set in the early 1980s. The rate will be reduced from 24% to 20% of the cost of the vehicle; the equivalent rate if book value is used will be 36%. To remove the potential for private use of a motor vehicle within a 24-hour period being treated as two days’ private use, employers will be able to elect the start time for an FBT day. The election must last for two years.

The treatment of leased vehicles will be aligned with that of owned vehicles; that is, lessees will have the choice of valuing the benefit on either the cost or tax book value of the vehicle.

To address the practice by which shareholder-employees avoid FBT by leasing their own vehicles to their employers and “suspending” the leases when private use occurs (known as “9-to-5” or “flip-flop”

leases), the “suspension” will be legislatively overridden for FBT purposes and private use treated as a fringe benefit.

Employers will have the option of valuing their loans to employees at a market rate as an alternative to the current prescribed rate of interest. The market rate must be the rate that the lender was charging to other comparable groups of a sufficient size on an arm’s-length basis and need not be a rate that is available to the public.

The minimum value thresholds that apply to unclassified fringe benefits will be increased, in the case of the employee threshold, from \$75 to \$200 per quarter and in the case of the employer threshold, from \$450 per quarter to \$15,000 per annum.

The private use of employer-owned or leased business tools, such as cell phones and laptops, will be exempt from FBT when provided to the employee primarily for business purposes, subject to the cost price of a tool not exceeding \$5,000.

Benefits that arise in relation to employer health and safety obligations will be exempt from FBT irrespective of whether provided on or off-premises. The general anti-avoidance rule for income tax will in future be applied to FBT and the provision of credit cards and other short-term credit facilities by charities to their employees will be made subject to FBT by generally excluding such benefits from the charities’ FBT exemption.

If an employee is eligible for a tax-free reimbursement of the costs of travelling to visit the employee’s family, an exemption from FBT will be available when an employer pays for a member of the employee’s family to travel to visit the employee. The exemption for the family visit is limited to the amount that would have been exempt from FBT if the employee had made the visit and had been reimbursed.

The bill includes a number of other minor changes to the FBT rules. These changes will apply from 1 April 2006.

Increase in the child rebate

An amendment to section KC 2 will increase the maximum child rebate payable from \$156 to \$351 per annum. This will increase the amount of income (excluding interest and dividends) that eligible children can earn tax-free from \$1,040 per annum (\$20 per week) to \$2,340 per annum (\$45 per week).

The increase is intended to reduce compliance costs for certain groups of children. Eligible children who are private and domestic workers or independent contractors and earn income (less interest and dividends) of between \$1,040 and \$2,340 per annum will no longer be required to deduct tax or meet other tax obligations in respect of this income. Children who are employees, but not private and domestic workers, may experience a reduction in compliance costs if their employer reduces the tax deducted at source to take the child rebate into account. All eligible children whose income exceeds \$1,040 will benefit monetarily from the increase. This amendment will apply from the income year commencing 1 April 2006.

Payouts from co-operatives

An amendment is introduced to remove the current uncertainty in the tax treatment of payouts from co-operatives to members. It will ensure that payouts are deductible to the co-operative and taxable in the hands of the member at their marginal tax rate. The amendment achieves this by specifically excluding such payouts from the definition of a dividend and including them as an allowable deduction in the Income Tax Act 2004. To be deductible, however, the payout must be in relation to the supply of trading stock sold to the co-operative by the member or sold by the co-operative to the member.

Reverse takeovers

The concessionary continuity rules will be extended so that they apply in circumstances where a larger company is taken over or merges with a smaller company. Under current law, such a transaction may result in continuity for the losses of the larger company's losses or imputation credit account losses. However, use of the rules can be impractical in some instances. The amendments will allow simplified methods for determining continuity.

Securities lending

Amendments will reform the tax treatment of securities lending to bring New Zealand into line with the international treatment of these transactions. Tax avoidance concerns related to the current treatment of securities lending transactions are also addressed. The amendments involve the provision of: a clear definition of qualifying

transactions (called “share-lending arrangements”); detailed rules to deal with distributions on borrowed securities; a focus on equity securities; and the introduction of new rules relating to the treatment of the imputation credits received by a “borrower” of securities and the non resident withholding tax for which the “lender” of securities would be liable if the securities were not “lent”.

The securities lending rules will apply for income years and transactions beginning on or after enactment, while the associated anti-avoidance measures will apply from the date of Royal assent.

Subsidy for certain PAYE intermediaries

Proposed subpart NBB of the Income Tax Act 2004 introduces an extension to the accredited PAYE intermediaries scheme which commenced in 2004. Persons who are accredited PAYE intermediaries under that scheme may apply to become “listed PAYE intermediaries”. A PAYE intermediary contracts with small employers for the performance of their tax payroll obligations. The amendments permit the Commissioner to pay a subsidy to a “listed intermediary” for the performance of these services. The Commissioner may list an applicant as a listed PAYE intermediary if satisfied (among other things) that the person is an accredited PAYE intermediary who has provided all required returns, that the person has paid all tax due, and that the person has available the administrative (including information technology) systems necessary to perform the obligations of a listed PAYE intermediary. Dealing with tax calculations and payments forms the bulk of payroll related compliance costs for small employers. The proposal is expected to assist new employers by reducing growth-inhibiting effects caused by the initial burden of taking on employees.

A small employer is defined as an employer who, in the preceding tax year, had gross tax (including SSCWT) deductions of less than \$100,000, or if not in business in the preceding tax year, their gross tax (including SSCWT) deductions are less than \$100,000. This initiative is intended to reduce compliance costs for small employers by promoting the use of listed PAYE intermediaries. The subsidy will be paid to the listed PAYE intermediary at a rate to be set by Order in Council and paid monthly in respect of the first 5 employees of each employer who contracts the services of a listed PAYE intermediary. Consequential amendments to the Tax Administration

Act 1994 are included. The new scheme will be available from 1 April 2006.

Tax exemption for gaming machine operators

The Income Tax Act 2004 will be amended to provide a separate tax exemption for the gaming machine income of licensed non-casino gaming machine operators if they apply or distribute the income as required by the Gambling Act 2003. Application is from the date of Royal assent.

Temporary exemption for new migrants

Amendments will allow a temporary exemption from income tax on the foreign income (except dividends, interest, employment income and business income relating to services performed offshore) of people who have not been tax resident in New Zealand for at least ten years. The exemption will be for five years for employees and three years for all other new migrants. The amendments, which result from the Government tax policy discussion document *Reducing tax barriers to international recruitment to New Zealand*, are intended to relax New Zealand's comprehensive international tax rules which can create a barrier to potential migrants and impose additional costs on New Zealand business. The economic costs of tax on these forms of income are generally passed on to New Zealand employers.

New migrants and returning New Zealanders will continue to be taxed on New Zealand sourced income. Dividends, interest, and offshore employment income and business income relating to services performed offshore will continue to be taxed at normal rates. Application is from 1 April 2006 for those arriving on or after that date with application to their 2005-06 and later income years.

Treatment of employment-related foreign superannuation scheme interests

Amendments to the foreign investment fund rules in relation to employment-related foreign superannuation scheme interests will extend the current exemption available for new migrants for interests acquired in an employment-related foreign superannuation scheme prior to migrating to New Zealand to returning residents. In addition, the amendments will provide a permanent exemption for

all interests attributable to contributions made to an employment-related foreign superannuation fund within the first five years of each new period of New Zealand residence. The amendments will apply from 1 April 2006 for people arriving in New Zealand on or after this date with application from the 2005-06 income year and subsequent years.

Part 3

Amendments to Tax Administration Act 1994

Information-reporting and record-keeping requirements for foreign trusts

Amendments will be made to the Tax Administration Act, as well as the Income Tax Act 2004, to introduce information-reporting and record-keeping requirements for New Zealand resident trustees of foreign trusts. These amendments are intended to ensure that New Zealand is in a position to meet its international commitments and obligations under its double tax agreements to exchange information.

New Zealand resident trustees will be required to provide the information prescribed in new section 59B to Inland Revenue within 30 days of their appointment or, in the case of existing appointments, within 60 days of the commencement of the amendments. The record-keeping requirements in section 22 will be amended to impose an obligation on New Zealand resident trustees to maintain financial records for each foreign trust, in New Zealand, for New Zealand tax purposes. New Zealand resident trustees will be required to provide these records to Inland Revenue, if requested. In addition, at least one New Zealand resident trustee of each foreign trust will be required to be a member of an organisation that is acceptable to Inland Revenue (such as an accounting or legal body). New Zealand resident trustees who satisfy this requirement will be referred to as “qualifying New Zealand resident trustees”. A two-year exemption from the above requirements will be allowed for eligible New Zealand resident trustees who are new migrants, or have not been resident in New Zealand for at least five years prior to becoming a New Zealand resident.

If Inland Revenue requests financial records from a foreign trust and determines that the trust does not have a qualifying New Zealand resident trustee, the non-qualifying trustee will commit an offence

under new section 143(1)(d), unless the two-year exemption applies. Under new section HH 4(3BB) of the Income Tax Act 2004, continued failure to become a qualifying New Zealand resident trustee (or have a co-trustee appointed who satisfies this requirement) will result in a foreign trust that the trustee provides trustee services for, being taxed in New Zealand on its worldwide income. This tax treatment will be applied on a prospective basis. In addition, a foreign trust will be subject to income tax on its worldwide income for an income year if the foreign trust has no qualifying New Zealand resident trustee in the income year and financial records for the income year are requested by Inland Revenue and not provided.

Inland Revenue will, as a matter of routine, provide to the Australian Tax Office, information relating to foreign trusts that have a New Zealand resident trustee and an Australian resident settlor. Information will be provided to New Zealand's other DTA partners on a case-by-case request basis, when Inland Revenue receives a valid request for information. These amendments will commence on 1 April 2006.

Part 4

Amendments to other Acts

Goods and Services Tax Act 1985

GST treatment of supplies to security holders

An amendment to the Goods and Services Act 1985 applies to a supply of a security under which the security holder has a right to a supply of goods and services that would be a taxable supply if not made under the security. The supply of the right under the security is treated as being separate from the supply of the security and as being made at the market value of the right. This amendment comes into force on the date on which this Act receives the Royal assent.

GST and distributions under a testamentary trust

An amendment to the Goods and Services Tax Act 1985 preserves the intended revenue-neutral effect of the supply of goods and services made under a testamentary trust where the goods or services are used in the recipient's taxable activity. This amendment comes into force on the date on which this Act receives the Royal assent.

GST and postage stamps

An amendment to the Goods and Services Tax Act 1985 clarifies that a supply of a postage stamp occurs on sale or issue and therefore is subject to GST at a rate of 12.5 percent. This will ensure that the GST treatment of postage stamps is consistent regardless of whether the supplier of the stamp is a registered postal operator. This amendment comes into force on the date on which this Act receives the Royal assent.

GST on goods outside New Zealand at the time of supply

An amendment to the Goods and Service Tax Act 1985 supports the principle that supplies of goods consumed in New Zealand are subject to GST. As a result, a supply of goods that are not situated in New Zealand at the time of supply is zero-rated if the goods are not situated in New Zealand at the time of delivery. Double taxation is avoided by a rule that a supply is zero-rated if the recipient pays GST on the importation of the goods into New Zealand. This amendment comes into force on 19 May 2005.

Clause-by-clause analysis

Clause 1 gives the title of the Act.

Clause 2 gives the commencement dates for the Act.

Part 1

Annual rates of income tax for 2005-06 tax year

Clause 3 sets the income tax imposed by section BB 1 of the Income Tax Act 2004 for the 2005–06 tax year at the basic rates specified in Schedule 1 of the Income Tax Act 2004.

Part 2

Amendments to Income Tax Act 2004

Part 2 amends the *Income Tax Act 2004*.

Clause 5 amends section BH 1 (Double Tax Agreements) to narrow the override established by the section.

Clause 6 replaces the section heading to section CD 1.

Clause 7 inserts new *section CD 1B* (Distribution excluded from being dividend) which excludes a distribution under *section CD 24B*

from the definition of dividend, with application for income years corresponding to the 2006-07 and subsequent tax years.

Clause 8 inserts new *section CD 10B* (Dividend reduced if foreign tax paid on company's income) which reduces the amount of certain dividends paid.

Clause 9 amends *section CD 18* (Capital distributions on liquidation) in relation to emigrating companies.

Clause 10 inserts new *section CD 24B* (Distribution to member of co-operative company based on member's transactions) which provides that distributions that do not comprise trading stock when made by a co-operative company or a company owned by a co-operative company are excluded from being a dividend in certain circumstances.

Clause 11 inserts new *section CD 32(15B)* consequential to new *section FCB 2* (Emigrating company treated as making distribution to shareholders).

Clause 12 amends *section CD 34* (When does a person have attributed repatriation from a CFC?).

Clause 13 inserts new *sections CD 43* (Replacement payment), *CD 44* (Share supplier treated as disposing of original share if share-lending arrangement not completed). The inserted sections apply to a person who is a share user under a share-lending arrangement and acquires a replacement share for less consideration than the person provided to the share supplier for the original share. Under the inserted sections, the person derives income equal to the amount by which the consideration provided to the supplier for the original share exceeds the consideration provided for the replacement share.

Clause 14 amends *section CE 2*. *Subsection (8)* is added to clarify that the cancellation of share options in exchange for cash is a disposal of rights and is therefore employment income. *Subsection (9)* is amended to exclude from the application of the section a distribution to a certified resident relating to employment overseas.

Clause 15 amending *section CE 5* and *clause 16* inserting a new *section CE 11* are consequential changes to the new *section DC 15*, which allows an employee to claim an income tax deduction for an income protection insurance premium to the extent that the employer is liable for, and pays, a contribution towards the premium. The amendment to *section CE 5* ensures that the amount the

employer pays is not expenditure on account of the employee. New *section CE 11* (Proceeds from claims under policies of income protection insurance) provides that an amount paid under an income protection policy to an employee is income of the employee if the employer paid the policy premiums.

Clause 17 amends *section CF 1(2)* to provide that payments under the Injury Prevention, Rehabilitation, and Compensation Act 1991 to a claimant under that Act in respect of attendant care are income of the recipient to the extent that they exceed the amount paid to the provider of the attendant care.

Clause 18 amends *section CH 1* consequential to the share-lending arrangement provisions.

Clause 19 amends *section CQ 2* consequential to the certified resident provisions.

Clause 20 amends *section CQ 5* consequential to the certified resident provisions.

Clause 21 inserts new *section CW 11C* (Proceeds from share acquired under venture investment agreement) which relates to the proceeds from shares acquired under venture investment agreements.

Clause 22 inserts new *section CW 22B* (Certain income derived by certified resident) which provides that income derived by a certified resident is exempt income if the income is a foreign sourced amount that is not a dividend, interest, employment income or income from a supply of services.

Clause 23 inserts new *section CW 40B* (Income from conducting gaming-machine gambling) which provides that the income of a person from gaming-machine gambling is exempt income if the person is authorised to conduct gaming-machine gambling under the Gambling Act 2003 and the person complies with that Act in applying and distributing the net gambling proceeds.

Clause 24 consequentially amends *section CX 2(1)(b)(i)*.

Clause 25 inserts new *sections CX 6B and CX 6C* to provide that the FBT rules in relation to motor vehicles apply to an arrangement through which a right to use a motor vehicle is transferred from time to time.

Clause 26 inserts new *section CX 15B* (Contributions to income protection insurance) which provides that the payment of a contribution for an income protection insurance for the benefit of an employee is the provision of a fringe benefit.

Clause 27 amends *section CX 17* to exclude from being a fringe benefit, in certain circumstances, the amount paid by an employer to enable an employee's family member to visit the employee when the employee is temporarily working away from home.

Clause 28 inserts new *section CX 18B* (Business tools) which provides that the private use of a business tool provided mainly for business use and costing the employer less than \$5,000 is not a fringe benefit.

Clause 29 replaces *section CX 20(1)*, to provide that in certain circumstances a benefit to an employee of a visit by a family member is not a fringe benefit, and *section CX 20(2)*, to define the premises of an employer or associated company.

Clause 30 inserts new *section CX 20B* (Benefits related to employee's health and safety) which provides that a benefit to an employee is not a fringe benefit if it is related to the employee's health and safety and is aimed at the elimination of hazards in the workplace as contemplated in the Health and Safety in Employment Act 1992.

Clause 31 amends *section CX 21* so that short-term credit facilities provided by a charitable organisation to an employee are fringe benefits that are not exempt from FBT, unlike other benefits provided by charitable organisations to employees.

Clause 32 inserts a new *section CX 27B* which provides that a fringe benefit does not arise when an employer secures a bulk discount from a third party for its employees, if the same discount is available to comparable groups.

Clause 33 amends *section CX 31(a)*, consequential to new *section CX 15B*.

Clause 34 replaces *section CX 41(3)* consequential to the Agricultural Recovery Programme for the Lower North Island and Eastern Bay of Plenty.

Clause 35 inserts new *section CX 44B* (Disposal of original share to share user by share supplier) and new *section 44C* (Disposal of share

to share supplier by share user) which provide that the consideration derived in certain share-lending arrangements is excluded income.

Clause 36 inserts the new heading “*Returning securities transfers*”, new *section DB 12B* (Share supplier: cost of acquiring share after share-lending arrangement), new *section DB 12C* (Share user: cost of acquiring share in share-lending arrangement), and new *section DB 12D* (Replacement payment under returning securities transfer), and new *section DB 12E* (Imputation credits attached to replacement payment under share-lending arrangement), which relate to the deductibility of the cost of shares used in share-lending arrangements.

Clause 37 amends *section DB 26* so that a person allowed a deduction under that section for expenditure that is not interest is permitted to allocate all or part of the deduction to an income year after the income year in which the person incurred the expenditure in the manner required by new *section EJ 21*.

Clause 38 amends *section DB 27*, consequential to the provisions relating to the allocation of tax deductions for expenditure on research and development.

Clause 39 amends *section DB 40*, consequential to the share-lending arrangement provisions.

Clause 40 inserts new *section DC 15* (Contributions to employee’s income protection insurance) which provides that when an employer pays an amount under a policy of income protection insurance for the benefit of an employee, the amount is treated as expenditure incurred in deriving the employee’s assessable income.

Clause 41 amends *section DE 2*.

Clause 42 amends *section DF 1* consequential to the Agricultural Recovery Programme for the Lower North Island and Eastern Bay of Plenty.

Clause 43 replaces *section DN 2(d)*, consequential to the certified resident provisions.

Clause 44 replaces *section DN 6(1)(c)(iv)*, consequential to the certified residents provisions.

Clause 45 amends *section DO 1(1)* as part of the regrassing amendments.

Clause 46 amends *section DO 4* (Improvements farm land) to authorise the making of regulations which vary the categories of improvements of farm land.

Clause 47 inserts new *section DV 10B* (Distribution to member of co-operative company, excluded from being dividend).

Clause 48 amends *section EA 1(1)(c)* consequential to the share-lending arrangement provisions.

Clause 49 inserts new *section EC 5B* (Transfer of livestock because of self-assessed adverse event) which provides that livestock that is donated or supplied for consideration that is less than market value is to be treated by the donor and recipient as having no value, or as the case may be, the value of the consideration provided by the recipient.

Clause 50 amends *section ED 1* consequential to the share-lending arrangement provisions.

Clause 51 amends *section ED 2* consequential to the share-lending arrangement provisions.

Clause 52 amends *section EE 1* as part of the provisions relating to the allocation of deductions for expenditure on research and development.

Clause 53 amends *section EE 25* consequential to the depreciation amendments.

Clause 54 inserts new *section EE 25B* (Economic rate for certain depreciable property acquired on or after 1 April 2005) which provides for the setting of depreciation rates for property that is not buildings and new *section EE 25C* (Economic rate for depreciation of building acquired on or after 19 May 2005) which provides for the setting of depreciation rates for buildings acquired on or after 19 May 2005.

Clause 55 inserts new *section EE 26B* (Election in respect of certain depreciable property acquired on or after 1 April 2005 and before 2005-06 income year).

Clause 56 amends *section EE 31* consequential to the depreciation amendments.

Clause 57 amends *section EE 38* to clarify that an amount derived under *section EE 37* may be nil or a negative amount.

Clause 58 amends *section EE 58* consequential to the depreciation amendments.

Clause 59 amends *section EF 3(3)* consequential to the alignment of provisional tax payment dates provisions.

Clause 60 repeals *section EH 36*.

Clause 61 repeals *section EH 63*.

Clause 62 inserts new *section EJ 20* (Deductions for market development-product of research, development) and new *section EJ 21* (Allocation of deductions for research, development, resulting market development) as part of the amendments relating to the allocation of deductions for expenditure on research and development.

Clause 63 amends *section EW 5* by inserting *subsection (11B)*, which provides that a share-lending arrangement is an excepted financial arrangement, and *subsection (15B)*, which provides that an arrangement of a certified resident is an excepted financial arrangement if the other parties are non-residents and the arrangement is not for the purpose of a business in New Zealand.

Clause 64 amends *section EW 32* consequential to the share-lending arrangements amendments.

Clause 65 amends *section EW 37* which relates to the valuation of assumed accrued obligations, consequential to the certified resident amendments.

Clause 66 amends *section EW 42* which relates to accrued entitlements under financial arrangements to address the circumstances of a certified resident.

Clause 67 inserts new *section EW 52B* relating to the treatment of a share-lending arrangement.

Clause 68 amends *section EX 16* consequential to the certified resident amendments.

Clause 69 replaces *section EX 17* (Income interest for period if variations within period).

Clause 70 amends *section EX 24* (Residence in grey list country).

Clause 71 amends *section EX 33(1)* to exclude certain FIF interests from being attributing interests.

Clause 72 replaces *section EX 35*, consequential to the certified resident amendments.

Clause 73 amends *section EX 36(2)* to extend to returning New Zealanders the current exemption for payments from employment-related foreign superannuation schemes and to further extend the period of exemption.

Clause 74 amends *section EX 44*.

Clause 75 amends *section EX 45*.

Clause 76 amends *section EX 52* of the Income Tax Act 2004 consequential to the certified resident amendments.

Clause 77 replaces *section EZ 29* consequential to the grey list amendments.

Clause 78 inserts new *subpart FCB – Emigration of resident companies*. New *section FCB 1* (Tax effects of company becoming non-resident to reflect tax effects of liquidation) defines the consequences of a company becoming a non-resident. New *section FCB 2* (Emigrating company treated as paying distribution to shareholders) provides that an emigrating company is to be treated as if it had made a distribution to shareholders on its liquidation. New *section FCB 3* (Emigrating company treated as disposing of property and immediately reacquiring property).

Clause 79 amends *section FE 1(2)* consequential to the alignment of provisional tax payment dates provisions.

Clause 80 consequentially amends *section GC 6*.

Clause 81 inserts new *section GC 17B* (Fringe benefit tax: arrangement void) which provides that an arrangement is void under *section BG 1* in respect of an amount of excluded income if the Commissioner considers it appropriate to counteract any tax advantage obtained by a person.

Clause 82 amends *section GD 1* so that this anti-avoidance provision does not apply to stock donated because of a self-assessed adverse event.

Clause 83 amends *section HB 1(5)(b)* to insert references to new *sections MB 29 and MB 30*.

Clause 84 amends *section HG 12(2)(c)* to insert references to new *sections 120KB to 120KE* of the Tax Administration Act 1994.

Clause 85 amends *section HH 1* to correct a cross-reference.

Clause 86 amends section HH 2(1) consequential to the certified resident amendments.

Clause 87 amends section HH 4. Subsections (3)(a) and (3B) are amended consequential to the certified resident amendments. New subsection (3BB) modifies the application of subsection (3B), also consequential to the certified resident amendments.

Clause 88 amends section IZ 7(b) to insert references to new sections 120KB to 120KE of the Tax Administration Act 1994.

Clause 89 amends section KC 2(e) to increase the amount of the child rebate to \$351.

Clause 90 amends section KD 3(1) consequential to the certified resident amendments.

Clause 91 amends section LB 2 consequential on the amendments relating to share-lending arrangements.

Clause 92 replaces section LC 4(1) to amend the foreign tax credit rules for CFCs.

Clause 93 amends section LD 3(2) consequential to the share-lending arrangement provisions.

Clause 94 replaces section LF 1(1)(a).

Clause 95 amends section LF 3(1).

Clause 96 amends section LF 5 consequential to the grey list amendments.

Clause 97 amends section LF 6(4).

Clause 98 amends section MB 3B so that those affected by a self-assessed adverse event can apply to make late estimates of provisional tax.

Clause 99 inserts section MB 11B which is a transitional provision providing for the introduction of the new provisional tax payment provisions.

Clause 100 replaces subpart MB. New section MB 1 (Outline of subpart) provides an outline of the scope of the new subpart. New section MB 2 (Who pays provisional tax?) defines the term provisional taxpayer and excludes some taxpayers in specified circumstances. New section MB 3 (Becoming provisional taxpayer by

election) provides that certain taxpayers may elect to become provisional taxpayer. New *section MB 4* (Methods for calculating provisional tax liability) specifies the five methods which may be used to calculate a person's provisional tax liability. New *section MB 5* (Determining residual income tax) provides for the calculation of residual income tax under the standard method provided in *section MB 4*. New *section MB 6* (Estimation method) provides for the calculation of provisional tax under the estimation method in *section MB 4(4)*. New *section MB 7* (GST ratio method) provides that persons who meet the requirements of *section MB 15* may calculate provisional tax using a GST ratio. New *section MB 8* (Provisional tax payable in instalments) provides that provisional tax is payable in the months set out in *Schedule 13, part A* with some exceptions. New *section MB 9* (Calculating amount of instalment under standard and estimation methods) provides the basis for calculation of the amount of an instalment of provisional tax.

New *section MB 10* (Calculating amount of instalment using GST ratio) provides a basis for calculation of the amount of an instalment of provisional tax using the GST ratio. New *section MB 11* (Using GST refund to pay instalment of provisional tax) permits a provisional taxpayer with a refund due in a taxable period to offset the amount of refund against an instalment of provisional tax. New *section MB 12* (Voluntary payments) provides that a taxpayer may make a voluntary payment of provisional tax at any time if it relates to their income tax liability or is more than the provisional tax payable by them for the tax year. New *section MB 13* (Paying 2 instalments for tax year) provides for new provisional taxpayers whose first business day occurs in the period that starts thirty days before the date of instalment B and ends thirty days before the date of instalment D. New *section MB 14* (Paying 1 instalment for tax year) provides for new provisional taxpayers whose first business day occurs in the period that starts thirty days before the date of instalment D and ends at the end of the corresponding income year. New *section MB 15* (Who may use GST ratio?) defines the circumstances of provisional taxpayers who may choose to use a GST ratio to determine the amount of their provisional tax for a tax year. New *section MB 16* (Choosing to use GST ratio) requires a taxpayer who qualifies to use a GST ratio must notify the Commissioner of their choice to do so before the start of the income year corresponding to the tax year. New *section MB 17* (Changing determination method)

provides that a taxpayer who is obliged to cease using a GST ratio or who wishes to change the method of calculation must notify the Commissioner of their choice of new method, which will apply for the balance of the income year. New *section MB 18* (Disposal of assets) provides rules relating to the disposal of certain assets as part of the business of the entity described in *section MB 15(1)*. New *section MB 19* (Calculating residual income tax in transitional years) applies for the calculation of a person's residual income tax for a transitional year.

New *section MB 20* (Paying provisional tax in transitional years) provides for the calculation and timing of instalments in transitional years. New *section MB 21* (Calculating instalments in transitional years: standard method) provides for the calculation of the amounts of instalments when new *section MB 20* applies. New *section MB 22* (Calculating instalments in transitional years: estimation method) provides for the calculation of the amounts of instalments when the estimation method is used by a taxpayer. New *section MB 23* (Calculating instalments in transitional years: GST ratio method) requires a taxpayer to apply the GST ratio method to any period or part period before the start of the new income year on the dates for instalments A to F for their corresponding income year. New *section MB 24* (Consequences of a change in balance date) provides rules relating to instalments when a balance date is changed. New *section MB 25* (Registering for GST or cancelling registration) applies when there is a change in the GST status of a provisional taxpayer who uses the standard or estimation method to calculate the amount of provisional tax payable for a year. New *section MB 26* (Changing GST cycle) applies when a provisional taxpayer with a GST liability under new *section 15C* of the Goods and Services Tax Act 1985 changes their cycle of taxable periods. New *section MB 27* (Payment of provisional tax instalments when GST cycle changed) provides rules for provisional taxpayers using the standard or estimation methods and who change the cycle of taxable periods. New *section MB 28* (Application of provisions of Tax Administration Act 1994) modifies the application of use of money interest, the late payment penalty, and the shortfall penalty on taxpayers who use the GST ratio method. New *section MB 29* (Provisional tax rules and consolidated groups) provides that each company in a consolidated group is jointly and severally liable for the amount of provisional tax payable by the consolidated group.

New *section MB 30* (Residual income tax of consolidated groups) modifies the provisional tax rules for a company that is a member of a consolidated group in a tax year but was not a member of the group for all of the preceding tax year. New *section MB 31* (Consolidated groups using estimation method) provides rules for a company that is a member of a consolidated group for all or part of a tax year but was not a member of the group for all of the following tax year. New *section MB 32* (Consolidated groups using GST ratio method) modifies the application of new *sections MB 7, MB 8(5), MB 10, and MB 15 to 18* for a consolidated group that uses a GST ratio for a tax year. New *section MB 33* (Wholly-owned groups of companies) provides rules relating to the application of the provisional tax rules and Part 7 of the Tax Administration Act 1994 to a company that is a member of a wholly-owned group of companies. New *section MB 34* (Amalgamated companies: calculating residual income tax) provides that if an amalgamating company ceases to exist on amalgamation, the residual income tax of the amalgamated company for the preceding tax year is treated as the amount that would have been the residual income tax if the amalgamating company and the amalgamated company had been one company. New *section MB 35* (Attribution rule for services) provides rules relating to the application of the provisional tax rules and Part 7 of the Tax Administration Act 1994 for provisional tax paid for income from personal services to which *section GC 14B* applies. New *section MB 36* (Overpaid provisional tax) applies when the amount of provisional tax payable by a provisional taxpayer for a tax year is reduced by the taxpayer or by the Commissioner under *section 119(2)* of the Tax Administration Act 1994. New *section MB 37* (Further income tax credited to provisional tax liability) applies if a company applies an amount of further income tax to pay an instalment of provisional tax for which the company becomes liable after the date of payment of the further income tax. New *section MB 38* (Provisional taxpayer affected by self-assessed adverse event) re-enacts, as part of new *subpart MB*, the former *section MB 3B* of the Taxation (Disaster Relief) Act 2004.

Clause 101 amends *section MC 1* consequential to new *subpart MB*.

Clause 102 amends *section MD 2* consequential to new *subpart MB*.

Clause 103 amends *section MD 2B* consequential to new *subpart MB*.

Clause 104 amends *section ME 4* consequential to the share-lending arrangement amendments.

Clause 105 amends *section ME 5(1) and (2)* consequential to the share-lending arrangements and new *subpart MB*.

Clause 106 amends *section ME 6* consequential to the insertion of new *subpart FCB*, relating to emigrating companies.

Clause 107 inserts new *section ME 6B* (Share user may attach imputation credit to replacement payment) which allows a share user under a share-lending arrangement, on making a replacement payment, to attach to the replacement payment an imputation credit of an amount less than or equal to the amount of any imputation credits attached to dividends.

Clause 108 amends *section ME 11(1) and (2)* consequential to new *section MB 33*.

Clause 109 amends *section ME 12(1) and (2)* consequential to new *section MB 33*.

Clause 110 amends *section ME 13(6)* consequential to new *section MB 37*.

Clause 111 amends *section MG 2* as part of the corporate migration amendments.

Clause 112 amends *section MI 2* consequential to the corporate migration amendments.

Clause 113 amends *section MI 10* consequential to the insertion of new *subpart FCB*, relating to emigrating companies.

Clause 114 amends *section MK 4(1)* consequential to new *section MB 33(5)(b)*.

Clause 115 amends *section MK 5 (1)(b) and (2)(b)* consequential to new *sections MB 33(5)(b) and MB 33(4)*, respectively.

Clause 116 amends *section MK 8(5)* consequential to new *section MB 37*.

Clause 117 inserts new *section MZ 8* (Certain elections to become provisional taxpayer) which provides transitional rules for certain returns of income.

Clause 118 inserts new *section MZ 9* (Amount of provisional tax based on 1997–98 or earlier tax year).

Clause 119 inserts new *subpart NBB* (Subsidy payable to certain listed PAYE intermediaries). New *section NBB 1* (Purpose) states the purpose of the subpart. New *section NBB 2* (Accreditation of listed PAYE intermediary) permits the Commissioner to list an applicant as a listed PAYE intermediary in the circumstances prescribed in the section. New *section NBB 3* (Obligations of listed PAYE intermediaries) specifies the obligations of a listed PAYE intermediary. New *section NBB 4* (Revocation of listing) prescribes the circumstances in which the Commissioner may revoke the accreditation of a listed PAYE intermediary. New *section NBB 5* (Listed PAYE intermediary claim form) describes the process by which listed PAYE intermediaries must provide payroll information to the Commissioner, claim the amount of the subsidy, and authorises the offset of overpayments. New *section NBB 6* (Calculation and payment of subsidy to certain listed PAYE intermediaries) defines the employer group in respect of which the subsidy may be payable, defines the manner in which the rate of subsidy may be set and provides that payment of the subsidy is to be by electronic means only. New *section NBB 7* (Termination of employer arrangements with listed PAYE intermediary) deals with the termination of an arrangement between a listed PAYE intermediary and an employer and with consequential issues.

Clause 120 amends *section NC 20(1)* consequential to new *sections 120KB to 120KE* of the Tax Administration Act 1994.

Clause 121 amends *section ND 1A* to provide optional calculation methods for calculating the value of a private use of motor vehicle benefit.

Clause 122 inserts new *section ND 1AB* (Private use of motor vehicle: 24-hour period) which gives employers a choice of the time at which their FBT day begins.

Clause 123 replaces *section ND 1D*, giving an employer who provides employment-related loans a choice of methods for valuing the benefit.

Clause 124 inserts new *section ND 1IB* (Benefits provided by charitable organisations) which defines the components of a benefit provided by a charitable organisation by way of short-term credit facilities.

Clause 125 amends *section ND 1K* of the Income Tax Act 2004 to extend, for FBT purposes, the meaning of the phrase “price charged

to the public for a service” in relation to a group of employees. The phrase includes an arm’s-length price charged for the service to a group of a size comparable to that of the employee group.

Clause 126 amends *section ND 1Q* of the Income Tax Act 2004, which relates to unclassified fringe benefits, to raise the thresholds for the liability of an employer to pay FBT.

Clause 127 amends *section ND 2(3)* of the Income Tax Act 2004 to simplify the method by which an employer may make an election to pay FBT quarterly under that section.

Clause 128 consequentially amends *section ND 3*.

Clause 129 amends *section ND 6(1)(a)*.

Clause 130 amends *section ND 8* to provide an option to the application of *sections ND 5(4) and 6(2)* for employers who cease employing staff.

Clause 131 consequentially amends *section ND 13(2)* so that elections under the section can be made by telephone.

Clause 132 consequentially amends *section ND 14* so that elections under the section can be made by telephone. The section is also amended to require a return under *section ND 10* from an employer who elects to change their basis of payment for FBT and as a result does not pay on the former basis for a complete year.

Clause 133 amends *section NF 1(2)* consequential to the share-lending arrangement amendments.

Clause 134 amends *section NF 2(1)* consequential to the share-lending arrangement amendments.

Clause 135 consequentially amends *section NF 2A(1)*.

Clause 136 consequentially amends *section NF 2B(1)*.

Clause 137 consequentially amends *section NF 2D(1)*.

Clause 138 amends *section NF 3(2)* consequential to the share-lending arrangement amendments.

Clause 139 amends *section NF 4(4)* consequential to the share-lending arrangement amendments.

Clause 140 inserts new *section NF 8B* (Resident withholding tax deductions from replacement payments treated as imputation credits) of the Income Tax Act 2004.

Clause 141 amends *section NG 2(1)(b)(i)* to exclude interest paid by a certified resident in respect of money borrowed by the certified resident when a non-resident and not in relation to a business carried on by the certified resident from the imposition of NRWT.

Clause 142 amends *section NG 17(2)* consequential to new *sections 120KB to 120KE* of the Tax Administration Act 1994.

Clause 143 amends *section OB 1*. *Subclause (2)* amends the definition of *balance date*. *Subclause (3)* inserts a definition of *base amount*. *Subclause (4)* inserts a definition of *business tool*. *Subclause (5)* inserts definitions of *certified dependent resident*, *certified employed resident*, *certified general resident*, and *certified resident*. *Subclause (6)* amends the definition of *consolidation rules*. *Subclause (7)* inserts a definition of *dependent resident certificate*. *Subclause (8)* amends the definition of *development*. *Subclause (9)* amends the definition of *dispose*.

Subclause (10) inserts definitions of *emigrating company* and *emigration time*. *Subclause (11)* inserts a definition of *employed resident certificate*. *Subclause (12)* amends the definition of *estimated useful life*. *Subclause (13)* amends the definition of *finance lease*. *Subclause (14)* repeals the definition of *first instalment date*. *Subclause (15)* amends the definition of *fishing business*. *Subclause (17)* amends the definition of *fringe benefit tax rules*. *Subclause (18)* inserts definitions of *gaming-machine gambling*, *gaming-machine operator's licence*, and *gaming machine venue licence*. *Subclause (19)* inserts a definition of *general resident certificate*.

Subclause (20) inserts a definition of *gross gambling proceeds*. *Subclause (21)* inserts a definition of *GST ratio*. *Subclause (22)* replaces the definition of *instalment date*. *Subclause (23)* inserts a definition of *interest instalment date*. *Subclause (24)* amends the definition of *lease*. *Subclause (25)* replaces the definition of *limited attribution company*. *Subclause (26)* repeals the definition of *limited attributed foreign company*. *Subclause (27)* replaces the definition of *listed company*. *Subclause (28)* inserts definitions of *listed PAYE intermediary* and *listed PAYE intermediary claim form*. *Subclause (29)* inserts a definition of *net gambling proceeds*.

Subclause (30) inserts a definition of *original share*. *Subclause (31)* inserts a definition of *ownership interest*. *Subsection (32)* amends the definition of *PAYE rules*. *Subclause (33)* amends the definition of *provisional tax rules*. *Subclause (34)* replaces the definition of

provisional taxpayer. Subsection (35) amends the definition of qualifying person. Subclause (36) inserts a definition of ratio instalment date. Subclause (37) amends the definition of relative. Subclause (38) inserts a definition of replacement payment. Subclause (39) inserts a definition of replacement share.

Subclause (40) amends the definition of research. Subclause (41) inserts a definition of returning securities transfer. Subclause (42) repeals the definition of second instalment date. Subclause (43) inserts a definition of self-assessed adverse event. Subclause (44) inserts a definition of share-lending arrangement. Subclause (45) inserts definitions of share supplier and share user. Subclause (46) inserts a definition of shortfall penalty. Subclause (47) inserts a definition of significant capital activity. Subclause (48) replaces the definition of taxable period. Subclause (49) repeals the definition of third instalment date.

Subclause (50) inserts a definition of total supplies. Subclause (51) amends the definition of trading stock. Subclause (52) amends the definition of trust rules. Subclause (53) inserts definitions of venture investment agreement and Venture Investment Fund.

Clause 144 amends section OB 2(1) consequential to the amendments relating to attendant caregiver payments under the Injury Prevention, Rehabilitation, and Compensation Act 1991.

Clause 145 amends section OB 6 to correct cross-references and ensure that the Act's general anti-avoidance rule (section BG 1) applies to FBT.

Clause 146 repeals section OD 5(10).

Clause 147 inserts new section OD 5AA (Modifications to voting and market value interests for application of continuity provisions to reverse takeover).

Clause 148 replaces schedule 2—Fringe benefit values.

Clause 149 amends schedule 3, parts A and B in relation to the Kingdom of Spain.

Clause 150 amends schedule 7, part A as part of the regrassing amendments.

Clause 151 inserts new schedule 11B which relates to depreciation on and after 19 May 2005.

Clause 152 amends *schedule 13* by replacing *part A* with the new *part A in Schedule 2* and replacing *part B* with the new *part B in Schedule 3*.

Clause 153 amends *schedule 14* consequential to the share-lending arrangement amendments.

Part 3

Amendments to Tax Administration Act 1994

Part 3 amends the Tax Administration Act 1994.

Clause 155 amends *section 3(1)*. *Subclause (2)* inserts a definition of *approved organisation*. *Subclause (3)* inserts a definition of *base amount*. *Subclause (4)* inserts definitions of *certified dependent resident*, *certified employed resident*, *certified general resident*, and *certified resident*. *Subclause (5)* inserts a definition of *dependent resident certificate*. *Subclause (6)* inserts a definition of *employed resident certificate*. *Subclause (7)* inserts a definition of *general resident certificate*. *Subclause (8)* inserts a definition of *GST ratio*. *Subclause (9)* amends the definition of *instalment date*. *Subclause (10)* inserts a definition of *interest instalment date*. *Subclause (11)* inserts a definition of *new-resident certificate*. *Subclause (12)* inserts a definition of *New Zealand resident trustee*. *Subclause (13)* inserts a definition of *provisional taxpayer*. *Subclause (14)* inserts a definition of *qualifying New Zealand resident trustee*. *Subclause (15)* inserts a definition of *ratio instalment date*. *Subclause (16)* amends the definition of *residual income tax*. *Subclause (17)* amends the definition of *response period*. *Subclause (18)* repeals the definition of *second instalment date*. *Subclause (19)* amends the definition of *tax*. *Subclause (20)* amends the definition of *tax position*. *Subclause (21)* repeals the definition of *third instalment date*. *Subclause (22)* repeals the definition of *trustee income*.

Clause 156 amends *section 22* consequential to the foreign trust information amendments.

Clause 157 inserts new *section 30B* which prescribes the duties of a share user under a share-lending arrangement.

Clause 158 amends *section 33A(1)* to remove the requirement that claimants file a tax return for income that is a payment under *section 81(1)(b)* of the *Injury Prevention, Rehabilitation, and Compensation Act 1991* in respect of attendant care from which a tax deduction has been made.

Clause 159 inserts new *section 33C* to remove the requirement that caregivers file a tax return for income that includes less than \$9,500 from providing attendant care services if tax has already been deducted by ACC.

Clause 160 amends *section 39* consequential to the dates alignment amendments.

Clause 161 inserts new *section 39B* which provides for changes in return dates for taxpayers with provisional tax and GST liabilities.

Clause 162 inserts new *section 59B* which requires the disclosure by trustees of foreign trusts of prescribed information.

Clause 163 amends *section 61* consequential to the certified resident amendments.

Clause 164 corrects a terminological error in *section 89C(db)*.

Clause 165 amends *section 89D* by inserting new *subsection (2D)*.

Clause 166 amends *section 89N* to replace “request” with “requirement” and to clarify the time limit for an application by the Commissioner.

Clause 167 amends *section 89O* to clarify a time limit.

Clause 168 amends *section 91AAF* consequential to the depreciation amendments.

Clause 169 amends *section 91AAG* consequential to the depreciation amendments.

Clause 170 inserts new *Part 5B*. New *section 91K* defines when a person is eligible for a new-resident certificate. New *section 91L* provides when a person may apply for a new-resident certificate. New *section 91M* prescribes the contents of a new-resident certificate. New *section 91N* requires a person who has been issued a new-resident certificate to advise the Commissioner of any change in circumstances. New *section 91O* provides for the withdrawal or surrender of a new-resident certificate.

Clause 171 amends *section 119(1)* consequential to new *section MB 6* of the Income Tax Act 2004.

Clause 172 amends *section 120C(1)* consequential to new *section 120KE* and new *section MB 17* of the Income Tax Act 2004.

Clause 173 replaces *section 120K* with new *sections 120KB to 120KE*, consequential to the dates alignment amendments.

Clause 174 amends *section 120L(1)* consequential to the dates alignment amendments.

Clause 175 amends *section 120M(b)* consequential to the dates alignment amendments.

Clause 176 amends *section 120Q* consequential to the dates alignment amendments.

Clause 177 amends *section 139C* consequential to the GST ratio option in the dates alignment amendments.

Clause 178 amends *section 140D* consequential on new *sections 120KB to 120KE*.

Clause 179 amends *section 140DB(2)* consequential on new *sections 120KB to 120KE*.

Clause 180 inserts new *section 141EA* which relates to shortfall penalties and users of the GST ratio provisional tax option.

Clause 181 corrects a cross-reference in *section 141FB(5)*.

Clause 182 amends *section 143(1)* consequential to the foreign trust amendments.

Clause 183 amends *section 173P(2)* consequential to the dates alignment amendments.

Clause 184 amends *section 173Q* consequential to new *section 120KE* and new *sections MB 4(2) and MB 12* of the Income Tax Act 2004.

Clause 185 amends *section 173R* consequential to new *section 120KE* and new *section MB 12* of the Income Tax Act 2004

Clause 186 amends *section 183ABA*.

Clause 187 amends *section 183H*.

Clause 188 amends *section 185(1)* consequential to new *subpart NBB* of the Income Tax Act 2004.

Clause 189 inserts new *section 185C* which relates to the establishment of the Listed PAYE Intermediary Bank Account and new *section 185D* which relates to payments into and out of the Listed PAYE Intermediary Bank Account.

Part 4
Amendments to other Acts
Income Tax Act 1994

Clauses 191 to 201 amend the *Income Tax Act 1994*.

Clause 191 amends *section CF 3* consequential to the insertion of new *subpart FCB*, relating to emigrating companies.

Clause 192 amends *section DC 1* consequential to the Agriculture Recovery Programme for the Lower North Island and Eastern Bay of Plenty.

Clause 193 amends *section DO 3* as part of the regrassing amendments.

Clause 194 amends *section EG 16(1)* consequential to the depreciation amendments.

Clause 195 inserts new *subpart FCB—Emigration of resident companies*. New *section FCB 1* (Tax effects of company becoming non-resident to reflect tax effects of liquidation) defines the consequences a company becoming a non-resident. New *section FCB 2* (Emigrating company treated as making distribution to shareholders) provides that an emigrating company is to be treated as if it had made a distribution to shareholders on its liquidation. New *section FCB 3* (Emigrating company treated as disposing of property and immediately reacquiring property).

Clause 196 amends *section ME 6* consequential to the insertion of new *subpart FCB*, relating to emigrating companies.

Clause 197 amends *section MG 2*, as part of the provisions relating to emigrating companies.

Clause 198 amends *section MI 2*, consequential to the amendment to *section MG 2*.

Clause 199 amends *section MI 10* consequential to the insertion of new *subpart FCB*, relating to emigrating companies.

Clause 200 amends *section OB 1*. *Subclause (2)* replaces the formula in the definition of *available subscribed capital*. *Subclause (3)* inserts definitions of *emigrating company* and *emigration time*. *Subclause (4)* amends the definition of *estimated useful life*. *Subclause (5)* amends the definition of *low value property* to increase the threshold value. *Subclause (6)* inserts a definition of *significant capital activity*.

Clause 201 amends *schedule 7* as part of the regrassing amendments.

Goods and Services Tax Act 1985

Clauses 203 to 219 amend the *Goods and Services Tax Act 1985*.

Clause 203 amends *section 2*. *Subclause (2)* inserts a definition of *associated supply*. *Subclause (3)* inserts a definition of *balance date*. *Subclause (4)* amends the definition of *taxable period*.

Clause 204 repeals *section 3(3)(b)*.

Clause 205 amends the definition of the term *supply*. *Subclause (1)* clarifies the meaning of postage stamp. *Subclause (2)* provides that if a part of a debt security equity security or participatory security is the supply of a right to receive goods or services, the supply of the right is treated as a supply of goods or services made for consideration.

Clause 206 consequentially amends *section 9(2)*.

Clause 207 consequentially amends *section 10(3)* and inserts new *section 10(3AB)*.

Clause 208 amends *section 11(1)(j)* to clarify the circumstances in which goods that are not situated in New Zealand at the time of their supply must be zero-rated.

Clause 209 amends *section 14(1)* to exclude associated supplies from the exemption in *subsection (1)*.

Clause 210 inserts new *section 15AB* as a transitional provision for the dates alignment amendments.

Clause 211 replaces *sections 15 to 15AB* with new *sections 15 and 15B to 15D*, consequential to the dates alignment amendments.

Clause 212 replaces *section 16* consequential to the dates alignment amendments.

Clause 213 inserts new *section 16B* which relates to the meaning of end of taxable period.

Clause 214 amends *section 17(1)* which relates to special returns, consequential to the dates alignment amendments.

Clause 215 amends *section 53(1)* consequential to the new *section 15*.

Clause 216 amends *section 55(7)* consequential to the new *sections 15 to 15D*.

Clause 217 amends *section 56(6)* consequential to the new *sections 15 to 15D*.

Clause 218 corrects a cross-reference in *section 69*.

Clause 219 amends *section 78A* consequential to new *sections 16 and 16B*.

Other Acts

Clause 220 inserts new *section 74D* in the Estate and Gift Duties Act 1968. The new section provides that a gift by a co-operative company to a member of that company is not a dutiable gift.

Clause 221 amends *section 28(3)* of the Student Loan Scheme Act 1992 consequential to new *sections MB 2, MB 4, and MB 5* of the Income Tax Act 2004.

Regulatory impact and compliance cost statement

An objective in developing tax law is to ensure that costs associated with the functioning of the tax system are minimised. This objective must necessarily be balanced by the needs to protect the tax base, treat taxpayers fairly, and ensure an efficient system. All the proposals in this bill are intended to improve the efficiency and equity of the system. Some proposals that deliver various levels of tax savings are also likely to increase tax-related compliance costs.

Compliance cost statement

The following proposals in the bill will reduce compliance costs:

Aligning provisional tax payments with GST payments

Aligning provisional tax payment dates to GST payment dates will be mandatory for all provisional taxpayers. Approximately 13,000 taxpayers will be required to change their GST taxable periods to align with their balance date. However, these costs could have offsetting benefits to taxpayers as better financial information will be available with GST information matching the time period of other financial information.

Taxpayers may also lose some of the benefits of having the use of the GST money as they will have to pay GST up to three days earlier

as a result of the changes. Taxpayers will also incur costs in changing their systems.

However, these costs will be offset to a greater or lesser extent by:

- taxpayers having use of provisional tax money for longer as the new provisional tax payment dates defers the payment of tax. For example, taxpayers with three payment instalments retain the use of their money for an additional 52, 74, and 52 days (respectively) for each instalment; and
- reducing taxpayers' compliance costs by concentrating taxpayers' tax compliance efforts. This is achieved by removing the need for separate provisional tax payments and fewer payment dates to remember.

The due date for payment of student loan payments will be later than the current dates and therefore students will incur additional interest on their loan. If they do not want to incur the interest, they can make voluntary payments during the year, which will impose its own costs in determining the payment amount and making payment.

Taxpayers entitled to base their provisional tax payments on a percentage of their GST taxable supplies can match their provisional tax payments with when they earn their income.

Overall, taxpayers are expected to benefit from making voluntary payments or basing their provisional tax payments on a percentage of GST taxable supplies. If the costs of adopting this method are less than the benefits, it is expected that taxpayers will not adopt them.

Increase in the child rebate

The increase in the child rebate will reduce compliance costs for some eligible children who earn income (less interest and dividends) of between \$1,040 and \$2,340 per annum, as they will no longer be required to deduct tax or meet other tax obligations in respect of that income. Employers who choose to reduce the tax they deduct at source to take the child rebate into account may face a small increase in compliance costs. The increase may be attributed to the need to modify payroll systems or collect additional information from child employees. Increasing the child rebate is expected to result in a net reduction in compliance costs.

Farm conversions

The amendments relating to farm conversions will make the treatment of regrassing and fertilising expenditure more certain, providing a minor reduction in compliance costs.

Fringe benefit tax review

The fringe benefit tax (FBT) rules have not been substantively reviewed since their introduction in 1985. While the rules have been effective in taxing non-cash remuneration provided to employees (to parallel the treatment of cash remuneration), the general perception is that they are complex, result in high compliance costs, are unfair in particular cases, and contain a number of anomalies. Accordingly, in 2002 the Government announced its intention to review the fringe benefit tax rules.

Reforms introduced in this bill relate to motor vehicles, exemption thresholds for minor unclassified benefits, low interest loans, discounted goods, valuation of services, and a range of other technical and remedial problems.

Motor vehicles: The fringe benefit valuation rate will be reduced from 24% to 20% for vehicles with unrestricted private use to reflect current real motoring costs. Employers will also have the option of basing calculations on the declining/depreciated value of the vehicle, as measured by the tax book value, at a rate of 36% which over a five year period results in the same FBT liability as using the cost basis. These changes would apply to both employer-owned and employer-leased vehicles. Also, “9-to-5” and “flip-flop” leases will now be subject to FBT. Employers will now be able to elect the start time for an FBT day. This will allow the use of a vehicle taken home in the evening of the first day and used to travel to work on the second day to count as a single FBT day.

Exemption threshold for minor unclassified benefits: In the case of the minimum value thresholds that apply to minor unclassified fringe benefits – the employee threshold will be increased from \$75 to \$200 per quarter and the employer threshold will be increased from \$450 per quarter to \$15,000 per annum.

Low interest loans, discounted goods, and valuation of services: Employers will have the additional option of valuing their loans to employees at a market rate. The market rate must be the rate that the employer was charging to other comparable groups, of an adequate

size, on an arm's-length basis. This approach to market value will also apply when valuing the benefit of services and discounted goods.

Business tools: The private use of employer owned or leased business tools, such as laptops and cell phones, will be exempt from FBT, when provided to the employee primarily for business purposes, if the cost price of each tool is below \$5,000.

Health and safety related benefits: Benefits that arise in relation to employer health and safety obligations will be exempt from FBT irrespective of whether the benefits were provided on or off-premises.

Other technical and remedial changes: A range of technical and remedial changes are implemented, including a limited exemption for employer-funded family travel to visit employees, streamlined elections regarding FBT payment options, employees being able to claim an income tax deduction when their employer pays income protection insurance on their behalf, extending the 'on-premises' exemption to include premises of other companies within the same group of companies, employers ceasing to employ staff during the year (and not replacing them) will now have the option of applying the flat FBT rate of 64% in the final quarter in place of the end of year square-up calculation, excluding credit cards from the charities' FBT exemption (an anti-avoidance measure), application of the general anti-avoidance rule in the Income Tax Act, and clarifying that share options cancelled for cash fall within the employment provisions rather than the FBT provisions of the Act.

The combined effect of these changes is that of a significant reduction in compliance costs to employers.

Listed PAYE intermediaries

The accredited PAYE intermediaries scheme which commenced in 2004 is to be expanded to enable persons who are accredited PAYE intermediaries under that scheme to apply to become "listed PAYE intermediaries". A PAYE intermediary contracts with small employers for the performance of their tax payroll obligations. Dealing with tax calculations and payments forms the bulk of payroll related compliance costs for small employers. This initiative is intended to reduce compliance costs for small employers by promoting the use of listed PAYE intermediaries. The amendments permit the Commissioner to pay a subsidy to the listed PAYE intermediary

for the performance of these services. The subsidy will be paid to the listed PAYE intermediary according to a calculation mechanism to be set by Order in Council and paid monthly in respect of the first 5 employees of each small employer who contracts the services of a listed PAYE intermediary.

Temporary exemption for new migrants and certain returning New Zealanders

This initiative aims to provide New Zealand businesses with highly skilled employees whose expertise and experience should enable them to maximise efficiency, resulting in positive effects for the New Zealand economy. Recent arrivals (including returning New Zealanders who have not been tax resident in New Zealand for at least ten years) will receive a temporary tax exemption for five years – if they are employees – on their foreign-sourced income (except dividends, interest, employment income, and business income relating to services performed offshore). The proposals will decrease their tax burden and the associated compliance costs.

The three-year option (which will be available to all new migrants) is intended to provide independent contractors (who are analogous to employees) relief from the New Zealand international tax rules. Therefore, it will decrease their tax burden and the associated compliance costs. It also allows recent arrivals sufficient time to organise their offshore investments to minimise the effect of New Zealand's international tax rules. These proposals contain no compliance costs for business.

Treatment of employment-related foreign superannuation interests

Persons that work overseas may have compulsory contributions made on their behalf by their employers into an employment-related foreign superannuation scheme. In some schemes access to these superannuation interests may be denied until the person reaches retirement age. If these people migrate or return to New Zealand they can be required to pay tax on these interests, on a current basis, under New Zealand's foreign investment fund (FIF) rules.

There is anecdotal evidence that some people with interests of this kind may not be complying correctly with their tax obligations under the FIF rules and, indeed, may not even be aware that they have to account for tax. For those people that are aware of their tax responsibilities, determining whether they have a FIF obligation can involve

high compliance costs. Although the current FIF exemptions provide some relief from these rules, the difficulty is determining which exemption applies and the need to continue to meet the on-going requirements of the exemption. In addition, there is an inconsistency in the way new migrants and returning residents to New Zealand are treated under the FIF rules in that there are more exemptions available to new residents than for returning residents giving rise to issues of equity and consistency.

These issues are addressed by extending the current exemption in section EX 36 of the Income Tax Act 2004 so as to apply it to returning residents (rather than just new migrants) and providing a permanent exemption for all interests attributable to contributions made within the first five years of each new period of New Zealand residence (currently the exemption applies to interests attributable to contributions made while a person was not a resident of New Zealand). These changes are expected to reduce the tax compliance costs of affected taxpayers.

The following proposals in the bill will not change compliance costs:

Foreign hybrids and foreign tax credits

Under current tax law, typically a person who derives foreign income receives a tax credit for the foreign tax paid on that income. There are however technical barriers to investors in entities, known as foreign hybrids, claiming tax credits for the foreign tax paid, by the investor, in respect of the hybrid. Furthermore, a foreign hybrid can not qualify for the grey list exemption. The amendments ensure that tax credits will be available to the New Zealand investor for foreign tax paid by the investor in respect of foreign hybrids. It also ensures that a foreign hybrid will be eligible for the grey list exemption. While the amendments will operate to the benefit of affected taxpayers, no change to compliance costs is expected.

Foreign venture capital investment alongside the VIF

The New Zealand Venture Investment Fund Limited, a Crown-owned company established to promote the development of the New Zealand venture capital industry, invests alongside private sector co-investors into early stage New Zealand companies. Currently, there is a technical risk that any gains on the sale of shares in the New

Zealand investee companies may be taxable to non-resident investors. This risk may be acting as a barrier to venture capital investment in New Zealand by non-residents. Therefore a specific exemption for non-resident investors on investments that have been made alongside the VIF is proposed.

The following changes in the bill will increase compliance costs:

Allocation of research and development tax deductions

Current tax treatment results in R&D expenditure being recognised too early in relation to when the resulting income is recognised. This mismatch in the recognition of R&D expenditure and income means that deductions for R&D expenditure of a company may be inappropriately lost when there is a shareholding change in the company, such as when new investors are admitted to fund the next stage of development. The current tax rules could therefore act as a disincentive to investment in the technology sector, which would not be consistent with the government's growth and innovation framework which emphasises the importance of the technology sector to the country's economic and social development.

The additional compliance costs involved in these measures are estimated to be modest and will be met only by companies which benefit from them.

Corporate migration

If a company migrates from New Zealand, the tax rules for the liquidation of companies will apply. Although a migrating company will be subject to greater compliance costs than is currently the case, the costs will be equivalent to the costs currently incurred on the liquidation of a New Zealand company.

As with liquidation, additional compliance costs may potentially arise from the requirement to revalue taxable property at market value. The market value of certain property such as intangible property may not be readily available and may require some research by the company. However, the incidence of this cost is expected to be low and is already a feature of the various deemed disposition rules in the Income Tax Act.

Foreign trusts information and record keeping

Inevitably, provisions which impose additional requirements on New Zealand resident trustees of foreign trusts to disclose information and keep financial and other records of matters not previously

required to be disclosed or kept will impose additional compliance costs on affected trustees. The new obligations will however enable New Zealand to meet its international and Double Tax Agreement obligations.

Securities lending

Securities lending involves the lending of securities to another party for a fee and was developed to allow brokers to transact in securities in which they have a shortfall. Securities lending also provides a relatively risk-free way for larger holders of shares to increase their overall portfolio returns. Internationally, securities lending represents a substantial part of the daily settlement value in many transaction systems and can play an important role in facilitating market liquidity.

New Zealand does not have an onshore securities lending market. When New Zealand companies wish to enter into securities lending transactions they must go offshore to other markets (Sydney, Hong Kong or London). The size of the New Zealand offshore equity securities lending market is estimated to be approximately US\$1 billion.

The lack of a New Zealand securities market is, at least in part, due to the current tax treatment of these transactions. At present, New Zealand does not have special tax rules for securities lending transactions. For New Zealand tax purposes, securities lending transactions are taxed on the basis of legal form (a sale of shares) rather than economic substance (a loan). Consequently, profits from a securities lending transaction are generally taxable. The measures in this bill will introduce specific securities lending rules to allow the taxation of “qualifying” securities lending transactions (called “share-lending arrangements”) on the basis of economic substance rather than legal form. The measures will also strengthen the imputation and NRWT rules to ensure that “non-qualifying” securities lending transactions do not give rise to an unintended fiscal cost.

If securities lending is encouraged, or at least not discouraged, through the introduction of special tax rules, it will allow institutional investors to “lend” their securities, increasing the number of possible transactions in the market. In theory, this will increase the number of actively traded securities, improve liquidity and lead to a more efficient capital market. It will also resolve many of the

problems identified with the current tax treatment of these transactions (for example, lack of consistency with international trends and the economic and accounting treatment of these transactions as well as with the treatment of other commercial transactions) and will mean a more consistent tax treatment and increased taxpayer certainty.

While the changes can be viewed as largely technical amendments, there may be a small increase in compliance costs. Taxpayers who undertake securities lending are likely to seek professional advice and will also need to maintain and monitor tax credit accounts and review transactions to determine whether they are qualifying transactions or whether the new anti-avoidance rules apply.

Consultation

Proposals contained in the bill were, with the exception of a number of minor remedial amendments, subject to the Generic Tax Policy Process. This is a robust consultative and tax policy development process focussed on tax policy development. For the major measures in the bill, this process included the release of the following discussion documents or issues papers:

Foreign trusts: proposed information reporting and record keeping requirements

Making tax easier for small businesses

Reducing tax barriers to international recruitment to New Zealand

Streamlining the taxation of fringe benefits

Taxation of foreign hybrids and foreign tax credits: an officials' issues paper

Taxing securities lending transactions: substance over form

Specific consultation was undertaken with a number of professional groups, industry representatives, and individual taxpayers, according to their experience or membership. These consultations included:

- Accident Compensation Corporation
- Auckland City Council
- Canterbury Employers' Chamber of Commerce
- Child, Youth and Family Service

- Corporate Taxpayer Group
- Deloitte
- Department of Internal Affairs
- Department of Labour
- Department of Prime Minister and Cabinet
- Employers and Manufacturers Association Central
- Employers and Manufacturers Association Northern
- Federated Farmers of New Zealand (Inc)
- Fonterra
- HiGrowth
- Housing Corporation
- HSBC International Trustee (New Zealand) Limited
- Huddleston & Tosser Limited
- Institute of Chartered Accountants of New Zealand
- Investment Savings and Insurance Association
- Landcorp Farming Limited
- Ministry of Agriculture and Forestry
- Ministry of Foreign Affairs and Trade
- Ministry of Economic Development
- Ministry of Justice
- Ministry of Research, Science and Technology
- Ministry of Transport
- Ministry of Women's Affairs
- Minter Ellison Rudd Watts
- New Zealand Co-operatives Association
- New Zealand Exchange Limited
- New Zealand Fire Service
- New Zealand Law Society
- New Zealand Police
- New Zealand Superannuation Fund
- New Zealand Trustees Association
- New Zealand Trustee Companies Association
- NZ Bio
- Office of the Privacy Commissioner
- PriceWaterhouseCoopers
- Reserve Bank of New Zealand
- Russell McVeagh
- Securities Industry Association

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Explanatory note

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- Small Business Advisory Group
 - Society of Trusts and Estate Practitioners
 - The Treasury
 - The New Zealand Venture Investment Fund Limited
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Hon Dr Michael Cullen

Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Bill

Government Bill

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164	Notices of proposed adjustment required to be issued by the Commissioner	180	New section 141EA inserted 141EA Shortfall penalty and provisional tax

**Taxation (Depreciation, Payment Dates
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<p>181 Reduction of penalties for previous behaviour</p> <p>182 Absolute liability offences</p> <p>183 Transfer of excess provisional tax if provisional tax paid is more than taxpayer's provisional tax liability, determined before assessment</p> <p>184 Transfer of excess provisional tax if taxpayer estimates or revises estimate of residual income tax, determined before assessment</p> <p>185 Transfer of excess tax if provisional tax is more than taxpayer's residual income tax, determined after assessment</p> <p>186 Remission in circumstances of qualifying event</p> <p>187 Remission on written application</p> <p>188 Payment out of Crown bank account</p> <p>189 New sections 185C and 185D inserted</p> <p style="padding-left: 20px;">185C Establishment of Listed PAYE Intermediary Bank Account</p> <p style="padding-left: 20px;">185D Payments into, and out of, Listed PAYE Intermediary Bank Account</p> <p style="text-align: center;">Part 4</p> <p style="text-align: center;">Amendments to other Acts</p> <p style="text-align: center;"><i>Income Tax Act 1994</i></p> <p>190 Income Tax Act 1994</p> <p>191 Exclusions from term dividends</p> <p>192 Government grants to businesses</p> <p>193 Certain expenditure on land used for farming or agricultural purposes</p> <p>194 Low value asset write-off</p> <p>195 New subpart FCB inserted</p> <p style="padding-left: 40px;">Subpart FCB—Emigration of resident companies</p> <p style="padding-left: 20px;">FCB 1 Tax effects of company becoming non-resident to reflect tax effects of liquidation</p> <p style="padding-left: 20px;">FCB 2 Emigrating company treated as paying distribution to shareholders</p> <p style="padding-left: 20px;">FCB 3 Emigrating company treated as disposing of property and immediately reacquiring property</p> <p>196 Company may attach imputation credit to dividend</p>	<p>197 Company may elect to maintain dividend withholding payment account</p> <p>198 Company may elect to be conduit tax relief company and maintain conduit tax relief account</p> <p>199 Further dividend withholding payment payable in respect of conduit tax relief account debits</p> <p>200 Definitions</p> <p>201 Schedule 7—Expenditure on Land and Aquacultural Improvements</p> <p style="text-align: center;"><i>Goods and Services Tax Act 1985</i></p> <p>202 Goods and Services Act 1985</p> <p>203 Interpretation</p> <p>204 Meaning of term financial services</p> <p>205 Meaning of term supply</p> <p>206 Time of supply</p> <p>207 Value of supply of goods and services</p> <p>208 Zero-rating of goods</p> <p>209 Exempt supplies</p> <p>210 New section 15AB inserted</p> <p style="padding-left: 20px;">15AB Transitional provision: alignment of taxable periods with balance dates</p> <p>211 Sections 15 to 15AB replaced</p> <p style="padding-left: 20px;">15 Taxable periods</p> <p style="padding-left: 20px;">15B Taxable periods aligned with balance dates</p> <p style="padding-left: 20px;">15C Changes in taxable periods</p> <p style="padding-left: 20px;">15D When change in taxable period takes effect</p> <p>212 Section 16 replaced</p> <p style="padding-left: 20px;">16 Taxable period returns</p> <p>213 New section 16B inserted</p> <p style="padding-left: 20px;">16B Meaning of end of taxable period</p> <p>214 Special returns</p> <p>215 Registered person to notify change of status</p> <p>216 Group of companies</p> <p>217 Branches and divisions</p> <p>218 Annual imputation return</p> <p>219 Returns to be furnished in 2 parts for taxable period in which change in rate of tax occurs</p> <p style="text-align: center;"><i>Other Acts</i></p> <p>220 New section 74D inserted in the Estate and Gift Duties Act 1968</p>
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Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions)			
cl 1	<table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> <p>74D Exemption for gifts in respect of distribution by co-operative company or company owned by co-operative company</p> <p>221 Interim repayments to be paid in same manner as provisional tax</p> </td> <td style="width: 50%; vertical-align: top; text-align: center;"> <p>Schedule 1</p> <p>New schedule 11B inserted in Income Tax Act 2004</p> </td> </tr> </table>	<p>74D Exemption for gifts in respect of distribution by co-operative company or company owned by co-operative company</p> <p>221 Interim repayments to be paid in same manner as provisional tax</p>	<p>Schedule 1</p> <p>New schedule 11B inserted in Income Tax Act 2004</p>
<p>74D Exemption for gifts in respect of distribution by co-operative company or company owned by co-operative company</p> <p>221 Interim repayments to be paid in same manner as provisional tax</p>	<p>Schedule 1</p> <p>New schedule 11B inserted in Income Tax Act 2004</p>		

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the **Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2005**.

2 Commencement

- (1) This Act comes into force on the date on which it receives the Royal assent, except as provided in this section.
- (2) **Sections 201**, is treated as coming into force on 1 July 2004.
- (3) **Sections 181** is treated as coming into force on 21 December 2004.
- (4) **Sections 85, 143(16), 150, and 218** are treated as coming into force on 1 April 2005.
- (5) **Sections 56** is treated as coming into force on 19 May 2005.
- (6) **Sections 12, 14(2), 14(3), 19, 20, 22, 43, 44, 46, 52, 62, 63(2), 65, 66, 68, 69, 72, 73, 76, 86, 87(1), 87(2), 90, 141, 143(5), (7), (8), (11), (15), (19), (35), (40), and (43), 155(4) to (7), and (11), and 163** come into force on 1 October 2005.
- (7) **Sections 212, 214, and 219** come into force on 31 March 2006.
- (8) **Sections 8, 14(1), 15, 16, 17, 24 to 33, 40, 70, 71, 74, 75, 81, 87(3), 92, 94 to 97, 99, 121 to 132, 143(4), (9), (17), (24), (37), and (52), 145(1), 145(2), 148, 155(2), (12), (14), (19), and (20), 156, 158, 159, 162, 182, and 188**, come into force on 1 April 2006.
- (9) **Sections 6, 7, 37, 38, 47, 77, 79, 89, 143(51), and 144** come into force on 1 October 2006.
- (10) **Sections 203(3) and (4), 211, 213, and 215 to 217**, come into force on 1 April 2007.
- (11) **Sections 59, 83, 84, 88, 100 to 103, 105(2), 105(4), 108(1), 108(3), 109(2), 109(4), 110, 114 to 118, 120, 142, 143(2), (3), (6), (14), (21) to**

(23), (33), (34), (36), (42), (46), and (48) to (50), 145(3), 152, 155(3), (8) to (10), (13), (15), (16), (18), (21), and (22), 160, 161, 171 to 180, 183 to 185, and 221 come into force on 1 October 2007.

Part 1

Annual rates of income tax for 2005–06 tax year

3 Rates of income tax for 2005–06 tax year

- (1) Income tax imposed by section BB 1 of the Income Tax Act 2004 must, for the 2005–06 tax year, be paid at the basic rates specified in Schedule 1 of that Act.
- (2) The Taxation (Annual Rates of Income Tax 2004–05) Act 2004 is repealed.

Part 2

Amendments to Income Tax Act 2004

4 Income Tax Act 2004

This Part amends the Income Tax Act 2004.

5 Double tax agreements

In section BH 1(4), “any other enactment,” is replaced by “any other Inland Revenue Act or the Official Information Act 1982 or the Privacy Act 1993,”.

6 Heading for section CD 1 replaced

The heading for section CD 1 is replaced by “**Dividend**”.

7 New section CD 1B inserted

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

“CD 1B Distribution excluded from being dividend

A distribution, derived by a member of a co-operative company, that is excluded by **section CD 24B** from being a dividend is income of the member.

“Defined in this Act: co-operative company, dividend, income”.

- (2) **Subsection (1)** applies for income years corresponding to the 2006–07 and subsequent tax years.

8 New section CD 10B inserted

After section CD 10, the following is inserted:

“CD 10B Dividend reduced if foreign tax paid on company’s income

“When this section applies

- “(1) This section applies to a person who—
- “(a) derives a dividend from a company that is—
 - “(i) a foreign company; and
 - “(ii) treated as if the company were a partnership by the laws relating to income tax of the country or territory in which the company is resident; and
 - “(b) is liable in the country or territory for income tax on income of the company; and
 - “(c) pays the income tax; and
 - “(d) provides to the Commissioner upon request, within the time allowed by the Commissioner, sufficient information to satisfy the Commissioner as to the amount of income tax paid.

“Amount of dividend reduced

- “(2) The amount of the dividend is reduced by the greater of zero and the amount calculated using the formula—
total tax paid – other reductions.

“Definition of items in formula

- “(3) In the formula,—
- “(a) **total tax paid** is the total amount of income tax on income of the company that the person has paid in the country by the time that the person derives the dividend:
 - “(b) **other reductions** is the total amount of reductions under this section that, by the time that the person derives the dividend, have affected other dividends derived by the person from the company.

“Defined in this Act: branch equivalent method, company, controlled foreign company, dividend, FIF income or loss, foreign investment fund, income, income tax .

9 Capital distributions on liquidation

- (1) In the heading to section CD 18, “**or emigration**” is added after “**liquidation**”.
- (2) Section CD 18(1), other than the heading, is replaced by the following:
 - “(1) This section applies if a shareholder—
 - “(a) is paid an amount in relation to a share on the liquidation of the company;
 - “(b) is treated under **section FCB 2** (Emigrating company treated as paying distribution to shareholders) as being paid an amount in relation to a share in the company.”
- (3) In the list of terms defined in the Act, “emigrating company” is inserted.
- (4) **Subsections (1) to (3)** apply for—
 - (a) a company that becomes a non-resident on or after 21 March 2005; and
 - (b) income years corresponding to the 2005–06 and subsequent tax years.

10 New section CD 24B inserted

- (1) After section CD 24, the following is inserted:

“CD 24B Distribution to member of co-operative company based on member’s transactions

“Distribution by co-operative company, company owned by co-operative company

- “(1) An amount that is a distribution to a member of a co-operative company by the co-operative company, or by a company (a **subsidiary company**) in which the co-operative company owns voting interests equal to 100%, is not a dividend if—
 - “(a) the co-operative company is resident in New Zealand for the period to which the distribution relates; and
 - “(b) the distribution is not a foreign-sourced amount for the member; and
 - “(c) the value of the distribution is determined by the value for the period of transactions between the member and the co-operative company or subsidiary company that satisfy **subsection (2)**; and
 - “(d) the amount is given by **subsection (3)**.

**Taxation (Depreciation, Payment Dates
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Part 2 cl 10

“Transactions must involve trading stock

- “(2) A transaction must—
- “(a) involve the sale and purchase of trading stock of the vendor that is not intangible property; and
 - “(b) not be subject to section FB 3 (Disposal of trading stock) or FB 4(1) (Income derived from disposal of trading stock together with other assets of business).

“Amount excluded from being dividend

- “(3) The amount of a distribution that is excluded under **subsection (1)** from being a dividend is the lesser of the following:
- “(a) the amount of the distribution:
 - “(b) if the right of the member to enter transactions with the co-operative company does not arise from shares held by the member in the co-operative company, the smallest distribution to which a member of the co-operative company would be entitled if that member—
 - “(i) were entitled to enter, with the co-operative company or subsidiary company, transactions of the type and value referred to in **subsection (1)(c)**; and
 - “(ii) entered the transactions referred to in **subparagraph (i)**:
 - “(c) if the right of the member to enter transactions with the co-operative company arises from shares held by the member in the co-operative company, the amount of the distribution relating to shares in the co-operative company that the member acquires for the purpose of obtaining that right.

“Defined in this Act: company, co-operative company, foreign-sourced amount, resident in New Zealand, shareholder”.

- (2) **Subsection (1)** applies for distributions made on or after the date on which this Act receives the Royal assent.

11 Available subscribed capital amount

- (1) After section CD 32(15), the following is inserted:

“Subscriptions amount: emigrating company

- “(15B) If a company has been treated under **section FCB 2** (Emigrating company treated as paying distribution to shareholders) as paying a distribution to shareholders, the subscriptions

amount includes the amount of the distribution that is assessable income of the shareholders.”

- (2) **Subsection (1)** applies for—
- (a) a company that becomes a non-resident on or after 21 March 2005; and
 - (b) income years corresponding to the 2005–06 and subsequent tax years.

12 When does a person have attributed repatriation from a CFC?

- (1) After section CD 34(1)(b), the following is inserted:
- “(bb) at any time in the accounting period, the person is a New Zealand resident who is not a certified resident; and”.
- (2) In section CD 34(2), the formula is replaced by the following:
- $$\text{income interest} \times \text{repatriation} \times \frac{\text{days}}{\text{days in accounting period}}$$
- (3) After section CD 34(2), the following is added:
- “Definition of items in formula*
- “(3) In the formula,—
- “(a) **income interest** is the income interest of the person for the period in the accounting period during which the person is a New Zealand resident who is not a certified resident:
 - “(b) **repatriation** is the New Zealand repatriation amount for the CFC and the accounting period:
 - “(c) **days** is the number of days in the accounting period during which the person is a New Zealand resident who is not a certified resident
 - “(d) **days in accounting period** is the number of days in the accounting period.”
- (4) In section CD 34, in the list of terms defined in the Act,—
- (a) “certified resident” is inserted:
 - (b) “New Zealand resident” is inserted.
- (5) **Subsections (1) to (4)** apply for—
- (a) a person who becomes a New Zealand resident on or after 1 April 2006; and

- (b) income years corresponding to the 2005–06 and subsequent tax years.

13 New heading and sections CD 43 and CD 44 added

- (1) After section CD 42, the following is added:

“Returning securities transfers

“CD 43 Replacement payment

A replacement payment derived by a person under a returning securities transfer is assessable income of the person if the replacement payment is intended to be economically equivalent to a reward of ownership, in relation to an original share, that would be assessable income for the person if derived by the person.

“Defined in this Act: assessable income, original share, replacement payment, returning securities transfer

“CD 44 Purchase of replacement share in share-lending arrangement

“When this section applies

- “(1) This section applies to a person who—
 - “(a) is a share user under a share-lending arrangement; and
 - “(b) returns a replacement share to the share user.

“Income

- “(2) The person derives income equal to the market value of the original share at the date of acquisition by the share user.

“Defined in this Act: income, original share, replacement share, share-lending arrangement, share supplier, share user, returning securities transfer”.

- (2) **Subsection (1)** applies for income years beginning on or after the day on which this Act receives the Royal assent

14 Value and timing of benefits under share purchase agreements

- (1) After section CE 2(7), the following is added:

“Disposal of rights under share purchase option

- “(8) For the purposes of subsection (3), a disposal of rights under a share purchase agreement includes the cancellation of a share option in return for a cash payment.”
- (2) After section CE 2(8), as added by **subsection (1)**, the following is added:

“If benefit to certified resident relating to employment when non-resident

- “(9) The value of a benefit, or a part of a benefit, of a type referred to in **subsections (2) to (5)** is zero if—
- “(a) the employee is a certified resident when the employee acquires the shares under the share purchase agreement or disposes of the rights under the share purchase agreement; and
- “(b) the employee is a non-resident during the period of employment that gives rise to the benefit or part of the benefit.”
- (3) In section CE 2, in the list of terms defined in the Act,—
- (a) “certified resident” is inserted:
- (b) “non-resident” is inserted.
- (4) **Subsection (1)** applies for a person’s liability for fringe benefit tax for a period beginning on or after 1 April 2006.
- (5) **Subsections (2) and (3)** apply for—
- (a) a person who becomes a New Zealand resident on or after 1 April 2006; and
- (b) income years corresponding to the 2005–06 and subsequent tax years.

15 Meaning of expenditure on account of an employee

- (1) In section CE 5,—
- (a) in subsection (3)(i), “scheme.” is replaced by “scheme; or” and the following is added:
- “(j) a premium for income protection insurance that an employer is liable to pay or make a contribution towards for the benefit of an employee.”;
- (b) in the list of defined terms, “contribution” is inserted.
- (2) **Subsection (1)** applies for a person’s liability for fringe benefit tax for a period beginning on or after 1 April 2006.

16 New section CE 11 inserted

- (1) After section CE 10, the following is inserted:

“CE 11 Proceeds from claims under policies of income protection insurance

“When this section applies

- “(1) This section applies when an employer is liable to pay, or contribute to the payment of, a premium under a policy of income protection insurance for the benefit of a person who is their employee.

“Income

- “(2) An amount that is or would be derived under the policy is income of the person.

“Defined in this Act: amount, employee, employer, income, pay”.

- (2) **Subsection (1)** applies for a person’s liability for fringe benefit tax for a period beginning on or after 1 April 2006.

17 Benefits, pensions, compensation, and government grants

In section CF 1(2), in paragraph (f) of the definition of **accident compensation payment**, “of that Act” is replaced by “of that Act; or” and the following is added:

- “(g) a payment made by the Corporation under section 81(1)(b) of the Injury Prevention, Rehabilitation, and Compensation Act 1991, if the total amount of such payments in an income year exceeds the total amount of payments made in that income year by the claimant to a caregiver in respect of attendant care (as defined in Schedule 1, clause 12 of that Act)”.

18 Adjustment for closing values of trading stock, livestock, and excepted financial arrangements

- (1) In section CH 1(1)(c), “arrangements).” is replaced by “arrangements):” and the following is added:

- “(d) a right as a share supplier under a share-lending arrangement to acquire original shares or replacement shares, if the original shares are excepted financial arrangements described in paragraph (c).”

- (2) In section CH 1(4), “arrangements,” is replaced by “arrangements or right,”
- (3) **Subsections (1) and (2)** apply for income years beginning on or after the day on which this Act receives the Royal assent.

19 When attributed CFC income arises

- (1) Section CQ 2(1)(d) is replaced by the following:
 - “(d) at any time in the accounting period, the person is a New Zealand resident who is not a certified resident; and”.
- (2) In section CQ 2(1)(e), “accounting period” is replaced by “part of the accounting period during which the person is a New Zealand resident who is not a certified resident”.
- (3) In section CQ 2, in the list of terms defined in the Act,—
 - (a) “certified resident” is inserted;
 - (b) “New Zealand resident” is inserted.
- (4) **Subsections (1) to (3)** apply for—
 - (a) a person who becomes a New Zealand resident on or after 1 April 2006; and
 - (b) income years corresponding to the 2005–06 and subsequent tax years.

20 When FIF income arises

- (1) In section CQ 5(1)—
 - (a) paragraph (c)(iv) is replaced by the following:
 - “(iv) the exemption for a non-resident or certified resident in **section EX 35** (Income interest of non-resident or certified resident):”.
 - (b) paragraph (e) is replaced by the following:
 - “(e) at any time in the year, the person is a New Zealand resident who is not a certified resident and holds the attributing interest; and”.
- (2) In section CQ 5 “certified resident” is inserted in the list of terms defined in the Act.
- (3) **Subsections (1) and (2)** apply for—
 - (a) a person who becomes a New Zealand resident on or after 1 April 2006; and

- (b) income years corresponding to the 2005–06 and subsequent tax years.

21 New section CW 11C inserted

- (1) After section CW 11B, the following is inserted:

“CW 11C Proceeds from share or option acquired under venture investment agreement

“Exempt income: proceeds from share or option

- “(1) An amount of income that a non-resident derives from the sale or other disposal of a share, or option to buy a share, in a company is exempt income if the requirements of **subsections (2) to (5)** are satisfied.

“Requirements relating to company at time of acquisition

- “(2) When the non-resident acquires the share or option, the company must have in New Zealand—
 - “(a) more than 50% in value of the company’s assets; and
 - “(b) more than 50% in number of the company’s employees.

“Requirements relating to acquisition of share or option

- “(3) A person (a **venture capital manager**) must acquire, as required by a venture investment agreement,—
 - “(a) on behalf of the non-resident, the share or option; and
 - “(b) on behalf of the Venture Investment Fund or a company owned by the Venture Investment Fund, another share or option that confers the same rights and imposes the same obligations as the share or option.

“Continuing requirements relating to company

- “(4) While the non-resident holds the share or option, the company must not have 1 or more of the following as a main activity:
 - “(a) land development:
 - “(b) land ownership:
 - “(c) mining:
 - “(d) provision of financial services:
 - “(e) insurance:
 - “(f) construction of public infrastructure assets:
 - “(g) acquisition of public infrastructure assets:

“(h) investing with a main aim of deriving, from the investment, income in the form of interest, dividends, rent, or personal property lease payments that are not royalties.

“Requirements relating to situation at disposition of share or option

- “(5) When the non-resident disposes of the share or option,—
- “(a) the venture capital manager must have complied with the venture capital manager’s obligations under the venture investment agreement; and
 - “(b) the non-resident must have complied with the non-resident’s obligations under any agreement between the non-resident and the Venture Investment Fund or a company owned by the Venture Investment Fund; and
 - “(c) the Venture Investment Fund must be satisfied on reasonable grounds that no person who is resident in New Zealand and no group of associated persons who are resident in New Zealand has a direct or indirect interest of more than 10% in the share or option.

“Venture investment agreement

- “(6) In this section, **venture investment agreement** means an agreement that—
- “(a) is an agreement, relating to investment in companies, between parties that include—
 - “(i) a venture capital manager; and
 - “(ii) the Venture Investment Fund or a company owned by the Venture Investment Fund; and
 - “(b) provides for investments under the agreement to be managed by the venture capital manager; and
 - “(c) provides that an investment under the agreement must be in a company that, when the investment is made, has in New Zealand—
 - “(i) more than 50% in value of the company’s assets; and
 - “(ii) more than 50% in number of the company’s employees.

“Defined in this Act: employee, income, interest, non-resident, resident in New Zealand, share, venture investment agreement, Venture Investment Fund”.

- (2) **Subsection (1)** applies for shares or options purchased for a non-resident by a venture capital manager under a venture investment agreement made on or before 31 March 2008.

22 New section CW 22B inserted

- (1) After section CW 22, the following is inserted:

“Certain income of certified resident

“CW 22B Certain income derived by certified resident

Income derived in a period of time by a person who is a certified resident for the period is exempt income if the income is a foreign-sourced amount that is none of the following:

- “(a) a dividend:
- “(b) interest within the meaning given by paragraph (a) of the definition of that term in section OB 1:
- “(c) employment income of a type described in section CE 1(a) to (c) and (e) to (g):
- “(d) income from a supply of services.

“Defined in this Act: certified resident, dividend, employment income, exempt income, foreign-sourced amount, income”.

- (2) **Subsection (1)** applies for—
- (a) a person who becomes a New Zealand resident on or after 1 April 2006; and
 - (b) income years corresponding to the 2005–06 and subsequent tax years.

23 New section CW 40B inserted

After section CW 40, the following is inserted:

“CW 40B Income from conducting gaming-machine gambling

An amount of income derived by a person that is gross gambling proceeds from gaming-machine gambling is exempt income if—

- “(a) the person is authorised to conduct the gaming-machine gambling under the Gambling Act 2003 by a gaming-machine operator’s licence and a gaming-machine venue licence; and

“(b) the person complies with the Gambling Act 2003 in applying and distributing the net gambling proceeds from the gaming-machine gambling.

“Defined in this Act: exempt income, gaming-machine gambling, gaming-machine operator’s licence, gaming-machine venue licence, gross gambling proceeds, net gambling proceeds .

24 Meaning of fringe benefit

- (1) In section CX 2(1)(b)(i), “CX 15” is replaced by “**CX 15B**”.
- (2) **Subsection (1)** applies for a person’s liability for fringe benefit tax for a period beginning on or after 1 April 2006.

25 New sections CX 6B and CX 6C inserted

- (1) After section CX 6, the following is inserted:

“CX 6B Meaning of lease in relation to motor vehicle

In the FBT rules, in relation to the use of a motor vehicle, a **lease** includes an agreement or arrangement between an employer and an employee transferring a right to use a motor vehicle under terms agreed between the parties.

“Defined in this Act: arrangement, employer, employee, FBT rules, motor vehicle

“CX 6C Suspension of right to use vehicle disregarded if applies when private use

In the application of the FBT rules to a lease of a motor vehicle between an employer and an employee, a suspension under the lease of the right to use the motor vehicle is disregarded if a result of the suspension would be—

- “(a) a use of the vehicle by a party to the lease is private:
- “(b) a party to the lease has a right to use the vehicle privately.

“Defined in this Act: employer, employee, FBT rules, lease, motor vehicle”.

- (2) **Subsection (1)** applies for a person’s liability for fringe benefit tax for a period beginning on or after 1 April 2006.

26 New section CX 15B inserted

- (1) After section CX 15, the following is inserted:

“CX 15B Contributions to income protection insurance

A fringe benefit arises when an employer has a liability to pay, or contribute to the payment of, a premium for income protection insurance for the benefit of an employee.

“Defined in this Act: contribution, employee, employer, fringe benefit”.

- (2) **Subsection (1)** applies for a person’s liability for fringe benefit tax for a period beginning on or after 1 April 2006.

27 Benefits provided instead of allowances

- (1) Section CX 17 is renumbered as section CX 17(1) and “*When not fringe benefit*” is inserted as the subsection heading.

- (2) After section CX 17(1), the following is added:

“Temporary change in workplace

- “(2) A benefit that an employer provides to an employee is not a fringe benefit if it is an allowance that—

“(a) is in substitution for an allowance under subsection (1)(b); and

“(b) is brought about because the employee has a temporary change in their place of work while in the same employment; and

“(c) reimburses the employee for transport costs that would have been incurred relating to travel by the employee’s spouse or partner or relative for the purpose of visiting the employee in the temporary place of work; and

“(d) has a value that is no more than the amount that would be reimbursed under subsection (1)(b).”

- (3) In the list of defined words in CX 17, “, relative” is added.

- (4) **Subsections (1) to (3)** apply for a person’s liability for fringe benefit tax for a period beginning on or after 1 April 2006.

28 New section CX 18B inserted

- (1) After section CX 18, the following is inserted:

“CX 18B Business tools

“When business tool not fringe benefit

- “(1) A business tool that an employer provides to an employee is not a fringe benefit if—

“(a) the business tool is provided mainly for business use; and

“(b) the cost of the business tool to the employer is not more than \$5,000.

“Private use or availability for private use of business tool not fringe benefit

“(2) The private use of a business tool that an employer provides to an employee, and the availability for private use of such a business tool, is not a fringe benefit if the business tool satisfies **subsection (1)(a) and (b)**.

“Use away from employer’s premises

“(3) For the purposes of **subsection (1)**, a business tool that is not taken to and used on the employer’s premises may nevertheless be provided mainly for business use if the employee performs a significant part of the employee’s employment duties away from the premises.

“Defined in this Act: business use, business tool, employee, employer, fringe benefit”.

(2) **Subsection (1)** applies for a person’s liability for fringe benefit tax for a period beginning on or after 1 April 2006.

29 Benefits provided on premises

(1) Section CX 20(1), other than the subsection heading, is replaced by the following:

“(1) A benefit, other than free, discounted, or subsidised travel, accommodation, or clothing, is not a fringe benefit if the benefit is—

“(a) provided to the employee by the employer of the employee and received or used by the employee on the premises of—

“(i) the employer of the employee:

“(ii) a company that is in the same group of companies as the employer of the employee:

“(b) provided to the employee by a company that is in the same group of companies as the employer of the employee and received or used by the employee on the premises of—

“(i) the employer of the employee:

“(ii) the company that provides the benefit.”.

- (2) Section CX 20(2) is replaced by the following:

“Premises of person

- “(2) In this section, the premises of a person—
- “(a) include premises that the person owns or leases:
 - “(b) include premises, other than those referred to in **paragraph (a)**, on which an employee of the person is required to perform duties for the person:
 - “(c) does not include premises occupied by an employee of the person for residential purposes.”
- (3) In the list of defined terms for section CX 20, “company”, and “group of companies” are inserted.
- (4) **Subsections (1) to (3)** apply for a person’s liability for fringe benefit tax for a period beginning on or after 1 April 2006.

30 New section CX 20B inserted

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

“CX 20B Benefits related to health and safety

A benefit that an employer provides to an employee is not a fringe benefit to the extent to which it—

- “(a) is related to the employee’s health and safety; and
- “(b) is aimed at the elimination of hazards in the workplace as contemplated in the Health and Safety in Employment Act 1992; and
- “(c) would be excluded by **section CX 20** from being a fringe benefit if provided on the employer’s premises.

“Defined in this Act: employee, employer, employment, fringe benefit”.

- (2) **Subsection (1)** applies for a person’s liability for fringe benefit tax for a period beginning on or after 1 April 2006.

31 Benefits provided by charitable organisations

- (1) Section CX 21 is renumbered as section CX 21(1) and “*When not fringe benefit*” is inserted as the subsection heading.

- (2) After section CX 21(1), the following subsections are added:

“When employer provides credit facilities

- “(2) Subsection (1) does not apply, and the benefit provided is a fringe benefit, if a charitable organisation provides a benefit to an employee by way of short-term credit facilities and the value of the benefit from the short-term credit facilities for the

employee in an income year of the employee exceeds 5% of the employee's salary or wages for the income year.

“Meaning of short-term credit facilities

- “(3) For the purposes of this section, a **short-term credit facility** means an arrangement that—
- “(a) enables an employee of a charitable organisation to obtain goods or services that have no connection with the organisation or its operations by buying or hiring the goods or services or charging the cost of the goods or services to an account; and
 - “(b) places the liability for some or all of the payment for the goods or services on the organisation; and
 - “(c) is not a fringe benefit under section CX 9.”
- (3) **Subsections (1) and (2)** apply for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

32 New section CX 27B inserted

- (1) After section CX 27, the following is inserted:

“CX 27B Goods provided at discount by third parties

“When this section applies

- “(1) This section applies when an employer and a person who is not associated with the employer have an arrangement through which goods are provided by the person at a discount.

“When not fringe benefit

- “(2) A discount provided by the person to an employee in a group of employees is not a fringe benefit if—
- “(a) the person offers a discount to a group of persons that—
 - “(i) negotiates the discount on an arm's-length basis; and
 - “(ii) does not include the group of employees; and
 - “(iii) is comparable in size to the group of employees; and
 - “(b) the discount offered to the group of employees is the same or less than the discount offered to the group described in **paragraph (a)**.”
- (2) **Subsection (1)** applies for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

33 Meaning of unclassified benefit

- (1) In section CX 31(a), “CX 15” is replaced by “**CX 15B**”.
- (2) **Subsection (1)** applies for a person’s liability for fringe benefit tax for a period beginning on or after 1 April 2006.

34 Government grants to businesses

- (1) Section CX 41(3) is replaced by the following:

“Exclusions

- “(3) This section does not apply to—
 - “(a) a large budget screen production grant:
 - “(b) a grant made under the Agriculture Recovery Programme for the Lower North Island and Eastern Bay of Plenty, to the extent that the grant is made in respect of expenditure—
 - “(i) incurred by the recipient before the grant; and
 - “(ii) for which the recipient would be allowed a deduction in the absence of section DF 1 (Government grants to businesses).”
- (2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

35 New sections CX 44B and CX 44C inserted

- (1) After section CX 44, the following is inserted:

“CX 44B Disposal of original share to share user by share supplier

“When this section applies

- “(1) This section applies to a person who—
 - “(a) acquires a share—
 - “(i) for the purposes of a business:
 - “(ii) for the purposes of an undertaking or scheme that the person enters or devises with the purpose of making a profit:
 - “(iii) for the purpose of disposing of the share:
 - “(iv) when in a business of dealing in shares; and
 - “(b) is the share supplier for a share-lending arrangement; and
 - “(c) disposes of the share to the share user as an original share under the share-lending arrangement.

“Proceeds from disposal of original share

- “(2) The consideration derived by the person for the original share is excluded income.

“Exclusion

- “(3) This section does not apply to a share lending fee or a replacement payment.

“Defined in this Act: excluded income, original share, share, share-lending arrangement, share supplier, share user

“CX 44C Replacement payment

A replacement payment derived by a person under a returning securities transfer is excluded income of the person if the replacement payment is not intended to be economically equivalent to a reward of ownership, in relation to an original share, that would be assessable income for the person if derived by the person.

“Defined in this Act: assessable income, original share, replacement payment, returning securities transfer.”.

- (2) **Subsection (1)** applies for income years beginning on or after the day on which this Act receives the Royal assent.

36 New heading and sections DB 12B to DB 12E inserted

After section DB 12, the following is inserted:

“Returning securities transfers

“DB 12B Share supplier: cost of acquiring share after share-lending arrangement

“When this section applies

- “(1) This section applies to a person who—
- “(a) is the share supplier for a share-lending arrangement; and
 - “(b) acquires an original share or a replacement share—
 - “(i) under the share-lending arrangement;
 - “(ii) when the share-lending arrangement ends.

“Expenditure in purchase of replacement share

- “(2) The person is not allowed a deduction for the cost of the acquisition referred to in **subsection (1)(b)**.

“Link with subpart DA

- “(3) This section overrides the general permission.

“Defined in this Act: deduction, general limitation, general permission, replacement share, share, share-lending arrangement, share supplier, share user

“DB 12C Share user: cost of acquiring share in share-lending arrangement

“When this section applies

- “(1) This section applies to a person who—
“(a) is the share user for a share-lending arrangement; and
“(b) acquires a share under the share-lending arrangement.

“Expenditure in purchase of replacement share

- “(2) The person is allowed a deduction for the expenditure incurred by the person in acquiring the share—
“(a) the market value of the share, if the share is an original share acquired from the share supplier;
“(b) the cost of the share, if the share is a replacement share.

“Link with subpart DA

- “(3) This section overrides the general permission. The general limitations still apply.

“Defined in this Act: deduction, general limitation, general permission, replacement share, share, share-lending arrangement, share supplier, share user

“DB 12D Replacement payment under returning securities transfer

“When this section applies

- “(1) This section applies to a share user who incurs expenditure as a replacement payment under a returning securities transfer.

“No deduction in some circumstances

- “(2) A share user is not allowed a deduction for the replacement payment if—

- “(a) the share supplier is a non-resident for whom—
 - “(i) the replacement payment is not assessable income; and
 - “(ii) the replacement payment is intended to be economically equivalent to a reward of ownership, in relation to an original share, that would be assessable income for the share supplier if derived by the share supplier; and
 - “(iii) the returning securities transfer is not a share-lending arrangement:
- “(b) the replacement payment is not intended to be economically equivalent to a reward of ownership, in relation to an original share, that would be assessable income for the share supplier if derived by the share supplier.

“*Link with subpart DA*

- “(3) This section overrides the general permission.

“Defined in this Act: assessable income, deduction, general permission, non-resident, original share, replacement payment, share-lending arrangement, share supplier, share user, returning securities transfer

“DB 12E Imputation credits attached to replacement payment under share-lending arrangement

“*When this section applies*

- “(1) This section applies to a share user who makes a replacement payment under a share-lending arrangement and attaches an imputation credit to the replacement payment under **section ME 6B**.

“*Deduction*

- “(2) A share user is allowed a deduction for the amount of the imputation credit if the share user is allowed a deduction for the replacement payment.

“*Link with subpart DA*

- “(3) This section supplements the general permission. The general limitations still apply.

“Defined in this Act: deduction, general limitation, general permission, imputation credit, replacement payment, share-lending arrangement, share user”.

37 Research or development

- (1) After section DB 26(6), the following is inserted:

“Choice for allocation of deduction

“(6B) A person who has a deduction under this section for expenditure that is not interest may choose to allocate all or part of the deduction—

“(a) to an income year after the income year in which the person incurs the expenditure; and

“(b) in the way required by **section EJ 21** (Allocation of deductions for research, development, resulting market development).”

- (2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

38 Some definitions

- (1) In section DB 27(1), “section DB 26” is replaced by “sections DB 26, EE 1 (What this subpart does), **EJ 20** (Deductions for market development—product of research, development), and **EJ 21** (Allocation of deductions for research, development, resulting market development)”.

- (2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

39 Adjustment for opening values of trading stock, livestock, and excepted financial arrangements

- (1) In section DB 40(1)(c), “arrangements).” is replaced by “arrangements):” and the following is added:

“(d) a right as a share supplier under a share-lending arrangement to acquire original shares or replacement shares, if the original shares are excepted financial arrangements described in paragraph (c).”

- (2) In section DB 40(4), “arrangements had” is replaced by “arrangements or right had”.

- (3) **Subsections (1) and (2)** apply for income years beginning on or after the day on which this Act receives the Royal assent.

40 New section DC 15 inserted

- (1) After section DC 14, the following is inserted:

“DC 15 Contributions to employees’ income protection insurance

“When this section applies

- “(1) This section applies when an employer has a liability to pay, or contribute to the payment of, a premium under a policy of income protection insurance for the benefit of a person who is their employee.

“Expenditure

- “(2) An amount equal to the amount that the employer pays or contributes is treated as expenditure incurred by the person in deriving their assessable income. The amount is allocated to the income year in which the employer makes the payment.

“Link with subpart DA

- “(3) The general permission must be satisfied and the general limitations still apply.

“Defined in this Act: amount, employee, employer, general permission, income year, pay”.

- (2) **Subsection (1)** applies for a person’s liability for fringe benefit tax for a period beginning on or after 1 April 2006.

41 Deductions for business use

In section DE 2(1), in paragraph (a), “; or” is replaced by “:”.

42 Government grants to businesses

- (1) In section DF 1(1), in paragraph (d), “exist.” is replaced by “exist; and” and the following is added:

“(e) the payment is excluded income under **section CX 41** (Government grants to businesses).”

- (2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

43 When attributed CFC loss arises

- (1) Section DN 2(d) is replaced by the following:

“(d) at any time in the accounting period, the person is a New Zealand resident who is not a certified resident; and”.

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- (2) In section DN 2, “certified resident” is inserted in the list of terms defined in the Act.
- (3) **Subsections (1) and (2)** apply for—
 - (a) a person who becomes a New Zealand resident on or after 1 April 2006; and
 - (b) income years corresponding to the 2005–06 and subsequent tax years.

44 When FIF loss arises

- (1) Section DN 6(1)(c)(iv) is replaced by the following:
 - “(iv) the exemption for a non-resident or certified resident in **section EX 35** (Income interest of non-resident or certified resident):”.
- (2) Section DN 6(1)(e) is replaced by the following:
 - “(e) at any time in the year, the person is a New Zealand resident who is not a certified resident and holds the attributing interest; and”.
- (3) In section DN 6, “certified resident” is inserted in the list of terms defined in the Act.
- (4) **Subsections (1) to (3)** apply for—
 - (a) a person who becomes a New Zealand resident on or after 1 April 2006; and
 - (b) income years corresponding to the 2005–06 and subsequent tax years.

45 Enhancements to land, except trees

- (1) In section DO 1(1),—
 - (a) In the words preceding paragraph (a), “A person” is replaced by “Unless **subsection (1B)** applies, a person”:
 - (b) In paragraph (f), “rabbit-proof.” is replaced by “rabbit-proof:” and the following is added:
 - “(g) the regrassing and fertilising of all types of pasture, if the expenditure is not amortised under **section DO 4**.”
- (2) After section DO 1(1), the following is inserted:
 - “*Exclusion*
 - “(1B) Despite **subsection (1)(g)**, and except to the extent that the expenditure relates to a type of pasture with an estimated useful life of 1 year or less, a person is not allowed a deduction

under this section for an amount of expenditure that is incurred in the course of a significant capital activity.”

- (3) **Subsections (1) and (2)** apply to expenditure incurred on and after 1 April 2005.

46 Improvements to farm land

- (1) After section DO 4(7) (Link with subpart DA), the following is inserted:

“Order in Council to amend Schedule 7

- “(8) The Governor-General may from time to time by Order in Council, make regulations to amend Schedule 7 so as to vary the categories of improvements and percentages of diminished value of those improvements allowed as a deduction.”

- (2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

47 New section DV 10B inserted

- (1) After section DV 10, the following is inserted:

“DV 10B Distribution to member of co-operative company, excluded from being dividend

“Deduction

- “(1) A co-operative company, or a company owned by a co-operative company, is allowed a deduction for a distribution made for an income year to a member of the co-operative company if an amount of the distribution is excluded by **section CD 24B** (Distribution to member of co-operative company based on member’s transactions) from being a dividend.

“Amount of deduction

- “(2) The deduction for the distribution is the amount that is excluded by **section CD 24B** from being a dividend.

“Timing of deduction

- “(3) The deduction for the distribution is allocated to the income year for which the distribution is made.

“Link with subpart DA

“(4) This section supplements the general permission. The general limitations still apply.

“Defined in this Act: company, co-operative company, deduction, general permission, general limitation, income year, shareholder”.

(2) **Subsection (1)** applies for income years corresponding to the 2006–07 and subsequent tax years.

48 Trading stock, livestock, and excepted financial arrangements

(1) In section EA 1(1)(c), “arrangements)” is replaced by “arrangements):” and the following is added:

“(d) a right as a share supplier under a share-lending arrangement to acquire original shares or replacement shares, if the original shares are excepted financial arrangements described in paragraph (c).”

(2) **Subsection (1)** applies for income years beginning on or after the day on which this Act receives the Royal assent.

49 New section EC 5B inserted

(1) After section EC 5, the following is inserted:

“EC 5B Transfer of livestock because of self-assessed adverse event

“When this section applies

“(1) This section applies in an income year to livestock that is donated, or supplied for consideration worth less than the market value of the livestock, to a recipient—

“(a) for use in a farming or agricultural business that is affected by a self-assessed adverse event; and

“(b) by a donor or supplier who is not associated with the recipient.

“Treatment by donor or supplier

“(2) The donor or supplier must treat the livestock as having on the day of the transfer of the livestock—

“(a) no value, if the livestock is donated to the recipient:

“(b) the value of the consideration provided by the recipient, otherwise.

“Treatment by recipient

“(3) The recipient must treat the livestock as having on the day of the transfer of the livestock—

“(a) no value, if the livestock is donated to the recipient:

“(b) the value of the consideration provided by the recipient, otherwise.

“Defined in this Act: market value, self-assessed adverse event”.

(2) **Subsection (1)** applies for transfers of livestock in income years corresponding to the 2005–06 and subsequent tax years.

50 Valuation of excepted financial arrangements

(1) The heading to section ED 1(1) is replaced by *“Valuation method for excepted financial arrangement”*.

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

“Valuation method for right to acquire share under share-lending arrangement

“(1B) For a person who has a right as a share supplier under a share-lending arrangement to acquire revenue account property that is an excepted financial arrangement, the value of the right at the end of each income year is the cost of the original share at the time the person entered the share-lending arrangement.

“Valuation method for share acquired by share supplier under share-lending arrangement

“(1C) For a person who is a share supplier under a share-lending arrangement and acquires an original share or replacement share from the share user under the share-lending arrangement, the value of the share at the end of each income year is the cost of the original share at the time the person entered the share-lending arrangement.”

(3) **Subsections (1) and (2)** apply for income years beginning on or after the day on which this Act receives the Royal assent.

51 Transfers of certain excepted financial arrangements within wholly-owned groups

(1) In section ED 2(1), the following is inserted after paragraph (a):

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“(ab) the transfer of the excepted financial arrangement is not made under a share-lending arrangement; and”.

- (2) **Subsection (1)** applies for income years beginning on or after the day on which this Act receives the Royal assent.

52 What this subpart does

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

“Choice for allocation of deduction—property used for research, development

“(4B) A person who uses an item for research or development in an income year, and as a result has an amount of depreciation loss for the item for the income year, may choose to allocate all or part of the deduction for the depreciation loss—

“(a) to an income year after the income year for which the person has the depreciation loss; and

“(b) in the way required by **section EJ 21** (Allocation of deductions for research, development, resulting market development).”

- (2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

53 Economic rate

- (1) After section EE 25(5), the following is added:

“Application of section: acquisition date for depreciable property

“(6) This section applies to economic depreciation rates required to be set for items of depreciable property that are—

“(a) plant or equipment acquired before 1 April 2005:

“(b) buildings acquired before 19 May 2005.”

- (2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

54 New sections EE 25B and EE 25C inserted

- (1) After section EE 25, the following are inserted:

“EE 25B **Economic rate for certain depreciable property
acquired on or after 1 April 2005**

“What this section is about

“(1) This section is about setting the economic depreciation rate that applies to a kind of item of depreciable property.

“Exclusion

“(2) This section does not apply to buildings, fixed life intangible property, or excluded depreciable property, for which an economic rate cannot be set.

“Rate set by Commissioner

“(3) The Commissioner sets the rate from time to time by—
“(a) following the procedure set out in this section; and
“(b) issuing a determination under section 91AAF of the Tax Administration Act 1994.

“Procedure for setting economic rate

“(4) To set the diminishing value rate for a kind of item of depreciable property, the Commissioner—
“(a) gets a figure by applying the formula in **subsection (5)** to items of that kind; and
“(b) rounds the figure up or down to the nearest rate specified in schedule 11B, column 1; and
“(c) sets the same rate for some or all of the kinds of items of depreciable property that are similar to one another, if the Commissioner thinks it is appropriate to do so having regard to—
“(i) the rate calculated for each kind; and
“(ii) the reduction in compliance costs that is likely to be achieved.

“Formula

“(5) The formula is—

$$\frac{2}{\text{estimated useful life}}$$

“Definition of item in formula

- “(6) In the formula, **estimated useful life** is the estimated useful life of the item expressed in years.

“Defined in this Act: Commissioner, depreciable property, diminishing value rate, economic rate, estimated useful life, excluded depreciable property, fixed life intangible property

“EE 25C Economic rate for depreciation of building acquired on or after 19 May 2005

“What this section is about

- “(1) This section is about setting the economic depreciation rate that applies to a kind of item of depreciable property that is a building.

“Rate set by Commissioner

- “(2) The Commissioner sets the rate from time to time by—
“(a) following the procedure set out in this section; and
“(b) issuing a determination under section 91AAF of the Tax Administration Act 1994.

“Procedure for setting economic rate

- “(3) To set the diminishing value rate for a kind of item of depreciable property, the Commissioner—
“(a) gets a figure by applying the formula in **subsection (4)** to items of that kind; and
“(b) rounds the figure up or down to the nearest rate specified in schedule 11B, column 4; and
“(c) sets the same rate for some or all of the kinds of buildings that are similar to one another, if the Commissioner thinks it is appropriate to do so having regard to—
“(i) the rate calculated for each kind; and
“(ii) the reduction in compliance costs that is likely to be achieved.

“Formula

- “(4) The formula is—

$$\frac{1}{\text{estimated useful life}}$$

“Definition of item in formula

- “(5) In the formula, **estimated useful life** is the estimated useful life of the item expressed in years.

“Contracts existing at 19 May 2005

- “(6) Despite **subsection (1)**, a building that is the subject of a contract that was entered into before 19 May 2005 must be treated on the basis of the ownership of the building immediately before 19 May 2005.

“Defined in this Act: Commissioner, depreciable property, diminishing value rate, economic rate, estimated useful life, excluded depreciable property, fixed life intangible property”.

- (2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

55 New section EE 26B inserted

After section EE 26, the following is inserted:

“EE 26B Election in respect of certain depreciable property acquired on or after 1 April 2005 and before 2005–06 income year

“Election

- “(1) Subject to **subsection (2)**, a person who acquired an item of depreciable property that is not a building on or after 1 April 2005 and before the commencement of the person’s income year corresponding to the 2005–06 tax year may elect to calculate the depreciation loss for that item for income years corresponding to the 2005–06 and subsequent tax years in accordance with the economic depreciation rate determined under **sections EE 25B**.

“Election to be made in return of income

- “(2) For an item of depreciable property, an election under **subsection (1)** must be made in the person’s 2005–06 return of income.

“Defined in this Act: depreciation loss, depreciable property, economic depreciation rate, income year”.

56 Items of low value

- (1) In section EE 31(1) the subsection heading is replaced by “*Assets acquired on or before 19 May 2005*”.
- (2) In section EE 31(1)(a), “(on or before 19 May 2005)” is inserted after “acquires”.
- (3) After section EE 31(1), the following is inserted:

“Assets acquired after 19 May 2005

“(1B) This section applies when—

- “(a) a person acquires (after 19 May 2005), in an income year, an item of property for a total cost of \$500 or less; and
- “(b) the person uses the item, or has the item available for use, in the income year; and
- “(c) the item would be depreciable property if the person did not deal with it under this section; and
- “(d) the item has not and will not become part of any other property that is depreciable property; and
- “(e) the person is denied a deduction for the cost of the item if the person does not deal with the item under this section; and
- “(f) the item is not acquired at the same time and from the same supplier as any other items to which the same depreciation rate would apply if they were all treated as items of depreciable property, although this paragraph does not apply if—
 - “(i) the total cost of all the items is \$500 or less; or
 - “(ii) the total cost of all the items that are not treated by the person solely as trading stock, when the items generally constitute the person’s trading stock, is \$500 or less.”

57 Consideration for purposes of section EE 37

- (1) After section EE 38 (1), the following is added:

“Amount derived may be nil or negative

“(1B) For the purposes of section EE 37, an amount that a person derives as consideration may be nil or a negative amount.”

- (2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

58 Other definitions

- (1) In section EE 58, in the definition of **economic rate**, “section EE 25” is replaced by “section EE 25, **25B**, or **25C**”.
- (2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

59 ACC levies and premiums

- (1) In section EF 3(3), “column E (Months for payment of provisional tax and terminal tax) is to be treated as if it were due and payable on the relevant date in column D of that part of the schedule” is replaced by “column H (Dates for payment of provisional tax) is treated as if it were due and payable on the relevant date in schedule 13, part A, column G for the person’s corresponding income year”.
- (2) Section EF 3(4), other than the heading, is replaced by the following:
 - “(4) For the purposes of subsection (3), references to the date in schedule 13, part A, columns G and H (which refer to months only and not days) are references to the day in the relevant month that is fixed by the following:
 - “(a) the definition of **instalment date** in section OB 1 (Definitions); and
 - “(b) **sections MB 1(3), and MB 19 to 23** (which relate to provisional tax instalments in transitional years), and **MC 1** (Payment of terminal tax).”
- (3) In the list of defined terms for section EF 3, the references to “first instalment date”, “second instalment date”, and “third instalment date” are omitted.
- (4) **Subsections (1) to (3)** apply for income years corresponding to the 2007–08 and subsequent tax years.

60 Meaning of self-assessed adverse event

- (1) Section EH 36 is repealed.
- (2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

61 Meaning of self-assessed adverse event

- (1) Section EH 63 is repealed.

- (2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

62 New heading and sections EJ 20 and EJ 21 inserted

- (1) After section EJ 19, the following is inserted:

“Research, development, resulting market development

“EJ 20 Deductions for market development—product of research, development

“Deduction affected

- “(1) This section applies to a person who has a deduction for expenditure that is not interest and is incurred—
- “(a) on market development for a product that has resulted from expenditure incurred by the person on research or development; and
 - “(b) before the person first derives assessable income from the use of the product; and
 - “(c) before the person begins commercial production of the product.

“Choice for allocation of deduction

- “(2) The person may choose to allocate all or part of the deduction to an income year—
- “(a) after the income year in which the person incurs the expenditure; and
 - “(b) in the way required by **section EJ 21**.

“Defined in this Act: assessable income, deduction, development, income year, research

“EJ 21 Allocation of deductions for research, development, resulting market development

“Deduction affected

- “(1) This section applies for a person to—
- “(a) a deduction, for expenditure incurred on research or development, that the person chooses to allocate under **section DB 26(6B)** (Research or development):

- “(b) a deduction, for depreciation losses for an item used in the research or development, that the person chooses to allocate under **section EE 1(4B)** (What this subpart does):
- “(c) a deduction, for expenditure incurred on market development for a product that has resulted from expenditure incurred on research or development, that the person chooses to allocate under **section EJ 20(2)**.

“Timing of allocated deduction

- “(2) The person must allocate a deduction to an income year—
 - “(a) in which the person derives assessable income that the person would not have derived but for—
 - “(i) expenditure that gives rise to a deduction that may be allocated under this section:
 - “(ii) the use of an item for which the person has a depreciation loss that may be allocated under this section:
 - “(b) to which the person would be permitted by Part I (Treatment of net losses) to carry forward a net loss for the income year in which the expenditure or depreciation loss was incurred.

“Amount of deduction allocated to income year

- “(3) A person must allocate to an income year an amount of deductions that is not less than the lesser of—
 - “(a) the amount of assessable income referred to in **subsection (2)(a)** that the person derives in the income year:
 - “(b) the amount of the deductions that has not been allocated to earlier income years.

“Defined in this Act: assessable income, deduction, depreciation losses, development, income year, research”.

- (2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

63 What is an excepted financial arrangement?

- (1) After section EW 5(11), the following is inserted:
 - “(11B) A share-lending arrangement is an excepted financial arrangement.”
- (2) After section EW 5(15), the following is inserted:

“Certain arrangements to which certified resident is party

- “(15B) An arrangement to which a certified resident is a party is an excepted financial arrangement for the certified resident if—
- “(a) the certified resident is a non-resident when becoming a party to the arrangement; and
 - “(b) no other party to the arrangement is a New Zealand resident; and
 - “(c) the arrangement is not for a purpose of a business carried on in New Zealand by a party to the arrangement.”
- (3) **Subsection (1)** applies for income years beginning on or after the day on which this Act receives the Royal assent.
- (4) **Subsection (2)** applies for—
- (a) a person who becomes a New Zealand resident on or after 1 April 2006; and
 - (b) income years corresponding to the 2005–06 and subsequent tax years.

64 Consideration for agreement for sale and purchase of property or services, hire purchase agreement, specified option, or finance lease

- (1) Section EW 32(7), other than the heading, is replaced by the following:
- “(7) This section does not apply if the agreement, option, or lease—
- “(a) has lapsed or does not proceed:
 - “(b) is a transaction—
 - “(i) that is part of share-lending arrangement; and
 - “(ii) to which **section EW 34B or EW 34C** applies.”
- (2) **Subsection (1)** applies for income years beginning on or after the day on which this Act receives the Royal assent.

65 Consideration when person enters rules: accrued obligation

- (1) Section EW 37(1), other than the heading, is replaced by the following:
- “(1) This section applies to a person who is a party to a financial arrangement if, when the person has an accrued obligation to pay consideration under the arrangement, 1 or more of the following situations arise:

- “(a) the person is a non-resident who becomes a party to the arrangement for the purpose of a business carried on by the person through a fixed establishment in New Zealand:
 - “(b) the person is a non-resident who—
 - “(i) becomes a New Zealand resident who is not a certified resident; and
 - “(ii) is not, immediately before becoming a New Zealand resident, a party to the arrangement for the purpose of a business carried on by the person through a fixed establishment in New Zealand:
 - “(c) the person is a certified resident for whom the arrangement ceases to be an excepted financial arrangement described in **section EW 5(15B)**:
 - “(d) the person is a certified resident who becomes a New Zealand resident who is not a certified resident, resulting in the arrangement ceasing to be an excepted financial arrangement described in **section EW 5(15B)**:
 - “(e) the person stops using the arrangement for a private or domestic purpose, resulting in the arrangement ceasing to be an excepted financial arrangement described in any of section EW 5(16) to (18).”
- (2) In section EW 37, in the list of terms defined in the Act,—
- (a) “certified resident” is inserted:
 - (b) “New Zealand resident” is inserted:
 - (c) “non-resident” is inserted:
 - (d) “resident in New Zealand” is omitted.
- (3) **Subsections (1) and (2)** apply for—
- (a) a person who becomes a New Zealand resident on or after 1 April 2006; and
 - (b) income years corresponding to the 2005–06 and subsequent tax years.

66 Consideration when person enters rules: accrued entitlement

- (1) Section EW 42(1), other than the heading, is replaced by the following:
- “(1) This section applies to a person who is a party to a financial arrangement if, when the person has an accrued entitlement to

receive consideration under the arrangement, 1 or more of the following situations arise:

- “(a) the person is a non-resident who becomes a party to the arrangement for the purpose of a business carried on by the person through a fixed establishment in New Zealand:
 - “(b) the person is a non-resident who—
 - “(i) becomes a New Zealand resident who is not a certified resident; and
 - “(ii) is not, immediately before becoming a New Zealand resident, a party to the arrangement for the purpose of a business carried on by the person through a fixed establishment in New Zealand:
 - “(c) the person is a certified resident for whom the arrangement ceases to be an excepted financial arrangement described in **section EW 5(15B)**:
 - “(d) the person is a certified resident who becomes a New Zealand resident who is not a certified resident, resulting in the arrangement ceasing to be an excepted financial arrangement described in **section EW 5(15B)**:
 - “(e) the person stops using the arrangement for a private or domestic purpose, resulting in the arrangement ceasing to be an excepted financial arrangement described in any of section EW 5(16) to (18).”
- (2) In section EW 42, in the list of terms defined in the Act,—
- (a) “certified resident” is inserted:
 - (b) “New Zealand resident” is inserted:
 - (c) “non-resident” is inserted:
 - (d) “resident in New Zealand” is omitted.
- (3) **Subsections (1) and (2)** apply for—
- (a) a person who becomes a New Zealand resident on or after 1 April 2006; and
 - (b) income years corresponding to the 2005–06 and subsequent tax years.

67 New heading and section EW 52B inserted

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

“Treatment of original share acquired under financial arrangement

“EW 52B **Share supplier under share lending arrangement**

“When this section applies

- “(1) This section applies to a person who—
- “(a) acquires a share under a financial arrangement (the **original financial arrangement**); and
 - “(b) is the share supplier for a share lending arrangement; and
 - “(c) disposes of the share to the share user as an original share under the share lending arrangement.

“Treatment of reacquisition of original share

- “(2) If the person reacquires the original share under the share lending arrangement, for the purposes of applying the financial arrangements rules to the original financial arrangement—
- “(a) the person did not dispose of the original share to the share user; and
 - “(b) the person continued to own the original share until the time that the person reacquired the original share.

“Treatment of acquisition of replacement share

- “(3) If the person acquires a replacement share under the share lending arrangement, for the purposes of the financial arrangements rules in relation to the original financial arrangement—
- “(a) the replacement share is the share that the person acquired under the original financial arrangement; and
 - “(b) the person continued to own the replacement share until the time that the person acquired the replacement share.

“Defined in this Act: financial arrangement, financial arrangements rules, original share, replacement share, share, share lending arrangement, share supplier, share user”.

- (2) **Subsection (1)** applies for income years beginning on or after the day on which this Act receives the Royal assent.

68 Income interests on days of non-residence

- (1) The heading to section EX 16 is replaced by “**Income interests for certain purposes**”.

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- (2) Section EX 16(1), other than the heading, is replaced by the following:
- “(1) This section applies for the purposes of determining the attributed CFC income or loss of a person for a period if the person holds an income interest in the CFC on a day in the period.”
- (3) Section EX 16(2), other than the heading, is replaced by the following:
- “(2) For the purposes of calculating the attributed CFC income or loss of a person for a period, the person has an income interest in a CFC of zero on a day in the period if, on the day, the person is—
- “(a) a non-resident:
- “(b) a certified resident.”
- (4) In section EX 16, “certified resident” is inserted in the list of terms defined in the Act.
- (5) **Subsections (1) to (4)** apply for—
- (a) a person who becomes a New Zealand resident on or after 1 April 2006; and
- (b) income years corresponding to the 2005–06 and subsequent tax years.

69 Section EX 17 replaced

- (1) Section EX 17 is replaced by the following:
- “EX 17 Income interest for period if variations within period**
- “Section applies if income interest varies within period*
- “(1) This section applies if a person’s income interest in a CFC, calculated under sections EX 8 to EX 16, varies between days in a period.
- “Weighted average*
- “(2) The person’s income interest for the period is the total of the amounts for the period, each of which is calculated using the formula in **subsection (3)** for a day in the period.
- “Formula*
- “(3) The formula is—
- $$\frac{\text{income interest for day}}{\text{days in period}}$$

“Definition of items in formula

- “(4) In the formula,—
- “(a) **income interest for day** is—
 - “(i) the income interest during the day, if the income interest does not vary during the day:
 - “(ii) the income interest at the start of the day, if the income interest varies during the day:
 - “(b) **days in period** is the number of days in the period.
- “Defined in this Act: CFC, income interest”.
- (2) **Subsection (1)** applies for—
- (a) a person who becomes a New Zealand resident on or after 1 April 2006; and
 - (b) income years corresponding to the 2005–06 and subsequent tax years.

70 Residence in grey list country

Section EX 24(1), except for the heading, is replaced by the following:

- “(1) For the purposes of this subpart and subparts CQ (Attributed income from foreign equity) and DN (Attributed losses from foreign equity), a CFC is resident in a country listed in schedule 3, part A (International tax rules: grey list countries) if—
- “(a) the CFC is liable in the country to income tax on the CFC’s income because the CFC—
 - “(i) is domiciled in the country:
 - “(ii) is resident in the country:
 - “(iii) is incorporated in the country:
 - “(iv) has its place of management in the country:
 - “(b) the CFC is organised under the laws of the country and the country—
 - “(i) imposes on persons holding income interests in the CFC the liability for income tax on the CFC’s income; and
 - “(ii) under the laws of the country, is the source of 80% or more of the income of the CFC.”

71 Grey list exemption

Section EX 33(1), except for the heading, is replaced by the following:

- “(1) A person’s rights in a FIF in an income year are not an attributing interest if, at all times in the income year—
- “(a) the FIF is not an entity described in schedule 4, part B (Foreign investment funds); and
 - “(b) there is a country listed in schedule 3, part A (International tax rules: grey list countries) that in relation to the FIF satisfies at least 1 of the grounds for exemption given by **subsections (1B) and (1C)**.

“First ground for exemption

- “(1B) The country—
- “(a) is the residence of the FIF under section OE 2(3) to (6) (Determination of residence of company); and
 - “(b) imposes on the FIF liability for income tax on the FIF’s income because the FIF—
 - “(i) is domiciled in the country;
 - “(ii) is resident in the country;
 - “(iii) is incorporated in the country;
 - “(iv) has its place of management in the country;

“Second ground for exemption

- “(1C) The country—
- “(a) is the country under whose laws the FIF is organised; and
 - “(b) imposes on persons holding income interests in the FIF liability for income tax on the FIF’s income; and
 - “(c) under the laws of the country, is the source of 80% or more of the income of the FIF.”

72 Section EX 35 replaced

- (1) Section EX 35 is replaced by the following:

“EX 35 Income interest of non-resident or certified resident

A person’s rights in a FIF at any time are not an attributing interest if—

- “(a) the person is a natural person; and
- “(b) the person acquires the rights when a non-resident or certified resident; and

“(c) the person is a non-resident or certified resident at the time.

“Defined in this Act: attributing interest, certified resident, FIF, New Zealand resident, non-resident”.

- (2) **Subsection (1)** applies for—
- (a) a person who becomes a New Zealand resident on or after 1 April 2006; and
 - (b) income years corresponding to the 2005–06 and subsequent tax years.

73 New resident’s accrued superannuation entitlement exemption

- (1) Section EX 36(2) is replaced by:
- “Rights accruing before or after becoming resident*
- “(2) The rights must have accrued during a period—
- “(a) for which the person is not a New Zealand resident:
 - “(b) for which the person is a New Zealand resident and that—
 - “(i) begins with the time at which the person becomes a New Zealand resident; and
 - “(ii) ends before the commencement of the fifth income year following the income year in which the person becomes a New Zealand resident.”
- (2) In section EX 36(3), “before the person first became a resident” is omitted.
- (3) In section EX 36(4)(a), “on the day on which the person first became a New Zealand resident” is replaced by “described in subsection (2)”.
- (4) **Subsections (1) to (3)** apply for—
- (a) a person who becomes a New Zealand resident on or after 1 April 2006; and
 - (b) income years corresponding to the 2005–06 and subsequent tax years.

74 Comparative value method

In section EX 44(6), “including income tax on the income of the FIF for which the person is liable in the country in which the FIF is resident” is inserted after “interest”.

75 Deemed rate of return method

In section EX 45(6)(b), “, including income tax on the income of the FIF for which the person is liable in the country in which the FIF is resident,” is inserted after “interest”.

76 Migration of persons holding FIF interests

(1) Section EX 52(3)(a) is replaced by the following:

“(a) is a non-resident or a certified resident; and

“(ab) becomes a New Zealand resident who is not a certified resident; and”.

(2) In section EX 52(3)(c), “change of residence” is replaced by “change of residence or status”.

(3) Section EX 52(5)(a) is replaced by the following:

“(a) ceases to be—

“(i) a New Zealand resident who is not a certified resident, and becomes a non-resident:

“(ii) a non-resident or a certified resident, and becomes a New Zealand resident who is not a certified resident; and”.

(4) In section EX 52, in the list of terms defined in the Act,—

(a) “certified resident” is inserted:

(b) “New Zealand resident” is inserted:

(c) “non-resident” is inserted:

(d) “resident of New Zealand” is omitted.

(5) **Subsections (1) to (4)** apply for—

(a) a person who becomes a New Zealand resident on or after 1 April 2006; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

77 Section EZ 29 replaced

(1) Section EZ 29 is replaced by the following:

“EZ 29 Disclosure restrictions on grey list CFCs before 2011–12

“No attributed CFC income from taxable distribution

“(1) No attributed CFC income arises under section EX 19 (Taxable distribution from non-qualifying trust) in respect of a person’s income interest in a CFC if **subsection (4)** applies.

“No branch equivalent income or loss

- “(2) No branch equivalent income or loss arises under section EX 21 (Branch equivalent income or loss: calculation rules) in respect of a person’s income interest in a CFC if **subsection (4)** applies.

“No FIF income or loss

- “(3) No FIF income or loss arises under section EX 46 (Additional FIF income or loss if CFC owns FIF) in respect of a person’s income interest in a CFC if **subsection (5)** applies.

“Application of subsections (1) and (2)

- “(4) **Subsection (1) or (2)** applies in respect of a person’s income interest for an accounting period in a CFC if—
- “(a) the income interest arises from an interest of the person in a CFC that satisfies **subsection (6)**; and
 - “(b) the person holds information that would, if considered by the Commissioner, satisfy the Commissioner under **subsection (7)**.

“Application of subsection (3)

- “(5) **Subsection (3)** applies in respect of a person’s income interest for an accounting period in a CFC if—
- “(a) the income interest satisfies **subsection (6)**; and
 - “(b) the person holds information that would, if considered by the Commissioner, satisfy the Commissioner under **subsection (7)**.

“Relevant grey list CFC

- “(6) An interest in a CFC satisfies this subsection for an accounting period if the CFC is, throughout the accounting period,—
- “(a) resident in a country on the grey list; and
 - “(b) quoted on the official list of a recognised exchange in the country; and
 - “(c) under the rules of the country or the rules of the exchange,—
 - “(i) prevented from disclosing to the person information necessary for calculating attributed CFC income or loss or FIF income or loss:

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“(ii) required, as a result of the disclosure, to make a further disclosure of information that would be harmful to the commercial interests of the CFC.

“Person must satisfy Commissioner

“(7) For this section to apply in respect of a person’s income interest for an accounting period in a CFC, the person must hold information that would satisfy the Commissioner that, for the accounting period, an effect of the law or rules referred to in **subsection (6)** is that the person cannot calculate the attributed CFC income or loss or FIF income or loss in respect of the income interest.

“Section terminates after 2010–11 income year

“(8) This section does not apply to the tax on income derived in an income year after the 2010–11 income year.

“Defined in this Act: accounting period, attributed CFC income, attributed CFC income or loss, branch equivalent income or loss, Commissioner, CFC, FIF, FIF income or loss, grey list, income, income interest, income year, recognised exchange, tax”.

(2) **Subsection (1)** applies for income years corresponding to the 2006–07 to 2010–11 income years.

78 New subpart FCB inserted

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

“Subpart FCB—Emigration of resident companies

“FCB 1 **Tax effects of company becoming non-resident to reflect tax effects of liquidation**

“(1) This subpart applies to an **emigrating company**, which is a company that—

“(a) is a New Zealand resident; and

“(b) ceases to be a New Zealand resident.

“(2) The intended effect of this subpart and related provisions of the Act is that, for the purposes of the Act, the effects on an emigrating company and its shareholders when the emigrating company becomes a non-resident reflect the effects that would have resulted if—

“(a) immediately before the emigration time—

- “(i) the emigrating company disposed of its property at market value; and
- “(ii) the emigrating company went into liquidation; and
- “(iii) the amount available for distribution in the liquidation were distributed as dividends to the shareholders of the emigrating company; and
- “(b) at the emigration time, the emigrating company were reformed as a foreign company that—
 - “(i) had the same ownership and business activities as those of the emigrating company immediately before the emigration time; and
 - “(ii) had acquired at market value the property of the emigrating company immediately before the emigration time.

“FCB 2 Emigrating company treated as paying distribution to shareholders

Immediately before the emigration time for an emigrating company—

- “(a) the emigrating company is treated as paying, as dividends, a distribution in money to shareholders of the amount that would be available for distribution to the shareholders if, immediately before the emigration time, the emigrating company—
 - “(i) disposed of its property at market value; and
 - “(ii) went into liquidation; and
- “(b) each shareholder in the emigrating company is treated as being paid by the emigrating company, as a dividend, a distribution in money of the amount to which the shareholder would be entitled in such a liquidation.

“FCB 3 Emigrating company treated as disposing of property and immediately reacquiring property

An emigrating company is treated as, immediately before the emigration time for the emigrating company,—

- “(a) disposing of the property of the emigrating company to another person for consideration equal to the market value of the property at the emigration time; and

“(b) acquiring the property referred to in **paragraph (a)** from the other person for consideration equal to the amount referred to in **paragraph (a)**.”

- (2) **Subsection (1)** applies for—
- (a) a company that becomes a non-resident on or after 21 March 2005; and
 - (b) income years corresponding to the 2005–06 and subsequent tax years.

79 Amalgamation of companies: purpose

- (1) In section FE 1(2)(a), “MB 11” is replaced by “**MB 34**”.
- (2) **Subsection (1)** applies for income years corresponding to the 2007–08 and subsequent tax years.

80 Arrangement to defeat application of depreciation provisions

- (1) In section GC 6, “For the purposes of sections EZ 16 to EZ 18 and FF 15, where” is replaced by “If”.
- (2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

81 New section GC 17B inserted

- (1) After section GC 17, the following is inserted:

“GC 17B Fringe benefit tax: arrangement void

- “(1) If an arrangement is void under section BG 1, the amount of excluded income under section CX 3 of a person affected by the arrangement may be adjusted by the Commissioner in the manner the Commissioner thinks appropriate, so as to counteract any tax advantage obtained by that person from or under the arrangement, and without limiting the generality of this subsection, the Commissioner may have regard to—

“(a) the amount of excluded income as, in the Commissioner’s opinion, the person would have, or might be expected to have, or would in all likelihood have, had if the arrangement had not been made or entered into; or

“(b) the amount of excluded income as, in the Commissioner’s opinion, the person would have had if they had been allowed the benefit of some or all the excluded income, as the Commissioner considers proper, derived

by any other person or persons as a result of the arrangement.

- “(2) If an amount of excluded income is included in the income of a person under **subsection (1)**, then, for the purposes of this Act, that amount is not included in the income of any other person.”
- (2) **Subsection (1)** applies for a person’s liability for fringe benefit tax for a period beginning on or after 1 April 2006.

82 Sale or other disposition of trading stock for inadequate consideration

- (1) In section GD 1(1), “subsection (2)” is replaced by “subsections **(1B)** and (2)”.
- (2) After section GD 1(1), the following is inserted:
“Exclusion
- “(1B) Subsection (1) does not apply to a share disposed of by a share user to a share supplier under a share-lending arrangement.”
- (3) Section GD 1(4)(b) is replaced by the following:
“(b) is donated, or supplied for consideration worth less than the market value of the trading stock, to a person—
“(i) for use in a farming, agricultural, or fishing business that is affected by a self-assessed adverse event; and
“(ii) by a donor or supplier who is not associated with the person.”
- (4) **Subsections (1) and (2)** apply for income years beginning on or after the day on which this Act receives the Royal assent.
- (5) **Subsection (3)** applies for transfers of trading stock in income years corresponding to the 2005–06 and subsequent tax years.

83 Returns, assessments, and liability of consolidated group

- (1) In section HB 1(5)(b), “section MB 7(1) does” is replaced by “**sections MB 29 and MB 30** do”.
- (2) **Subsection (1)** applies for income years corresponding to the 2007–08 and subsequent tax years.

84 Payment of qualifying company election tax

- (1) In section HG 12(2)(c), “section 120K” is replaced by “**sections 120KB to 120KE**”.
- (2) **Subsection (1)** applies for income years corresponding to the 2007–08 and subsequent tax years.

85 Interpretation

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

86 Trusts settled by persons before becoming resident

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

“(1A) This section applies to a trust if—

- “(a) a settlor of the trust is a natural person who on a day (the **transition day**) becomes a New Zealand resident who is not a certified resident; and
- “(b) the trust would be a foreign trust in relation to a distribution made from property of the trust if the distribution were made on the day immediately before the settlor became a New Zealand resident.

“(1) If this section applies to a trust, a settlor, trustee, or beneficiary of the trust may, within 12 months of the transition day, elect under section HH 4(7) to satisfy the income tax liability in respect of the taxable income of the trustee of the trust.”

- (2) In section HH 2(3)(a), “the day on which the settlor first became resident in New Zealand” is replaced by “the transition day”.
- (3) **Subsections (1) and (2)** apply for—
 - (a) a person who becomes a New Zealand resident on or after 1 April 2006; and
 - (b) income years corresponding to the 2005–06 and subsequent tax years.

87 Trustee income

- (1) Section HH 4(3)(a) is replaced by the following:

“(a) any settlor of the trust is a New Zealand resident who is not a certified resident; or”

- (2) In section HH 4(3B), in the words before paragraph (a), “resident in New Zealand at any time during the tax year” is replaced by “at any time in the tax year a New Zealand resident who is not a certified resident”.
- (3) After section HH 4(3B), the following is inserted:

“(3BB) Subsection (3B) does not apply for an income year to a New Zealand resident trustee of a foreign trust to which **sections 22(2)(fb) and (m) and 59B** of the Tax Administration Act 1994 apply if—

 - “(a) the New Zealand resident trustee, having been given notice of the Commissioner’s intention to prosecute the trustee under **section 143(1)(d)** of the Tax Administration Act 1994, fails to become a qualifying New Zealand resident trustee within 30 days of the notice:
 - “(b) there is no qualifying New Zealand resident trustee of the foreign trust for the income year and there is a record for the income year that—
 - “(i) section 22 of the Tax Administration Act 1994 requires the New Zealand resident trustee to keep; and
 - “(ii) the Commissioner requests be produced for inspection; and
 - “(iii) is not produced for inspection.”
- (4) **Subsections (1) and (2)** apply for income years corresponding to the 2005–06 and subsequent tax years.

88 Application of other provisions to withdrawal tax

- (1) In section IZ 7(b), “section 120K” is replaced by “**sections 120KB to 120KE**”.
- (2) **Subsection (1)** applies for income years corresponding to the 2007–08 and subsequent tax years.

89 Rebate in certain cases for children

- (1) Section KC 2(e) is replaced by the following:

“(e) \$351:”.
- (2) **Subsection (1)** applies for income years corresponding to the 2006–07 and subsequent tax years.

90 Calculation of family tax credit

(1) In section KD 3(1), after paragraph (b) of the definition of **qualifying person**, the following is inserted:

“(bb) is not a certified resident; and

“(bc) is not the spouse, civil union partner, or de facto partner of a certified resident; and”.

(2) **Subsection (1)** applies for—

(a) a person who becomes a New Zealand resident on or after 1 April 2006; and

(b) income years corresponding to the 2005–06 and subsequent tax years.

91 Credit of tax for imputation credit

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

“(1B) A taxpayer who receives an imputation credit as a share user in a returning securities transfer is not entitled under **subsection (1)** to a credit of tax.”

92 Foreign tax credits: CFCs

Section LC 4(1) is replaced by the following:

“(1) Subject to this section, a person who has attributed CFC income for an income year in respect of an income interest in a controlled foreign company is allowed a credit against the person’s income tax liability for—

“(a) income tax paid or payable in New Zealand or another country or territory by the controlled foreign company in respect of the attributed CFC income:

“(b) withholding tax paid or payable in New Zealand or another country or territory on behalf of the controlled foreign company in respect of the attributed CFC income:

“(c) income tax paid or payable in a country or territory other than New Zealand by the person in respect of the attributed CFC income.

“(1B) For the purposes of this section, income tax or withholding tax paid or payable in a currency other than New Zealand currency must be converted into New Zealand currency by, at the option of the person who has the attributed CFC income,—

“(a) applying the close of trading spot exchange rate applicable on the date when the income tax or withholding tax was paid or became payable; or

“(b) applying the average of the close of trading spot exchange rates for the 15th day of each complete month falling within the period to which the attributed CFC income relates.

“(1C) The Commissioner must amend an assessment of a person for an income year to reflect the amount of a credit under **subsection (1)** to which the person is entitled if—

“(a) the amount of the credit cannot be determined before the time by which the person must file a return of income for the income year; and

“(b) the Commissioner receives a written request for the amended assessment from the person within 4 years after the end of the income year.”

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

(1) In section LD 3(2), in the words before paragraph (a), “, not being a replacement payment made under a share-lending arrangement,” is inserted after “any amount of resident withholding income”.

(2) **Subsection (1)** applies for income years beginning on or after the day on which this Act receives the Royal assent.

94 Underlying foreign tax credits generally, and interpretation

Section LF 1(1)(a) is replaced by the following:

“(a) allows in certain circumstances a company resident in New Zealand to claim a credit against a liability to pay a dividend withholding payment in respect of a foreign withholding payment dividend paid by a foreign company; and

“(ab) provides that the amount of the credit, in general terms, be calculated to reflect a proportionate share of the New Zealand and foreign income tax paid, or deemed to be paid,—

- “(i) on the income of the foreign company that gives rise to the foreign withholding payment dividend; and
- “(ii) by the company, the foreign company, or another company directly or indirectly funding the foreign withholding payment dividend; and”.

95 Amount of underlying foreign tax credit

In section LF 3(1)—

- (a) in the definition of **item a**, “and without any reduction under section **section CD 10B**” is inserted after “withholding tax”:
- (b) in the definition of **item b**, “by the company” is replaced by “on the income of the company”.

96 Dividends from grey list companies

(1) Section LF 5(1)(b) is replaced by the following:

- “(b) for all eligible accounting years, a country or territory specified in schedule 3, part A—
 - “(i) is the residence of the company under section OE 2(3) to (6) and imposes on the company liability for income tax on the company’s income because the company is domiciled in the country, is resident in the country, is incorporated in the country, or has its place of management in the country:
 - “(ii) is the country under whose laws the company is organised and imposes on persons holding income interests in the company a liability for income tax on the company’s income and is the source of 80% of the company’s income; and”

(2) In section LF 5(1)(c), “the company has in respect of all eligible accounting years, for the purposes of income tax in the country or territory, calculated its income liable to income tax” is replaced by “for all eligible accounting years, the income of the company that is liable to income tax in the country or territory is calculated”.

- 97 Procedures with respect to underlying foreign tax credit**
In section LF 6(4), “a company is treated as having no amount of income tax paid or payable with respect to its earnings” is replaced by “no amount of income tax is paid or payable in respect of earnings of a company”.
- 98 Provisional taxpayer affected by qualifying event**
- (1) In the heading to section MB 3B, “**qualifying event**” is replaced by “**self-assessed adverse event**”.
 - (2) Section MB 3B(1) is replaced by the following:
 - “(1) This section applies to a taxpayer with a farming, agricultural, or fishing business that is significantly affected by a self-assessed adverse event”.
 - (3) In section MB 3B(3),—
 - (a) paragraph (a) is replaced by the following:
 - “(a) the taxpayer’s business is significantly affected by the self-assessed adverse event; and”;
 - (b) in paragraph (b), in the words before subparagraph (i), “a qualifying event” is replaced by “the self-assessed adverse event”.
 - (4) **Subsections (1) to (3)** apply for income years corresponding to the 2005–06 and subsequent tax years.
- 99 New section MB 11B inserted**
- (1) After section MB 11, the following is inserted:

“**MB 11B Transitional provisions relating to alignment of dates of payment for provisional tax and GST**

“Aligning taxable periods

 - “(1) For a provisional taxpayer with a GST liability, if a change in balance date means that the taxpayer’s taxable period is not aligned with the balance date, an adjustment must be made to their taxable period under **section 15AB** of the Goods and Services Tax Act 1985.

“Application of subsections (3) and (4)

 - “(2) **Subsections (3) and (4)** apply when a provisional taxpayer with a GST liability changes under **section 15AB** of the Goods and Services Tax Act 1985 their cycle of taxable periods.

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“When taxable periods aligned

- “(3) The change takes effect as described in **section 15AB** of that Act if the following coincide:
- “(a) the end of the taxable period in which the taxpayer—
 - “(i) applies to change the basis on which the taxpayer’s taxable period is set:
 - “(ii) is required to change the basis on which the taxpayer’s taxable period is set:
 - “(b) the start of the taxable period in the taxpayer’s new cycle.

“When taxable periods not aligned

- “(4) If **subsection (3)** does not apply, the taxpayer must continue to use the taxpayer’s existing cycle until the end of the next taxable period for which the end coincides with the start of a taxable period in the new cycle.”
- (2) **Subsection (1)** applies for income years corresponding to the 2006–07 income year.

100 Subpart MB replaced

- (1) Sections MB 2 to MB 12 are replaced by the following:

“Introductory provisions

“MB 1 **Outline of subpart**

“When this subpart applies

- “(1) **Sections MB 2 to MB 38** apply for the purposes of the provisional tax rules to determine—
- “(a) who pays provisional tax:
 - “(b) a taxpayer’s provisional tax liability for a tax year, and the methods for calculating the amount payable:
 - “(c) the number of instalments and the instalment dates for an income year:
 - “(d) how the amount of an instalment is determined:
 - “(e) the payment of provisional tax in transitional years:
 - “(f) the application of the rules relating to use of money interest, late payment penalties, and shortfall penalties.

“Amount treated as income tax

- “(2) The provisions of this Act and the Tax Administration Act 1994 apply in relation to an amount that a person is liable to pay under the provisional tax rules as if the amount were income tax imposed under section BB 1 (Imposition of income tax).

“Instalment dates

- “(3) In this subpart, a reference to an instalment classified by the letters A to H is a reference to a date in the table in **schedule 13, part A** (Dates for payment of provisional tax) on which an instalment of provisional tax (A to F) or terminal tax (G and H) is payable by a provisional taxpayer for an income year that corresponds to a tax year.

“Defined in this Act: amount, income tax, income year, instalment date, pay, provisional tax, provisional tax rules, provisional taxpayer, shortfall penalty, tax year, terminal tax, transitional year

“MB 2 Who pays provisional tax?

“Meaning of provisional taxpayer

- “(1) A provisional taxpayer, for a tax year, means—
- “(a) a person whose residual income tax for the tax year is \$2,500 or more; or
 - “(b) a person who chooses under **section MB 3** to be a provisional taxpayer.

“Exclusions

- “(2) The following persons are not provisional taxpayers:
- “(a) a company that does not have a fixed establishment in New Zealand and is not treated as resident in New Zealand;
 - “(b) a person to whom section 33A of the Tax Administration Act 1994 applies;
 - “(c) a non-resident contractor as defined in regulation 2 of the Income Tax (Withholding Payments) Regulations 1979 who has not been issued with an exemption certificate by the Commissioner for the tax year under regulation 5.

“No obligation

- “(3) A person has no obligation to pay provisional tax for a tax year if their residual income tax for the preceding tax year is less than \$2,500.

“Defined in this Act: company, fixed establishment, New Zealand, non-resident, provisional taxpayer, resident in New Zealand, residual income tax, tax year

“MB 3 Becoming provisional taxpayer by election

A taxpayer, when first providing a return of income for a tax year, may choose to be a provisional taxpayer for the tax year if—

- “(a) they have paid provisional tax of \$2,500 or more on or before—
- “(i) the date of instalment F for the corresponding income year; or
 - “(ii) the final instalment date in a transitional year; and
- “(b) they have, on the day on which the first payment of provisional tax is made for the tax year, a reasonable expectation that they are a provisional taxpayer for the tax year, other than by this election.

“Defined in this Act: corresponding income year, final instalment, instalment date, provisional tax, provisional taxpayer, return of income, tax year, taxpayer, transitional year

“Calculation of provisional tax liability

“MB 4 Methods for calculating provisional tax liability

“Choice of method

- “(1) The provisional tax payable by a provisional taxpayer for a tax year must be calculated using 1 of the methods described in **subsections (2) to (6)**.

“Standard method

- “(2) As the standard method, the amount of provisional tax payable for the tax year is 105% of the taxpayer’s residual income tax for the preceding tax year, determined under **section MB 5**. However, the amount is 110% of the residual income tax for the tax year before the preceding tax year if—

- “(a) the taxpayer is required to provide a return of income for the preceding tax year but the return is not due on or before an instalment date through the application of section 37 of the Tax Administration Act 1994 or an extension granted under that section; and
- “(b) the taxpayer has not provided the return on or before the instalment date; and
- “(c) the instalment date is not the date of instalment F for the corresponding income year.

“Other methods: relationship with standard method

- “(3) **Subsections (4) to (6)** override **subsection (2)**.

“Estimation method

- “(4) A taxpayer may make an estimate of their residual income tax under **section MB 6** as their provisional tax liability for the tax year.

“GST ratio method

- “(5) A taxpayer who is eligible under **section MB 15** may choose to use a GST ratio under **section MB 7** for the purposes of determining their provisional tax liability for the tax year.

“Commissioner’s determination

- “(6) If the Commissioner determines a taxpayer’s provisional tax liability under **section 119** of the Tax Administration Act 1994, the amount is that last determined by the Commissioner and notified to the taxpayer at least 30 days before the instalment date. The 30 day requirement does not apply in a case to which **section 119(1)(d)** applies (which relates to an estimate of residual income tax that is not fair and reasonable).

“Life insurance business

- “(7) A provisional taxpayer, who carries on a business of providing life insurance and who is liable for income tax under the life insurance rules, must at the time they determine their provisional tax liability provide the Commissioner with details of the calculation of that liability, in particular, the

extent to which the amount of that provisional tax relates to the policyholder base.

“Defined in this Act: amount, business, Commissioner, corresponding income year, GST ratio, instalment date, life insurance, life insurance rules, notify, pay, policyholder base, provisional tax, provisional taxpayer, qualifying event, residual income tax, return of income, tax year, taxpayer

“**MB 5 Determining residual income tax**

“*When this section applies*

“(1) This section applies for the purposes of **section MB 4(2)** and the calculation of the amount of provisional tax payable for a tax year under the standard method.

“*Assessment for preceding tax year*

“(2) The taxpayer’s residual income tax for a tax year is based on their assessment for the preceding tax year unless the Commissioner has issued a notice of assessment for the tax year at least 30 days before the relevant instalment date, in which case it is based on the Commissioner’s assessment for the preceding tax year.

“*Commissioner’s assessment for preceding tax year*

“(3) The taxpayer’s residual income tax is based on the Commissioner’s assessment for the preceding tax year, whenever the assessment is made, if—

“(a) the taxpayer is required under section 37 of the Tax Administration Act 1994 to provide a return of income for the preceding tax year but has failed to do so by the relevant instalment date; or

“(b) the taxpayer is not required under section 37 to provide a return by the relevant instalment date, and **subsections (2) and (4)** do not apply.

“*Residual income tax for preceding tax year*

“(4) The amount of provisional tax payable for a tax year is the amount of residual income tax for the preceding tax year if—

“(a) the taxpayer is not required to provide a return of income for the preceding tax year; or

“(b) the taxpayer’s residual income tax for that tax year was less than \$2,500 and they were not required to provide,

and have not provided, a return of income for that tax year by the date of instalment F for the corresponding income year.

“Later increased assessment

- “(5) If the Commissioner assesses a taxpayer’s income tax liability after the due date for an instalment of provisional tax and the taxpayer’s residual income tax is increased by the assessment, the residual income tax is treated for the purposes of the provisional tax rules as if it had not been increased.

“Transitional years and consolidated groups

- “(6) Residual income tax in transitional years is calculated under **section MB 19**. For consolidated groups of companies, the calculation is made under **section MB 30**.

“Defined in this Act: amount, assessment, Commissioner, consolidated group, corresponding income year, income tax liability, instalment date, notice, pay, provisional tax, residual income tax, return of income, tax year, taxpayer, transitional year

“MB 6 Estimation method

“When this section applies

- “(1) This section applies for the purposes of **section MB 4(4)** and the calculation of the amount of provisional tax payable for a tax year under the estimation method.

“Fair and reasonable estimate

- “(2) On or before an instalment date, a provisional taxpayer may make a fair and reasonable estimate of their residual income tax for the tax year by providing a statement of the estimate to the Commissioner. The estimate may be a revised estimate.

“Reasonable care in making and maintaining assessment

- “(3) A taxpayer who makes an estimate under **subsection (2)** must take reasonable care in making it, and must revise the estimate for the tax year if, at some time in the tax year, the amount estimated is no longer fair and reasonable.

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“Estimation higher than provisional tax payable

- “(4) If a taxpayer estimates their residual income tax and the estimate is more than the provisional tax that is payable for the tax year, they are treated as having taken reasonable care in making the estimate.

“Changing determination method from GST ratio

- “(5) If, under **section MB 17(5)**, a taxpayer changes the way they determine the amount of provisional tax after the date of an instalment, they must estimate their residual income tax for the income year, and must pay provisional tax on whichever of instalment dates B, D, and F for their corresponding income year occur after 30 days from their last ratio instalment date.

“Disaster relief

- “(6) A taxpayer who is significantly affected by a self-assessed adverse event may make an estimate of their provisional tax under **section MB 38**, and that section overrides this section.

“Defined in this Act: amount, Commissioner, corresponding income year, GST ratio, income year, instalment date, pay, provisional tax, provisional taxpayer, ratio instalment date, residual income tax, self-assessed adverse event, tax year, taxpayer

“MB 7 GST ratio method

“Using GST ratio

- “(1) A provisional taxpayer who meets the requirements of **section MB 15** may choose to use a GST ratio to determine the amount of provisional tax payable for a tax year.

“Meaning of GST ratio

- “(2) A taxpayer’s **GST ratio** is the percentage figure that is obtained by dividing their residual income tax for the preceding tax year by their total supplies for the corresponding income year. The amount of residual income tax and the amount of total supplies are called the **base amounts** in this section.

“When amounts based on tax year before preceding tax year

- “(3) If the base amounts for the preceding tax year or corresponding income year have not been assessed, the GST ratio is the percentage based on the assessment for the tax year and corresponding income year that are immediately before the preceding tax year and corresponding income year.

“Commissioner’s calculation and notification

- “(4) The Commissioner must calculate a taxpayer’s GST ratio, notifying them by—
- “(a) including the percentage figure on the taxpayer’s pre-printed GST return form; or
 - “(b) advising them in writing or by telephone; or
 - “(c) some other means.

“Adjustment to GST ratio

- “(5) The Commissioner must adjust a taxpayer’s GST ratio if the base amounts are revised through, among other reasons,—
- “(a) an assessment or an amended assessment of the taxpayer’s income tax return for the preceding tax year; or
 - “(b) a change in the value of the taxable supplies for the corresponding income year; or
 - “(c) the disposal of an asset to which **section MB 18** applies.

“New GST ratio

- “(6) When **subsection (5)** applies, the Commissioner must notify the taxpayer of the new GST ratio. The new ratio applies in relation to the relevant instalment dates that occur 30 days after the date of notification.

“Transitional years

- “(7) If a taxpayer has paid instalments of provisional tax in a transitional year, for the tax year that follows the transitional year, for the purposes of this section and **section MB 10**, they must—
- “(a) ignore the transitional year when determining their residual income tax or total supplies; and

“(b) base their determination of residual income tax and total supplies on the tax year preceding the transitional year.

“Total supplies

“(8) In **subsection (2)**, and in **sections MB 10, MB 18, and MB 32**, **total supplies** means the amount that is the total value of supply in New Zealand of goods and services of the taxpayer, in relation to which GST is charged under section 8 (Imposition of goods and services tax on supply) of the Goods and Services Tax Act 1985 and, for this purpose,—

“(a) the amount includes GST; and

“(b) the supply includes a supply that section 11, 11A, 11AB, or 11B (which relate to zero-rating) requires to be charged at the rate of 0%.

“Defined in this Act: amount, assessment, base amount, Commissioner, corresponding income year, GST, GST ratio, instalment date, notify, pay, provisional tax, provisional taxpayer, residual income tax, tax year, taxable supply, total supplies, transitional year

“Instalments of provisional tax

“MB 8 Provisional tax payable in instalments

“General principle

“(1) The general principle for the standard and estimation methods is that the amount of a taxpayer’s residual income tax must be spread evenly over the applicable number of instalments, so that equal amounts are paid on each instalment date. If the amount of residual income tax is not divisible into exactly equal instalments, the final instalment carries the difference.

“Provisional tax payable in 3 instalments

“(2) Provisional tax is payable in 3 instalments on the interest instalment dates for the tax year in the months set out in schedule 13, part A, columns B, D, and F for the taxpayer’s corresponding income year. The amount of each instalment is calculated under **section MB 9**. **Subsection (3)** overrides this subsection.

“Exclusions

- “(3) **Subsection (2)** does not apply—
- “(a) to a provisional taxpayer who—
 - “(i) pays GST on a 6-monthly basis:
 - “(ii) uses a GST ratio to determine the amount of provisional tax payable, or who changes their determination method under **section MB 17(5)**:
 - “(iii) changes the cycle of their taxable periods under section 15C of the Goods and Services Tax Act 1985:
 - “(b) to a new provisional taxpayer who—
 - “(i) pays GST on a 6-monthly basis:
 - “(ii) pays GST on a monthly or 2-monthly basis, and starts a taxable activity after 30 days from the date of instalment B in their corresponding income year:
 - “(c) to a provisional taxpayer who has not provided a return of income for the preceding tax year, and whose residual income tax for the tax year immediately before the preceding tax year was less than \$2,500:
 - “(d) in a transitional year.

“Provisional tax when GST paid on 6-monthly basis

- “(4) A provisional taxpayer who pays GST on a 6-monthly basis must pay provisional tax on the 2 instalment dates for the tax year in the months set out in schedule 13, part A, columns C and F for the taxpayer’s corresponding income year. This subsection applies to a new provisional taxpayer other than one who pays GST on a 6-monthly basis and starts a taxable activity within 30 days of the date of instalment C.

“Provisional tax determined using GST ratio

- “(5) A provisional taxpayer who uses a GST ratio to determine the amount of provisional tax payable for a tax year, must pay provisional tax on the 6 instalment dates in the months set out in schedule 13, part A, columns A to F for the taxpayer’s corresponding income year. The amount of each instalment is calculated under **section MB 10**.

“Changing determination method

- “(6) A provisional taxpayer who is unable or decides not to use a GST ratio, changing their determination method under **section MB 17**, must pay the provisional tax payable for the tax year on the relevant instalment dates under the replacement method. The amount of each instalment is calculated under **section MB 6 or MB 9**, as applicable.

“Changing cycle of taxable periods

- “(7) A provisional taxpayer who changes the cycle of their taxable periods under section 15C of the Goods and Services Tax Act 1985 must pay provisional tax for the tax year on the instalment dates specified in **section MB 27** after the change in taxable period takes effect under **section MB 26**. The amount of each instalment is calculated under **section MB 9**.

“New provisional taxpayers

- “(8) A new provisional taxpayer who starts a taxable activity in a tax year in relation to which they pay GST must pay provisional tax for the tax year—
- “(a) in 3 instalments under **subsection (2)** if they start a taxable activity at some time in the period that starts at the beginning of the corresponding income year and ends 30 days before the date of instalment B:
 - “(b) in 2 instalments—
 - “(i) in a case to which **section MB 13** applies; or
 - “(ii) if they start a taxable activity at some time in the period that starts at the beginning of the corresponding income year and ends 30 days before the date of instalment C:
 - “(c) in 1 instalment in a case to which **section MB 14** applies.

“Extension of time for return

- “(9) A provisional taxpayer who has not provided a return of income for a preceding tax year and whose residual income tax for the tax year before the preceding tax year was less than \$2,500 must pay provisional tax for the tax year on the instalment dates set out in **section MB 13 or MB 14**, as applicable.

“Transitional years

“(10) In a transitional year, provisional tax is due and payable as set out in **section MB 20** and **schedule 13, part B**. The amount of each instalment is calculated under **sections MB 21 to MB 23**.

“Voluntary payments

“(11) A provisional taxpayer may pay an instalment of provisional tax under **section MB 12** at any time.

“Defined in this Act: amount, corresponding income year, GST, GST ratio, income year, instalment date, interest instalment date, new provisional taxpayer, pay, provisional tax, provisional taxpayer, ratio instalment date, residual income tax, return of income, tax year, taxable activity, taxable period, taxpayer, transitional year

TABLE MB 8
Categories for payment of provisional tax

Categories: ordinary	Variables	Method	Instalments	Instalment dates	Calculation	Interest, penalties
Standard MB 4(2)		MB 5	3 — MB 8(2)	B, D, F	MB 9	120KD(1), (2)
Estimation MB 4(4)		MB 6	3 — MB 8(2)		MB 9	
GST ratio MB 4(5)	1 month	MB 7	6 — MB 8(5)	A to F	MB 10	120KD(3), (4)
	2 month	MB 7	6 — MB 8(5)	A to F	MB 10(2)	139C, 141ED
GST 6-month MB 8(4)	standard	MB 5	2	C and F	MB 9	120KD(1), (2)
	estimation	MB 6	2	C and F	MB 9	
Categories: exceptional	Variables	Method	Instalments	Instalment dates	Calculation	Interest, penalties
New provisional taxpayers		MB 4(2) or (4)	MB 13(2), MB 14(2) (MB 8(8), (9))	D and F, as required	MB 9 (MB 13(3)), MB 9 (MB 14(3))	120KB
Transitional years		MB 19	MB 20 (MB 8(10))	B, D, F, as required	MB 21 - MB 23	120KC
Changing taxable period (or starting and stopping GST registration)		MB 25, MB 26 15C, 15E	MB 27 (MB 8(7))	B, D, F, or C, F as required	MB 9	
Changing determination method		MB 17	MB 4(2) or (4) (MB 6, MB 8(6))	MB 4(2) or (4) (MB 6)	MB 6(6), MB 9	120KD (5) - (7)
Voluntary payments		MB 12				120E

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“MB 9 Calculating amount of instalment under standard and estimation methods

“When this section applies

- “(1) This section applies for the purposes of—
- “(a) **section MB 4(2) and (4)** (which relates to the calculation of a provisional tax liability);
 - “(b) **section MB 8(2) and (4)** (which relates to payment of instalments);
 - “(c) **sections MB 13 and MB 14** (which relate to new provisional taxpayers and taxpayers with an extension of time for providing a return); and
 - “(d) **sections MB 25 to MB 27** (which relate to changes in taxable periods).

“Calculation

- “(2) The amount of an instalment of provisional tax is calculated using the formula—

$$\frac{\text{residual tax} \times \text{instalment number}}{\text{total instalments}} - \text{provisional tax}$$

“Definition of items in formula

- “(3) In the formula,—
- “(a) **residual tax** is a provisional taxpayer’s residual income tax, as applicable—
 - “(i) for the preceding tax year, uplifted by 5%; or
 - “(ii) for the tax year immediately before the preceding tax year, uplifted by 10%; or
 - “(iii) the amount estimated by the taxpayer:
 - “(b) **instalment number** is the number of the taxpayer’s instalment for the tax year, whether first, second, or third;
 - “(c) **total instalments** is the total number of the taxpayer’s instalments for the tax year;
 - “(d) **provisional tax** is the amount of the taxpayer’s provisional tax liabilities to date.

“Instalment amounts after change in balance date or taxable period

- “(4) If a change occurs to the balance date or cycle of taxable periods of a provisional taxpayer, the calculation of the

amount of an instalment is made under this section, applying the updated figures to the items in the formula.

“Defined in this Act: amount, balance date, new provisional taxpayer, pay, provisional tax, provisional taxpayer, residual income tax, return of income, tax year, taxable period

“MB 10 Calculating amount of instalment using GST ratio

“Calculation

“(1) The amount of provisional tax payable on an instalment date by a provisional taxpayer who uses a GST ratio for a tax year is calculated using the formula—

GST ratio for tax year × taxable supplies

“Item in formula: taxable supplies

“(2) In the formula, **taxable supplies** is the amount of the taxpayer’s taxable supplies in the taxable period that matches the instalment period.

“Taxable supplies when taxpayer pays on monthly basis

“(3) For the purposes of **subsection (1)**, a taxpayer who pays GST on a 1-month cycle under section 15 of the Goods and Services Tax Act 1985 must apply the GST ratio to the sum of their taxable supplies in the current taxable period and the preceding taxable period; that is, the total supplies in the 2-month period matching the instalment period.

“Defined in this Act: amount, GST, GST ratio, instalment period, pay, provisional tax, provisional taxpayer, tax year, taxable period, taxable supply, total supplies

“MB 11 Using GST refund to pay instalment of provisional tax

“Offsetting amount

“(1) If a provisional taxpayer has a GST refund in a taxable period under section 20(5) of the Goods and Services Tax Act 1985, they may choose to use the amount of the refund to pay some or all of an instalment of provisional tax that is due on the same instalment date.

“Reduction in amount of refund

- “(2) If the Commissioner reduces the amount of the GST refund before it has been transferred to the instalment of provisional tax under **subsection (1)**, the taxpayer is not liable for a late payment penalty under the Tax Administration Act 1994 in relation to the amount of the discrepancy that arises as a result of the reduction until the expiry of a grace period that ends at least 30 days after the due date.

“Defined in this Act: amount, Commissioner, GST, instalment date, pay, provisional tax, provisional taxpayer, taxable period

“**MB 12 Voluntary payments**

A taxpayer may at any time make a voluntary payment of an amount of provisional tax that—

- “(a) relates to their income tax liability for a tax year in which they are not a provisional taxpayer; or
“(b) is more than the provisional tax payable by them for the tax year.

“Defined in this Act: amount, income tax liability, pay, provisional tax, provisional taxpayer, tax year, taxpayer

“**MB 13 Paying 2 instalments for tax year**

“Who this section applies to

- “(1) This section applies for a tax year to—
- “(a) a new provisional taxpayer whose first business day occurs in the period that starts 30 days before the date of instalment B and ends 30 days before the date of instalment D; or
- “(b) a taxpayer whose return of income for the preceding tax year is provided in the period that starts on the date of instalment B and ends on the date of instalment D if—
- “(i) the taxpayer was required to provide a return for the preceding tax year but, under **section 37** of the Tax Administration Act 1994 or an extension under that section, the taxpayer is not required to provide the return by the date of instalment B; and
- “(ii) their residual income tax for the tax year before the preceding tax year was less than \$2,500.

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- under that section, is not required to provide the return by the date of instalment D; and
- “(ii) their residual income tax for the tax year before the preceding tax year was less than \$2,500:
 - “(c) a person who pays GST on a 6-monthly basis if— 5
 - “(i) their first business day occurs in the period that starts 30 days before the date of instalment C and ends at the end of the corresponding income year:
 - “(ii) they meet the requirements of **paragraph (b)(i) and (ii)** as if the reference to instalment D in paragraph (b)(i) were a reference to instalment C. 10

“*When instalment due*

- “(2) The instalment is due and payable on the date of instalment F for the taxpayer’s corresponding income year.

“*Amount of instalment*

- “(3) The amount of the instalment is calculated under **section MB 9**. 15

“Defined in this Act: amount, corresponding income year, first business day, GST, new provisional taxpayer, pay, provisional tax, residual income tax, return of income, tax year, taxpayer

Example: Section MB 14

Ms Orange, who is registered for GST on a 2-monthly basis, starts business on 1 January and has a March balance date. Ms Orange is liable to pay GST in 3 instalments aligned with her GST payment dates. The first business day falls in the period that starts on 21 December (30 days before instalment D) and ends on 31 March. Ms Orange has 1 payment of provisional tax for the year, due on 28 April.

Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr
									↓ starts business			↓ pays provisional tax

“Requirements for using GST ratio

“MB 15 Who may use GST ratio?

“General eligibility

- “(1) A provisional taxpayer may choose to use a GST ratio to determine under **section MB 4(5)** the amount of provisional tax payable for a tax year only if they meet all the requirements in **subsections (2) and (3)** in relation to the same entity.

“Requirements for preceding tax year

- “(2) For the purposes of determining their eligibility for a tax year, the taxpayer must meet the following requirements in the preceding tax year:
- “(a) their residual income tax, as assessed, was more than \$2,500 but no more than \$150,000; and
 - “(b) they were a person registered under section 51 of the Goods and Services Tax Act 1985 for the whole tax year, and provided returns under that Act for an entity whose business or taxable activity did not begin operations in that tax year; and
 - “(c) the ratio of their residual income tax to total supplies, as calculated under **section MB 10** and expressed as a percentage, is between zero and 100%.

“Requirement for current year

- “(3) For the tax year in which the taxpayer uses a GST ratio, they must be liable to file a return under the Goods and Services Tax Act 1985 for a 2-month or a 1-month period under **section 15(1)(b) and (c)** of that Act.

“When election applies

- “(4) An election to use a GST ratio applies for the tax year for which the election is made and in later tax years, unless the taxpayer changes their determination method under **section MB 17**. The election is made under **section MB 16**.

“Requirement to discontinue use of GST ratio

- “(5) Despite **subsections (1) to (4)**, a taxpayer must discontinue the use of the GST ratio for the tax year and must apply **section MB 17(4) or (5)** if—
- “(a) their GST registration ends in the tax year; or
 - “(b) they no longer qualify under **subsection (2)** as a result of an amended assessment of their income tax liability or their GST liability for the preceding tax year; or
 - “(c) they no longer qualify under **subsection (3)** as a result of a change in their taxable period.

“Failure to provide GST returns

- “(6) A taxpayer must not use, or must discontinue the use of, a GST ratio if they do not provide a return under the Goods and Services Tax Act 1985 for a period in which they are liable to provide a return. In this case, for the instalment periods that remain for the tax year or corresponding income year, the taxpayer must—
- “(a) pay the amount determined for the previous instalment period; or
 - “(b) if **paragraph (a)** does not apply, pay an amount calculated by dividing their residual income tax for the preceding tax year by the number of instalments remaining for the tax year or corresponding income year.

“References to preceding tax year

- “(7) In this section, a reference to a preceding tax year includes a reference to the tax year immediately before the preceding tax year if that earlier tax year is used for the purposes of calculating a GST ratio.

“Defined in this Act: amount, assessment, business, corresponding income year, GST ratio, income tax liability, instalment period, pay, provisional tax, provisional taxpayer, registered person, residual income tax, tax year, taxable activity, taxable period, total supplies

“MB 16 Choosing to use GST ratio

“Notifying Commissioner

- “(1) Having met the requirements referred to in **section MB 15(1)** for a tax year, a provisional taxpayer who chooses to use a GST ratio must, before the start of the income year corresponding

to the tax year, notify the Commissioner of their election to use a GST ratio for the income year.

“Manner of notification

- “(2) For the purposes of this section, the taxpayer may notify the Commissioner either in writing under section 14B (Giving of notices to Commissioner) of the Tax Administration Act 1994, or by telephone.

“Defined in this Act: Commissioner, corresponding income year, GST ratio, notice, notify, provisional taxpayer, tax year

“MB 17 Changing determination method

“When this section applies

- “(1) This section applies if, after having chosen to use a GST ratio for a tax year, a provisional taxpayer either—
- “(a) chooses another way to determine the amount of provisional tax payable for the corresponding income year; or
 - “(b) is required under **section MB 15(5) or (6)** to discontinue the use of a GST ratio for the corresponding income year.

“Notifying Commissioner of decision to change

- “(2) The taxpayer must notify the Commissioner of their decision under **subsection (1)(a)**, and may do this either in writing or by telephone. **Subsection (3) or (4)** then applies for the remaining instalments for the income year.

“Date on which use of GST ratio discontinued

- “(3) For the purposes of **subsection (1)(b)**, the date on which the taxpayer discontinues their use of a GST ratio is, as applicable,—
- “(a) the date their GST registration ends; or
 - “(b) the date of the amended assessment of their income tax liability or GST liability for the preceding tax year; or
 - “(c) the effective date of a change in taxable period; or
 - “(d) the end of the period in which a return is liable to be provided under the Goods and Services Tax Act 1985.

“Changing method before first instalment date

- “(4) If the taxpayer is unable or decides not to use a GST ratio before the date of instalment A, they may choose to determine the amount of provisional tax payable under **section MB 4(2) or (4)**, as if the election to use the GST ratio had not been made.

“Changing method after instalment date

- “(5) If the taxpayer is unable or decides not to use the GST ratio after an instalment date they must determine the amount of provisional tax payable on instalment for the remainder of the income year under **section MB 4(4)** on the basis of an estimate of their residual income tax for the tax year. For this purpose, the taxpayer may provide the estimate in writing or by telephone.

“Date of application when method changed

- “(6) If a taxpayer changes their determination method under **subsection (4) or (5)**, the date on which the change applies may be a future date agreed between the taxpayer and the Commissioner.

“Other consequences of changing method

- “(7) For the purposes of this section,—
- “(a) the frequency and the instalment dates remaining for an income year depend on—
 - “(i) the requirements of the determination method chosen by the taxpayer when they stop using the GST ratio; and
 - “(ii) the cycle of taxable periods chosen by the taxpayer, being either a monthly or 2-monthly basis:
 - “(b) a taxpayer may change from using a GST ratio to a 6-monthly cycle of taxable periods only if—
 - “(i) the requirements in **section 15C** of the Goods and Services Tax Act 1985 are met; and
 - “(ii) their 6-month taxable period is aligned with their balance date under **section 15B** of the Goods and Services Tax Act 1985:
 - “(c) **section 120KE(5) to (7)** (Provisional tax and rules on use of money interest) of the Tax Administration Act 1994 applies to determine whether and when use of money

interest is payable in relation to instalments under the new determination method.

“Defined in this Act: amount, balance date, Commissioner, corresponding income year, GST ratio, income year, instalment date, notify, pay, provisional tax, provisional taxpayer, residual income tax, tax year, taxable period

“MB 18 Disposal of assets

“When this section applies

“(1) This section applies if, as part of the business of an entity described in **section MB 15(1)**, a provisional taxpayer disposes of an asset—

“(a) that is not revenue account property; and

“(b) the value of the supply of which is the greater of—

“(i) an amount equal to 5% of the taxable supplies of the business for the previous 12 months:

“(ii) \$1,000.

“Adjustment to GST ratio for current and next income year

“(2) The taxpayer may choose to take the disposal of the asset into account by adjusting their taxable supplies for the relevant taxable period and income year. The adjustment must be made to both—

“(a) the amount of the taxpayer’s taxable supplies for the purposes of the formula in **section MB 10(1)**, by subtracting an amount that equals the value of the supply of the asset (as determined under section 10 of the Goods and Services Tax Act 1985) from the amount of total supplies for the relevant income year or taxable period; and

“(b) the base amount of the taxpayer’s taxable supplies for the next income year, by subtracting the amount that equals the value of the supply of the asset referred to in **paragraph (a)** from total supplies in working out the GST ratio under **section MB 7(2)**.

“Notifying Commissioner

“(3) For the purposes of **subsection (2)**, the taxpayer must notify the Commissioner of both the disposal of the asset and the value of its supply, and may do this either in writing or by telephone.

“Rounding percentages

- “(4) In the determination of the value of the supply of the asset under **subsection (1)(b)(i)**, the amount must be rounded to a whole percentage number.

“Defined in this Act: amount, base amount, business, Commissioner, GST ratio, income year, instalment date, notify, provisional taxpayer, revenue account property, taxable period, taxable supply, total supplies

“Transitional years

“MB 19 Calculating residual income tax in transitional years

“Calculation for transitional year

- “(1) This section applies for the purposes of **section MB 4(2)** and the calculation of a taxpayer’s residual income tax for a tax year that precedes a transitional tax year or is the tax year before that preceding tax year. The amount of residual income tax for the transitional year must be increased or decreased to reflect the amount that would apply in a 12-month period.

“Formula

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

$$\frac{\text{residual income tax} \times \text{days in current tax year}}{\text{days in transitional year}}$$

“Defined in this Act: amount, first business day, new provisional taxpayer, residual income tax, tax year, taxpayer, transitional year

“MB 20 Paying provisional tax in transitional years

“Total amount payable

- “(1) The total amount of provisional tax payable in a transitional year is the sum of all instalments of provisional tax due in the transitional year.

“When instalments due

- “(2) Instalments other than a final instalment of provisional tax are due on—
- “(a) the 28th day of the months set out in **schedule 13, part B**, reflecting the instalment dates set out in **part A of the schedule**, unless **paragraph (b)** applies:

“(b) the 20th day of January, when the month set out in **schedule 13, part A** is December.

“When final instalment due

“(3) Payment of the final instalment is due on—

“(a) the 28th day of the month following the final month in the transitional year; or

“(b) the 20th day of January, when November is the final month.

“Modifications to instalment dates

“(4) For the purposes of **subsection (2)**, provisional tax is not due and payable on—

“(a) the date of instalment B, if **section MB 13** would have applied had the tax year not been a transitional year; or

“(b) the dates of instalments B and D, if **section MB 14(1)(a) and (b)** would have applied had the tax year not been a transitional year; or

“(c) the dates of instalments B, D, and F, if the taxpayer is a new provisional taxpayer whose first business day occurs within 30 days of the date of instalment F; or

“(d) the date of instalment C, if **section MB 14(1)(c)** would have applied had the tax year not been a transitional year; or

“(e) the dates of instalments C and F, if the taxpayer is a new provisional taxpayer who pays GST on a 6-monthly basis whose first business day occurs within 30 days of the date of instalment F.

“Counting months in transitional years

“(5) In this section, and in **sections MB 21 to MB 24**, and in **schedule 13, part B**, the number of months in a transitional year is determined as follows:

“(a) the first month in a taxpayer’s transitional year is the first whole month in the transitional year:

“(b) the final month in a transitional year is the month in which the taxpayer’s new return date under section 39 of the Tax Administration Act 1994 occurs:

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“(c) each month falling between the first and final months must be included in determining the length of the transitional year.

“Defined in this Act: amount, final instalment, first business day, new provisional taxpayer, pay, provisional tax, tax year, transitional year

**“MB 21 Calculating instalments in transitional years:
standard method**

“When this section applies

“(1) This section applies to instalments of provisional tax payable in a transitional year under **section MB 20** by a provisional taxpayer using the standard method to calculate their provisional tax liability.

“Instalment other than final instalment

“(2) The amount payable on an instalment date other than the final instalment date is calculated using the formula—

$$\frac{\text{provisional tax} \times \text{instalments due} - \text{tax previously due}}{\text{total instalments}}$$

“Definition of items in formula in subsection (2)

“(3) In the formula in **subsection (2)**,—

“(a) **provisional tax** is the provisional tax liability under **section MB 4(2)**:

“(b) **instalments due** is the number of instalments due in the transitional year on or before the instalment date:

“(c) **total instalments** is whichever of the following applies:

“(i) 3, for provisional taxpayers who pay on instalment dates B, D, and F; or

“(ii) 2, for provisional taxpayers who pay on instalment dates C and F:

“(d) **tax previously due** is the amount for the transitional year of provisional tax that is due and payable before the instalment date.

“Final instalment

“(4) The amount payable on a final instalment date is calculated using the formula—

$$\frac{\text{provisional tax} \times \text{transitional year days} - \text{tax previously due}}{\text{preceding year days}}$$

“Definition of items in formula in subsection (4)

“(5) In the formula in **subsection (4)**,—

- “(a) **provisional tax** is the provisional tax liability under **section MB 4(2)**:
- “(b) **transitional year days** is the number of days in the transitional year:
- “(c) **preceding year days** is the number of days in the preceding tax year:
- “(d) **tax previously due** is the amount for the preceding tax year of provisional tax that is due and payable before the instalment date.

“Defined in this Act: amount, instalment date, final instalment date, pay, provisional tax, provisional taxpayer, tax year, transitional year

“**MB 22 Calculating instalments in transitional years: estimation method**

“When this section applies

“(1) This section applies to instalments of provisional tax payable in a transitional year under **section MB 20** by a provisional taxpayer using the estimation method to calculate their provisional tax liability.

“Instalment other than final instalment

“(2) The amount payable on an instalment date other than the final instalment date is calculated using the formula—

$$\frac{\text{tax estimate} \times \text{instalments due} - \text{tax previously due}}{\text{transitional months}}$$

“Definition of items in formula in subsection (2)

“(3) In the formula,—

- “(a) **tax estimate** is the provisional tax liability last estimated by the taxpayer under **section MB 4(4)**:
- “(b) **instalments due** is either—
 - “(i) 4 multiplied by the number of instalments in the transitional year that are due on or before the instalment date, for provisional taxpayers who

pay on the equivalent of instalment dates B, D, and F; or

“(ii) 6 multiplied by the number of instalments in the transitional year that are due on or before the instalment date, for provisional taxpayers who pay on the equivalent of instalment dates C and F:

“(c) **transitional months** is the number of months in the transitional year:

“(d) **tax previously due** is the amount for the transitional year of provisional tax that is due and payable before the instalment date.

“Final instalment

“(4) The amount payable on a final instalment date is the amount of provisional tax determined under **section MB 4(4)** less the amount of any instalment previously due and payable.

“Defined in this Act: amount, instalment date, final instalment date, pay, provisional tax, provisional taxpayer, transitional year

“MB 23 Calculating instalments in transitional years: GST ratio method

“What this section applies to

“(1) This section applies to instalments of provisional tax payable in a transitional year by a provisional taxpayer using a GST ratio.

“Adjustment if required

“(2) The taxpayer must apply the GST ratio under **section MB 10** to any period or part period before the start of the new income year on whichever dates of instalments A to F for their corresponding income year occur in the transitional year.

“Defined in this Act: GST ratio, income year, pay, provisional tax, provisional taxpayer, transitional year

“MB 24 Consequences of a change in balance date

“Continuing frequency

“(1) If a provisional taxpayer changes their balance date, until the new balance date is reached, the taxpayer must continue to use

the instalment dates that applied before the change in balance date was approved.

“How amounts determined

- “(2) **Sections MB 19 to MB 23** and **schedule 13, part B** apply for the transitional year in **subsection (1)** to determine the amount and due date of the instalments.

“Estimation method

- “(3) In a transitional year, a provisional taxpayer who uses the estimation method must,—
- “(a) before the date on which the Commissioner notifies a change in balance date, estimate the residual income tax as if no change in balance date is or will be approved; and
 - “(b) after the date on which the Commissioner notifies a change in balance date, re-estimate the residual income tax.

“GST ratio method

- “(4) **Subsection (5)** applies when a provisional taxpayer who uses a GST ratio to determine the provisional tax payable for a tax year, changes their balance date and moves from—
- “(a) a set of instalment dates in even-numbered months to a set of instalment dates in odd-numbered months; or
 - “(b) a set of instalment dates in odd-numbered months to a set of instalment dates in even-numbered months.

“Adjustment to liability

- “(5) The taxpayer must adjust their provisional tax liability for the income year for the part-period of 1 month before the start of the new income year. The part-period is their final taxable period, and the instalment of provisional tax is due 28 days after the end of that period.

“Aligning taxable periods

- “(6) For a provisional taxpayer with a GST liability, if a change in balance date means that the taxpayer’s taxable period is not aligned with the balance date, an adjustment must be made to

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their taxable period under **section 15B(3) or 15C** of the Goods and Services Tax Act 1985.

“Defined in this Act: amount, balance date, Commissioner, GST ratio, income year, instalment date, notify, pay, provisional tax, provisional taxpayer, residual income tax, tax year, taxable period

5

Example: Sections MB 20 to MB 24

Mr Yellow, who has a March balance date, decides to change to a May balance date. The transitional year is 14 months long. He starts business and becomes a new provisional taxpayer on 31 July, estimating provisional tax at \$15,000 for the income year. At the end of the year, Mr Yellow’s residual income tax is \$20,000.

2007										2008					
← Transitional year →															
Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	
			↓ starts business	↓ (no instalment)					↓ first instalment			↓ second instalment		↓ final instalment	
<p>Instalments in transitional year: 28th day of 5th, 9th, and 13th months after balance date, and final instalment on 28th day of month following final month in transitional year (s MB 22 and schedule 13, part B). But the first business day falls within 30 days of the date that would be the first instalment, 28 August (s MB 13), so no instalment is due.</p> <p>Amounts payable on the instalment dates are calculated under s MB 22.</p> <p style="margin-left: 40px;">First instalment due 20 January: $\\$15,000 \times 4/14 = \\$4,285$</p> <p style="margin-left: 40px;">Second instalment due 28 April: $\\$15,000 \times 8/14 - \\$4,285 = \\$4,286$</p> <p style="margin-left: 40px;">Final instalment due 28 June: $\\$15,000 - \\$8,571 = \\$6,429$</p>															

***“When provisional taxpayers start or stop paying GST, or
change taxable periods***

“MB 25 Registering for GST or cancelling registration

“When this section applies

- “(1) This section applies if a provisional taxpayer who uses the standard or estimation method to determine the amount of provisional tax payable for a tax year—
- “(a) applies to the Commissioner to become a registered person under section 51 of the Goods and Services Tax Act 1985; or
 - “(b) is treated as registered under section 51B of that Act; or
 - “(c) asks the Commissioner to cancel their GST registration, or has their GST registration cancelled under section 52 of that Act.

“Starting or ending GST registration: monthly or 2-monthly basis

- “(2) For a taxpayer who becomes registered for GST paying on a monthly or 2-monthly basis, or who cancels or has their GST registration cancelled having paid on that basis, the instalments of provisional tax payable by them for the tax year are unaffected.

“Starting GST registration: 6-monthly basis

- “(3) For a taxpayer who becomes registered for GST paying on a 6-monthly basis, instalments of provisional tax are due and payable on whichever dates of instalments C and F for their corresponding income year coincide with the cycle of their taxable periods after they become a registered person.

“Ending GST registration: 6-monthly basis

- “(4) For a taxpayer who pays GST on a 6-monthly basis and cancels their GST registration or has their registration cancelled, instalments of provisional tax are due and payable on whichever dates of instalments B, D, and F for their corresponding income year occur after 30 days from the date of cancellation.

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“Date of cancellation

- “(5) For the purposes of **subsection (4)** and the provisional tax rules, the date of cancellation is the date on which the cancellation of GST registration is notified.

“Formula for amount of instalment

- “(6) The amount of each instalment is calculated under **section MB 9**.

“Defined in this Act: amount, corresponding income year, GST, pay, provisional tax, provisional taxpayer, registered person, tax year, taxable period

“MB 26 Changing GST cycle

“When this section applies

- “(1) This section applies when a provisional taxpayer with a GST liability changes under **section 15C** of the Goods and Services Tax Act 1985 their cycle of taxable periods.

“When taxable periods aligned

- “(2) The change takes effect as described in **section 15D** of that Act if the following coincide:

- “(a) the end of the taxable period in which the taxpayer—
- “(i) applies to change the basis on which the taxpayer’s taxable period is set:
 - “(ii) is required to change the basis on which the taxpayer’s taxable period is set:
- “(b) the start of the taxable period in the taxpayer’s new cycle.

“When taxable periods not aligned

- “(3) If **subsection (2)** does not apply, the taxpayer must continue to use the taxpayer’s existing cycle until the end of the next taxable period for which the end coincides with the start of a taxable period in the new cycle. This section overrides **section 15D(2)** of the Goods and Services Tax Act 1985.

“Defined in this Act: instalment dates, interest instalment date, provisional tax, provisional taxpayer, tax year, taxable period

“MB 27 Payment of provisional tax instalments when GST cycle changed

“When subsection (2) applies

“(1) **Subsection (2)** applies in a tax year to a provisional taxpayer who—

“(a) uses the standard or estimation method to determine the amount of provisional tax payable; and

“(b) has been paying GST on a monthly or 2-monthly basis; and

“(c) changes to a 6-monthly basis under **section 15C(1)** of the Goods and Services Tax Act 1985.

“When instalments are due: changing to 6-monthly basis

“(2) Instalments of provisional tax are due and payable on whichever dates of instalments C and F for the taxpayer’s corresponding income year occur after the change in taxable period takes effect under **section MB 26**.

“When subsection (4) applies

“(3) **Subsection (4)** applies in a tax year to a provisional taxpayer who—

“(a) uses the standard or estimation method to determine the amount of provisional tax payable; and

“(b) has been paying GST on a 6-monthly basis; and

“(c) changes to a monthly or 2-monthly basis under **section 15C(2) or (3)** of the Goods and Services Tax Act 1985.

“When instalments due: changing to monthly or 2-monthly basis

“(4) Instalments of provisional tax are due and payable on whichever dates of instalments B, D, and F for the taxpayer’s corresponding income year occur after the change in taxable period takes effect under **section MB 26**.

“Interest instalment dates in new cycle

“(5) If an instalment of provisional tax due on an instalment date in the new cycle is payable in relation to a period in the taxpayer’s original cycle and was, under that original cycle, an interest instalment date, it remains an interest instalment date

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in the new cycle. However, if the instalment is due and payable on an instalment date other than an interest instalment date, the change does not affect the nature of the instalment.

“Formula for amount of instalment

“(6) The amount of each instalment is calculated under **section MB 9**.

5

“Defined in this Act: amount, corresponding income year, GST, provisional tax, provisional taxpayer, tax year, taxable period

Examples: Sections MB 26 and MB 27 (using March balance dates)

Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr
-----	-----	-----	-----	-----	------	-----	-----	-----	-----	-----	-----	-----

- 1 Professor Green starts the income year registered for GST on a monthly basis, and on 10 June asks to change to a 6-monthly basis:
 - the change takes effect on 30 September (s MB 26(2))
 - provisional tax instalment payable on old cycle on 28 August
 - provisional tax instalment due on 28 April (s MB 27(2))
- 2 Ms Blue starts the income year registered for GST on a 6-monthly basis, and on 10 June asks to change to a monthly basis:
 - the change takes effect on 30 September (s MB 26(2))
 - provisional tax instalment payable on old cycle on 28 October
 - provisional tax instalments due on 20 January, 28 April (s MB 27(4))
- 3 Mr Indigo starts the income year registered for GST on a monthly basis, and on 20 October asks to change to a 6-monthly basis:
 - the change takes effect on 31 March
 - provisional tax instalments paid on old cycle on 28 August, 20 January, 28 April (ss MB 26(2), MB 27(5))
- 4 Miss Violet starts the income year registered for GST on a 6-monthly basis, and on 10 June ends her GST registration:
 - the change takes effect for provisional tax purposes on 10 June
 - provisional tax instalments due on 28 August, 20 January, 28 April

“Penalties and interest provisions

“MB 28 Application of provisions of Tax Administration Act 1994

“Safe harbour for standard method

- “(1) If a provisional taxpayer meets the requirements in **section 120KE(1)** of the Tax Administration Act 1994, their residual income tax is treated as due and payable in 1 instalment on their terminal tax date.

“GST ratio method

- “(2) A provisional taxpayer who uses a GST ratio in a tax year to determine the amount of an instalment of provisional tax is liable to pay an amount of use of money interest, a late payment penalty, or a shortfall penalty only in the circumstances set out in, as applicable, the following sections of the Tax Administration Act 1994:

- “(a) **sections 120KB to 120KE** (which relate to due dates for provisional tax and use of money interest):
- “(b) **section 139C(1B)** (Late payment penalty and provisional tax):
- “(c) **section 141ED** (Shortfall penalty and provisional tax).

“Defined in this Act: amount, GST ratio, pay, provisional taxpayer, residual income tax, shortfall penalty, tax year, terminal tax date

“Treatment of groups of companies and amalgamated companies

“MB 29 Provisional tax rules and consolidated groups

“Single company

- “(1) The provisional tax rules apply, with the necessary modifications, to a consolidated group of companies as if it were a single company.

“Joint and several liability

- “(2) Each company in a consolidated group in a tax year is jointly and severally liable for the amount of provisional tax payable by the consolidated group to be credited against the income tax liability of the group for the tax year. The individual

liability of a company for income tax for the tax year is substituted by that joint and several liability to the extent to which the liability arises while the company is a member of the consolidated group.

“Relationship with section HB 1

“(3) **Section HB 1(5)** (Returns, assessments, and liability of consolidated group) overrides this section.

“Defined in this Act: amount, company, consolidated group, income tax, income tax liability, pay, provisional tax, provisional tax rules, tax year

“MB 30 Residual income tax of consolidated groups

“When this section applies

“(1) This section applies for the purposes of the provisional tax rules if a company is a member of a consolidated group of companies in a tax year but was not a member of the group for all or part of the preceding tax year.

“Increased residual income tax

“(2) The residual income tax of the consolidated group for the preceding tax year is treated as increased by an amount equal to the residual income tax of the company for the preceding tax year. If the company is a member of the group for part of the current tax year, the amount of residual income tax is increased as a proportion on the basis of the part of the tax year during which the company is a member of the group.

“Instalments due after company becomes member

“(3) If the company is a member of a group for part of the tax year, this section applies only to instalments of provisional tax payable after the date on which the company becomes a member.

“Defined in this Act: amount, company, consolidated group, pay, provisional tax, provisional tax rules, residual income tax, tax year

“MB 31 Consolidated groups using estimation method

“When subsection (2) applies

“(1) **Subsection (2)** applies for the purposes of the provisional tax rules if a company is a member of a consolidated group of

companies for all or part of a tax year but is not a member of the group for all or part of the following tax year.

“Estimation before final instalment date

- “(2) The company must estimate its residual income tax on or before the date of instalment F for the following income year that corresponds to the tax year, and the company is treated as a provisional taxpayer to which **section MB 6** applies for the purposes of its estimate.

“When company member of another consolidated group

- “(3) The consolidated group, in the case of a company that is a member of another consolidated group, must make an estimate of residual income tax on or before the date of instalment F for the following income year that corresponds to the tax year, and the consolidated group is treated as a provisional taxpayer to which **section MB 6** applies for the purposes of its estimate.

“When company no longer member

- “(4) If a company stops being a member of the consolidated group in the following tax year, the company’s estimate applies only to instalments of provisional tax payable after the date on which it stopped being a member.

“Defined in this Act: company, consolidated group, corresponding income year, pay, provisional tax rules, provisional taxpayer, residual income tax, tax year

“MB 32 Consolidated groups using GST ratio method

Sections MB 7, MB 8(5), MB 10, and MB 15 to MB 18 apply to a consolidated group of companies with the following modifications:

- “(a) if a consolidated group that is eligible to use, or is using, a GST ratio for a tax year is joined by a new member, the following subparagraphs apply:
- “(i) if the new member joins at the start of the tax year and, as a result, the threshold in **section MB 15(2)(a)** is exceeded, the group is no longer eligible to use a GST ratio:
 - “(ii) if the new member joins at the start of the tax year, and the group, allowing for the inclusion of

the new member, is eligible under **section MB 15(1)**, the group may use a GST ratio, subject to the recalculation of the ratio under **paragraph (c)**:

- “(iii) if the new member joins at some time in the tax year, the group may continue to use a GST ratio for the tax year, as recalculated under **paragraph (c)**, provided the requirements for eligibility other than the threshold in **section MB 15(2)(a)** are met:
- “(b) if a consolidated group that does not determine provisional tax payable for a tax year using a GST ratio, is joined by a new member that is using a GST ratio for the tax year, the group may not start using a GST ratio for this purpose for the tax year:
- “(c) for the purposes of **paragraph (a)**,—
 - “(i) the group must recalculate the GST ratio applying for a tax year to include the residual income tax of the new member for the preceding tax year and the total supplies of the new member for the corresponding income year, applying **section MB 7(3)** if required; and
 - “(ii) the recalculated GST ratio applies to provisional tax payments made for the corresponding income year on or after the date on which the new member joins the group:
- “(d) **section MB 17(4) or (5)**, as applicable, and **subsection (3)** apply to a company that leaves a consolidated group at some time in a tax year.

“Defined in this Act: consolidated group, corresponding income year, GST ratio, pay, provisional tax, residual income tax, tax year, total supplies

“MB 33 Wholly-owned groups of companies

“*When this section applies*

- “(1) This section applies for the purposes of the provisional tax rules and Part 7 of the Tax Administration Act 1994 in relation to a company (**company A**) that is a member in a tax year of a wholly-owned group of companies that includes another company (**company B**). **Section MD 2** (Limits on refunds and allocation of tax) overrides this section.

“Company A allocating overpayment to company B

- “(2) If, for a tax year, company A has paid an amount of provisional tax that is more than the residual income tax payable for the tax year, the company may allocate some or all of the overpayment to company B to the extent to which the amount of provisional tax paid by company B is less than their residual income tax for the tax year. Company A must notify the Commissioner under **subsection (4)**.

“When allocation made

- “(3) Company A may allocate an amount under **subsection (2)** on or after the later of—
- “(a) the day on which company A overpays the provisional tax; or
 - “(b) the day on which the first instalment of provisional tax for the tax year becomes payable by company B.

“Notice

- “(4) A notice under **subsection (2)** must—
- “(a) name company B, and the amount to be allocated; and
 - “(b) state the date on which the overpayment is treated as allocated to company B; and
 - “(c) be provided to the Commissioner within the time for providing a return of income for the tax year for company B.

“When allocation made, and how allocation treated

- “(5) For the purposes of this section,—
- “(a) an allocation under **subsection (2)** is treated as made on the date stated in the notice; and
 - “(b) provisional tax allocated to company B by company A is treated as provisional tax paid by company B and not by company A.

“Defined in this Act: amount, Commissioner, company, notice, notify, pay, provisional tax, provisional tax rules, residual income tax, return of income, tax year, wholly-owned group of companies

“MB 34 Amalgamated companies: calculating residual income tax

If, in a tax year, an amalgamating company ceases to exist on an amalgamation, the residual income tax of the amalgamated company for the preceding tax year is treated as the amount that would have been the residual income tax if the amalgamating company and the amalgamated company had been 1 company. The subsection applies for the purposes of the provisional tax rules only in relation to instalments of provisional tax payable after the amalgamation.

“Defined in this Act: amalgamated company, amalgamating company, amalgamation, amount, company, pay, provisional tax, provisional tax rules, residual income tax, tax year

“Attribution rule for services

“MB 35 Attribution rule for services

“When this section applies

“(1) This section applies for the purposes of the provisional tax rules and Part 7 of the Tax Administration Act 1994 for provisional tax paid for income from personal services to which **section GC 14B** (Attribution rule for personal services) may apply.

“Person B allocating amount to person C

“(2) If, in a tax year, person B pays an amount of provisional tax that is more than the residual income payable for the tax year, person B may allocate some or all of the overpayment to person C to the extent to which the amount of provisional tax paid by person C is less than their residual income tax for the tax year.

“Person C allocating amount to person B

“(3) If, in a tax year, person C pays an amount of provisional tax that is more than the residual income payable for the tax year, person C may allocate some or all of the overpayment to person B to the extent that the amount of provisional tax paid by person B is less than their residual income tax for the tax year.

“When allocation made

- “(4) Persons B and C may allocate an amount under **subsection (2) or (3)** on or after the later of—
- “(a) the day on which the overpayment of provisional tax is paid by person B or person C, as applicable; or
 - “(b) the day on which the first instalment of provisional tax payable for the tax year becomes payable by—
 - “(i) person C, if person B is making the allocation; or
 - “(ii) person B, if person C is making the allocation.

“Notice

- “(5) The Commissioner must be notified of an allocation under **subsection (2) or (3)** in a notice that—
- “(a) names the person to whom an allocation is made, and the amount to be allocated; and
 - “(b) states the date on which the overpayment is treated as allocated to person B or person C, as applicable; and
 - “(c) is provided within the time for providing a return of income for the tax year for the person to whom the allocation is made.

“When allocation made, and how allocation treated

- “(6) For the purposes of this section,—
- “(a) an allocation under **subsection (2) or (3)** is treated as made on the day stated in the notice; and
 - “(b) provisional tax allocated to person C by person B for a tax year is treated as provisional tax paid by person C and not by person B; and
 - “(c) provisional tax allocated to person B by person C is treated as provisional tax paid by person B and not by person C.

“Defined in this Act: amount, Commissioner, notice, notify, pay, provisional tax, provisional tax rules, residual income tax, return of income, tax year

“Overpayments and credits

“MB 36 Overpaid provisional tax

“When this section applies

“(1) This section applies when the amount of provisional tax payable by a provisional taxpayer for a tax year is reduced by the taxpayer, or by the Commissioner under **section 119(2)** of the Tax Administration Act 1994.

“Reduction in amount of provisional tax payable

“(2) If the taxpayer applies in writing for a refund of the amount of provisional tax already paid that is as a result of the reduction more than the amount that would have been payable in relation to earlier instalment dates for the tax year, the Commissioner must—

“(a) apply the overpayment as the taxpayer asks under **section 173T** of the Tax Administration Act 1994 or, if no request is made, in a way that the Commissioner determines in payment of tax or another amount that is payable by them; and

“(b) refund any balance of the overpayment.

“Reduction in assessment

“(3) If the taxpayer’s residual income tax is assessed as not more than \$2,500, and they apply in writing for the refund of an amount of provisional tax that has been determined under **section MB 8** and already paid (other than on a final instalment), the Commissioner must—

“(a) apply the amount as the taxpayer asks under **section 173T** of the Tax Administration Act 1994 or, if no request is made, in a way the Commissioner determines in payment of tax or another amount that is payable by them; and

“(b) refund any balance of the amount.

“Treatment of amount refunded or credited

“(4) When an overpayment or amount of provisional tax for a tax year has been applied or refunded under **subsection (2) or (3)**—

- “(a) a later instalment payable under **section MB 9 or MB 10**, as applicable, is calculated as if the total instalments previously payable were reduced by the amount of the overpayment or amount; and
- “(b) the overpayment or amount applied or refunded is, from the date of action taken by the Commissioner, treated as not being provisional tax paid for the tax year.

“Defined in this Act: amount, Commissioner, instalment date, pay, provisional tax, provisional taxpayer, residual income tax, tax, tax year

“MB 37 Further income tax credited to provisional tax liability

“When this section applies

- “(1) This section applies for the purposes of **sections MB 8 to MB 10** if, under **section ME 9** (Allocation rules for imputation credits), a company applies an amount of further income tax to pay an instalment of provisional tax for which the company becomes liable after the date of payment of the further income tax.

“Amount treated as provisional tax

- “(2) The instalment is satisfied to the extent of the amount of further income tax. The amount is treated as provisional tax paid on the date on which the instalment was due and payable.

“Order

- “(3) The Commissioner must credit the amount of the further income tax in payment successively of—
 - “(a) the instalment of provisional tax that is first due and payable after the date of payment of the further income tax; and
 - “(b) to the extent of the amount of further income tax, to later instalments in the order in which they are due and payable.

“Defined in this Act: amount, company, further income tax, pay, provisional tax

“Disaster relief

“MB 38 Provisional taxpayer affected by self-assessed adverse event

“Who this section applies to

- “(1) This section applies to a provisional taxpayer with a farming, agricultural, or fishing business that is significantly affected by a self-assessed adverse event. This section overrides **section MB 6**.

“Taxpayer’s request

- “(2) The provisional taxpayer may ask the Commissioner to accept an estimate or a revised estimate of the residual income tax payable by them for a tax year.

“Acceptance of estimate

- “(3) The Commissioner may accept an estimate or revised estimate described in **subsection (2)** if all the following requirements are met:
- “(a) the business is significantly affected by the self-assessed adverse event; and
 - “(b) it is not reasonable to require the taxpayer to provide under **section MB 6** an estimate or revised estimate of residual income tax payable by them for the tax year; and
 - “(c) the basis on which the taxpayer has chosen to pay provisional tax is now inappropriate; and
 - “(d) the taxpayer asks to revise their estimate as soon as practicable.

“Treatment of revised estimate

- “(4) If a revised estimate is accepted under **subsection (3)**, it is treated as the estimate applying on the date of instalment F.

“Defined in this Act: Defined in this Act: Commissioner, provisional tax, provisional taxpayer, qualifying event”.

- (2) **Subsection (1)** applies for income years corresponding to the 2007–08 and subsequent tax years.

101 Payment of terminal tax

- (1) In section MC 1(1),—
 - (a) “part A for the payment of terminal tax for the tax year,” is replaced by “part A, column G or H, for the person’s corresponding income year,”:
 - (b) paragraph (b) is replaced by the following:
 - “(b) the 20th day of January, if December is specified in schedule 13, part A, column G or H for the person’s corresponding income year.”
- (2) Section MC 1(2) is replaced by the following:
 - “(2) For the purposes of **subsection (1)**, the month specified in schedule 13, part A, column G or H for the taxpayer’s corresponding income year is—
 - “(a) the month in column H, if—
 - “(i) the person’s return of income for the income year was linked to a tax agent; or
 - “(ii) the person has asked for an income statement under section 80C of the Tax Administration Act 1994 or has been issued an income statement under section 80D of that Act, the Commissioner has been notified that a tax agent will respond to the income statement issued to the person; or
 - “(b) the month in column G in any other case.”
- (3) **Subsections (1) and (2)** apply for income years corresponding to the 2007–08 and subsequent tax years.

102 Limit on refunds and allocations of tax

- (1) In section MD 2—
 - (a) in subsections (1) to (4) and (5A), “section MB 9” is replaced by “**section MB 33**” in all the places it occurs:
 - (b) in subsection (4), “the date of payment of the first instalment of provisional tax for that tax year” is replaced by “the date of instalment B specified in **schedule 13, part A**, for the company’s income year that corresponds to that tax year”.
- (2) **Subsection (1)** applies for income years corresponding to the 2007–08 and subsequent tax years.

103 Limits on refunds of tax in relation to Maori authorities

- (1) In section MD 2B(3), “the date of the first instalment of provisional tax for the tax year” is replaced by “the date of instalment B specified in schedule 13, part A, for the authority’s income year that corresponds to the tax year”.
- (2) **Subsection (1)** applies for income years corresponding to the 2007–08 and subsequent tax years.

104 Credits arising to imputation credit account

- (1) In section ME 4(1), the following is inserted after paragraph (ea):
 - “(eb) the amount of any imputation credit attached under **section ME 6B** to a replacement payment made under a share-lending arrangement to the company during the income year:
 - “(ec) the amount of any imputation credit treated under **section NF 8B** as being attached to a replacement payment made under a share-lending arrangement to the company during the income year”.
- (2) In section ME 4(2), the following is inserted after paragraph (cb):
 - “(cc) in the case of the credits referred to in subsection (1)(eb) and (ec), on the date the replacement payment is made:”.
- (3) **Subsections (1) and (2)** apply for income years beginning on or after the day on which this Act receives the Royal assent.

105 Debits arising to imputation credit account

- (1) In section ME 5(1), the following is inserted after paragraph (a):
 - “(ab) the amount of any imputation credit attached under **section ME 6B** to a replacement payment made under a share-lending arrangement by the company during the income year:
 - “(ac) the amount of any imputation credit attached to a dividend that—
 - “(i) is paid to the company during the imputation year; and

- “(ii) is received by the company as the holder of a share that the company acquired as a share user under a returning securities transfer that is not a share-lending arrangement:”.
- (2) In section ME 5(1)(d), “section MB 9” is replaced by “**section MB 33**”.
- (3) In section ME 5(2), the following is inserted after paragraph (a):
- “(ab) in the case of a debit referred to in subsection (1)(ab), on the date the replacement payment is made:
- “(ac) in the case of a debit referred to in subsection (1)(ac), on the date the relevant dividend is paid:”.
- (4) In section ME 5(2)(d), “section MB 9” is replaced by “**section MB 33**”.
- (5) **Subsections (1) and (3)** apply for income years beginning on or after the day on which this Act receives the Royal assent.
- (6) **Subsections (2) and (4)** apply for income years corresponding to the 2007–08 and subsequent tax years.

106 Company may attach imputation credit to dividend

- (1) Section ME 6(2) is replaced by the following:
- “(2) Notwithstanding subsection (1), an imputation credit account company may retrospectively attach an imputation credit to a dividend arising from a transfer pricing adjustment or under **subpart FCB** if—
- “(a) the company pays a non-cash dividend and is subject to an adjustment under section GD 13(3) or (4) in respect of the arrangement giving rise to the dividend:
- “(b) the company is an emigrating company that is treated under **section FCB 2** as paying a distribution to shareholders.”
- (2) In section ME 6(3), “subsection (2)” is replaced by “**subsection (2)(a)**”.
- (3) After section ME 6(3), the following is inserted:
- “(3B) The amount of imputation credit attached retrospectively under **subsection (2)(b)** must not exceed the credit balance, if any, in the company’s imputation credit account immediately before the emigration time.”

- (4) In section ME 6(5)(a), “subsection (2)” is replaced by “**subsection (2)(a)**”.
- (5) After section ME 6(5), the following is added:
 - “(6) If an amount of tax paid by an emigrating company is attributable to the application of **subpart FCB** to the emigrating company, the amount of tax is treated for the purposes of this subpart as being paid immediately before the emigrating company becomes a non-resident if—
 - “(a) the company determines under **subsection (2)(b)** to attach an imputation credit to a dividend; and
 - “(b) the imputation credits that the company attaches are not less than the amount of tax; and
 - “(c) the company notifies the Commissioner with the company dividend statement required by **subsection (4)(b)**.”
- (6) **Subsections (1) to (5)** apply for the 2005–06 and subsequent imputation years.

107 New section ME 6B inserted

- (1) After section ME 6, the following is inserted:

“**ME 6B Share user may attach imputation credit to replacement payment**

A share user under a share-lending arrangement may, on making a replacement payment, attach to the replacement payment an imputation credit of an amount less than or equal to the amount of any imputation credits attached to dividends—

 - “(a) received by the share user before the replacement payment is made; and
 - “(b) to which the replacement payment relates.”
- (2) **Subsection (1)** applies for income years beginning on or after the day on which this Act receives the Royal assent

108 Credits arising to imputation credit account of group

- (1) In section ME 11(1)(b), “section MB 9” is replaced by “**section MB 33**”.
- (2) In section ME 11(1), the following is inserted after paragraph (e):
 - “(eb) the amount of any imputation credit attached under **section ME 6B** to a replacement payment made under a

share-lending arrangement to a company that is at the time of the payment a member of the consolidated imputation group:

- “(ec) the amount of any imputation credit treated under **section NF 8B** as being attached to a replacement payment made under a share-lending arrangement to a company that is at the time of the payment a member of the consolidated imputation group:”.
- (3) In section ME 11(2)(b), “section MB 9” is replaced by “**section MB 33**”.
- (4) In section ME 11(2), the following is inserted after paragraph (cb):
- “(cc) in the case of the credits referred to in **subsection (1)(eb) and (ec)**, on the date the replacement payment is made:”.
- (5) **Subsections (1) and (3)** apply for income years corresponding to the 2007–08 and subsequent tax years.
- (6) **Subsections (2) and (4)** apply for income years beginning on or after the day on which this Act receives the Royal assent.

109 Debits arising to imputation credit account

- (1) In section ME 12(1), the following is inserted after paragraph (a):
- “(ab) the amount of any imputation credit attached under **section ME 6B** to a replacement payment made under a share-lending arrangement during the imputation year by a company that is at the time of the payment a member of the consolidated group:
- “(ac) the amount of any imputation credit attached to a dividend that—
- “(i) is paid during the imputation year to a company that is at the time of the payment a member of the consolidated group; and
- “(ii) is received by the company as the holder of a share that the company acquired as a share user under a returning securities transfer that is not a share-lending arrangement:”.
- (2) In section ME 12(1)(c), “section MB 9” is replaced by “**section MB 33**”.

- (3) In section ME 12(2), the following is inserted after paragraph (a):
 - “(ab) in the case of a debit referred to in **subsection (1)(ab)**, on the date the replacement payment is made:
 - “(ac) in the case of a debit referred to in **subsection (1)(ac)**, on the date the relevant dividend is paid:”.
- (4) In section ME 12(1)(c), “section MB 9” is replaced by “**section MB 33**”.
- (5) **Subsections (1) and (3)** apply for income years beginning on or after the day on which this Act receives the Royal assent.
- (6) **Subsections (2) and (4)** apply for income years corresponding to the 2007–08 and subsequent tax years.

110 Debiting and crediting between consolidated imputation group and individual companies

- (1) In section ME 13(6)(e), “section MB 10” is replaced by “**section MB 37**”.
- (2) **Subsection (1)** applies for income years corresponding to the 2007–08 and subsequent tax years.

111 Company may elect to maintain dividend withholding payment account

- (1) In section MG 2(5)(a), “account” is inserted after “dividend withholding payment”.
- (2) After section MG 2(5), the following is added:
 - “(6) If an emigrating company is a dividend withholding payment account company immediately before the emigration time for the emigrating company, the emigrating company ceases to be a dividend withholding payment account company at the emigration time.
 - “(7) A company that ceases to be a dividend withholding payment account company as a result of **subsection (6)** must—
 - “(a) furnish, within the time limit in section 71 of the Tax Administration Act 1994, the annual dividend withholding payment account return required from the company as a dividend withholding payment account company for the imputation year in which the company becomes a non-resident; and

“(b) pay any further dividend withholding payment that may be payable under section MG 9 by the company as a dividend withholding payment account company for the imputation year.”

- (3) **Subsections (1) and (2)** apply for the 2005–06 and subsequent imputation years.

112 Company may elect to be conduit tax relief company and maintain conduit tax relief account

- (1) After section MI 2(7), the following is added:

“(8) A company that ceases to be a dividend withholding payment account company as a result of **section MG 2(6)**—

“(a) ceases to be a conduit tax relief company; and

“(b) must furnish, within the time limit in section 69 of the Tax Administration Act 1994, the annual imputation return required from the company for the imputation year in which the company becomes a non-resident; and

“(c) must pay any dividend withholding payment that may be payable under section MI 10(3) by the company as a dividend withholding payment account company for the imputation year.”

- (2) **Subsection (1)** applies for the 2005–06 and subsequent imputation years.

113 Further dividend withholding payment payable in respect of conduit tax relief account debits

- (1) In the heading to section MI 10, “**Further dividend**” is replaced by “**Dividend**”.

- (2) In section MI 10(1), “a further amount” is replaced by “an amount”.

- (3) In section MI 10(2), “further amount” is replaced by “amount”.

- (4) **Subsections (1) to (3)** apply for the 2005–06 and subsequent imputation years.

114 Credits arising to Maori authority credit account

- (1) In section MK 4(1)(b), “section MB 9(5)” is replaced by “**section MB 33(5)(b)**”.

- (2) **Subsection (1)** applies for income years corresponding to the 2007–08 and subsequent tax years.

115 Debits arising to Maori authority credit account

- (1) In section MK 5—
- (a) in subsection (1)(b), “section MB 9(5)” is replaced by “**section MB 33(5)(b)**”:
 - (b) in subsection (2)(b), “section MB 9” is replaced by “**section MB 33(4)**”.
- (2) **Subsection (1)** applies for income years corresponding to the 2007–08 and subsequent tax years.

116 Further tax payable for end of year debit balance or when Maori authority ceases to exist

- (1) In section MK 8(5), “section MB 10” is replaced by “**section MB 37**”.
- (2) **Subsection (1)** applies for income years corresponding to the 2007–08 and subsequent tax years.

117 New section MZ 8 added

- (1) After section MZ 7, the following is added:
- “MZ 8 **Certain elections to become provisional taxpayer**
- “(1) This section applies when a taxpayer has a non-standard income year and has filed a return of income for the 1998–99 or a subsequent income year between 10 October 2000 and the date on which the Taxation (Relief, Refunds, and Miscellaneous Provisions) Act 2002 received the Royal assent.
- “(2) If the taxpayer has filed their return of income on the basis that **section MB 3(a)** applied (being section MB 2A(1)(a)(i) as it was before the enactment of section 50(1) of the Taxation (Relief, Refunds, and Miscellaneous Provisions) Act 2002), the taxpayer may elect to be a provisional taxpayer for the income year for which the return was filed if the taxpayer has paid provisional tax of \$2,500 or more on or before the date of instalment F for the non-standard income year that corresponds to the tax year for which the return was filed.”
- (2) **Subsection (1)** applies for income years corresponding to the 2007–08 and subsequent tax years.

118 New section MZ 9 added

- (1) After section MZ 8, as added by **section 117**, the following is added:

“MZ 9 Amount of provisional tax based on 1997–98 or earlier tax year

For the purposes of **sections MB 4 and MB 5** (other than **section MB 5(3) and (4)**), and for a taxpayer who is a New Zealand superannuitant for the 1997–98 tax year, the taxpayer’s residual income tax for that tax year or for an earlier tax year is the amount that would have been the taxpayer’s residual income tax if the taxpayer—

- “(a) had not been liable to pay the New Zealand superannuitant surcharge; and
“(b) had not paid any New Zealand superannuitant surcharge by way of surcharge deduction.”

- (2) **Subsection (1)** applies for income years corresponding to the 2007–08 and subsequent tax years.

119 New subpart NBB inserted

- (1) After subpart BA of Part N, the following is inserted:

“Subpart BB—Subsidy payable to certain listed PAYE intermediaries

“NBB 1 Purpose

The purpose of this subpart is to prescribe the requirements for a listed PAYE intermediary to receive a subsidy payment under this subpart.

“NBB 2 Accreditation of listed PAYE intermediary

- “(1) The Commissioner may list an applicant as a listed PAYE intermediary if the Commissioner is satisfied that,—

- “(a) the applicant is an accredited PAYE intermediary under subpart NBA, the listing of which is consistent with section 6(1) of the Tax Administration Act 1994; and
“(b) the period for which the applicant requests listing as a listed PAYE intermediary does not exceed the period for which the applicant is an accredited PAYE intermediary; and
“(c) the applicant has completed and provided the tax returns required from the applicant; and

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- “(d) the applicant has made the required payments of tax due from the applicant; and
 - “(e) in the case of an applicant who acted as an accredited PAYE intermediary for an employer or who made PAYE payments for an employer before the date of the application,—
 - “(i) the applicant completed and provided the required tax returns by their due dates; and
 - “(ii) the applicant made the payments of tax by their due dates; and
 - “(f) the applicant has available the administrative (including information technology) systems necessary to perform the obligations of a listed PAYE intermediary; and
 - “(g) if the application is approved, the applicant will, before acting as a listed PAYE intermediary for an employer, inform each employer who contracts the services of the applicant as a listed PAYE intermediary that the Commissioner does not guarantee payments by the applicant to employees of the employer or the performance of any part of the services provided by the applicant.
- “(2) The Commissioner may specify a period for which a person is accredited as a listed PAYE intermediary.

“NBB 3 Obligations of listed PAYE intermediaries

- “(1) A listed PAYE intermediary must, throughout the period of their listing,—
- “(a) maintain the status of an accredited PAYE intermediary under subpart NBA; and
 - “(b) perform in a timely manner the obligations of an accredited PAYE intermediary; and
 - “(c) continuously meet the standards listed in **sections NBB 2(1)(c) to (g)**.
- “(2) A listed PAYE intermediary must, throughout the period of their listing, maintain working access to administrative and information technology systems that will enable the listed PAYE intermediary to correctly return by electronic means a listed PAYE intermediary claim form that,—
- “(a) employs the electronic format prescribed by the Commissioner; and

- “(b) correctly calculates the amount of subsidy claimed under **section NBB 5**.
- “(3) For the purposes of section 22 of the Tax Administration Act 1994, a listed PAYE intermediary must keep such records as are necessary to verify the information contained in each listed PAYE intermediary claim form.

“NBB 4 Revocation of listing

- “(1) The Commissioner may revoke the listing of a listed PAYE intermediary if—
- “(a) the person’s accreditation as a PAYE intermediary is revoked;
 - “(b) the person does not provide a listed PAYE intermediary claim form by the date and in the format prescribed by the Commissioner;
 - “(c) the person fails to comply with any of the obligations of a listed PAYE intermediary or ceases to be a person which the Commissioner may list under **section NBB 2**;
 - “(d) the Commissioner considers revocation is necessary in order to protect the integrity of the tax system.
- “(2) The Commissioner must give 30 days of his intention to revoke an accreditation under **subsection (1)** and of the reasons for the intended revocation.
- “(3) If the listed PAYE intermediary does not resolve the matters listed in the notice of intended revocation to the satisfaction of the Commissioner, the Commissioner may give 14 days notice of revocation.
- “(4) At the expiration of a notice under **subsection (3)**, the listing of the listed PAYE intermediary is revoked.
- “(5) A decision made by the Commissioner under this section may not be challenged.”
- (2) After **section NBB 4**, as inserted by **subsection (1)**, the following is added:

“NBB 5 Listed PAYE intermediary claim form

- “(1) A listed PAYE intermediary claim form must be filed within one month of the date of filing of the employer monthly schedule to which it relates.
- “(2) The Commissioner may, within 2 years of receipt of a listed PAYE intermediary claim form, amend the particulars in

order to rectify an error in the particulars supplied by the listed PAYE intermediary.

- “(3) The Commissioner must give the listed PAYE intermediary who provided the listed PAYE intermediary claim form 14 days notice of the amendment proposed under **subsection (2)** before making the amendment.
- “(4) An overpayment or underpayment that results from the amendment must be paid by the listed PAYE intermediary or the Commissioner, as the case may be, within 30 days of the giving of the Commissioner’s notice under **subsection (3)**.
- “(5) Despite **subsection (3)**, the Commissioner may elect to offset an overpayment that results from an amendment under that subsection against a claim for payment of subsidy made after expiry of the 14 day period prescribed in that subsection.

“NBB 6 Calculation and payment of subsidy to certain listed PAYE intermediaries

- “(1) The Commissioner may pay a subsidy to a listed PAYE intermediary in respect of payroll services provided to an employer to whom sections NC 15(1)(c) or (d) applies if the listed PAYE intermediary —
 - “(a) has contracted with the employer for the provision of those services; and
 - “(b) has met the obligations of the listed PAYE intermediary under subpart NBA; and
 - “(c) files a correct listed PAYE intermediary claim form under **section NBB 5**.
- “(2) Within 14 days of the date on which the Commissioner pays a subsidy to a listed PAYE intermediary under **subsection (1)**, the Commissioner must give notice by electronic means to the listed PAYE intermediary of the—
 - “(a) amount of subsidy paid in respect of each employer; and
 - “(b) pay frequency of each employee in relation to whom the subsidy was paid; and
 - “(c) PAYE period to which the amount paid relates.

- “(3) The amount of the subsidy must be calculated in the manner provided by regulations made under this section and a payment of a subsidy under this section must be made electronically to a bank account—
- “(a) nominated by the listed PAYE intermediary for the purpose; or
 - “(b) if an overpayment has been made to the listed PAYE intermediary, to the Listed PAYE Intermediary Bank Account.
- “(4) A claim for payment of an amount of subsidy calculated under this section is to be made in the manner provided in **section NBB 5**.
- “(5) The Commissioner must pay the amount of subsidy that is payable in respect of a listed PAYE intermediary claim form within 30 days of receipt the last of—
- “(a) the employer monthly schedule to which the listed PAYE intermediary claim form relates:
 - “(b) payment of the PAYE deductions to which the listed PAYE intermediary claim form relates:
 - “(c) the listed PAYE intermediary claim form.
- “(6) The Governor-General may from time to time, by Order in Council, prescribe the amount of the subsidy to be paid in respect of each employee of an employer who contracts the services of a listed PAYE intermediary under this subpart.

“NBB 7 Termination of employer arrangements with listed PAYE intermediary

- “(1) An employer or a listed PAYE intermediary may end an arrangement by giving notice to the other party and to the Commissioner.
- “(2) A notice must state the date on which the arrangement will end, being a date that occurs not less than 14 days after the date on which the notice is given.
- “(3) A person who, for whatever reason, ceases to be a listed PAYE intermediary for an employer has the rights and obligations under the PAYE rules and SSCWT rules of a listed PAYE intermediary in relation to funds that—
- “(a) the employer pays to the person as a listed PAYE intermediary; and

“(b) the person is holding at the time that the person ceases to be a listed PAYE intermediary for the employer.”

- (3) **Subsection (2)** applies for pay periods beginning on or after 1 April 2006.

120 Application of other provisions to amounts payable under PAYE rules

- (1) In section NC 20(1), “section 120K” is replaced by “**sections 120KB to 120KE**”.
- (2) **Subsection (1)** applies for income years corresponding to the 2007–08 and subsequent tax years.

121 Private use of motor vehicle: value of benefit

- (1) After section ND 1A(1), the following is inserted:
- “(1B) The value of the benefit may be calculated using either of the valuation methods set out in **schedule 2, part A**.
- “(1C) The value of the benefit may be calculated using the tax value of the vehicle in the first return relating to the vehicle under whichever is applicable of **sections ND 2, ND 9, ND 10, ND 13, and ND 14**.
- “(1D) The value of the benefit may be calculated using the tax value of the vehicle from—
- “(a) the end of a period of 5 or more years starting on the date of the first return for the vehicle, if that return gives the value of the benefit based on the cost price of the vehicle:
- “(b) the end of a period of 1 or more years—
- “(i) starting immediately after a period in which the value of the benefit is calculated using the tax value of the vehicle; and
- “(ii) in which the value of the benefit is calculated using the cost price of the vehicle.
- “(1E) If the value of the benefit is calculated using the tax value of the vehicle in a return relating to the vehicle, the valuation method must continue to be used until the first of the following events:
- “(a) the disposal of the vehicle:
- “(b) the vehicle ceases to be leased:

- “(c) the end of a period of 5 or more years starting on the date of the first return relating to the vehicle, if the valuation method is used under **subsection (1C)**;
 - “(d) the end of a period of 1 or more years starting after the end of a period referred to in **subsection (1D)**.”
- (2) **Subsection (1)** applies for a person’s liability for fringe benefit tax for a period beginning on or after 1 April 2006.

122 New section ND 1AB inserted

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

“ND 1AB Private use of motor vehicle: 24-hour period

- “(1) This section applies for the purposes of the calculation of the value of a benefit under section ND 1A.
- “(2) In section ND 1A(5)(a) and (b), in relation to a motor vehicle and the item **days** in the formulas in sections ND 1A(2) and (4), a day is—
- “(a) a 24-hour period starting at midnight, if the person who owns or leases the motor vehicle does not make an election under **paragraph (b)**;
 - “(b) a 24-hour period starting from the time in a day that is elected under this section by the person who owns or leases the motor vehicle.
- “(3) For the purposes of **subsection (2)(b)**, the person must—
- “(a) choose an hour in the 24-hour period starting at midnight as the starting point of the day; and
 - “(b) notify the Commissioner of the election in the next return that relates to the motor vehicle.
- “(4) An election under **subsection (3)** is effective from the start of the quarter, income year, or tax year to which the return relates, and applies to all motor vehicles in relation to which the person provides a return.
- “(5) If the person chooses a particular hour in the 24-hour period as the starting point of the day under **subsection (3)**, that hour continues to apply to the use of the motor vehicle or vehicles from the start of the relevant quarter, income year, or tax year as applicable, for a minimum period of 2 income years.
- “(6) An employer may apply to the Commissioner to amend the starting point of the 24-hour period or to treat the election as

revoked if the employer's circumstances have changed in a way that—

- “(a) is more than minor; and
- “(b) makes the starting point no longer relevant to the employer's business.”

- (2) **Subsection (1)** applies for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

123 Employment-related loans: value of benefit

- (1) Section ND 1D, other than the heading, is replaced by the following:

“(1) The value of a benefit provided by way of an employment-related loan in a period is the amount by which, as the employer chooses, either the prescribed interest or the market interest on the loan is more than—

- “(a) the amount of interest that accrued on the loan in that period; or
- “(b) when the loan is a financial arrangement and it is appropriate having regard to the nature of the loan, the income that would have accrued to the employer's benefit in that period as calculated under the yield to maturity method.

“(2) Having chosen a method under **subsection (1)**, an employer must use the method for the income year to which the choice relates and for the next following income year.

“(3) An employer may not change the method of calculating the value of the benefit for an income year unless the employer notifies the Commissioner of the proposed change at least 1 year before the beginning of the income year in which the change is to occur.

“(4) In this section, **market interest** means the amount of interest calculated at the interest rate that would apply to a borrower belonging to a group of persons to whom a loan of the kind provided to the employee is offered when that group meets the following requirements:

- “(a) the group is assessed as having a comparable credit risk to the group to which the employee belongs; and
- “(b) the group is employed by a person who is not associated with the employer; and

“(c) the group is of sufficient size to ensure a transaction on an arm’s-length basis.

“(5) For the purposes of a calculation under **subsection (3)**, the amount of interest is the amount accrued on the loan during the quarter or tax year calculated on the daily balance of that loan at the rate referred to in that subsection.

Example A bank provides loan facilities to its employees on terms that are not those offered to the general public, but are identical to those that the bank offers to a group of employees of a government department. The market interest rate would be the rate offered to the group of employees of the department.”

(2) **Subsection (1)** applies for a person’s liability for fringe benefit tax for a period beginning on or after 1 April 2006.

124 New section ND 1IB inserted

(1) After section ND 1I, the following is inserted:

“ND 1IB Benefits provided by charitable organisations

The value under **section CX 21(2)** of a benefit provided by a charitable organisation by way of a short-term credit facility is the sum of—

“(a) the amount that the organisation pays for or towards the purchase or the hire of the goods and services obtained by the employee under the short-term credit facility:

“(b) any interest incurred in relation to the purchase or hire of the goods and services:

“(c) if the short-term credit facility is a credit card provided for an employee’s use solely for purposes unconnected with the organisation or its operations, the associated account or service fees.”

(2) **Subsection (1)** applies for a person’s liability for fringe benefit tax for a period beginning on or after 1 April 2006.

125 Services: value of benefit

(1) After section ND 1K(1), the following is inserted:

“(1B) For the purposes of subsection (1), a person providing services to an employee belonging to a group of employees is to be treated as providing the same or similar services to the

public in the open market in New Zealand on ordinary trade or professional terms if the person provides the same or similar services to a group of persons that—

“(a) negotiates the transaction on an arm’s-length basis; and
“(b) is comparable in size to the group of employees.”

- (2) **Subsection (1)** applies for a person’s liability for fringe benefit tax for a period beginning on or after 1 April 2006.

126 Unclassified benefits

- (1) In section ND 1Q,—

(a) in subsection (2),—

- (i) in paragraph (a), “\$75” is replaced by “\$200”:
- (ii) in paragraph (b), “the quarter” is replaced by “the last four quarters including the current quarter”:
- (iii) in paragraph (b), “\$450” is replaced by “\$15,000”:

(b) in subsection (3),—

- (i) in paragraph (a), “\$300” is replaced by “\$800”:
- (ii) in paragraph (b), “\$1,800” is replaced by “\$15,000”.

(c) in subsection (4),—

- (i) in paragraph (a), “\$300” is replaced by “\$800”:
- (ii) in paragraph (b), “\$1,800” is replaced by “\$15,000”.

- (2) **Subsection (1)** applies for a person’s liability for fringe benefit tax for a period beginning on or after 1 April 2006.

127 Election to pay fringe benefit tax by quarter

- (1) In section ND 2, subsection (3) is replaced by the following:

“(3) An employer may make an election under this section by providing a return stipulating the rate chosen.”

- (2) **Subsection (1)** applies for a person’s liability for fringe benefit tax for a period beginning on or after 1 April 2006.

128 Attributed fringe benefits

- (1) In section ND 3(1)(b), (4)(a), and (7), “CX 15” is replaced by “**CX 15B**” in each place where it appears.

- (2) **Subsection (1)** applies for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

129 Calculation of fringe benefit tax on non-attributed fringe benefits

- (1) In section ND 6(1)(a), "CX 15" is replaced by "**CX 15B**".
- (2) **Subsection (1)** applies for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

130 Special rule for employer who stops employing staff during tax year

- (1) In section ND 8, the following is added:
- “(3) As an alternative to the application of section ND 5(4) or ND 6(2), an employer may choose to pay fringe benefit tax at the rate of 64% of the taxable value of a fringe benefit provided or granted to an employee,—
- “(a) making the calculation in relation to the period from the start of the tax year to the date on which the employer stops employing staff; and
- “(b) taking into account any earlier payments of fringe benefit tax made in relation to the employee.”
- (2) **Subsection (1)** applies for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

131 Payment of fringe benefit tax on annual basis for employees who are not shareholder-employees

- (1) In section ND 13(2), "Commissioner" is replaced by "Commissioner, either in writing or by telephone,".
- (2) **Subsection (1)** applies for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

132 Payment of fringe benefit tax on income year basis for shareholder-employees

- (1) In section ND 14,—
- (a) in subsection (2), "Commissioner" is replaced by "Commissioner, either in writing or by telephone,";
- (b) after subsection (2), the following is inserted:
- “(2B) If an employer has been paying fringe benefit tax on a quarterly basis under sections ND 2, ND 9, and ND 10 and elects

under this section to change to payment on an income year basis, a calculation must be made under section ND 10 for the period—

“(a) beginning immediately after the end of the last full tax year for which the employer pays fringe benefit tax on a quarterly basis:

“(b) ending immediately before the beginning of the first income year for which the election applies.”

- (2) **Subsection (1)** applies for a person’s liability for fringe benefit tax for a period beginning on or after 1 April 2006.

133 Application of RWT rules

- (1) In section NF 1(2), the following is inserted after paragraph (c):

“(d) a replacement payment, made under a share-lending arrangement:”.

- (2) In the proviso to section NF 1(2), “paragraphs (a), (b) and (c)” is replaced by “paragraphs (a) to **(d)**”.

- (3) **Subsections (1) and (2)** apply for income years beginning on or after the day on which this Act receives the Royal assent

134 Deduction of resident withholding tax

- (1) In section NF 2(1), in paragraph (f), “distribution:” is replaced by “distribution; and” and the following is added:

“(g) to the extent that the payment is a replacement payment made under a share-lending arrangement, of an amount calculated according to the formula—

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

where—

a is the rate of resident withholding tax, expressed as a percentage, specified in **schedule 14, clause 2:**

b is the amount of the replacement payment, not including imputation credits attached under **section ME 6B:**

c is the amount of imputation credits attached to the replacement payment under **section ME 6B:**”.

- (2) In section NF 2(4)(b), in subparagraph (iv), “distribution.” is replaced by “distribution; or” and the following is added:
- “(v) that payment is a replacement payment made under a share-lending arrangement.”
- (3) **Subsections (1) and (2)** apply for income years beginning on or after the day on which this Act receives the Royal assent.

135 Election to apply higher rate of deduction

- (1) In section NF 2A(1), “section NF 2(1)” is replaced by “section NF 2(1), other than section NF 2(1)(g).”.
- (2) **Subsection (1)** applies for income years beginning on or after the day on which this Act receives the Royal assent.

136 Companies to notify interest payer

- (1) In section NF 2B(1), “section NF 2(1)” is replaced by “section NF 2(1), other than section NF 2(1)(g).”.
- (2) **Subsection (1)** applies for income years beginning on or after the day on which this Act receives the Royal assent.

137 Election rates of deduction for companies

- (1) In section NF 2D(1), “section NF 2(1)” is replaced by “section NF 2(1), other than section NF 2(1)(g).”.
- (2) **Subsection (1)** applies for income years beginning on or after the day on which this Act receives the Royal assent.

138 Requirements for agents or trustees to make resident withholding tax deductions on receipt of payments

- (1) Section NF 3(2) is replaced by the following:
- “(2) Subsection (1) does not apply to require a recipient of a payment of resident withholding income to make a deduction of resident withholding tax if—
- “(a) the recipient—
- “(i) holds at the time of payment a valid certificate of exemption; and
- “(ii) receives the payment as trustee of a trust that is not a bare trust:
- “(b) the payment is a replacement payment under a share-lending arrangement.”

- (2) **Subsection (1)** applies for income years beginning on or after the day on which this Act receives the Royal assent.

139 Payment of deductions of resident withholding tax to Commissioner

- (1) In section NF 4(4), “dividends” is replaced by “dividends, replacement payments,”.
- (2) **Subsection (1)** applies for income years beginning on or after the day on which this Act receives the Royal assent.

140 New section NF 8B inserted

- (1) After section NF 8A, the following is inserted:

“NF 8B **Resident withholding tax deductions from replacement payments treated as imputation credits**

If a share user under a share-lending arrangement deducts resident withholding tax in accordance with the RWT rules from a replacement payment, the deduction—

- “(a) is treated for the share supplier as an imputation credit attached to the replacement payment in addition to any imputation credit that the share user attaches to the replacement payment under **section ME 6B**; and
- “(b) does not give rise under section LD 3 to a credit of tax or refund for the share supplier.”

- (2) **Subsection (1)** applies for income years beginning on or after the day on which this Act receives the Royal assent.

141 Non-resident withholding tax imposed

- (1) After section NG 2(1)(b)(i), the following is inserted:

“(ib) interest, other than interest to which paragraph (ab) applies, that is paid by a certified resident in respect of money borrowed by the certified resident when the certified resident was a non-resident, and not in relation to a business carried on by the certified resident through a fixed establishment in New Zealand, and is derived by a person who is not an associated person of the certified resident; or”.

- (2) **Subsection (1)** applies for—

- (a) a person who becomes a New Zealand resident on or after 1 April 2006; and
- (b) income years corresponding to the 2005–06 and subsequent tax years.

142 Application of other provisions to non-resident withholding tax

- (1) In section NG 17(2), “section 120K” is replaced by “**sections 120KB to 120KE**”.
- (2) **Subsection (1)** applies for income years corresponding to the 2007–08 and subsequent tax years.

143 Definitions

- (1) This section amends section OB 1.
- (2) In the definition of **balance date**, “and terminal tax” is omitted.
- (3) After the definition of **banking company**, the following is inserted:

“**base amount** is defined in **section MB 7(2)** for the purposes of that section”.
- (4) After the definition of **business purposes**, the following is inserted:

“**business tool** means a portable item that is used by an employee in the performance of their work duties”.
- (5) After the definition of **certificate of exemption**, the following is inserted:

“**certified dependent resident** for a period of time means a person who—

 - “(a) is entitled under **section 91K** of the Tax Administration Act 1994 to hold for the period a dependent resident certificate; and
 - “(b) holds a dependent resident certificate issued for the period by the Commissioner under **section 91M** of the Tax Administration Act 1994

“**certified employed resident** for a period of time means a person who—

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- “(a) is entitled under **section 91K** of the Tax Administration Act 1994 to hold for the period an employed resident certificate; and
- “(b) holds an employed resident certificate issued for the period by the Commissioner under **section 91M** of the Tax Administration Act 1994
- “**certified general resident** for a period of time means a person who—
- “(a) is entitled under **section 91K** of the Tax Administration Act 1994 to hold for the period a general resident certificate; and
- “(b) holds a general resident certificate issued for the period by the Commissioner under **section 91M** of the Tax Administration Act 1994
- “**certified resident** for a period of time means a person who for the period is—
- “(a) a certified dependent resident:
- “(b) a certified employed resident:
- “(c) a certified general resident”.
- (6) In the definition of **consolidation rules**, in paragraph (a)(vii), “section MB 7 (Provisional tax of consolidated group members)” is replaced by “**sections MB 29 to MB 32** (relating to provisional tax of consolidated group members)”.
- (7) After the definition of **dependent child**, the following is inserted:
- “**dependent resident certificate** means a dependent resident certificate issued by the Commissioner under **section 91M** of the Tax Administration Act 1994”.
- (8) In the definition of **development**, “and DB 27” is replaced by “, DB 27, EE 1 (What this subpart does), **EJ 20** (Deductions for market development—product of research, development), and **EJ 21** (Allocation of deductions and depreciation losses for research, development, resulting market development)”.
- (9) In the definition of **dispose**, after paragraph (c), the following is inserted:
- “(cb) is defined in section CE 2 for the purposes of that section:”.
- (10) After the definition of **emergency call**, the following is inserted:

“**emigrating company** is defined in **section FCB 1(1)** (Tax effects for company becoming non-resident to reflect tax effects of liquidation)

“**emigration time**, for an emigrating company, is the time at which the emigrating company becomes a non-resident”.

- (11) Before the definition of **employee**, the following is inserted:
“**employed resident certificate** means an employed resident certificate issued by the Commissioner under **section 91M** of the Tax Administration Act 1994”.
- (12) In the definition of **estimated useful life**, after paragraph (c), the following is added:
“(d) for a type of pasture, means the period of time over which the pasture might reasonably be expected to be useful to a person in deriving income or carrying on a farming or agricultural business on land in New Zealand”.
- (13) In the definition of **finance lease**, in paragraph (b)(iii), “section EE 25(4)” is replaced by “sections EE 25(4), **25B and 25C**”.
- (14) The definition of **first instalment date** is repealed.
- (15) In the definition of **fishing business**, paragraph (a) is replaced by the following:
“(a) is defined in section EH 37 (Other definitions) for the purposes of this Act except the provision to which paragraph (b) refers:”.
- (16) In the definition of foreign trust, “settler” is replaced by “settlor”.
- (17) In the definition of **fringe benefit tax rules**, in paragraph (a)(ii), “GC 17” is replaced by “GC 17B”.
- (18) After the definition of **futures contract**, the following is inserted:
“**gaming-machine gambling** means class 4 gambling, as defined in section 30 of the Gambling Act 2003, that utilises or involves a gaming machine
“**gaming-machine operator’s licence** means a class 4 operator’s licence as defined in section 4 of the Gambling Act 2003

- “**gaming-machine venue licence** means a class 4 venue licence as defined in section 4 of the Gambling Act 2003”.
- (19) Before the definition of **general insurance**, the following is inserted:
- “**general resident certificate** means a general resident certificate issued by the Commissioner under **section 91M** of the Tax Administration Act 1994”.
- (20) After the definition of **gross**, the following is inserted:
- “**gross gambling proceeds** means gross proceeds, as defined in regulation 3(1) of the Gambling (Class 4 Net Proceeds) Regulations 2004, plus prizes”.
- (21) After the definition of **GST payable**, the following is inserted:
- “**GST ratio** has the meaning given in **section MB 7(2)** (GST ratio method)”.
- (22) The definition of **instalment date** is replaced by the following:
- “**instalment date** means a date for payment of provisional tax for a tax year that is the day and month specified for a provisional taxpayer in schedule 13 part A (Dates for payment of provisional tax)”.
- (23) After the definition of **interest**, the following is inserted:
- “**interest instalment date** means an instalment date—
- “(a) on which an instalment of provisional tax is due and payable under **section MB 8** (Provisional tax payable in instalments); and
- “(b) after which, except in a case to which **section 120KC(1)** applies, an instalment amount that is overpaid or underpaid attracts use of money interest, a late payment penalty, or a shortfall penalty, as applicable”.
- (24) In the definition of **lease**, after paragraph (a), the following is inserted:
- “(ab) is defined in **section CX 6(6)** (Private use of motor vehicle) for the purposes of the FBT rules:”.
- (25) The definition of **limited attribution company** is replaced by the following:
- “**limited attribution company** is a company that is—
- “(a) a building society:

- “(b) a co-operative company registered under the Co-operative Companies Act 1956, Part 2 or 3 of the Co-operative Companies Act 1996, the Co-operative Dairy Companies Act 1949, the Co-operative Freezing Companies Act 1960, or the Co-operative Forestry Companies Act 1978:
- “(c) a listed company:
- “(d) a widely-held company:
- “(e) a foreign company that is not a closely-held company”.
- (26) The definition of **limited attribution foreign company** is repealed.
- (27) The definition of **listed company** is replaced by the following:
“**listed company** means, at any time, a company any shares in which are at that time quoted on the official list of a recognised exchange”.
- (28) After the definition of **listed company**, the following are inserted:
“**listed PAYE intermediary** means a person which the Commissioner may list under **section NBB 2(1)**
“**listed PAYE intermediary claim form** means a form that a listed PAYE intermediary must provide to the Commissioner in an electronic format prescribed by the Commissioner, showing—
- “(a) the tax file number of the listed PAYE intermediary; and
- “(b) the tax file number and name of each employer in respect of which a subsidy is claimed; and
- “(c) the tax file number and name of each employee of each employer in respect of which a subsidy is claimed under **section NBB 3**; and
- “(d) the pay period to which the claim relates; and
- “(e) the pay frequency of each employee in that pay period; and
- “(f) the amount of subsidy that the listed PAYE intermediary claims in respect of the period to which the form relates”.
- (29) After the definition of **net balance due**, the following is inserted:

- “**net gambling proceeds** means net proceeds as defined in section 4 of the Gambling Act 2003”.
- (30) After the definition of **ordering rule**, the following is inserted:
- “**original share**, for a returning securities transfer, means a share that under the returning securities transfer—
- “(a) must be disposed of, by one party to the returning securities transfer, to a second party to the returning securities transfer; and
- “(b) must be returned, or a substitute for which must be returned, to the first party by the second party at a later date”.
- (31) After the definition of **own**, the following is inserted:
- “**ownership interest** is defined in **section OD 5AA(7)** (Modifications to voting and market value interests for application of continuity provisions to reverse takeover) for the purposes of that section”.
- (32) In the definition of **PAYE rules**, after paragraph (a)(iv), the following is inserted:
- “(ivb) **subpart NBB** (Listed PAYE intermediaries):”.
- (33) In the definition of **provisional tax rules**,—
- (a) in paragraph (a)(iii), “sections MB 2 to MB 6” is replaced by “**sections MB 1 to MB 28**”:
- (b) in paragraph (a)(iv), “sections MB 8 to MB 10 (which relate to provisional tax):” is replaced by “**sections MB 33, and MB 35 to 38** (which relate to provisional tax):”:
- (c) paragraph (a)(v) is repealed.
- (34) The definition of **provisional taxpayer** is replaced by the following:
- “**provisional taxpayer** has the meaning given in section MB 2 (Who pays provisional tax?)”.
- (35) In the definition of **qualifying person**, after paragraph (a)(ii), the following is inserted:
- “(iib) is not a certified resident; and
- “(iic) is not the spouse, civil union partner, or de facto partner of a certified resident; and”.
- (36) After the definition of **quarter**, the following is inserted:

- “**ratio instalment date** means an instalment date of a taxpayer who uses a GST ratio for a tax year, and is an instalment date for a payment in relation to which no amount of use of money interest or penalties apply other than a late payment penalty or a shortfall penalty”.
- (37) In the definition of **relative**, in paragraph (a), “CX 17 (Benefits provided instead of allowances),” is inserted after “sections”.
- (38) After the definition of **replaced area fraction**, the following is inserted:
- “**replacement payment**, for a returning securities transfer, means a transfer of value, including any imputation credits, made under the returning securities transfer that satisfies **paragraph (d)(ii)** of the definition of returning securities transfer”.
- (39) After the definition of **replacement plant**, the following is inserted:
- “**replacement share**, for a returning securities transfer, means a share that a party to the returning securities transfer acquires in replacement of the original share disposed of by that party under the returning securities transfer—
- “(a) receives from another party to the returning securities transfer:
- “(b) acquires from a person who is not a party to the returning securities transfer if—
- “(i) the acquisition is during the term of the returning securities transfer or any further period that the Commissioner allows; and
- “(ii) the Commissioner accepts that the share is acquired in replacement of the original share”.
- (40) In the definition of **research**, “and DB 27” is replaced by “, DB 27, EE 1 (What this subpart does), **EJ 20** (Deductions for market development—product of research, development), and **EJ 21** (Allocation of deductions and depreciation losses for research, development, resulting market development)”.
- (41) After the definition of **return of the taxpayer’s income**, the following is inserted:
- “**returning securities transfer** means an arrangement under which—

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- “(a) a person (the **share supplier**) disposes of a share in a company (the **original share**) to a person (the **share user**); and
 - “(b) the original share is—
 - “(i) listed on the official list of a recognised exchange;
 - “(ii) ordinarily available for subscription or purchase by the public; and
 - “(c) the share user agrees to transfer to the share supplier at a later date—
 - “(i) the original share; or
 - “(ii) a share in the company (the **replacement share**) that confers the same rights and imposes the same obligations on the holder as the original share; and
 - “(d) the share user makes, to the share supplier, transfers of value under the arrangement—
 - “(i) in the form of valuable consideration (**replacement payments**) or rights and options issued by the company to shareholders of the company; and
 - “(ii) are intended to be economically equivalent in value to rewards of ownership to which the holder of the original share would be entitled during the term of the arrangement”.
- (42) The definition of **second instalment date** is repealed.
- (43) The definition of **self-assessed adverse event** is replaced by the following:
- “**self-assessed adverse event**, for a person and a farming, agricultural, or fishing business of the person, means an event that—
- “(a) is one of the following:
 - “(i) drought, fire, flood, or some other natural event;
 - “(ii) disease or sickness among livestock; and
 - “(b) materially affects the business; and
 - “(c) is described, together with the effect on the business, by the person in a statutory declaration given to the Commissioner”.
- (44) After the definition of **share**, the following is inserted:

- “**share-lending arrangement** means a returning securities transfer entered into after **8 December 2005**—
- “(a) the term of the returning securities transfer is 12 calendar months or less; and
 - “(b) the share user, during the term of the returning securities transfer,—
 - “(i) transfers to the share supplier the rights and options that the holder of the original share would be entitled to receive during the term of the financial arrangement, or rights and options that are equivalent to those rights and options; and
 - “(ii) operates an imputation credit account; and
 - “(c) the amount of resident withholding tax given by section NF 2(1)(g) for the replacement payments under the returning securities transfer is paid on the replacement payments by the share user; and
 - “(d) the share supplier acquires the original share or a replacement share—
 - “(i) from the share user under the returning securities transfer:
 - “(ii) during the agreed term of the returning securities transfer or within a further period allowed by the Commissioner; and
 - “(e) the conditions are ordinary commercial conditions consistent with those that would apply between parties negotiating at arm’s length”.
- (45) After the definition of **share purchase scheme**, the following is inserted:
- “**share supplier**, for a returning securities transfer, means a person who disposes of an original share under the returning securities transfer to another party to the returning securities transfer
- “**share user**, for a returning securities transfer, means a person who receives an original share under the returning securities transfer from another party to the returning securities transfer”.
- (46) After the definition of **short term trade credit**, the following is inserted:

- “**shortfall penalty** is defined in section 3(1) of the Tax Administration Act 1994”.
- (47) After the definition of **sickness, accident, or death benefit fund**, the following is inserted:
- “**significant capital activity**, in **section DO 1(1B)** (Enhancements to land, except trees) and **Schedule 7** (Expenditure on farming, horticultural, aquacultural, and forestry improvements), and in relation to a farming or agricultural business on land in New Zealand,—
- “(a) means an activity that enables a change in the nature or character of a farming activity from that undertaken on the land immediately before the change; and
- “(b) excludes an activity that enables a change in the intensity of a farming practice employed in a farming activity on the land”.
- (48) The definition of **taxable period** is replaced by the following:
- “**taxable period** has the meaning given in section 2(1) of the Goods and Services Tax Act 1985”.
- (49) The definition of **third instalment date** is repealed.
- (50) After the definition of **total debt**, the following is inserted:
- “**total supplies** is defined in **section MB 7(8)** for the purposes of that section and **sections MB 10, MB 18, and MB 32**”.
- (51) In paragraph (a) of the definition of **trading stock**, the following is inserted before subparagraph (i):
- “(ia) **section CD 24B** (Distribution to member of co-operative company based on member’s transactions):”.
- (52) In the definition of **trust rules**, in paragraph (b), “section 59” is replaced by “sections 59 **and 59B**”.
- (53) After the definition of **variation in control or income interests**, the following is inserted:
- “**venture investment agreement** is defined in **section CW 11C(6)** (Proceeds from share acquired under venture investment agreement) for the purposes of that section
- “**Venture Investment Fund** means the company called New Zealand Venture Investment Fund Limited that is listed in the

Fourth, Fifth and Sixth Schedules of the Public Finance Act 1989”.

- (54) **Subsection (10)** applies for—
 - (a) a company that becomes a non-resident on or after 21 March 2005; and
 - (b) income years corresponding to the 2005–06 and subsequent tax years.
- (55) **Subsections (12) and (47)** apply to expenditure incurred on and after 1 April 2005.
- (56) **Subsections (8) and (40)** apply for income years corresponding to the 2005–06 and subsequent tax years.
- (57) **Subsections (5), (7),(11), (19), and (35)** apply for—
 - (a) a person who becomes a New Zealand resident on or after 1 April 2006; and
 - (b) income years corresponding to the 2005–06 and subsequent tax years.
- (58) **Subsections (4), (9), (17), (24), and (37)** apply for a person’s liability for fringe benefit tax for a period beginning on or after 1 April 2006.
- (59) **Subsections (15) and (43)** apply for income years corresponding to the 2005–06 and subsequent tax years.
- (60) **Subsection (13)** applies for income years corresponding to the 2005–06 and subsequent tax years.
- (61) **Subsections (30), (38), (39), (41), (44), and (45)** apply for income years beginning on or after the day on which this Act receives the Royal assent.
- (62) **Subsections (2), (3), (6), (14), (21), (22), (23), (33), (34), (36), (42), (46), (48), (49), and (50)** apply for income years corresponding to the 2007–08 and subsequent tax years.

144 Meaning of source deduction payment: shareholder-employees of close companies

In section OB 2(1), “GC 14D” is replaced by “GC 14D, or an amount paid to a caregiver from monies paid to a claimant in respect of attendant care (as defined in Schedule 1, clause 12 of the Injury Prevention, Rehabilitation, and Compensation Act 1991) from which a tax deduction has been made under the Income Tax (Withholding Payment) Regulations 1979”.

145 Meaning of income tax

- (1) In section OB 6(1)(b), “CD 11, CW 11B, CW 45, EG 1” is replaced by “**CD 10B**, CD 11, CW 11B, CW 45, EG 1, **EX 44, EX 45**”.
- (2) Section OB 6(3)(a) is replaced by the following:
 - “(a) Part B, except for—
 - “(i) sections BB 3(2) and BH 1, if **subparagraph (ii)** does not apply:
 - “(ii) sections BB 3(1) and (2), BG 1, and BH 1, for the purposes of the fringe benefit tax rules; and”.
- (3) In section OB 6(3)(k), “MB 7” is replaced by “**MB 29 to MB 32**”.
- (4) **Subsection (2)** applies for a person’s liability for fringe benefit tax for a period beginning on or after 1 April 2006.

146 Modifications to measurement of voting and market value interests in case of continuity provisions

Section OD 5(10) is repealed.

147 New section OD 5AA inserted

After section OD 5, the following is inserted:

“OD 5AA Modifications to voting and market value interests for application of continuity provisions to reverse takeover

- “(1) This section modifies the application of sections OD 3 to OD 5 for the purposes of the continuity provisions.
- “(2) **Subsection (3)** applies if—
 - “(a) a limited attribution company (the **initial parent**) is treated under section OD 5(6)(b) as holding ownership interests in another company (the **subsidiary**); and
 - “(b) there is a change in the ownership of the initial parent, or the initial parent ceases to exist as the result of an amalgamation, at a time (the **changeover**); and
 - “(c) immediately before the changeover, the initial parent is treated under section OD 5(6)(b) as holding all ownership interests in the subsidiary; and
 - “(d) immediately after the changeover, another limited attribution company (the **new parent**) is treated under

- section OD 5(6)(b) as holding all ownership interests in the subsidiary; and
- “(e) immediately after the changeover, all or part of the ownership interests in the new parent are held by the persons (the **initial owners**) who hold ownership interests in the initial parent immediately before the changeover; and
 - “(f) each initial owner holds:
 - “(i) immediately before the changeover, a proportion of the total ownership interests in the initial parent at that time; and
 - “(ii) immediately after the changeover, a proportion of the total ownership interests in the new parent that the initial owners hold at that time; and
 - “(iii) a proportion referred to in **subparagraph (ii)** that is equal to the proportion referred to in **subparagraph (i)**.
- “(3) If the initial owners hold a total of 49% or more of the ownership interests in the new parent immediately after the changeover, the new parent is treated for the purposes of Part I as—
- “(a) holding, immediately after the changeover, the ownership interests in the subsidiary that the initial parent held immediately before the changeover; and
 - “(b) having held the ownership interests for the period for which the ownership interests were treated as being held by the initial parent.
- “(4) If the initial owners hold a total of 66% or more of the ownership interests in the new parent immediately after the changeover, the new parent is treated for the purposes of subparts ME and MG as—
- “(a) holding, immediately after the changeover, the ownership interests in the subsidiary that the initial parent held immediately before the changeover; and
 - “(b) having held the ownership interests for the period for which the ownership interests were held by the initial parent.
- “(5) In **subsections (3) and (4)**, if a person is referred to as holding ownership interests in a company, sections OD 3(3)(d) and OD 4(3)(d) apply for the calculation of the interests except

when ownership interests held by the person would be attributed to another person by those provisions.

- “(6) If the requirements of a continuity provision are not satisfied in relation to a company and would be satisfied but for the application of this section, the requirements of the continuity provision are treated as being satisfied in relation to the company.
- “(7) In this section, **ownership interests** for a company means—
- “(a) voting interests in the company as determined under section OD 3(3)(d) and **subsection (5)**, if **paragraph (b)** does not apply:
 - “(b) market value interests in the company as determined under section OD 4(3)(d) and **subsection (5)**, if a market value circumstance exists for the company.”

148 Schedule 2—Fringe benefit values

- (1) Schedule 2, part A is replaced by the following:

“Part A

“Motor vehicles

- 1 The following paragraphs apply to determine the value of the benefit that an employee has for a quarter or tax year, or income year when section ND 14 applies, if in the quarter, tax year, or income year, a motor vehicle is provided by a person for the private use of an employee, or is made available for their private use:
- (a) if the vehicle is owned by the person, jointly or otherwise,—
 - (i) on the basis of the cost price of the vehicle to the person: for a quarter, 5% of the cost price, and for a tax year or income year, 20% of the cost price:
 - (ii) subject to clause 6, on the basis of the tax value of the vehicle to the person: for a quarter, 9% of the tax value, and for a tax year or income year, 36% of the tax value:
 - (b) if the vehicle is leased or rented by the person from another person, whether they are associated or not,—

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- (i) on the basis of the cost price of the vehicle to its owner at the time the benefit is provided to the employee: for a quarter, 5% of the cost price, and for a tax year or income year, 20% of the cost price:
- (ii) subject to clause 6, on the basis of the tax value of the vehicle to its owner at the time the benefit is provided to the employee: for a quarter, 9% of the tax value, and for a tax year or income year, 36% of the tax value.
- 2 If a motor vehicle to which this schedule applies is 1 of a number of motor vehicles, each of which is available for private use as described in **clause 1**, the value of the benefit is determined as follows:
- (a) if the employee mainly uses the same vehicle, **clause 1** applies to that vehicle:
- (b) if **paragraph (a)** does not apply, and the employee is employed in a business engaged in the selling of motor vehicles, and the vehicles available for use are trading stock of the business, **clause 1** applies to the quotient obtained by dividing the sum of either the cost price of the vehicles or their tax value, by the total number of those vehicles:
- (c) if **paragraphs (a) and (b)** do not apply, **clause 1** applies to the highest value of any vehicle used by the employee.
- 3 In this schedule, a motor vehicle's tax value is the value of the vehicle in a quarter or tax year as determined under subpart EE (Depreciation).
- 4 To determine the value of a benefit under **clause 1**, any GST paid on the acquisition of a vehicle by the owner or lessor of the vehicle is—
- (a) included in the cost price of the motor vehicle or in the calculation of the motor vehicle's tax value; and
- (b) not reduced by an amount of input tax on the supply of the vehicle to the owner or lessor.

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- 5 Despite **clause 4**, a person who in a quarter, tax year, or income year provides a benefit that is valued under **clause 1** may choose to value the vehicle on the basis of its cost price exclusive of GST or its tax value calculated exclusive of GST using **clause 1** as modified by **clause 6**.
- 6 The following paragraphs apply to a person who values a vehicle on the basis of its cost price exclusive of GST or its tax value calculated exclusive of GST:
- (a) the terms “cost price” and “tax value” in **clause 1** do not include an amount of GST payable:
 - (b) the references to 5% in **clause 1** are treated as if they were references to a percentage calculated using the formula—
$$5 + (5 \times \text{rate of GST applying on last day of relevant quarter}):$$
 - (c) the references to 9% in **clause 1** are treated as if they were references to a percentage calculated using the formula—
$$9 + (9 \times \text{rate of GST applying on last day of relevant quarter}):$$
 - (d) the references to 20% in the clause are treated as if they were references to a percentage calculated using the formula—
$$20 + (20 \times \text{rate of GST applying on last day of relevant tax year or corresponding income year}):$$
 - (e) the references to 36% in the clause are treated as if they were references to a percentage calculated using the formula—
$$36 + (36 \times \text{rate of GST applying on last day of relevant tax year or corresponding income year}).$$
- 7 If the vehicle is leased or rented by the person from another person, the lessor must disclose to the lessee the value for whichever is relevant for the lessor of the cost price and tax value of the vehicle.
- 8 The minimum tax value of a motor vehicle to which this schedule applies is \$8,333.”
- (2) **Subsection (1)** applies for a person’s liability for fringe benefit tax for a period beginning on or after 1 April 2006.

149 Schedule 3—International tax rules: grey list countries

- (1) In schedule 3, part A, the following is added:
“(8) Kingdom of Spain”.
- (2) In schedule 3, part B, the following is added:
“7 In the case of the Kingdom of Spain, any special allowances, reliefs, or exemptions with respect to activities that are carried on in, or by an enterprise registered in, the following:
 - (a) Canary Islands:
 - (b) Ceuta:
 - (c) Melilla:
 - (d) Alava:
 - (e) Guipúzcoa:
 - (f) Vizcaya:
 - (g) Navarra.”
- (3) **Subsections (1) and (2)** apply for income years corresponding to the 2006–07 and subsequent tax years.

150 Schedule 7—Expenditure on farming, aquacultural, and forestry improvements

In schedule 7, part A,—

- (a) in clause 1, “preparation” is replaced by “unless **clause 1B** applies, preparation”; and
- (b) after clause 1, the following is inserted:
“1B regrassing and fertilising all types of pasture in the 45”.
course of a significant capital activity that relates to
a type of pasture with an estimated useful life of
more than 1 year

151 New schedule 11B inserted

- (1) After schedule 11, **Schedule 11B** in **Schedule 1** of this Act is inserted.
- (2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

152 Schedule 13—Months for payment of provisional tax and terminal tax

- (1) Part A of schedule 13 is replaced by **Schedule 2** of this Act.

- (2) Part B of schedule 13 is replaced by **Schedule 3** of this Act.
- (3) **Subsections (1) and (2)** apply for income years corresponding to the 2007–08 and subsequent tax years.

153 Schedule 14—Rate of resident withholding tax deductions

- (1) In schedule 14, clause 2, “being dividends“being dividends or replacement payments”.”
- (2) **Subsection (1)** applies for income years beginning on or after the day on which this Act receives the Royal assent.

Part 3

Amendments to Tax Administration Act 1994

154 Tax Administration Act 1994

This Part amends the Tax Administration Act 1994.

155 Interpretation

- (1) This section amends section 3(1).
- (2) After the definition of **amount payable**, the following is inserted:
 - “**approved organisation** is an organisation—
 - “(a) whose members include natural persons—
 - “(i) who are subject to a code of conduct; and
 - “(ii) who are subject to a disciplinary process intended to enforce compliance with the code; and
 - “(b) whose members typically provide trustee services in the course of their business activities; and
 - “(c) that has been approved by the Commissioner for the purposes of this definition”.
- (3) After the definition of **bank**, the following is inserted:
 - “**base amount** has the same meaning as in section OB 1 of the Income Tax Act 2004”.
- (4) After the definition of **certificate of exemption**, the following is inserted:
 - “**certified dependent resident** for a period of time means a person who—

“(a) is entitled under **section 91K** of the Tax Administration Act 1994 to hold for the period a dependent resident certificate; and

“(b) holds a dependent resident certificate issued for the period by the Commissioner under **section 91M** of the Tax Administration Act 1994

“**certified employed resident** for a period of time means a person who—

“(a) is entitled under **section 91K** of the Tax Administration Act 1994 to hold for the period an employed resident certificate; and

“(b) holds an employed resident certificate issued for the period by the Commissioner under **section 91M** of the Tax Administration Act 1994

“**certified general resident** for a period of time means a person who—

“(a) is entitled under **section 91K** of the Tax Administration Act 1994 to hold for the period a general resident certificate; and

“(b) holds a general resident certificate issued for the period by the Commissioner under **section 91M** of the Tax Administration Act 1994

“**certified resident** for a period of time means a person who for the period is—

“(a) a certified dependent resident:

“(b) a certified employed resident:

“(c) a certified general resident”.

(5) After the definition of **Department**, the following is inserted:

“**dependent resident certificate** means a dependent resident certificate issued by the Commissioner under **section 91M**”.

(6) After the definition of **earnings related compensation**, the following is inserted:

“**employed resident certificate** means an employed resident certificate issued by the Commissioner under **section 91M**”.

(7) After the definition of **fringe benefit**, the following is inserted:

“**general resident certificate** means a general resident certificate issued by the Commissioner under **section 91M**”.

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- (8) After the definition of **GST**, the following is inserted:
“**GST ratio** has the same meaning as in section OB 1 of the Income Tax Act 2004”.
- (9) In the definition of **instalment date**, “section 120K” is replaced by “sections 120KB to 120KE”.
- (10) After the definition of **instalment date**, the following is inserted:
“**interest instalment date** has the same meaning as in section OB 1 of the Income Tax Act 2004”.
- (11) After the definition of **Minister**, the following is inserted:
“**new-resident certificate** means—
“(a) a dependent resident certificate issued by the Commissioner under **section 91M**:
“(b) an employed resident certificate issued by the Commissioner under **section 91M**:
“(c) a general resident certificate issued by the Commissioner under **section 91M**”.
- (12) after the definition of **new return date**, the following is inserted:
“**New Zealand resident trustee** means a person who,—
“(a) either alone or jointly with another person, acts as a trustee of a foreign trust; and
“(b) is resident in New Zealand within the meaning of section OE 1 or section OE 2 of the Income Tax Act 2004”.
- (13) After the definition of **provisional tax payable**, the following is inserted:
“**provisional taxpayer** has the same meaning as in section OB 1 of the Income Tax Act 2004”.
- (14) after the definition of **private dwelling**, the following is inserted:
“**qualifying New Zealand resident trustee** means a trustee who,—
“(a) is a New Zealand resident trustee; and
“(b) if a natural person, the person or their co-trustee is a member of an approved organisation; and

- “(c) if not a natural person, a director or manager of the trustee is resident in New Zealand within the meaning of section OE 1 of the Income Tax Act 2004; and
 - “(d) if **paragraph (c)** applies, the New Zealand resident director or manager of the non-natural person must be a member of an approved organisation”.
- (15) After the definition of **qualifying person**, the following is inserted:
“**ratio instalment date** has the same meaning as in section OB 1 of the Income Tax Act 2004”.
- (16) In the definition of **residual income tax**, paragraph (a), “section 120K” is replaced by “section 120KB(4)”.
- (17) In the definition of **response period**,—
- (a) paragraph (a)(ii) and (iii) are omitted;
 - (b) paragraphs (c) and (d) are replaced by the following:
 - “(c) the 4-month period starting on the date of issue of the initiating notice, if—
 - “(i) the initiating notice is a notice of assessment issued by the Commissioner and the notice is a notice of proposed adjustment issued by the taxpayer under section 89D:
 - “(ii) the initiating notice is a notice of disputable decision that is not an assessment:
 - “(iii) the initiating notice is a notice revoking or varying a disputable decision that is not an assessment:
 - “(d) the 4-month period starting on the date on which the initiating notice is received at an office of the department, if the initiating notice is a notice of assessment issued by the taxpayer and the notice is a notice of proposed adjustment issued by the taxpayer under section 89DA”.
- (18) The definition of **second instalment date** is repealed.
- (19) in the definition of **tax**, after paragraph (a)(xii), the following is inserted:
“(xiii) the amount of a subsidy payable under **section NBB 6** of the Income Tax Act 2004 to a listed PAYE intermediary:”.

- (20) in the definition of **tax position**, after paragraph (n), the following is added:
 - “(o) the amount of a subsidy claimed under **section NBB 6** of the Income Tax Act 2004 to a listed PAYE intermediary”.
- (21) The definition of **third instalment date** is repealed.
- (22) The definition of **trustee income** is repealed.
- (23) **Subsection (17)** applies for an initiating notice that is issued—
 - (a) in relation to a GST return period commencing on or after 1 April 2005;
 - (b) on or after 1 April 2005, if the initiating notice is issued other than in relation to a GST return period.
- (24) **Subsections (4) to (7) and (11)** apply for—
 - (a) a person who becomes a New Zealand resident on or after 1 April 2006; and
 - (b) income years corresponding to the 2005–06 and subsequent tax years.
- (25) **Subsections (3), (8) to (10), (13), (15), (16), (18), (21), and (22)** apply for income years corresponding to the 2007–08 and subsequent tax years.

156 Keeping of business records

- (1) In section 22—
 - (a) in subsection (2)(f), “credit account person,—” is replaced by “credit account person:”, and the following is added:
 - “(fb) is a New Zealand resident trustee of a foreign trust in any tax year,—”.
 - (b) in subsection (2)(l), “making it,—” is replaced by “making it; and” and the following is added:
 - “(m) the financial position of the foreign trust,—”.
- (2) In section 22(7)(c), “this Act.” is replaced by “this Act:”, and the following is added:
 - “(d) in the case of a foreign trust, other than for the period for which **section 59B(3)** applies,—
 - “(i) documents that evidence the creation and constitution of the trust; and

- “(ii) particulars of settlements made on, and distributions made by, the foreign trust, including the date of the settlement or distribution, the name and address (if known) of the settlor of the settlement, the name and address (if known) of the recipient of the distribution; and
- “(iii) a record of—
 - “(A) the assets and liabilities of the foreign trust; and
 - “(B) all entries from day to day of all sums of money received and expended by the trustee in relation to the foreign trust and the matters in respect of which the receipt and expenditure takes place; and
 - “(C) the charts and codes of accounts, the accounting instruction manuals, and the system and programme documentation which describes the accounting system used in each income year in the administration of the trust.”

157 New section 30B inserted

(1) After section 30A, the following is inserted:

“30B Statement to share supplier when share user makes replacement payment under share-lending arrangement

A share user under a share-lending arrangement who makes a replacement payment to the share supplier must at the time of making the replacement payment give to the share supplier a replacement payment statement in a form approved by the Commissioner showing—

- “(a) the name of the share user:
- “(b) the date on which the replacement payment is made:
- “(c) the name and address of the share supplier:
- “(d) the amount of any resident withholding tax deducted by the share user:
- “(e) the amount of the replacement payment after the deduction of resident withholding tax:
- “(f) the amount of any imputation credit attached under **section ME 6B** of the Income Tax Act 2004 to the replacement payment:

- “(g) the aggregate of the amount of any imputation credit referred to in paragraph (f) and the amount of the imputation credit arising under **section NF 8B** of the Income Tax Act 2004 for the share supplier from the deduction of resident withholding tax:
 - “(h) the aggregate of the amount of any imputation credit referred to in paragraph (f) and the amount of the imputation credit arising under **section NF 8B** of the Income Tax Act 2004 for the share supplier and the amount of the replacement payment after the deduction of resident withholding tax.”
- (2) **Subsection (1)** applies for replacement payments made on or after the day on which this Act receives the Royal assent.

158 Annual returns of income not required

After section 33A(1)(a)(iiib), the following is inserted:

- “(iic) income that is a payment under section 81(1)(b) of the Injury Prevention, Rehabilitation, and Compensation Act 1991 in respect of attendant care (as defined in Schedule 1, clause 12 of that Act) from which a tax deduction has been made in accordance with the Income Tax (Withholding Payments) Regulations 1979, if the caregiver used such tax code as the Commissioner may from time to time prescribe; or”.

159 New section 33C inserted

After section 33B, the following is inserted:

“33C Return not required for certain recipients of payments for attendant care

- “(1) A natural person who derives income in an income year from providing attendant care services is not required to furnish a return of income for the attendant care services, to the extent that—
 - “(a) the attendant care services are provided to a claimant who receives a payment under section 81(1)(b) of the Injury Prevention, Rehabilitation, and Compensation Act 1991; and
 - “(b) in accordance with the Income Tax (Withholding Payments) Regulations 1979, a tax deduction was made by

the Corporation from each payment referred to in **paragraph (a)**; and

“(c) the total amount derived by the natural person from providing attendant care services in the income year does not exceed \$9500.

“(2) In this section—

“**attendant care services** means services that comprise the provision of attendant care as defined in Schedule 1, clause 12 of the Injury Prevention, Rehabilitation, and Compensation Act 1991

“**Corporation** has the meaning provided in section 6 of the Injury Prevention, Rehabilitation, and Compensation Act 1991.”

160 Consequential adjustments on change in balance date

(1) In section 39, “transitional income year” is replaced by “transitional year” in both places it occurs.”

(2) **Subsection (1)** applies for income years corresponding to the 2007–08 and subsequent tax years.

161 New section 39B inserted

(1) After section 39, the following is inserted:

“39B **Changes in return dates: taxpayers with provisional tax and GST liabilities**

“(1) **Subsection (2)** applies if a provisional taxpayer—

“(a) is a person registered under the Goods and Services Tax Act 1985, and pays GST on a 2-month cycle or a 6-month cycle; and

“(b) elects under section 38(1) to change their balance date at some time in an income year; and

“(c) moves from—

“(i) a balance date in an even-numbered month to a balance date in another even-numbered month; or

“(ii) a balance date in an odd-numbered month to a balance date in another odd-numbered month.

“(2) Until the new balance date is reached, the taxpayer must—

“(a) continue with the due dates for their provisional tax instalments that applied before the change in balance date was approved; and

- “(b) apply **sections MB 19 to MB 23**, as relevant, and **schedule 13, part B** of the Income Tax Act 2004 for the transitional period to determine the due date and amount of an instalment.
- “(3) **Subsection (4)** applies if a provisional taxpayer—
 - “(a) is a person registered under the Goods and Services Tax Act 1985, and pays GST on a 2-month cycle or a 6-month cycle; and
 - “(b) elects under section 38(1) to change their balance date at some time in an income year; and
 - “(c) moves from—
 - “(i) a balance date in an even-numbered month to a balance date in an odd-numbered month; or
 - “(ii) a balance date in an odd-numbered month to a balance date in an even-numbered month.
- “(4) Until the new balance date is reached, the taxpayer must—
 - “(a) continue with the due dates for their provisional tax instalments that applied before the change in balance date was approved; and
 - “(b) apply **sections MB 20 to MB 23**, as relevant, and **schedule 13, part B** of the Income Tax Act 2004 for the transitional period to determine the due date and amount of an instalment; and
 - “(c) make an adjustment to their provisional tax liability for the income year for the part of the taxable period in which the new balance date falls.
- “(5) If a change in balance date means that the taxpayer’s taxable period is not aligned with their balance date, the Commissioner must make an adjustment to the taxable period under section 15B of the Goods and Services Tax Act 1985.”
- (2) **Subsection (1)** applies for income years corresponding to the 2007–08 and subsequent tax years.

162 New section 59B inserted

After section 59, the following is inserted:

“59B Disclosure of foreign trust particulars

- “(1) A New Zealand resident trustee must disclose to the Commissioner the following particulars—

-
- “(a) the name or other identifying particulars (for example, the date of the settlement on the trust) that relate to each foreign trust in respect of which the person is a trustee; and
 - “(b) the name and contact particulars of the New Zealand resident trustee; and
 - “(c) whether a settlor is resident in the Commonwealth of Australia; and
 - “(d) the name of the approved organisation of which a trustee who is a natural person or their co-trustee or, if the trustee is a non-natural person, a director or manager of the non-natural trustee is a member.
- “(2) A New Zealand resident trustee must disclose to the Commissioner an alteration to a particular to which **subsection (1)** refers.
- “(3) The disclosure required by **subsections (1) and (2)** and the application of **section 22 (2)(fb) and (m)** is delayed for a period of 2 years (calculated from the date on which the trustee becomes a New Zealand resident) for a trustee who is a natural person and who was appointed a trustee of the foreign trust before becoming a New Zealand resident if the trustee,—
- “(a) becomes a New Zealand resident on or after 1 April 2006; and
 - “(b) is not in the business of providing trustee services; and
 - “(c) has not been resident in New Zealand on any day in the period of 5 years that ends immediately before the trustee becomes a New Zealand.
- “(4) If **subsection (3)** does not apply, the disclosure required by **subsection (1)** must be made by the date that is—
- “(a) 30 days after the date of the person’s appointment as a trustee, if the person is appointed on or after 1 April 2006:
 - “(b) 60 days of the commencement of this section, if the person is appointed before 1 April 2006:
- “(5) If **subsection (3)** does apply, the disclosure required by **subsection (1)** must be made by the date that is 30 days after the end of the period of 2 years that begins when the trustee becomes a New Zealand resident.

- “(6) The disclosure required by **subsection (2)** must be made by,—
- “(a) if **subsection (3)** does not apply, the date that is 30 days after the date on which the alteration becomes known to the trustee:
 - “(b) if **subsection (3)** does apply, the date that is the later of—
 - “(i) the date that is 30 days after the end of the period of 2 years that begins when the trustee becomes a New Zealand resident:
 - “(ii) the date that would be given by **paragraph (a)** if **subsection (3)** did not apply.”

163 Disclosure of interest in foreign company or foreign investment fund

In section 61(1), in the words before paragraph (a) “has at any time in a tax year” is replaced by “at any time in a tax year is a New Zealand resident who is not a certified resident and has”.

164 Notices of proposed adjustment required to be issued by the Commissioner

In section 89C(db), “income year” is replaced by “period”.

165 Taxpayers and others with standing may issue notices of proposed adjustment

After section 89D(2C), the following is inserted:

- “(2D) For the purpose of subsection (2C), section 16(3) of the Goods and Services Tax Act 1985 does not apply.”

166 Notices of proposed adjustment required to be issued by the Commissioner

- (1) In section 89N(1)(c)(vi),—
 - (a) “a request under a statute for information” is replaced by “a requirement under a statute to produce information”:
 - (b) “the request” is replaced by “the requirement”, in both places that it occurs.
- (2) Section 89N(5) is replaced by the following:
 - “(5) If the Commissioner makes an application under subsection (3), the Commissioner must make an amended assessment by the last day of the period that—

- “(a) begins on the day following the day by which the Commissioner, in the absence of the suspension, would be required under the Inland Revenue Acts to make the amended assessment; and
- “(b) contains the total of—
 - “(i) the number of days between the date on which the Commissioner files the application in the High Court and the earliest date on which the application is decided by the High Court or the application or dispute is resolved:
 - “(ii) the number of days allowed by an order of a court as a result of the application.”

167 Test cases

Section 89O(5) is replaced by the following:

- “(5) The Commissioner must make an amended assessment, or perform an action, that is the subject of a suspended dispute by the later of the following:
 - “(a) the day that is 60 days after the last day of the suspension:
 - “(b) the last day of the period that—
 - “(i) begins on the day following the day by which the Commissioner, in the absence of the suspension, would be required under the Inland Revenue Acts to make the amended assessment, or perform the action; and
 - “(ii) contains the same number of days as does the period of the suspension.”

168 Determination on economic rate

- (1) In section 91AAF(1), “section EE 25” is replaced by “section EE 25 or **section EE 25B or section 25C**”.
- (2) In section 91AAF(4)(b), “or is an item of property to which **sections EE 25B or EE 25C** of the Income Tax Act 2004 apply” is inserted after “reacquired”.
- (3) After section 91AAF(4), the following is added:
 - “(5) A determination made under this section may apply to items of depreciable property to which **sections EE 25B or EE 25C** of the

Income Tax Act 2004 apply if acquired or used by a person before the commencement of this section.”

- (4) **Subsections (1) to (3)** apply for income years corresponding to the 2005–06 and subsequent tax years.

169 Determination on special rates and provisional rates

- (1) In section 91AAG(2)(a), “section EE 25(4)” is replaced by “sections EE 25, **EE 25B and EE 25C**”.
- (2) In section 91AAG(4)(b), “or **schedule 11B**” is inserted after “schedule 11”.
- (3) **Subsections (1) and (2)** apply for income years corresponding to the 2005–06 and subsequent tax years.

170 New Part 5B inserted

- (1) After section 91J, the following is inserted:

**“Part 5B
“Certificates**

“91K Eligibility for new-resident certificate

- “(1) A natural person is eligible for a period of time in a tax year to hold a general resident certificate if—
- “(a) the person satisfies for the period the general requirements for a new-resident certificate given by **subsection (6)**; and
 - “(b) the period begins on or after the day on which the person last became a New Zealand resident; and
 - “(c) the tax year is—
 - “(i) the tax year in which the person last became a New Zealand resident; or
 - “(ii) one of the next 2 tax years.
- “(2) A natural person is eligible for a period of time in a tax year to hold an employed resident certificate if—
- “(a) the person satisfies for the period the general requirements for a new-resident certificate given by **subsection (6)**; and
 - “(b) the person has not held a general resident certificate or dependent resident certificate since last becoming a New Zealand resident; and

- “(c) the period begins on or after the day on which the person last became a New Zealand resident; and
- “(d) the tax year is—
 - “(i) the tax year in which the person last became a New Zealand resident; or
 - “(ii) one of the next 4 tax years; and
- “(e) the person engages during the tax year in an activity that gives rise to an entitlement to a source deduction payment other than—
 - “(i) a payment of a kind referred to in paragraph (b)(iii), (v), (ix), and (xi) of the definition of **salary or wages** in section OB 1 of the Income Tax Act 2004:
 - “(ii) a payment of a kind referred to in paragraph (b)(viii) of the definition of **salary or wages** in section OB 1 of the Income Tax Act 2004 that is not an accident compensation payment referred to in section CF 1(1)(a) of the Income Tax Act 2004 or a parental leave payment referred to in section CF 1(1)(f) of that Act:
 - “(iii) a withholding payment of the kind specified in part E of the schedule of the Income Tax (Withholding Payments) Regulations 1979:
 - “(iv) a payment made by a close company to the person as a major shareholder of the close company:
 - “(v) a payment made to the person by a person who is a relative of the person under paragraphs (c) and (d) of the definition of that term in section OB 1 of the Income Tax Act 2004:
 - “(vi) a payment made to the person from a business carried on by 2 or more persons jointly, whether in partnership or otherwise, who include a person who is a relative of the person under paragraphs (c) and (d) of the definition of that term in section OB 1 of the Income Tax Act 2004; and
- “(f) the person—
 - “(i) during not less than 94% of the period, is under a contractual obligation to engage in the activity for not less than 37.5 hours in the week, including reasonable provisions for sick leave and annual leave:

“(ii) during the months in the tax year that include or follow the day on which the person last became a New Zealand resident, derives total source deduction payments satisfying **paragraph (e)** equal to or more than the amount given by the formula in **subsection (3)**.

“(3) The amount of source deduction payments required by **subsection (2)(f)(ii)** is given by the formula—

$$\$70,000 \times \frac{\text{months}}{12}.$$

“(4) In the formula, **months** is the number of months in the tax year that include or follow the day on which the person last became a New Zealand resident.

“(5) A natural person is eligible at a time to hold a dependent resident certificate if at the time the person is—

“(a) less than 20 years of age; and

“(b) financially dependent on a person who at the time is a certified employed resident or a certified general resident; and

“(c) being maintained as a member of the family of the certified resident.

“(6) A person satisfies the general requirements for a new-resident certificate if—

“(a) the person is a New Zealand resident; and

“(b) the person last became a New Zealand resident immediately after being a non-resident for a continuous period of at least 10 years; and

“(c) the person has not held a new-resident certificate before last becoming a New Zealand resident.

“91L Application for new-resident certificate

“(1) A natural person may apply to the Commissioner for a new-resident certificate for the person for a time in a tax year if—

“(a) the person is or will be eligible at the time to hold the new-resident certificate; and

“(b) the application is made at or before the end of the tax year.

“(2) An application under this section must—

“(a) be in the prescribed form; and

- “(b) specify the tax file number of the person or be accompanied by an application by the person for a tax file number; and
- “(c) be signed by the person making the application; and
- “(d) specify the type of certificate sought; and
- “(e) specify the period for which the certificate is sought; and
- “(f) provide all the facts that are relevant to the application; and
- “(g) specify all assumptions that are relevant to the application; and
- “(h) provide all other information required by the Commissioner.

“91M Issuing new-resident certificate

- “(1) The Commissioner may issue a new-resident certificate for a period to a natural person who makes an application under **section 91L(2)** if the Commissioner is satisfied that the person is or will be eligible to hold the resident certificate for the period.
- “(2) A certificate issued under this section must state—
 - “(a) the type of certificate; and
 - “(b) the person to whom the certificate is issued; and
 - “(c) the period for which the certificate is issued; and
 - “(d) any assumptions made by the Commissioner when issuing the certificate.

“91N Change in situation

A person to whom a new-resident certificate has been issued must notify the Commissioner in writing of any circumstances that affect the eligibility of the person, or of a dependent of the person, to hold a new-resident certificate.

“91O Withdrawal or surrender of new-resident certificate

- “(1) The Commissioner may withdraw a new-resident certificate if the Commissioner is satisfied that the certificate is incorrect.
- “(2) The holder of a new-resident certificate may surrender the new-resident certificate by returning the certificate to the Commissioner.

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- “(3) A withdrawal of a new-resident certificate is effective from the date nominated by the Commissioner in a notice sent to the last known address of the holder of the certificate.
- “(4) A surrender of a new-resident certificate is effective from the date on which the Commissioner receives the certificate.
- “(5) The Commissioner may require the return of a new-resident certificate that is withdrawn under **subsection (1)**.”
- (2) **Subsection (1)** applies for a person who becomes a New Zealand resident on or after 1 April 2006.

171 Commissioner may determine amount of provisional tax

- (1) In section 119(1),—
- (a) “section MB 3” is replaced by “**section MB 6**”:
- (b) in paragraph (d)(ii) “date.” is replaced by “date; or” and the following is added:
- “(e) the person is required, under sections MB 6(5) and MB 17(5) of the Income Tax Act 2004, to estimate their residual income tax for a tax year, and fails to provide an estimation or re-estimation to the Commissioner.”
- (2) **Subsection (1)** applies for income years corresponding to the 2007–08 and subsequent tax years.

172 Definitions

- (1) In section 120C(1), in the definition of **date interest starts**—
- (a) after paragraph (a)(ii), the following is added:
- “(iii) for a provisional taxpayer to whom **section 120KE(7)** applies, the day after whichever dates of instalments B, D, and F for their corresponding income year occur 30 days after their last ratio instalment date; and”:
- (b) after paragraph (b)(iii), the following is added:
- “(iv) for a provisional taxpayer other than one to whom **section 120KE(1) or (3)** applies, means the first day of the income year; and
- “(v) for a provisional taxpayer to whom **section 120KE(6)** applies, the later of—
- “(A) the day after the date set out in **section MB 17(2) or MB 17(3)**, as applicable:

“(B) the day after their last ratio instalment date;
and”.

- (2) **Subsection (1)** applies for income years corresponding to the 2007–08 and subsequent tax years.

173 Section 120K replaced

- (1) Section 120K is replaced by the following:

“120KB Provisional tax instalments and due dates generally

“(1) This section applies—

“(a) in a tax year other than a transitional year:

“(b) to a provisional taxpayer who is not a new provisional taxpayer.

“(2) A provisional taxpayer’s residual income tax is due and payable as set out in **section MB 8** of the Income Tax Act 2004.

“(3) If a provisional taxpayer uses a GST ratio to determine the amount of provisional tax payable, and an adjustment to a base amount referred to in **section MB 7** of the Income Tax Act 2004 will, or is likely to, change the amount payable, the taxpayer may ask the Commissioner to make the adjustment and reassess their liability.

“(4) For the purposes of this section and **sections 120KC to 120KE**, residual income tax means a person’s residual income tax for a tax year as defined in section OB 1 of the Income Tax Act 2004—

“(a) as increased by an amount calculated in relation to the person and the income year under section KD 4(2)(c) of the Income Tax Act 2004; or

“(b) as reduced by an amount calculated in relation to the person and the income year under section KD 4(2)(d) of the Income Tax Act 2004.

“120KC Residual income tax of new provisional taxpayer

“(1) In a tax year other than a transitional year, and for the purposes of this Part, a new provisional taxpayer’s residual income tax is treated as due and payable—

“(a) in 3 equal instalments on the interest instalment dates B, D, and F for the taxpayer’s corresponding income year, if **section MB 8(8)(a)** of the Income Tax Act 2004 applies:

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- “(b) in 2 equal instalments on the interest instalment dates C and F for the taxpayer’s corresponding income year if **section MB 8(8)(b)** applies:
 - “(c) in 1 instalment on the interest instalment date F for the taxpayer’s corresponding income year, if **section MB 8(8)(c)** applies.
- “(2) In this section, a reference to an instalment classified by the letters A to F is a reference to an instalment date in the table in **schedule 13, part A** of the Income Tax Act 2004 on which an instalment of provisional tax is payable by a provisional taxpayer for an income year that corresponds to a tax year.

Example: Section 120KC

Mr Yellow, who has a March balance date, decides to change to a May balance date. The transitional year is 14 months long. He starts business and becomes a new provisional taxpayer on 31 July, estimating provisional tax at \$15,000 for the income year. At the end of the year, Mr Yellow's residual income tax is \$20,000.

2007											2008					
← Transitional year →																
Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun		
			↓ starts business	↓ (no instalment)					↓ first instalment			↓ second instalment			↓ final instalment	
<p>Instalments in transitional year: 28th day of 5th, 9th, and 13th months after balance date, and final instalment on 28th day of month following final month in transitional year (s MB 22 and schedule 13, part B). But first business day falls within 30 days of the date that would be the first instalment, 28 August (s MB 13), so no instalment is due.</p> <p>Amounts payable on the instalment dates are calculated under s MB 22.</p> <p style="margin-left: 40px;">First instalment due 20 January: $\\$15,000 \times 4/14 = \\$4,285$</p> <p style="margin-left: 40px;">Second instalment due 28 April: $\\$15,000 \times 8/14 - \\$4,285 = \\$4,286$</p> <p style="margin-left: 40px;">Final instalment due 28 June: $\\$15,000 - \\$8,571 = \\$6,429$</p> <p>Three interest start dates apply: 21 January, 29 April, and 29 June (s 120KC(2)).</p> <p style="margin-left: 40px;">First instalment 20 January on RIT: $\\$20,000 \times 4/14 = \\$5,714$</p> <ul style="list-style-type: none"> • interest payable from 21 January on: $(\\$5,714 - \\$4,285) = \\$1,429$ <p style="margin-left: 40px;">Second instalment 28 April on RIT: $\\$20,000 \times 4/14 = \\$5,714$</p> <ul style="list-style-type: none"> • interest payable from 29 April on: $(\\$5,714 - \\$4,286) = \\$1,428$ <p style="margin-left: 40px;">Final instalment 28 June on RIT: $\\$20,000 - (\\$5,714 + \\$5,714) = \\$8,572$</p> <ul style="list-style-type: none"> • interest payable from 29 June on RIT: $(\\$8,572 - \\$6,429) = \\$2,143$ 																

“120KD Provisional tax instalments in transitional years

“(1) For a transitional year to which **schedule 13, part B** of the Income Tax Act 2004 applies, the residual income tax of a provisional taxpayer, other than a person to whom **section**

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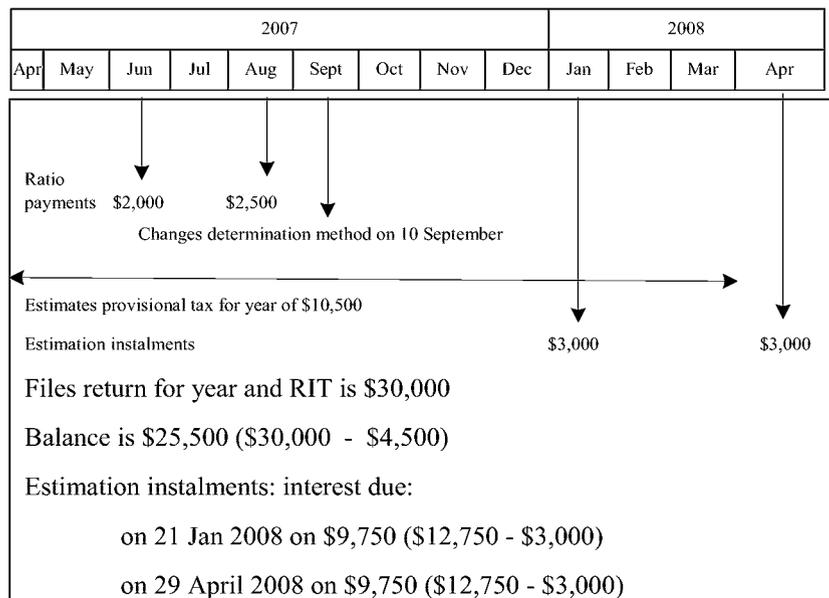
- 120KE(1)** applies, is due and payable as determined under **sections MB 20 to MB 23** of the Income Tax Act 2004.
- “(2) A provisional taxpayer in a transitional year is liable for use of money interest for unpaid tax in relation to the instalments of provisional tax payable in the months set out in **schedule 13, part B** of the Income Tax Act 2004. The date interest starts is the day after the 28th day of the month on which an instalment is payable.
- “(3) For the purposes of calculating the amount of interest due in relation to an instalment of provisional tax other than a final instalment, the amount of residual income tax payable on the instalment date is calculated using the formula—
- $$\frac{\text{residual income tax} \times \text{instalment period}}{\text{months in transitional year}}$$
- “(4) In the formula, the **instalment period** is either—
- “(a) 4, for provisional taxpayers who pay on the equivalent of instalment dates B, D, and F; or
- “(b) 6, for provisional taxpayers who pay on the equivalent of instalment dates C and F.
- “(5) For the purposes of calculating the amount of interest due in relation to a final instalment of provisional tax, the amount of residual income tax payable is the residual income tax for the tax year minus any amount treated as due on an instalment date referred to in **subsection (3)**.
- “(6) In this section, a provisional taxpayer includes a new provisional taxpayer.

Example: Section 120KD

Dr Beige starts the income year (March balance date) using a GST ratio to determine the amount of provisional tax payable. He makes payments in June and August. On 10 September 2007, Dr Beige decides to change his determination method. He must then estimate his residual income tax for the income year (s MB 17(5) Income Tax Act 2004), and pay 2 instalments under the estimation method on instalment dates D and F. Dr Beige provides a return for the income year that shows residual income tax of \$30,000.

Four interest start dates apply:

- for credit interest, the interest start date is 11 September:
- for debit interest, the interest start dates are:
 - 11 September for unpaid instalments under the GST ratio method
 - 21 January 2008 for unpaid instalments under estimation method
 - 29 April 2008 for unpaid instalments under estimation method.



“120KE Provisional tax and rules on use of money interest

- “(1) A provisional taxpayer’s residual income tax for a tax year is due and payable in 1 instalment on their terminal tax date if—
- “(a) they are a natural person, other than in their capacity as trustee; and
 - “(b) their residual income tax is less than \$35,000 for the tax year; and
 - “(c) they have not estimated their residual income tax under **section MB 6** of the Income Tax Act 2004 for the tax year; and
 - “(d) they have not used a GST ratio under **section MB 7** of the Income Tax Act 2004 in the tax year to determine the amount of provisional tax payable for the tax year; and
 - “(e) they have not at any time in the tax year held a valid certificate of exemption under **section NF 9(12)** of the Income Tax Act 2004.
- “(2) When **subsection (1)** applies, in relation to the payment of provisional tax under **section MB 8(2) or (4) or MB 20**, the provisional taxpayer—
- “(a) is not liable for use of money interest under **section 120D** for unpaid tax until their terminal tax date;
 - “(b) is not entitled to use of money interest under **section 120D** for overpaid tax until their terminal tax date.
- “(3) A provisional taxpayer’s residual income tax for a tax year is due and payable in 1 instalment on their terminal tax date if—
- “(a) they use a GST ratio to determine the amount of provisional tax payable for the tax year; and
 - “(b) they use the GST ratio as the determination method for the whole of the corresponding income year.
- “(4) When **subsection (3)** applies, in relation to the amount of provisional tax paid or payable for the period in the corresponding income year in which the GST ratio is used, the provisional taxpayer—
- “(a) is not liable for use of money interest under **section 120D** for unpaid tax until their terminal tax date;
 - “(b) is not entitled to use of money interest under **section 120D** for overpaid tax until their terminal tax date.

- “(5) **Subsections (6) and (7)** apply if, under **section MB 17** of the Income Tax Act 2004, a provisional taxpayer changes the way they determine the amount of provisional tax.
- “(6) For credit interest, the taxpayer is entitled to use of money interest from the later of—
- “(a) the day after the date set out in **section MB 17(2) or (3)**, as applicable:
 - “(b) the day after their last ratio instalment date.
- “(7) For debit interest, the taxpayer is liable for use of money interest—
- “(a) for the period of the tax year in which they use the GST ratio, from the later of the dates set out in **subsection (6)**:
 - “(b) for the period of the tax year in which they estimate their provisional tax, from whichever dates of instalments B, D, and F for their corresponding income year occur 30 days after their last ratio instalment date.
- “(8) In this section, a reference to an instalment classified by the letters A to F is a reference to a date in the table in **schedule 13, part A** of the Income Tax Act 2004 on which an instalment of provisional tax is payable by a provisional taxpayer for an income year that corresponds to a tax year.”
- (2) **Subsection (1)** applies for income years corresponding to the 2007–08 and subsequent tax years.

174 Meaning of unpaid tax and overpaid tax for provisional tax purposes

- (1) In section 120L(1), “section 120K” is replaced by “**section 120KB(4)**”.
- (2) **Subsection (1)** applies for income years corresponding to the 2007–08 and subsequent tax years.

175 Where provisional tax paid by company does not count as overpaid tax

- (1) In section 120M(b), “section MB 10” is replaced by “**section MB 37**”.
- (2) **Subsection (1)** applies for income years corresponding to the 2007–08 and subsequent tax years.

176 Due date for underestimation penalty tax

- (1) In section 120Q, “the taxpayer’s third instalment date” is replaced by “the date of instalment F set out in **schedule 13, part A** of the Income Tax Act 2004, for the taxpayer’s corresponding income year”.
- (2) **Subsection (1)** applies for income years corresponding to the 2007–08 and subsequent tax years.

177 Late payment penalty and provisional tax

- (1) In section 139C(1), “**Subsection (1B)** overrides this subsection.” is added.
- (2) After section 139C(1), the following is added:
“(1B) **Subsection (1)** applies to a provisional taxpayer who uses a GST ratio in a tax year to determine the amount of an instalment of provisional tax payable for the tax year except in the following circumstances:
 - “(a) when the taxpayer pays an amount determined correctly using the GST ratio, but underpays their liability in comparison with their residual income tax for the tax year:
 - “(b) when the taxpayer’s residual income tax has been reassessed and, based on the new GST ratio, the taxpayer has underpaid an instalment of provisional tax that was due before the date of reassessment.”
- (3) In section 139C(2), in the definition of provisional tax payable,—
 - (a) “section MB 5” is replaced by “**section MB 9**” wherever it occurs:
 - (b) in paragraph (a)(ii), “section MB 2” is replaced by “**section MB 4**”:
 - (c) in paragraph (a)(ii), “sections MB 2AA or MB 2AB” is omitted:
 - (d) in paragraph (aa), “section MB 5A” is replaced by “**sections MB 9 and MB 20**” wherever it occurs:
 - (e) in paragraph (aa)(ii), “item p of the formulae in section MB 5A(5) and MB 5A(7)” is replaced by “item **residual income tax** in the formula in **section MB 9(2)**”.
- (4) **Subsections (1) to (3)** apply for income years corresponding to the 2007–08 and subsequent tax years.

178 Application of other provisions of Act to imputation penalty tax and dividend withholding payment penalty tax

- (1) In section 140D(2)(d) and (3)(d), “section 120K” is replaced by “**sections 120KB to 120KE**”.
- (2) **Subsection (1)** applies for income years corresponding to the 2007–08 and subsequent tax years.

179 Application of other provisions of Act to Maori authority distribution penalty tax

- (1) In section 140DB(2)(b), “section 120K” is replaced by “**sections 120KB to 120KE**”.
- (2) **Subsection (1)** applies for income years corresponding to the 2007–08 and subsequent tax years.

180 New section 141EA inserted

- (1) After section 141E, the following is inserted:

“141EA **Shortfall penalty and provisional tax**

Despite sections 141A to 141E, a provisional taxpayer who uses a GST ratio in a tax year to determine the amount of an instalment of provisional tax payable for the tax year is not liable to pay a shortfall penalty in the following circumstances:

- “(a) when the taxpayer with a provisional tax liability at an instalment date pays the amount determined using the GST ratio, but underpays their annual liability:
- “(b) when the taxpayer uses the GST ratio that applies at an instalment date but a later reassessment of their residual income tax changes the GST ratio and the amount of the instalment.”

- (2) **Subsection (1)** applies for income years corresponding to the 2007–08 and subsequent tax years.

181 Reduction of penalties for previous behaviour

In section 141FB(5), “subsection (2)” is replaced by “subsections (1) and (2)”.

182 Absolute liability offences

In section 143(1)(c), “1985.” is replaced by “1985; or” and the following is added:

“(d) unless **section 59B(3)** applies, acts as a New Zealand resident trustee of a foreign trust when the person is not a qualifying New Zealand resident trustee.”

183 Transfer of excess provisional tax if provisional tax paid is more than taxpayer’s provisional tax liability, determined before assessment

- (1) In section 173P(2)(a), “section MB 6” is replaced by “**section MB 12**”.
- (2) **Subsection (1)** applies for income years corresponding to the 2007–08 and subsequent tax years.

184 Transfer of excess provisional tax if taxpayer estimates or revises estimate of residual income tax, determined before assessment

- (1) In section 173Q,—
 - (a) in subsection (1)(b)(ii), “section MB 2(1)(a) or section MB 2(1)(b)” is replaced by “**section MB 4(2)**”:
 - (b) in subsection (2)(a), “section MB 6” is replaced by “**section MB 12**”:
 - (c) in subsection (2), “section 120K(4)” is replaced by “**section 120 KD(1) and (2)**”.
- (2) **Subsection (1)** applies for income years corresponding to the 2007–08 and subsequent tax years.

185 Transfer of excess tax if provisional tax is more than taxpayer’s residual income tax, determined after assessment

- (1) In section 173R,—
 - (a) in subsection (2)(a), “section MB 6” is replaced by “**section MB 12**”:
 - (b) in subsection (2), “section 120K(4)” is replaced by “**section 120 KD(1) and (2)**”.
- (2) **Subsection (1)** applies for income years corresponding to the 2007–08 and subsequent tax years.

186 Remission in circumstances of qualifying event

- (1) Section 183ABA(2) is replaced by the following:
 - “(2) If this section applies and an affected taxpayer has been charged with interest under Part VII, the affected taxpayer may request the Commissioner to remit the interest charged.”
- (2) In section 183ABA(3)—
 - (a) in the words before paragraph (a), “penalty and” is omitted;
 - (b) in paragraph (a), “penalty or” is omitted.
- (3) In section 183ABA(4), “and section MB 3B of the Income Tax Act 1994” is omitted.
- (4) **Subsections (1) to (3)** apply for income years corresponding to the 2005–06 and subsequent tax years.

187 Remission on written application

- (1) In the heading to section 183H, “**written**” is omitted.
- (2) Section 183H(a) is replaced by the following:
 - “(a) make a written request to the Commissioner, if the requested remission is of—
 - “(i) imputation penalty tax imposed by section 140B:
 - “(ii) dividend withholding payment penalty tax imposed by section 140C:
 - “(iii) Maori authority distribution penalty tax imposed by section 140CB:
 - “(iv) a shortfall penalty imposed by section 141AA:
 - “(v) interest under Part VII; and”.
- (3) **Subsections (1) and (2)** apply for income years corresponding to the 2005–06 and subsequent tax years.

188 Payment out of Crown bank account

- In section 185(1)(f), “Income Tax Act 2004—” is replaced by “Income Tax Act 2004; or” and the following is added:
- “(g) in accordance with **section NBB 6** of the Income Tax Act 2004—”.

189 New sections 185C and 185D inserted

After section 185B, the following is inserted:

“185C Establishment of Listed PAYE Intermediary Bank Account

An account called the Listed PAYE Intermediary Bank Account is established by this section.

“185D Payments into, and out of, Listed PAYE Intermediary Bank Account

- “(1) All payments received by the Commissioner from a listed PAYE intermediary and made under **subpart NBB** of the Income Tax Act 2004 must be paid into the Listed PAYE Intermediary Bank Account.
- “(2) Such amount as is necessary to meet the payments required to be made under **section NBB 6** of the Income Tax Act 2004 must be paid into the Listed PAYE Intermediary Bank Account.
- “(3) The money standing to the credit of the Listed PAYE Intermediary Bank Account must be applied in making payments under **section NBB 6** of this Act.”

**Part 4
Amendments to other Acts**

Income Tax Act 1994

190 Income Tax Act 1994

Sections 191 to 201 amend the Income Tax Act 1994.

191 Exclusions from term “dividends”

- (1) In section CF 3(1)(c), “, or treated under **section FCB 2** as being distributed in respect of any share in the company,” is inserted after “liquidation of the company”.
- (2) **Subsection (1)** applies for—
- (a) a company that becomes a non-resident on or after 21 March 2005; and
 - (b) the 2004–05 income year.

192 Government grants to businesses

- (1) In section DC 1(1)(a), “a payment to which section CC 3 or section DL 3 (except section DL(3)(6)), applies:” is replaced by the following:
- “a payment—
 - “(i) to which section CC 3 applies:
 - “(ii) to which section DL 3, other than DL 3(6), applies:
 - “(iii) of a grant made under the Agriculture Recovery Programme for the Lower North Island and Eastern Bay of Plenty, to the extent that the grant is made in respect of expenditure incurred by the taxpayer before the grant:”.
- (2) **Subsection (1)** applies for the 2003–04 and subsequent income years.

193 Certain expenditure on land used for farming or agricultural purposes

- (1) In section DO 3,—
- (a) in the words preceding paragraph (a), “Any taxpayer” is replaced by “Unless **subsection (2)** applies, a taxpayer”:
 - (b) in paragraph (g), “rabbit-proof.” is replaced by “rabbit-proof:” and the following is added:
 - “(h) the regrassing and fertilising of all types of pasture, if the expenditure is not amortised under **section DO 4.**”
- (2) Section DO 3 is renumbered as **section DO 3(1)** and the following is added:
- “(2) Despite **subsection (1)(h)**, and except to the extent that the expenditure relates to a type of pasture with an estimated useful life of 1 year or less, a person is not allowed a deduction for an amount of expenditure that is incurred in the course of a significant capital activity.”
- (3) **Subsections (1) and (2)** apply to expenditure incurred on and after 1 July 2004.

194 Low value asset write-off

- (1) In section EG 16(1), the words preceding paragraph (a) are replaced by the following:

- “(1) Unless **subsection (1B)** applies, the cost of any low value property that, on or before 19 May 2005, is—”.
- (2) After section EG 16(1), the following is inserted:
 - “(1B) For the 2004–05 income year and for a taxpayer with a late balance date, in paragraph (a) of the definition of low value property in section OB 1, “\$200” must be read as \$500.”
- (3) **Subsections (1) and (2)** apply for the 2004–05 income year.

195 New subpart FCB inserted

- (1) After subpart FC, the following is inserted:

“Subpart FCB—Emigration of resident companies

“FCB 1 Tax effects of company becoming non-resident to reflect tax effects of liquidation

- “(1) This subpart applies to a company (an **emigrating company**) that—
 - “(a) is a New Zealand resident; and
 - “(b) ceases to be a New Zealand resident.
- “(2) The intended effect of this subpart and related provisions of the Act is that, for the purposes of the Act, the effects on an emigrating company and its shareholders when the emigrating company becomes a non-resident reflect the effects that would have resulted if—
 - “(a) immediately before the emigration time—
 - “(i) the emigrating company disposed of its property at market value; and
 - “(ii) the emigrating company went into liquidation; and
 - “(iii) the amount available for distribution in the liquidation were distributed as dividends to the shareholders of the emigrating company; and
 - “(b) at the emigration time, the emigrating company were reformed as a foreign company that—
 - “(i) had the same ownership and business activities as those of the emigrating company immediately before the emigration time; and
 - “(ii) acquired at market value the property of the emigrating company at the emigration time.

“FCB 2 Emigrating company treated as paying distribution to shareholders

Immediately before the emigration time for an emigrating company—

- “(a) the emigrating company is treated as paying, as dividends, a distribution in money to shareholders of the amount that would be available for distribution to the shareholders if, at the emigration time, the emigrating company—
 - “(i) disposed of its property at market value; and
 - “(ii) went into liquidation; and
- “(b) each shareholder in the emigrating company is treated as being paid by the emigrating company, as a dividend, a distribution in money of the amount to which the shareholder would be entitled in such a liquidation.

“FCB 3 Emigrating company treated as disposing of property and immediately reacquiring property

An emigrating company is treated as, immediately before the emigration time for the emigrating company,—

- “(a) disposing of the property of the emigrating company to another person for consideration equal to the market value of the property at the emigration time; and
- “(b) acquiring the property referred to in **paragraph (a)** from the other person for consideration equal to the amount referred to in **paragraph (a)**.”

(2) **Subsection (1)** applies for

- (a) a company that becomes a non-resident on or after 21 March 2005; and
- (b) the 2004–05 income year.

196 Company may attach imputation credit to dividend

(1) Section ME 6(2) is replaced by the following:

“(2) Notwithstanding subsection (1), an imputation credit account company may retrospectively attach an imputation credit to a dividend arising from a transfer pricing adjustment or under **subpart FCB** if—

- “(a) the company pays a non-cash dividend and is subject to an adjustment under section GD 13(3) or (4) in respect of the arrangement giving rise to the dividend:

- “(b) the company is an emigrating company that is treated under **section FCB 2** as paying a distribution to shareholders.”
- (2) In section ME 6(3), “subsection (2)” is replaced by “**subsection (2)(a)**”.
- (3) After section ME 6(3), the following is inserted:
“(3B) The amount of imputation credit attached retrospectively under **subsection (2)(b)** must not exceed the credit balance, if any, in the company’s imputation credit account immediately before the emigration time.”
- (4) In section ME 6(5)(a), “subsection (2)” is replaced by “**subsection (2)(a)**”.
- (5) After section ME 6(5), the following is added:
“(6) If an amount of tax paid by an emigrating company is attributable to the application of **subpart FCB** to the emigrating company, the amount of tax is treated for the purposes of this subpart as being paid immediately before the emigrating company becomes a non-resident if—
“(a) the company determines under **subsection (2)(b)** to attach an imputation credit to a dividend; and
“(b) the imputation credits that the company attaches are not less than the amount of tax; and
“(c) the company notifies the Commissioner with the company dividend statement required by **subsection (4)(b)**.”
- (6) **Subsections (1) to (5)** apply for the 2004–05 imputation year.

197 Company may elect to maintain dividend withholding payment account

- (1) After section MG 2(5), the following is added:
“(6) If an emigrating company is a dividend withholding payment account company immediately before the emigration time for the emigrating company, the emigrating company ceases to be a dividend withholding payment account company at the emigration time.
“(7) A company that ceases to be a dividend withholding payment account company as a result of **subsection (6)** must—

- “(a) furnish, within the time limit in section 71 of the Tax Administration Act 1994, the annual dividend withholding payment account return required from the company as a dividend withholding payment account company for the imputation year in which the company becomes a non-resident; and
- “(b) pay any further dividend withholding payment that may be payable under section MG 9 by the company as a dividend withholding payment account company for the imputation year.”

- (2) **Subsection (1)** applies for—
 - (a) a company that becomes a non-resident on or after 1 April 1997; and
 - (b) the 1997–98 and subsequent imputation years.

198 Company may elect to be conduit tax relief company and maintain conduit tax relief account

- (1) After section MI 2(7), the following is added:
 - “(8) A company that ceases to be a dividend withholding payment account company as a result of **section MG 2(6)**—
 - “(a) ceases to be a conduit tax relief company; and
 - “(b) must furnish, within the time limit in section 69 of the Tax Administration Act 1994, the annual imputation return required from the company for the imputation year in which the company becomes a non-resident; and
 - “(c) must pay any dividend withholding payment that may be payable under section MI 10(3) by the company as a dividend withholding payment account company for the imputation year.”
- (2) **Subsection (1)** applies for—
 - (a) a company that becomes a non-resident on or after 1 April 1997; and
 - (b) the 1997–98 and subsequent imputation years.

199 Further dividend withholding payment payable in respect of conduit tax relief account debits

- (1) In the heading to section MI 10, “**Further dividend**” is replaced by “**Dividend**”.

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- (2) In section MI 10(1), “a further amount” is replaced by “an amount”.
- (3) In section MI 10(2), “further amount” is replaced by “amount”.
- (4) **Subsections (1) to (3)** apply for the 1997–98 and subsequent imputation years.

200 Definitions

- (1) This section amends section OB 1.
- (2) In the definition of **available subscribed capital**—
 - (a) the formula is replaced by the following:
$$a + b - c + d:$$
 - (b) after the definition of item c, the following is added:

“d is—

 - “(i) in the case of a company that has been an emigrating company, the amount of the company’s distribution under **section FCB 2** that is assessable income of the shareholders:
 - “(ii) in any other case, nil:”.
- (3) After the definition of **emergency call**, the following is inserted:

“**emigrating company** is defined in **section FCB 1(1)**:
“**emigration time**, for an emigrating company, is the time at which the emigrating company becomes a non-resident:”.
- (4) In the definition of **estimated useful life**, after paragraph (c), the following is added:

“(d) for a type of pasture, means the period of time over which the pasture might reasonably be expected to be useful to a person in deriving income or carrying on a farming or agricultural business on land in New Zealand”.
- (5) In the definition of **low value property**, “\$200” is replaced by “\$500”.
- (6) After the definition of **sick, accident, or death benefit fund**, the following is inserted:

“**significant capital activity**, in **section DO 3** and **Schedule 7**, and in relation to a farming or agricultural business on land in New Zealand,—

“(a) means an activity that enables a change in the nature or character of a farming activity from that undertaken on the land immediately before the change; and

“(b) excludes an activity that enables a change in the intensity of a farming practice employed in a farming activity on the land”.

- (7) **Subsections (4) and (6)** apply to expenditure incurred on and after 1 July 2004.
- (8) **Subsections (2) and (3)** apply for a company that becomes a non-resident on or after 21 March 2005.
- (9) **Subsection (5)** applies for an asset acquired after 19 May 2005.

201 Schedule 7—Expenditure on Land and Aquacultural Improvements

- (1) In Schedule 7, Part A,—
 - (a) in clause 4, “The preparation” is replaced by “Unless **clause 4B** applies, the preparation”; and
 - (b) after clause 4, the following is inserted:

“4B. regrassing and fertilising all types of pasture in 45”.
the course of a significant capital activity that relates to a type of pasture with an estimated useful life of more than 1 year
- (2) **Subsection (1)** applies on and after 1 July 2004.

Goods and Services Tax Act 1985

202 Goods and Services Act 1985

Sections 203 to 219 amend the Goods and Services Act 1985.

203 Interpretation

- (1) This section amends section 2.
- (2) Before the definition of **challenge**, the following is inserted:

“**associated supply** means—

 - “(a) a supply for which the supplier and recipient are associated persons:

- “(b) a supply of a right, under a debt security, equity security, or participatory security, to receive for no consideration, or consideration at other than the open market value, a supply of goods and services that is—
 - “(i) not an exempt supply; and
 - “(ii) not a supply relating to the control of the issuer of the debt security, equity security, or participatory security”.
- (3) After the definition of **associated supply**, as inserted by **subsection (5)**, the following is inserted:

“**balance date** is defined in **section 15B** (Taxable periods aligned with balance dates) for the purposes of that section”.
- (4) In the definition of **taxable period**, “section 15 or section 15A” is replaced by sections 15 to **15D**.
- (5) **Subsections (3) and (4)** apply for a registered person for—
 - (a) a taxable period that begins on or after the beginning of the registered person’s 2007–08 income year, if the registered person derives assessable income in that income year:
 - (b) a taxable period that begins on or after 1 April 2007, if **paragraph (a)** does not apply.

204 Meaning of term financial services

- (1) Section 3(3)(b) is omitted.
- (2) **Subsection (1)** applies for supplies of financial services that are made on or after the date on which this Act receives the Royal assent.

205 Meaning of term supply

- (1) Section 5(11)(a) is replaced by the following:
 - “(a) an adhesive label, or a mark or design, that is—
 - “(i) issued or sold by a person to another person; and
 - “(ii) affixed to, impressed on, or printed on stationery; and
 - “(iii) indicates pre-payment of the fee chargeable for the carriage of a letter, parcel, or other article; and
 - “(iv) not intended to distinguish the article to which it relates from similar articles carried by the same person:”.

- (2) After section 5(14), the following is inserted:
- “(14B) If part of a supply of a debt security, equity security, or participatory security is the supply of a right to receive supplies of goods and services that are not exempt supplies, the supply of the right is treated as being a supply of goods and services made for a consideration.”
- (3) **Subsection (1)** applies for supplies that are made on or after the date on which this Act receives the Royal assent.
- (4) **Subsection (2)** applies for supplies of financial services that are made on or after the date on which this Act receives the Royal assent.

206 Time of supply

In section 9(2)(a), the words before subparagraph (i) are replaced by the following:

“(a) if the supply is an associated supply,—”.

207 Value of supply of goods and services

- (1) In section 10(3), in the words before paragraph (a), “(3AB),” is inserted after “subsections (3A),”.
- (2) Section 10(3)(b) is replaced by the following:
- “(b) the supply is an associated supply; and”.
- (3) After section 10(3A), the following is inserted:
- “(3AB) Subsection (3) does not apply to a supply of goods and services if the recipient—
- “(a) acquires the supply for no consideration; and
- “(b) from the time of the supply, applies the goods and services for the purpose of making taxable supplies.”
- (4) **Subsections (1) and (3)** apply for supplies made on or after the date on which this Act receives the Royal assent.

208 Zero-rating of goods

- (1) Section 11(1)(j) is replaced by the following:
- “(j) the goods are not situated in New Zealand at the time of supply and
- “(i) the goods are not situated in New Zealand at the time of delivery to the recipient:

“(ii) the recipient pays tax under section 12 on the importation of the goods into New Zealand; or”.

- (2) **Subsection (1)** applies for supplies made on or after **19 May 2005**.

209 Exempt supplies

- (1) In section 14(1)(a),—

- (a) “not being—” is replaced by “not being a supply referred to in **subsection (1B)**”:
(b) subparagraphs (i) and (ii) are omitted.

- (2) After section 14(1), the following is inserted:

“(1B) The following supplies are excluded from the exemption under subsection (1):

- “(a) a supply of financial services that, in the absence of subsection (1)(a), would be charged with tax at the rate of zero per cent under section 11A:
“(b) a supply described in **paragraph (b)** of the definition of **associated supply**:
“(c) a supply of goods and services which (although being part of a supply of goods and services which, but for this paragraph, would be an exempt supply under subsection (1)(a)) is not in itself, as between the supplier of that first-mentioned supply and the recipient, a supply of financial services in respect of which subsection (1)(a) applies.”

- (3) **Subsection (2)** applies in relation to the insertion of **section 14(1B)(b)** for supplies of financial services that are made on or after the date on which this Act receives the Royal assent.

210 New section 15AB inserted

- (1) After section 15A, the following is inserted:

“15AB Transitional provision: alignment of taxable periods with balance dates

- “(1) This section applies to a registered person who has a provisional tax liability in the person’s 2006–07 income year.
“(2) The registered person may pay the person’s GST liability on a monthly basis if the person applies to the Commissioner to pay on that basis.
“(3) The registered person must pay the person’s GST liability on a monthly basis if the person’s total taxable supplies in a 12-

month period are more, or are likely to be more, than \$24,000,000.

- “(4) If neither of **subsections (2) and (3)** applies to the registered person, the registered person must pay a GST liability on either a 2-monthly or 6-monthly basis.
- “(5) The registered person must pay a GST liability in a set of instalments that is aligned with the registered person’s balance date under section 33 or 38 of the Tax Administration Act 1994, reflecting the applicable payment dates in **schedule 13, part A** of the Income Tax Act 2004.
- “(6) For the purposes of **subsection (5)**, a registered person whose balance date changes during an income year must,—
 - “(a) before the new balance date, use the payment frequency applying at the start of the income year:
 - “(b) after the new balance date, use the cycle of taxable periods starting on the first day of the new income year.
- “(7) If the registered person’s GST cycle is not aligned with the person’s balance date and the person has a provisional tax liability for a tax year, the Commissioner must adjust the person’s taxable periods by truncating the last taxable period before the balance date so that the taxable period and income year end on the same date.
- “(8) The Commissioner may make the adjustment in **subsection (7)** if—
 - “(a) the registered person’s income tax liability indicates that a provisional tax liability is likely to arise:
 - “(b) the registered person asks for the adjustment.
- “(9) If there is a change in the basis on which the registered person’s taxable period is set and the change could result in the person’s taxable period not being aligned with the person’s balance date, the Commissioner must adjust the effective date of the change in taxable period to produce alignment.
- “(10) In this section, **balance date** means the registered person’s annual balance date for accounts for the tax year or other period for which the person must provide a return of income under section 33 of the Tax Administration Act 1994.
- “(11) A person is treated as having a balance date that falls in March if—

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- “(a) the person does not provide a return of income under section 38 of the Tax Administration Act 1994:
 - “(b) the person is a non-resident company that does not have a fixed establishment in New Zealand.”
- (2) **Subsection (1)** applies for taxable periods of a registered person that begin on or after the beginning of the person’s 2006–07 income year.

211 Sections 15 to 15AB replaced

- (1) Sections 15 to 15AB are replaced by the following sections:

“15 Taxable periods

- “(1) A registered person’s taxable period must be 1 of the following:
- “(a) a 6-month period, if **subsection (2)** applies:
 - “(b) a 2-month period:
 - “(c) a 1-month period, if **subsection (3) or (4)** applies.
- “(2) A person may pay the person’s GST liability on a 6-monthly basis if—
- “(a) the person’s total taxable supplies in a 12-month period are no more, and are not likely to be more, than \$250,000; and
 - “(b) the person applies to the Commissioner to pay on this basis.
- “(3) A person may pay the person’s GST liability on a monthly basis if the person applies to the Commissioner to pay on that basis.
- “(4) A person must pay the person’s GST liability on a monthly basis if the person’s total taxable supplies in a 12-month period are more, or are likely to be more, than \$24,000,000.
- “(5) For the purposes of **subsections (2) and (4)**,—
- “(a) the 12-month period is a period that starts on the first day of a month and ends on the last day of a month:
 - “(b) the amount of a person’s total taxable supplies does not include the amount of taxable supplies arising as part of—
 - “(i) the ending, including a premature ending, of a taxable activity carried on by the person:

- “(ii) a substantial and permanent reduction in the size or scale of a taxable activity carried on by the person:
- “(iii) the replacement of plant or a capital asset used in a taxable activity carried on by the person:
- “(c) the Governor-General, from time to time, may declare by Order in Council another amount as the limit applying to the value of a person’s taxable supplies.

“15B Taxable periods aligned with balance dates

- “(1) Unless **section 15(3) or (4)** applies, a person with a provisional tax liability must pay a GST liability on either a 2-monthly or 6-monthly basis.
- “(2) A person must pay a GST liability in a set of instalments that is aligned with the person’s balance date under section 33 or 38 of the Tax Administration Act 1994, reflecting the applicable payment dates in **schedule 13, part A** of the Income Tax Act 2004.
- “(3) For the purposes of **subsection (2)**, a person whose balance date changes during an income year must,—
 - “(a) before the new balance date, use the payment frequency applying at the start of the income year:
 - “(b) after the new balance date, use the cycle of taxable periods starting on the first day of the new income year.
- “(4) If a person’s GST cycle is not aligned with the person’s balance date and the person has a provisional tax liability for a tax year, the Commissioner must adjust the person’s taxable periods by truncating the last taxable period before the balance date so that the taxable period and income year end on the same date.
- “(5) The Commissioner may make the adjustment in **subsection (4)** if—
 - “(a) the person’s income tax liability indicates that a provisional tax liability is likely to arise:
 - “(b) the person asks for the adjustment.
- “(6) In this section, **balance date** means the person’s annual balance date for accounts for the tax year or other period for which the person must provide a return of income under section 33 of the Tax Administration Act 1994.

- “(7) A person is treated as having a balance date that falls in March if—
- “(a) the person does not provide a return of income under section 38 of the Tax Administration Act 1994;
 - “(b) the person is a non-resident company that does not have a fixed establishment in New Zealand.

“15C Changes in taxable periods

- “(1) A person to whom **section 15(1)(b) or (c)** applies may apply to the Commissioner to change the person’s taxable period to a 6-month period.
- “(2) The factors that the Commissioner must consider in directing a change of taxable period are—
- “(a) the person’s history in filing returns and paying tax liabilities;
 - “(b) the person’s financial reporting practices;
 - “(c) the nature and volume of the person’s taxable supplies;
 - “(d) the previous use of a 6-month cycle.
- “(3) A person to whom **section 15(1)(a)** applies may apply to the Commissioner to change the person’s taxable period to a 2-month period.
- “(4) A person whose taxable period is based on a 6-month or 2-month cycle is treated as having changed to a 1-month cycle if—
- “(a) the threshold in **section 15(4)** applies at the end of a taxable period to the person’s total taxable supplies; and
 - “(b) the person has not notified the Commissioner of a change of status under section 53(1)(ca) before the end of the next taxable period.
- “(5) A return provided after a change in taxable period must not include amounts for a period for which a return has already been provided.

“15D When change in taxable period takes effect

- “(1) This section applies if a registered person, who qualifies under **section 15**,—
- “(a) applies under **section 15B(4)(b), or 15C(1) or (2)** to change the basis on which the person’s taxable period is set; or

- “(b) is required because of **section 39B** of the Tax Administration Act 1994 to change the basis on which the person’s taxable period is set.
- “(2) A change in taxable period takes effect at the end of the taxable period in which the person applies or is required to change the basis on which the person’s taxable period is set.
- “(3) Despite **subsection (2)**, for a person to whom **section 15B** applies, the Commissioner must adjust the effective date of the change in taxable period if, as a result of the change, the person’s taxable period is not aligned with the person’s balance date.
- “(4) **Sections MB 26 and MB 27** of the Income Tax Act 2004 override this section.”
- (2) **Subsection (1)** applies for a registered person for—
- (a) a taxable period that begins on or after the beginning of the registered person’s 2007–08 income year, if the registered person derives assessable income in that income year:
 - (b) a taxable period that begins on or after 1 April 2007, if **paragraph (a)** does not apply.

212 Section 16 replaced

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

“16 Taxable period returns

- “(1) A registered person must provide a return setting out the amount of tax payable by them for a taxable period on or before the 28th day of the month following the end of the taxable period. The amount is calculated under section 20.
- “(2) **Subsection (1)** does not apply if the month following the end of a taxable period is December, in which case the person must provide the return by 20th January.
- “(3) If the circumstances of a non-profit body or a particular case mean a variation is required in the date on which a return must be provided, the Commissioner may vary the date.
- “(4) A registered person who ceases to be registered must provide a final return for the part of the last taxable period for which they were registered on or before the 28th day of the month following the end of that taxable period.”

- (2) **Subsection (1)** applies for taxable periods ending on or after 31 March 2006.

213 New section 16B inserted

- (1) After section 16, the following is inserted:

“16B Meaning of end of taxable period

- “(1) A taxable period ends on the last day of a month.
- “(2) Despite **subsection (1)**, a registered person may apply to substitute a day other than the last day of a month as the end of a taxable period, but the day must be within 7 days of the last day of the month, whether earlier or later than that day.
- “(3) **Subsection (5)** applies if 1 or more of the following events occurs in relation to a registered person:
- “(a) the natural person dies or is made bankrupt:
 - “(b) the company goes into liquidation or receivership, or ceases to exist on amalgamation (as defined in section OB 1 of the Income Tax Act 2004).
- “(4) Despite **subsection (1)**, if an event referred to in **subsection (4)** occurs, the date of the event is treated as the end of the person’s taxable period.”
- (2) **Subsection (1)** applies for a registered person for—
- (a) a taxable period that begins on or after the beginning of the registered person’s 2007–08 income year, if the registered person derives assessable income in that income year:
 - (b) a taxable period that begins on or after 1 April 2007, if **paragraph (a)** does not apply.

214 Special returns

- (1) In section 17(1), “the last working day” is replaced by “the 28th day”.
- (2) **Subsection (1)** applies for taxable periods ending on or after 31 March 2006.

215 Registered person to notify change of status

In section 53(1)(c), “section 15(3)” is replaced by “section 15(2)”.

216 Group of companies

In section 55(7)(b), “section 15 or section 15A” is replaced by “sections 15 to 15D”.

217 Branches and divisions

- (1) In section 56(6), “sections 15, 15A” is replaced by “sections 15 to 15D” in both places where it appears.
- (2) **Subsection (1)** applies for a registered person for—
 - (a) a taxable period that begins on or after the beginning of the registered person’s 2007–08 income year, if the registered person derives assessable income in that income year:
 - (b) a taxable period that begins on or after 1 April 2007, if **paragraph (a)** does not apply.

218 Annual imputation return

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

219 Returns to be furnished in 2 parts for taxable period in which change in rate of tax occurs

- (1) In section 78A,—
 - (a) in subsection (4), “section 16(2)” is replaced by “section 16(4)”; and
 - (b) in subsection (5), “section 15(7)” is replaced by “section 16B(2)”.
- (2) **Subsection (1)** applies for taxable periods ending on or after 31 March 2006.

Other Acts

220 New section 74D inserted in the Estate and Gift Duties Act 1968

- (1) After section 74C of the Estate and Gift Duties Act 1968, the following is inserted:

“74D Exemption for gifts in respect of distribution by co-operative company or company owned by co-operative company

No gift shall constitute a dutiable gift if the donor is a co-operative company or a company owned by a co-operative company, the donee is a member of the co-operative company, and the gift is an amount of a distribution that is excluded from being a dividend by **section CD 24B** of the Income Tax Act 2004.”

- (2) **Subsection (1)** applies for gifts made after 1 October 2005.

221 Interim repayments to be paid in same manner as provisional tax

- (1) In section 28(3) of the Student Loan Scheme Act 1992,
(a) “section MB 2 is replaced by “**sections MB 2, MB 4, and MB 5**”.”
(b) “section MB 2(1)(b) is replaced by “**section MB 2(3)**”.”
- (2) **Subsection (1)** applies for student loan repayment obligations relating to the 2007–08 and subsequent tax years.
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Schedule 1 s 151
New schedule 11B inserted in Income Tax Act 2004

Schedule 11B ss EE 25B, EE 25C
Banded rates of depreciation

Other assets (excluding intangible depreciable property and buildings)		Buildings	
<i>Column 1</i> D.V rate (%)	<i>Column 2</i> Straight-line rate (%)	<i>Column 3</i> D.V. rate (%)	<i>Column 4</i> Straight-line rate (%)
100	100	0	0
67	67	0	0
50	40	0	0
40	30	0	0
30	21	0	0
25	17.5	0	0
20	13.5	0	0
16	10.5	13.5	8
13	8.5	11	6.5
10	7	8.5	5
8	6	6.5	4
6	4	4.5	3
4	3	3	2
2	1.5	1.3	1

Schedule 2
New schedule 13, part A inserted in Income Tax Act
2004

Part A
Dates for payment of provisional tax

5

Month of balance date	A	B	C	D	E	F	G	H
October	28 Jan	28 Mar	28 May	28 Jul	28 Sep	28 Nov	Sep	Nov
November	28 Feb	28 Apr	28 Jun	28 Aug	28 Oct	20 Jan	Oct	Dec
December	28 Mar	28 May	28 Jul	28 Sep	28 Nov	28 Jan	Nov	Jan
January	28 Apr	28 Jun	28 Aug	28 Oct	20 Jan	28 Feb	Dec	Feb
February	28 May	28 Jul	28 Sep	28 Nov	28 Jan	28 Mar	Jan	Mar
March	28 Jun	28 Aug	28 Oct	20 Jan	28 Feb	28 Apr	Feb	Apr
April	28 Jul	28 Sep	28 Nov	28 Jan	28 Mar	28 May	Feb	Apr
May	28 Aug	28 Oct	20 Jan	28 Feb	28 Apr	28 Jun	Feb	Apr
June	28 Sep	28 Nov	28 Jan	28 Mar	28 May	28 Jul	Feb	Apr
July	28 Oct	20 Jan	28 Feb	28 Apr	28 Jun	28 Aug	Feb	Apr
August	28 Nov	28 Jan	28 Mar	28 May	28 Jul	28 Sep	Feb	Apr
September	20 Jan	28 Feb	28 Apr	28 Jun	28 Aug	28 Oct	Feb	Apr

For the purposes of this schedule, **balance date**, in relation to provisional tax or terminal tax payable by a person for a tax year or for another period, means the person's annual balance date for their accounts for the tax year or the other period for which the person must provide a return of income under section 33 of the Tax Administration Act 1994. A person is treated as having a balance date that falls in March if—

(a) the person does not provide a return of income under section 38 (Returns to annual balance date) of the Tax Administration Act 1994;

(b) the person is a non-resident company that does not have a fixed establishment in New Zealand.

Schedule 3 s 152(2)
**New schedule 13, part B inserted in Income Tax Act
2004**

Part B
**Months for payment under sections MB 8
and MB 21 to MB 24**

5

Monthly and 2-monthly non-ratio and non-GST provisional taxpayers

Transitional year length	New instalment months	
0-4 mths	1	month following final month
5-8 mths	2	5 th month, month following final month
9-12 mths	3	5 th , 9 th months, month following final month
13-16 mths	4	5 th , 9 th , 13 th months, month following final month
17-20 mths	5	5 th , 9 th , 13 th , 17 th months, month following final month
21-24 mths	6	5 th , 9 th , 13 th , 17 th , 21 st months, month following final month

6-monthly non-ratio provisional taxpayers

Transitional year length	New instalment months	
0-6 mths	1	month following final month
7-12 mths	2	7 th month, month following final month
13-18 mths	3	7 th , 13 th months, month following final month
19-24 mths	4	7 th , 13 th , 19 th months, month following final month

GST ratio provisional taxpayers

Transitional year length	New instalment months	
0-2 mths	1	month following final month
3-4 mths	2	3 rd month, month following final month
5-6 mths	3	3 rd , 5 th months, month following final month
7- mths	4	3 rd , 5 th , 7 th months, month following final month
9-10 mths	5	3 rd , 5 th , 7 th , 9 th months, month following final month
11-12 mths	6	3 rd , 5 th , 7 th , 9 th , 11 th months, month following final month
13-14 mths	7	3 rd , 5 th , 7 th , 9 th , 11 th , 13 th months, month following final month
15-16 mths	8	3 rd , 5 th , 7 th , 9 th , 11 th , 13 th , 15 th months, month following final month
17-18 mths	9	3 rd , 5 th , 7 th , 9 th , 11 th , 13 th , 15 th , 17 th months, month following final month
19-20 mths	10	3 rd , 5 th , 7 th , 9 th , 11 th , 13 th , 15 th , 17 th , 19 th months, month following final month
21-22 mths	11	3 rd , 5 th , 7 th , 9 th , 11 th , 13 th , 15 th , 17 th , 19 th , 21 st months, month following final month
23-24 mths	12	3 rd , 5 th , 7 th , 9 th , 11 th , 13 th , 15 th , 17 th , 19 th , 21 st , 23 rd months, month following final month

For the purposes of counting months under this schedule, the number is reckoned as set out in **section MB 20(5)**.