

*Examined and certified:*

*Clerk of the House of Representatives*

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*In the name and on behalf of Her Majesty Queen Elizabeth  
the Second I hereby assent to this Act this 19th day  
of December 2007*

*Governor-General.*

## **Taxation (Business Taxation and Remedial Matters) Act 2007**

Public Act 2007 No 109

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**The Parliament of New Zealand enacts as follows:**

- 1 Title**  
This Act is the Taxation (Business Taxation and Remedial Matters) Act 2007.
  
- 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) Section 284 is treated as coming into force on 1 April 1995.
  - (3) Sections 286 and 287 are treated as coming into force on 1 April 1997.
  - (4) Sections 241(1) and (3) and 269(1) are treated as coming into force on 1 April 1999.
  - (5) Sections 281 and 282(3) are treated as coming into force on 1 April 2001.

- (6) Section 273(2), (4), and (5) are treated as coming into force on 24 October 2001.
- (7) Section 285 is treated as coming into force on 1 April 2002.
- (8) Section 269(3) is treated as coming into force on 1 April 2003.
- (9) Section 133(1) is treated as coming into force on 4 June 2004.
- (10) Section 288(3) is treated as coming into force on 16 November 2004.
- (11) Sections 6, 7, 8, 9, 10, 13, 18, 19, 22, 23, 24, 25, 35, 39, 40, 41, 54, 55, 56, 76, 77, 79, 102, 128, 154, 165, 167, 182(25), (28), (33), and (55), 185(2), 230(1) and (2), and 272(1) are treated as coming into force on 1 April 2005.
- (12) Section 129(1) is treated as coming into force on 1 July 2005.
- (13) Sections 176 and 177 are treated as coming into force on 1 April 2006.
- (14) Sections 130, 182(44), and 185(1) are treated as coming into force on 1 December 2006.
- (15) Sections 4, 16, 26, 27, 31, 32, 38, 43, 44, 45, 46, 47, 49, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 80, 81, 82, 83, 84, 85, 87, 88, 89, 90, 91, 92, 94, 95, 96, 97, 100, 104, 131, 132, 135(2), 136, 138, 140, 153, 178, 179(1) and (3), 181, 182(5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (18), (19), (20), (22), (24), (27), (29), (30), (43), (45), (46), (47), (48)(a) and (b), (49), (50), (51), (52), (53), (54), and (56), 184, 189(2) and (5), 192, 193(1), 194(1), 202, 210, 224(1) and (4), 227(1), 228(1) and (3), 231(1), 252(2), 262(1), 295, 299, 300, 302, 304, and 305 are treated as coming into force on 1 April 2007.
- (16) Sections 156(1) and (2), 256, 258, 273(1) and (3), and 274 are treated as coming into force on 17 May 2007.
- (17) Sections 50, 51, 52, 78, 101, and 182(17), (26), and (59) are treated as coming into force on 20 June 2007.
- (18) Sections 5, 12, 28, 29, 30, 34, 75, 98, 99, 103, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 134, 135(1), 139, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 157, 158, 159, 160, 161, 162, 163, 164(2), 166(2), 168, 169, 170, 171, 172, 173, 174, 175, 179(2), 180, 182(2), (4), (23), (31), (35), (36), (37), (38), (39), (40), (41), and (42), 186, 190, 195, 196(1), (2), and (4), 207(2), (5), (6), (8), and (9), 208(1), 236,

- 237, 238, 239, 240, 245, 246, 247, 248, 249, and 279(1) are treated as coming into force on 1 October 2007.
- (19) Section 275 is treated as coming into force on 30 November 2007.
- (20) Sections 191, 193(2) and (3), 194(2) and (3), 196(3) and (5), 201, 203(2), 204(1), 205, 206(2) and (3), 207(1), (3), (4), (7), and (10), 208(2), 211, 212, 213, 214, 215, 216, 217, 218, 219, 222, 223, 224(2), (3), and (5), 227(2), 228(2), 231(2) to (4), 241(2), 242, 243, 244, 250(1) to (3), 251, 252(1), (3), and (4), 253, 254, 255, 257, 259, 260, 261, 262(2), 263, 264, 265, 266, 267, 269(2) and (4), 272(2), 278, 279(2), 290, 294, 307 to 318, 321 to 328, 330 to 342, 344 to 437, 438(1), 439 to 538, 540 to 549, 550(2) to (41) and (43) to (68), 551 to 553, 554(1) and (2), and 555 to 562 come into force on 1 April 2008.
- (21) Sections 14, 15, 21, 36, 37, 137, 182(32), 183, 197(1) to (3), 198, 303, 319, 320, 329, 343, 438(2), 539, 550(42), and 554(3) come into force on 1 July 2008.
- (22) Sections 220(1), 293, 297, and 298 come into force on the earlier of the following:
- (a) a date to be fixed by the Governor-General by Order in Council:
  - (b) 1 April 2009.
- (23) Section 229 comes into force on the earlier of the following:
- (a) a date to be fixed by the Governor-General by Order in Council:
  - (b) 1 April 2010.

## Part 1

### Amendments to Income Tax Act 2004

#### 3 Income Tax Act 2004

Sections 4 to 186 amend the Income Tax Act 2004.

#### 4 Withholding liabilities

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

*“Retirement scheme contributions*

“(5B) A person who makes a retirement scheme contribution to a retirement savings scheme must pay retirement scheme contribution withholding tax under the RSCWT rules.”

- (2) In section BE 1, in the list of defined terms, “retirement savings scheme”, “retirement scheme contribution”, “retirement scheme contribution withholding tax”, and “RSCWT rules” are inserted.

## 5 Section CB 4B replaced

Section CB 4B is replaced by the following:

### “CB 4B Disposal of certain shares by portfolio investment entity or New Zealand Superannuation Fund after declaration of dividend

*“When this section applies*

- “(1) This section applies to a portfolio investment entity or the New Zealand Superannuation Fund (the **entity**) if—
- “(a) the entity disposes of a share in a company; and
  - “(b) section CX 44C (Proceeds from disposal of certain shares by portfolio investment entities or New Zealand Superannuation Fund) applies to the disposal; and
  - “(c) a dividend from the share is—
    - “(i) declared before the disposal; and
    - “(ii) paid to a holder of the share who after the disposal becomes entitled to the dividend.

*“Income*

- “(2) The entity derives an amount of income that is the greater of zero and the amount calculated using the formula—  
(declaration shares – distribution shares) × distribution.

*“Definition of items in formula*

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

*“Declaration shares*

- “(4) **Declaration shares** is the number of shares in the company held by the entity when the dividend is declared.

*“Distribution shares*

- “(5) **Distribution shares** is the number of shares in the company for which the entity derives the dividend.

*“Distribution*

- “(6) **Distribution** is the amount for a share of—
- “(a) the dividend that is not fully imputed as that term is defined in section NG 2(3) (Application of NRWT rules), if the share is issued by a company that has an imputation credit account; or
  - “(b) the dividend, if paragraph (a) does not apply.

“Defined in this Act: amount, company, dividend, imputation credit account, income, portfolio investment entity, share”.

**6 New section CB 5A inserted**

- (1) Before section CB 5, the following is inserted:

**“CB 5A Land partially sold or sold with other land**

Sections CB 5 to CB 21 apply to amounts derived from the disposal of land if the land—

- “(a) is part of the land to which the relevant section applies:
- “(b) is the whole of the land to which the relevant section applies:
- “(c) is disposed of together with other land.

“Defined in this Act: amount, dispose, land”.

- (2) Subsection (1) applies for the 2005–06 and later income years.

**7 Disposal: amount from major development or division and not already in income**

- (1) Section CB 11(2) is replaced by the following:

*“Exclusions*

- “(2) Subsection (1) is overridden by the exclusions for residential land in section CB 15, for business premises in section CB 18, for farm land in section CB 19, and for investment land in section CB 21.”

- (2) Subsection (1) applies for—
- (a) a disposal of land occurring on or after the date on which this Act receives the Royal assent:
  - (b) a person and a disposal of land occurring before the date on which this Act receives the Royal assent, if the person—
    - (i) is the person disposing of the land; and
    - (ii) takes a tax position relating to the disposal in a return for the income year of the disposal; and

- (iii) in taking the tax position, relies on the law that would apply if subsection (1) applied for the disposal; and
- (iv) provides the return to the Commissioner by the due date for the return.

## **8 Residential exclusion from sections CB 10 and CB 11**

In section CB 15(1), in the words before paragraph (a), “Section CB 10 does” is replaced by “Sections CB 10 and CB 11 do”.

## **9 Business exclusion from section CB 10**

- (1) In the heading to section CB 18, “**section CB 10**” is replaced by “**sections CB 10 and CB 11**”.
- (2) In section CB 18, in the words before paragraph (a), “Section CB 10 does” is replaced by “Sections CB 10 and CB 11 do”.
- (3) Subsection (2) applies for—
  - (a) a disposal of land occurring on or after the date on which this Act receives the Royal assent:
  - (b) a person and a disposal of land occurring before the date on which this Act receives the Royal assent, if the person—
    - (i) is the person disposing of the land; and
    - (ii) takes a tax position relating to the disposal in a return for the income year of the disposal; and
    - (iii) in taking the tax position, relies on the law that would apply if subsection (2) applied for the disposal; and
    - (iv) provides the return to the Commissioner by the due date for the return.

## **10 Investment exclusion from section CB 10**

- (1) In the heading to section CB 21, “**section CB 10**” is replaced by “**sections CB 10 and CB 11**”.
- (2) In section CB 21, in the words before paragraph (a), “Section CB 10 does” is replaced by “Sections CB 10 and CB 11 do”.
- (3) Subsection (2) applies for—
  - (a) a disposal of land occurring on or after the date on which this Act receives the Royal assent:

- (b) a person and a disposal of land occurring before the date on which this Act receives the Royal assent, if the person—
  - (i) is the person disposing of the land; and
  - (ii) takes a tax position relating to the disposal in a return for the income year of the disposal; and
  - (iii) in taking the tax position, relies on the law that would apply if subsection (2) applied for the disposal; and
  - (iv) provides the return to the Commissioner by the due date for the return.

#### **11 Foreign investment fund income**

Section CD 26(b) is replaced by the following:

- “(b) the person calculates their FIF income or loss in relation to the interest and the period in which the amount is paid under—
  - “(i) the comparative value method:
  - “(ii) the deemed rate of return method:
  - “(iii) the cost method:
  - “(iv) the fair dividend rate method; and
- “(c) if the calculation referred to in paragraph (b) is under the fair dividend rate method,—
  - “(i) the FIF is not a grey list company:
  - “(ii) the person does not hold a direct income interest of 10% or more in the FIF at the beginning of the income year of the period.”

#### **12 Determination of amount of credit in certain cases**

In section CD 32(26)(b), “dividend:” is replaced by “dividend (section MZ 18 (Fully credited: modifying the actual ratio) modifies this paragraph):”.

#### **13 When does a person have attributed repatriation from a CFC?**

- (1) In section CD 34(1)(b), “EX 16” is replaced by “EX 17”.
- (2) Subsection (1) applies for the 2005–06 and later income years.

#### **14 New heading and section CE 12 inserted**

After section CE 11, the following is added:

*“Tax credits***“CE 12 Tax credits under section LD 1B added to provider’s income***“When this section applies*

- “(1) This section applies when a person is allowed under section LD 1B (Tax deductions from certain accident compensation payments: credit allowed to provider) a credit against the person’s income tax liability in an income year.

*“Income*

- “(2) An amount equal to the credit is income of the person in the income year, if the amount is not income under any other provision.

*“Defined in this Act: income, income year, payment”.***15 Benefits, pensions, compensation, and government grants**

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

“(g) a personal service rehabilitation payment for a claimant under the Injury Prevention, Rehabilitation, and Compensation Act 2001.”

- (2) In section CF 1, in the list of defined terms, “personal service rehabilitation payment” is inserted.

**16 When FIF income arises**

- (1) In section CQ 5(1),—
- (a) in paragraph (d), in the words before subparagraph (i), “any time during the income year” is replaced by “any time in the year”:
  - (b) in paragraph (db), in the words before subparagraph (i), “, at any time in the year,” is inserted after “the person holds”:
  - (c) in paragraph (f), “, EX 48 (Top-up FIF income: deemed rate of return method), or EX 49 (Top-up FIF income: 1 April 1993 uplift interests)” is inserted after “income or loss”.
- (2) After section CQ 5(1), the following is inserted:

*“Treatment of deemed transaction under section EX 51,  
EX 53, or EX 54B*

“(1B) If a person is treated under section EX 51(5) (Consequences of changes in method), EX 53 (Changes in application of FIF exemptions), or EX 54B (FIF rules first applying to interest for income year beginning on or after 1 April 2007) as disposing of or acquiring rights in an income year, the disposal or acquisition is ignored for the purposes of subsection (1)(d) and (db).”

#### **17 Exclusions of withdrawals of various kinds**

Section CS 2(4B) is repealed.

#### **18 Meaning of petroleum miner**

(1) Section CT 6(1), other than the heading, is replaced by the following:

“(1) **Petroleum miner**, for a permit area, means a person who undertakes petroleum mining operations in the permit area.”

(2) In section CT 6(2), in the words before paragraph (a), “an activity described in subsection (3)” is replaced by “petroleum mining operations”.

(3) Section CT 6(3) and (4) are repealed.

(4) In the list of defined terms in section CT 6,—

(a) “petroleum mining operations” is inserted:

(b) “removal or restoration operations” is omitted.

(5) Subsections (1) to (4) apply for the 2005–06 and later income years.

#### **19 New section CT 6B inserted**

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

##### **“CT 6B Meaning of petroleum mining operations**

*“Meaning*

“(1) **Petroleum mining operations** means an activity included in the activities described in subsection (2) and not excluded by subsection (3).

*“Activities: inclusions*

- “(2) The activities are those carried out in connection with—
- “(a) prospecting or exploring for petroleum:
  - “(b) developing a permit area for producing petroleum:
  - “(c) producing petroleum:
  - “(d) processing, storing, or transmitting petroleum before its dispatch to a buyer, consumer, processor, refinery, or user:
  - “(e) removal or restoration operations.

*“Activities: exclusions*

- “(3) The activities do not include further treatment to which all the following apply:
- “(a) it occurs after the well stream has been separated and stabilised into crude oil, condensate, or natural gas; and
  - “(b) it is done—
    - “(i) by liquefaction or compression; or
    - “(ii) for the extraction of constituent products; or
    - “(iii) for the production of derivative products; and
  - “(c) it is not treatment at the production facilities.

“Defined in this Act: permit area, petroleum, petroleum mining operations, removal or restoration operations”.

- (2) Subsection (1) applies for the 2005–06 and later income years.

## **20 Proceeds of share disposal by qualified foreign equity investor**

- (1) In section CW 11B(4), in the definition of **foreign exempt entity**,—
- (a) paragraph (c) is replaced by the following:
    - “(c) under the laws of the territory, or of the part of the territory, is not subject to a tax on income other than as a body that handles income of the members; and”:
  - (b) in paragraph (f)(iii), “taxation laws” is replaced by “laws” in both places that it occurs:
  - (c) in paragraph (f)(iii), “subparagraph (ii)” is replaced by “subparagraph (ii); and” and the following is added:
    - “(g) does not have a holder of a direct or indirect interest in the capital of the legal entity who—
      - “(i) is a resident of New Zealand; and

- “(ii) holds a total direct or indirect interest of 10% or more in the capital of the legal entity, when treated as holding the interests of any person who is associated with the holder under section OD 8(1)”.
- (2) In section CW 11B(4), in the definition of **foreign exempt partnership**,—
- (a) paragraph (c) is replaced by the following:
- “(c) under the laws of the territory, or of the part of the territory, is not subject to a tax on income other than as a body that handles income of the partners; and”:
- (b) in paragraph (h)(ii), “taxation laws” is replaced by “laws” in both places that it occurs:
- (c) in paragraph (h)(ii), “subparagraph (i)” is replaced by “subparagraph (i); and” and the following is added:
- “(i) does not have a holder of a direct or indirect interest in the capital of the unincorporated body who—
- “(i) is a resident of New Zealand; and
- “(ii) holds a total direct or indirect interest of 10% or more in the capital of the unincorporated body, when treated as holding the interests of any person who is associated with the holder under section OD 8(1)”.
- (3) In section CW 11B(4), in the definition of **foreign exempt person**,—
- (a) paragraph (d) is replaced by the following:
- “(d) under the laws of the territory, or of the part of the territory, derives the proceeds from a disposal of shares or options that are held by the person; and”:
- (b) in paragraph (e)(ii), “taxation laws” is replaced by “laws” in both places that it occurs:
- (c) in paragraph (e)(ii), “subparagraph (i)” is replaced by “subparagraph (i); and” and the following is added:
- “(f) does not have a holder of a direct or indirect interest in the person who—
- “(i) is a resident of New Zealand; and
- “(ii) holds a total direct or indirect interest of 10% or more in the capital of the person, when treated as holding the interests of any person who is associated with the holder under section OD 8(1)”.

- (4) Section CW 11B(5)(a) and (b) are replaced by the following:
- “(a) under a double tax agreement between New Zealand and the territory that is in force under the terms of the double tax agreement, if—
    - “(i) there is such a double tax agreement; and
    - “(ii) the double tax agreement provides for the residency of the person:
  - “(b) under the laws of the territory, if paragraph (a) does not apply.”

## 21 New section CW 28B inserted

After section CW 28, the following is inserted:

### “CW 28B Payment of certain accident compensation payments

The amount paid to a person (the **claimant**) for an income year as a personal service rehabilitation payment for the person under the Injury Prevention, Rehabilitation, and Compensation Act 2001 is exempt income of the claimant if—

- “(a) the claimant pays an amount to another person for providing a key aspect of social rehabilitation referred to in the definition of personal service rehabilitation payment in section OB 1; and
- “(b) the amount paid by the claimant for a key aspect of social rehabilitation for the income year is equal to or more than the amount of personal service rehabilitation payments, after any deduction of tax under this Act, paid to the claimant for the year.

“Defined in this Act: exempt income, income year, payment, personal service rehabilitation payment”.

## 22 Local authorities

Section CW 32(4)(c)(i) is replaced by the following:

- “(i) a council-controlled organisation, other than a council-controlled organisation operating a hospital as a charitable activity on behalf of the local authority:”.

## 23 Charities: non-business income

Section CW 34(3), other than the heading, is replaced by the following:

- “(3) This section does not apply to income derived by—
- “(a) a council-controlled organisation, other than a council-controlled organisation operating a hospital as a charitable activity:
  - “(b) a local authority from a council-controlled organisation, other than from a council-controlled organisation operating a hospital as a charitable activity on behalf of the local authority.”

**24 Charities: business income**

Section CW 35(2), other than the heading, is replaced by the following:

- “(2) This section does not apply to income derived by—
- “(a) a council-controlled organisation, other than a council-controlled organisation operating a hospital as a charitable activity:
  - “(b) a local authority from a council-controlled organisation, other than from a council-controlled organisation operating a hospital as a charitable activity on behalf of the local authority.”

**25 New heading and sections CW 49C and CW 49D inserted**

- (1) After section CW 49B, the following is inserted:

*“Income of, and distributions by, certain international funds*

**“CW 49C Income of certain international funds**

An amount of income derived by a person is exempt income if the person is—

- “(a) the trustee of the Niue International Trust Fund:
- “(b) the trustee of the Tokelau International Trust Fund.

“Defined in this Act: amount, exempt income, income, Niue International Trust Fund, Tokelau International Trust Fund, trustee

**“CW 49D Distributions by certain international funds**

An amount of income derived by a person is exempt income if the income is a distribution by—

- “(a) the trustee of the Niue International Trust Fund:

“(b) the trustee of the Tokelau International Trust Fund.

“Defined in this Act: amount, distribution, exempt income, income, Niue International Trust Fund, Tokelau International Trust Fund, trustee”.

(2) Subsection (1) applies for the 2005–06 and later income years.

**26 Heading above section CX 42 replaced**

The heading above section CX 42 is replaced by “*Contributions to superannuation scheme or retirement savings scheme*”.

**27 New section CX 42B inserted**

After section CX 42, the following is inserted:

**“CX 42B Contributions to retirement savings scheme**

*“Excluded income*

- “(1) A retirement scheme contribution is excluded income of—
- “(a) the person for whose benefit the retirement scheme contribution is provided, to the extent to which the retirement scheme contribution is—
    - “(i) money:
    - “(ii) an amount of imputation credit or Maori authority credit that is used to meet the liability of the retirement scheme contributor for retirement scheme contribution withholding tax on the retirement scheme contribution:
  - “(b) the retirement savings scheme.

*“Exclusion*

- “(2) Subsection (1)(a) does not apply if the person for whose benefit the retirement scheme contribution is provided—
- “(a) supplies to the retirement scheme contributor, or to the retirement savings scheme, a retirement scheme withholding rate that is less than the retirement scheme prescribed rate for the person:
  - “(b) includes the retirement scheme contribution in a return of income for the income year in which the retirement scheme contribution is provided:

“(c) is a non-resident and the retirement scheme contribution is non-resident withholding income.

“Defined in this Act: excluded income, income year, non-resident, non-resident withholding income, retirement savings scheme, retirement scheme contribution, retirement scheme contributor, retirement scheme prescribed rate, retirement scheme withholding rate, return of income”.

**28 Proceeds from disposal of certain shares by portfolio investment entities or New Zealand Superannuation Fund**

- (1) In section CX 44C(1), in the words before paragraph (a), “portfolio investment entity” is replaced by “portfolio investment entity or by a life insurer, in relation to that part of the life insurer that is a portfolio investment-linked life fund,”.
- (2) Section CX 44C(1)(a)(i) is replaced by the following:
  - “(i) resident in Australia and not treated as being resident in a country other than Australia in an agreement between Australia and another country that would be a double tax agreement if the agreement were negotiated between New Zealand and the other country; and”.
- (3) In section CX 44C(1)(b), “share.” is replaced by “share; and” and the following is added:
  - “(c) the entity disposing of the share is not assured, under an arrangement entered with another person when the share is acquired, of having a gain on the disposal.”
- (4) In section CX 44C, in the list of defined terms, “portfolio investment-linked life fund” is inserted.

**29 Portfolio investor allocated income and distributions of income by portfolio investment entities**

- (1) Section CX 44D(1) is replaced by the following:

*“Portfolio investor allocated income*

“(1) Portfolio investor allocated income derived under section CP 1 (Portfolio investor allocated income) in a portfolio calculation period in an income year by an investor in a portfolio tax rate entity is excluded income of the investor if—

  - “(a) the prescribed investor rate for the investor and the portfolio calculation period is more than zero; and

- “(b) the prescribed investor rate for the investor and the portfolio calculation period is not more than the portfolio investor rate for the investor and the portfolio calculation period when the entity calculates in relation to the portfolio investor allocated income—
- “(i) the portfolio entity tax liability of the entity; or
  - “(ii) the amount of a payment under section HL 23B (Optional payments of tax by portfolio tax rate entities) that the entity intends to be a final payment of the portfolio entity tax liability of the entity in relation to the portfolio investor allocated income; and
- “(c) for a portfolio tax rate entity making payments of tax under section HL 21 (Payments of tax by portfolio tax rate entity making no election), the portfolio investor allocated income is not allocated to a portfolio allocation period that includes part of a portfolio investor exit period for the investor.”
- (2) In section CX 44D(2), “distribution by” is replaced by “distribution or dividend of”.
- (3) In section CX 44D(3), in the words before paragraph (a), “distribution by” is replaced by “distribution or dividend of”.
- (4) Section CX 44D(3)(a)(i) is replaced by the following:
- “(i) is a natural person or a trustee; and”.

### **30 Cost of revenue account property**

- (1) Section DB 17(3)(a) is replaced by the following:
- “(a) the person is a portfolio investment entity or a life insurer in relation to that part of the life insurer that is a portfolio investment-linked life fund; and”.
- (2) In section DB 17, in the list of defined terms, “portfolio investment-linked life fund” is inserted.

### **31 Research or development**

- (1) In section DB 26(2), “paragraph 5.1 or 5.2 of the reporting standard” is replaced by “paragraph 68(a) of the reporting standard, applying, for the purposes of that paragraph, paragraphs 54 to 67 of the reporting standard”.
- (2) Section DB 26(3) is repealed.

- (3) In section DB 26(4)(a), “of paragraph 2.3 of the reporting standard” is replaced by “it is an amount written off due to its being an immaterial amount for financial reporting purposes”.
- (4) Section DB 26(4)(b) is replaced by the following:
  - “(b) would be required, if the expenditure were material, to recognise it for financial reporting purposes under paragraph 68(a) of the reporting standard, applying, for the purposes of that paragraph, paragraphs 54 to 67 of the reporting standard.”
- (5) Section DB 26(5)(b) is replaced by the following:
  - “(b) has written off the expenditure due to its being an immaterial amount for financial reporting purposes; and”.
- (6) Subsections (1) to (5) apply for—
  - (a) the 2007–08 and later income years, unless paragraph (b) applies; or
  - (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year.

## 32 Some definitions

- (1) Section DB 27(1) is replaced by the following:

*“Definitions*

“(1) In this section, and in section DB 26,—

“**development** is defined in paragraph 8 of the reporting standard

“**reporting standard** means the New Zealand Equivalent to International Accounting Standard 38, approved by the Accounting Standards Review Board, and as amended from time to time or an equivalent standard issued in its place

“**research** is defined in paragraph 8 of the reporting standard.”
- (2) In section DB 27, in the list of defined terms, “Financial Reporting Standard No 13 1995 (Accounting for Research and Development Activities),” is omitted.
- (3) Subsections (1) and (2) apply for—

- (a) the 2007–08 and later income years, unless paragraph (b) applies; or
- (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year.

**33 Gifts of money by company**

In section DB 32(3), “5% of” is omitted.

**34 Certain investors have deduction for portfolio investor allocated loss**

Section DB 43B(2)(a) is replaced by the following:

- “(a) the portfolio tax rate entity makes payments of tax under section HL 21 (Payments of tax by portfolio tax rate entity making no election) and the investor’s income year includes the end of the portfolio tax rate entity’s income year:”.

**35 Sale of business: transferred employment income obligations**

- (1) In section DC 9(2)(a), “any part” is replaced by “the provision made by the seller for a part”.
- (2) In section DC 9(2)(b), “of the provision” is inserted after “the amount”.
- (3) Section DC 9(3), other than the heading, is replaced by the following:
  - “(3) If the seller and the buyer are associated persons at the time of the sale,—
    - “(a) the buyer is allowed a deduction for the provision made by the seller for the amount of employment income if the seller would have been allowed a deduction for the amount if the business, or the part of the business, had not been sold; and
    - “(b) section EA 4(5) (Deferred payment of employment income) applies.

*“Deduction: Buyer’s payment exceeding provision*

“(3B) The buyer is allowed a deduction for any part of the amount of employment income that the buyer pays and that exceeds the provision made by the seller for that amount.”

- (4) In section DC 9(4)(b), “subsection (3) overrides” is replaced by “subsections (3) and (3B) override”.
- (5) Subsections (1) to (4) apply for the 2005–06 and later income years.

**36 Heading to subpart DF**

In the heading to subpart DF, “**grants**” is replaced by “**grants and compensation**”.

**37 New section DF 4 added**

After section DF 3, the following is added:

**“DF 4 Payment by claimant receiving personal service rehabilitation payment***“When this section applies*

- “(1) This section applies when a person (the **claimant**) is paid a personal service rehabilitation payment for the claimant under the Injury Prevention, Rehabilitation, and Compensation Act 2001 for an income year, and the amount of the payment is assessable income.

*“Deduction*

- “(2) The claimant is allowed a deduction for the income year of the amount given by subsection (3).

*“Formula*

- “(3) The amount of the deduction allowed under subsection (2) is calculated using the following formula:

$$\frac{\text{amount paid}}{1 - \text{tax rate.}}$$

*“Definition of items in formula*

- “(4) In the formula,—
- “(a) **amount paid** is the amount paid by the claimant for an income year for a key aspect of social rehabilitation

referred to in the definition of personal service rehabilitation payment in section OB 1, to the extent to which the amount is less than the amount of personal service rehabilitation payments, after any deduction of tax under this Act, paid to the claimant for the income year:

- “(b) **tax rate** is the rate at which tax is deducted under this Act from personal service rehabilitation payments for the income year.

*“Link with subpart DA*

- “(5) This section supplements the general permission and overrides the capital limitation and private limitation for the amount described in subsection (2). The other general limitations still apply.

“Defined in this Act: assessable income, capital limitation, general limitation, general permission, income year, payment, personal service rehabilitation payment, private limitation”.

### **38 When FIF loss arises**

- (1) In section DN 6(1),—
- (a) in paragraph (d), in the words before subparagraph (i), “any time during the income year” is replaced by “any time in the year”:
- (b) in paragraph (db), in the words before subparagraph (i), “, at any time in the year,” is inserted after “the person holds”.
- (2) After section DN 6(1), the following is inserted:

*“Treatment of deemed transaction under section EX 51, EX 53, or EX 54B*

- “(1B) If a person is treated under section EX 51(5) (Consequences of changes in method), EX 53 (Changes in application of FIF exemptions), or EX 54B (FIF rules first applying to interest for income year beginning on or after 1 April 2007) as disposing of or acquiring rights in an income year, the disposal or acquisition is ignored for the purposes of subsection (1)(d) and (db).”

### **39 Acquiring film rights**

- (1) In section DS 1(2)(c), “expenditure.” is replaced by “expenditure; or” and the following is added:

“(d) section DS 2B applies to the expenditure.”

- (2) In section DS 1(4), “except under section DS 2B” is inserted after “under any other provision of this Act”.

#### **40 Film production expenditure**

- (1) Section DS 2(3) and (4) are replaced by the following:

*“Exclusion*

- “(3) This section does not apply to film production expenditure if—

“(a) the film is produced mainly for broadcast in New Zealand by a person who operates a television station, a television network, or a cable television system:

“(b) the film is intended to be shown as an advertisement:

“(c) section DS 2B applies to the film production expenditure.

*“Timing of deduction*

- “(4) The deduction is allocated under—

“(a) section EJ 7 (Film production expenditure for New Zealand films having no large budget screen production grant) or EJ 8 (Film production expenditure for other films having no large budget screen production grant) if the film is not one for which a large budget screen production grant is made; or

“(b) section EJ 4 (Expenditure incurred in acquiring film rights in feature films) or EJ 5 (Expenditure incurred in acquiring film rights in films other than feature films) if the film is one for which a large budget screen production grant is made.”

- (2) In section DS 2(5), “except under section DS 2B” is inserted after “under any other provision of this Act”.

- (3) Subsection (1) applies for the 2005–06 and later income years.

#### **41 New section DS 2B inserted**

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

**“DS 2B Expenditure in acquiring film, or film right, intended for disposal***“Deduction*

- “(1) A person is allowed a deduction for film production expenditure or expenditure incurred in acquiring a film right if, when the person incurs the expenditure, the person intends to dispose of the film or film right.

*“Timing of deduction*

- “(2) The deduction is allocated under section EA 2 (Other revenue account property).

*“Link with subpart DA*

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

“Defined in this Act: capital limitation, deduction, film, film production expenditure, film right, general limitation, general permission”.

- (2) Subsection (1) applies for the 2005–06 and later income years.

**42 Maori authorities: donations**

- (1) In section DV 11(2), “5% of” is omitted.  
(2) Subsection (1) applies for the 2008–09 and later income years.

**43 Cost**

- (1) In section EB 6(1), “, unless subsection (1B) applies” is inserted after “accounting practice”.  
(2) After section EB 6(1), the following is inserted:

*“Valuation at cost: agricultural produce*

- “(1B) Despite subsection (1), a person who uses NZIAS 41 for their trading stock in their financial statements must—

- “(a) value their closing stock at cost; and  
“(b) include and allocate costs so that the value of their closing stock is not materially different from the value of the closing stock obtained by applying NZIAS 2 ignoring paragraph 20 of NZIAS 2.”

- (3) In section EB 6(2), “Financial Reporting Standard No 4 (Accounting for Inventories) approved under the Financial Reporting Act 1993” is replaced by “NZIAS 2”.

- (4) The following is added to section EB 6:

*“Definitions*

- “(3) In this section, **NZIAS 41** means New Zealand Equivalent to International Accounting Standard 41, approved by the Accounting Standards Review Board and as amended from time to time, or an equivalent standard issued in its place.”
- (5) In section EB 6, in the list of defined terms, “NZIAS 2” and “NZIAS 41” are inserted.
- (6) Subsections (1) to (5) apply for—
- (a) the 2007–08 and later income years, unless paragraph (b) applies; or
  - (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year.

**44 Discounted selling price**

- (1) In section EB 9(3)(a), “Financial Reporting Standard No 4 (Accounting for Inventories) approved under the Financial Reporting Act 1993” is replaced by “NZIAS 2”.
- (2) In section EB 9, in the list of defined terms, “NZIAS 2” is inserted.
- (3) Subsections (1) and (2) apply for—
- (a) the 2007–08 and later income years, unless paragraph (b) applies; or
  - (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year.

**45 Valuing closing stock consistently**

- (1) In section EB 12, “Financial Reporting Standard No 1 (Disclosure of Accounting Policies) approved under the Financial Reporting Act 1993” is replaced by “NZIAS 8”.
- (2) In section EB 9, in the list of defined terms, “NZIAS 8” is inserted.
- (3) Subsections (1) and (2) apply for—

- (a) the 2007–08 and later income years, unless paragraph (b) applies; or
- (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year.

#### **46 Discounted selling price for low-turnover traders**

- (1) In section EB 19(4)(a), “Financial Reporting Standard No 4 (Accounting for Inventories) approved under the Financial Reporting Act 1993” is replaced by “NZIAS 2”.
- (2) In section EB 9, in the list of defined terms, “NZIAS 2” is inserted.
- (3) Subsections (1) and (2) apply for—
  - (a) the 2007–08 and later income years, unless paragraph (b) applies; or
  - (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year.

#### **47 Valuing closing stock consistently for low-turnover traders**

- (1) In section EB 22(1), “Financial Reporting Standard No 1 (Disclosure of Accounting Policies) approved under the Financial Reporting Act 1993” is replaced by “NZIAS 8”.
- (2) In section EB 22, in the list of defined terms, “NZIAS 8” is inserted.
- (3) Subsections (1) and (2) apply for—
  - (a) the 2007–08 and later income years, unless paragraph (b) applies; or
  - (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year.

#### **48 Reduction: bloodstock not previously used for breeding in New Zealand**

- (1) In the heading to section EC 41, “**other than as shuttle stallions**” is added after “**New Zealand**”.

- (2) Section EC 41(1)(b) is replaced by the following:
- “(b) before a person (**person A**) acquired it, was not used for breeding in New Zealand by any other person.”
- (3) After section EC 41(1), the following is inserted:
- “*Further bloodstock to which this section applies*
- “(1B) This section also applies to bloodstock that, before person A acquired it, was used by another person for breeding in New Zealand if—
- “(a) the other person transferred the bloodstock to person A under a matrimonial agreement to which section FF 12 (Bloodstock) applies:
- “(b) the other person was a company in the same wholly-owned group as person A at the time person A acquired the bloodstock from the other person:
- “(c) the bloodstock is a stallion that, for each year in which the stallion was used for breeding in New Zealand before being acquired by person A, was—
- “(i) owned by a non-resident; and
- “(ii) removed from New Zealand after the breeding season; and
- “(iii) not subject to a reduction under this section.”
- (4) Subsections (2) and (3) apply to bloodstock acquired on or after 1 August 2007.

#### **49 Valuation of excepted financial arrangements**

- (1) In section ED 1(3), “Financial Reporting Standard No 1 (Disclosure of Accounting Policies) approved under the Financial Reporting Act 1993” is replaced by “NZIAS 8”.
- (2) In section ED 1, in the list of defined terms, “NZIAS 8” is inserted.
- (3) Subsections (1) and (2) apply for—
- (a) the 2007–08 and later income years, unless paragraph (b) applies; or
- (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year.

**50 Special rate or provisional rate**

In section EE 28, the following is added:

*“Exception*

- “(4) This section is subject to section FC 8I(8) (Adjustment required for certain operating leases entered before 20 June 2007).”

**51 Meaning of adjusted tax value**

In section EE 46, the following is added as subsection (2):

*“Exception*

- “(2) This section is subject to section FC 8I(7) (Adjustment required for certain operating leases entered before 20 June 2007).”

**52 Meaning of annual rate**

After section EE 52(6), the following is added:

*“Exception*

- “(7) This section is subject to section FC 8I(8) (Adjustment required for certain operating leases entered before 20 June 2007).”

**53 Allocation of income and deductions by portfolio tax rate entity**

- (1) In the heading to section EG 3, “**income and deductions**” is replaced by “**income, deductions, and credits**”.

- (2) After section EG 3(2), the following is added:

*“Credits*

- “(3) A credit received by a portfolio tax rate entity is allocated to the portfolio allocation period under subsection (2) of the income to which the credit relates.”

**54 Expenditure incurred in acquiring film rights in feature films**

- (1) Section EJ 4(1) is replaced by the following:

*“Feature films*

- “(1) A deduction for expenditure that a person incurs in acquiring a film right is allocated under this section if the film is a feature film and—

- “(a) the deduction is under section DS 1 (Acquiring film rights):
  - “(b) the deduction is under section DS 2 (Film production expenditure) and the film is one for which a large budget screen production grant is made.”
- (2) Subsection (1) applies for the 2005–06 and later income years.

**55 Expenditure incurred in acquiring film rights in films other than feature films**

- (1) Section EJ 5(1) is replaced by the following:
- “Films other than feature films*
- “(1) A deduction for expenditure that a person incurs in acquiring a film right is allocated under this section if the film is not a feature film and—
- “(a) the deduction is under section DS 1 (Acquiring film rights):
  - “(b) the deduction is under section DS 2 (Film production expenditure) and the film is one for which a large budget screen production grant is made.”
- (2) Subsection (1) applies for the 2005–06 and later income years.

**56 Film production expenditure for New Zealand films**

- (1) The heading to section EJ 7 is replaced by “**Film production expenditure for New Zealand films having no large budget screen production grant**”.
- (2) Section EJ 7(1) is replaced by the following:
- “New Zealand films*
- “(1) A deduction under section DS 2 (Film production expenditure) for film production expenditure is allocated under this section if—
- “(a) the film is not one for which a large budget screen production grant is made; and
  - “(b) the film has a final certificate under section EJ 6.”
- (3) Subsections (1) and (2) apply for the 2005–06 and later income years.

**57 Film production expenditure for films other than New Zealand films**

- (1) The heading to section EJ 8 is replaced by “**Film production expenditure for other films having no large budget screen production grant**”.
- (2) Section EJ 8(1) is replaced by the following:  
*“Films other than New Zealand films*
  - “(1) A deduction under section DS 2 (Film production expenditure) for film production expenditure is allocated under this section if—
    - “(a) the film is not one for which a large budget screen production grant is made; and
    - “(b) the film does not have a final certificate under section EJ 6.”
- (3) Subsections (1) and (2) apply for the 2005–06 and later income years.

**58 What spreading methods do**

- (1) Before section EW 14(2)(a), the following is inserted:  
“(aa) the IFRS taxpayer method, to which sections EW 15B to EW 15E are relevant; or”.
- (2) Section EW 14(2)(e) is repealed.
- (3) In section EW 14, in the list of defined terms, “IFRS taxpayer method” is inserted.
- (4) Subsections (1) to (3) apply for—
  - (a) the 2007–08 and later income years, unless paragraph (b) or (c) applies; or
  - (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; or
  - (c) the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007.

**59 What is included when spreading methods used**

- (1) In section EW 15(1)(a), “ignoring non-contingent fees; and” is replaced by “ignoring—”, and the following is added:
  - “(i) non-contingent fees, if the relevant method is not the IFRS method described in section EW 15C:
  - “(ii) non-integral fees, if the relevant method is the IFRS method described in section EW 15C; and”.
- (2) In section EW 15(1)(b), “ignoring non-contingent fees; and” is replaced by “ignoring—”, and the following is added:
  - “(i) non-contingent fees, if the relevant method is not the IFRS method described in section EW 15C:
  - “(ii) non-integral fees, if the relevant method is the IFRS method described in section EW 15C; and”.
- (3) In section EW 15, in the list of defined terms, “non-integral fee” is inserted.
- (4) Subsections (1) to (3) apply for—
  - (a) the 2007–08 and later income years, unless paragraph (b) or (c) applies; or
  - (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; or
  - (c) the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007.

**60 New sections EW 15B to EW 15E inserted**

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

**“EW 15B IFRS taxpayer method**

*“Who this section applies to*

- “(1) This section applies to a person who is a party to a financial arrangement if the person uses IFRSs to prepare financial statements and to report for financial arrangements.

*“IFRS taxpayer method*

- “(2) The person must use the IFRS taxpayer method, described in this section and in sections EW 15C to EW 15E.

*“Compulsory use of some determinations*

- “(3) The person must use 1 of the following methods for the financial arrangement, if the terms of the relevant method allow,—

“(a) *Determination G5C: Mandatory conversion convertible notes* or a determination that succeeds it:

“(b) *Determination G22: Optional conversion convertible notes denominated in New Zealand dollars convertible at the option of the holder:*

“(c) *Determination G22A: Optional convertible notes denominated in New Zealand dollars* or a determination that succeeds it:

“(d) *Determination G29: Agreements for sale and purchase of property denominated in foreign currency: exchange rate to determine the acquisition price and method for spreading income and expenditure* or a determination that succeeds it:

“(e) an alternative method to 1 of those methods described in paragraphs (a) to (d), if that alternative—

“(i) has regard to the purposes of the financial arrangements rules under section EW 1(3); and

“(ii) is for financial arrangements similar to those arrangements to which the methods described in paragraphs (a) to (d) may apply; and

“(iii) results in the allocation to each income year of amounts that are not materially different from those that would have been allocated using 1 of those methods described in paragraphs (a) to (d).

*“Compulsory use of other methods for certain arrangements*

- “(4) The person must use 1 of the methods in subsection (5) to allocate an amount to an income year for the financial arrangement if—

“(a) the person is not required under subsection (3) to use a method for the financial arrangement; and

“(b) the financial arrangement—

- “(i) includes an excepted financial arrangement:
- “(ii) is treated by the person or the issuer of the financial arrangement as an equity instrument in whole or in part under IFRSs:
- “(iii) is an agreement for the sale and purchase of property or services; and
- “(c) the terms of the relevant method allow.

*“Methods for arrangements under subsection (4)*

- “(5) The methods referred to in subsection (4) are—
  - “(a) the yield to maturity method:
  - “(b) *Determination G26: Variable rate financial arrangements* or a determination that succeeds it:
  - “(c) a determination made by the Commissioner under section 90AC(1)(bb) of the Tax Administration Act 1994:
  - “(d) an alternative method to 1 of those methods described in paragraphs (a) to (c), if that alternative—
    - “(i) has regard to the purposes of the financial arrangements rules under section EW 1(3); and
    - “(ii) is for financial arrangements similar to those arrangements to which the methods described in paragraphs (a) to (c) may apply; and
    - “(iii) results in the allocation to each income year of amounts that are not materially different from those that would have been allocated using 1 of those methods described in paragraphs (a) to (c).

*“IFRS method and 3 alternatives*

- “(6) If the person is not required under subsection (3) or (4) to use a method for the financial arrangement, the person must use 1 of the following methods for the financial arrangement:
  - “(a) the IFRS method described in section EW 15C:
  - “(b) a determination alternative to IFRS described in section EW 15D:
  - “(c) the expected value method described in section EW 15E:
  - “(d) the equity-free fair value method described in section EW 15E.

*“Equity instrument*

“(7) In this section, **equity instrument** has the same meaning as in NZIAS 32.

“Defined in this Act: equity instrument, financial arrangement, financial arrangements rules, financial statements, IFRS, IFRS taxpayer method, income year, NZIAS 32

**“EW 15C IFRS method***“Who this section applies to*

“(1) This section applies to a person and a financial arrangement if—

“(a) section EW 15B(6) applies; and

“(b) the person does not use section EW 15D or EW 15E.

*“IFRS method*

“(2) The person must allocate an amount to an income year for the financial arrangement in accordance with IFRSs, as modified by subsection (3).

*“Modification of IFRS method*

“(3) When a person applies the IFRS method, the following modifications are made to the method, if relevant:

“(a) an amount arising from an impaired credit adjustment under IFRSs is not allocated to an income year, if the financial arrangement is a financial asset:

“(b) an amount arising from the fair value method under IFRSs is allocated to an income year, even though the amount is allocated to equity reserves under IFRSs.

*“Impaired credit adjustment*

“(4) In this section, **impaired credit adjustment** means,—

“(a) for a financial arrangement accounted for using the fair value method, the movement in fair value due to the decline in credit quality of the arrangement:

“(b) for a financial arrangement not accounted for using the fair value method, credit impairment adjustments made under IFRSs.

“Defined in this Act: amount, Commissioner, fair value method, financial arrangement, impaired credit adjustment, IFRS, income year

**“EW 15D Determination alternatives to IFRS**

*“Who this section applies to*

- “(1) This section applies to a person and a financial arrangement if—
- “(a) section EW 15B(6) applies; and
  - “(b) the person chooses in a return of income to use a determination alternative to IFRS for the financial arrangement; and
  - “(c) the terms of the relevant method, as modified by subsection (3), allow the person to use it for the financial arrangement; and
  - “(d) the financial arrangement is not treated under IFRSs as a hedge of a financial arrangement (**financial arrangement A**), and—
    - “(i) section EW 15C applies or has applied to financial arrangement A; and
    - “(ii) the method used for financial arrangement A is or was the fair value method or a method that accounts for gains and losses related to the hedge.

*“Determination alternatives to IFRS*

- “(2) The person must use 1 of the following methods for the financial arrangement, as modified by subsection (3):
- “(a) *Determination G9C: Financial arrangements that are denominated in a currency other than New Zealand dollars: an expected value approach* or a determination that succeeds it:
  - “(b) *Determination G14B: Forward contracts for foreign exchange and commodities: an expected value approach* or a determination that succeeds it:
  - “(c) *Determination G27: Swaps* or a determination that succeeds it:
  - “(d) a determination made by the Commissioner under section 90AC(1)(bb) of the Tax Administration Act 1994:
  - “(e) an alternative method to 1 of those described in paragraphs (a) to (d), if that alternative—
    - “(i) has regard to the purposes of the financial arrangements rules under section EW 1(3); and

- “(ii) is for financial arrangements similar to those arrangements to which the methods described in paragraphs (a) to (d) may apply; and
- “(iii) results in the allocation to each income year of amounts that are not materially different from those that would have been allocated using 1 of those described in paragraphs (a) to (d).

*“Determination alternatives to IFRS: G9C and G14B  
modified*

- “(3) When a person applies a determination alternative to IFRS that is *Determination G9C* or *Determination G14B*, the following modifications are made to the relevant method:
  - “(a) the term **forward contract** is treated as including a conditional or unconditional agreement to pay or be paid an amount calculated by reference to the price of property or services, without the property being delivered or the services being performed:
  - “(b) a requirement that all members of a group of companies to which the person belongs make an election to use the determination alternative is treated as met if—
    - “(i) all members of the group of companies make an election on or before the 63rd day after the person enters into the relevant financial arrangement, or they make the election within such further time as the Commissioner may allow; and
    - “(ii) the financial arrangement is the first financial arrangement of the group of companies for which *Determination G9C* or *Determination G14B* may be used; and
    - “(iii) the election is in writing; and
    - “(iv) the election is for *Determination G9C* or *Determination G14B*.

“Defined in this Act: amount, Commissioner, fair value method, financial arrangement, financial arrangements rules, forward contract, group of companies, IFRS

**“EW 15E Expected value method and equity-free fair value method**

*“Who this section applies to*

“(1) This section applies to a person and a financial arrangement if—

“(a) section EW 15B(6) applies; and

“(b) the financial arrangement is denominated in a currency other than New Zealand dollars or is a derivative instrument; and

“(c) the financial arrangement is not treated under IFRSs as a hedge of a financial arrangement (**financial arrangement A**), and—

“(i) section EW 15C applies or has applied to financial arrangement A; and

“(ii) the method used for financial arrangement A is or was the fair value method or a method that accounts for gains and losses related to the hedge; and

“(d) the person is not in the business of dealing in the financial arrangement; and

“(e) the person has entered into the financial arrangement in the ordinary course of their business; and

“(f) the person and all members of a group of companies to which the person belongs have chosen to use the expected value method described in subsection (2) or the equity-free fair value method described in subsection (3) by notifying the Commissioner in writing at the time the person must furnish a return of income for the relevant tax year.

*“Expected value method*

“(2) A person who has chosen under subsection (1)(f) to use the expected value method for the financial arrangement must use a method that—

“(a) has the features of an expected value approach described in *Determination G9C* and *Determination G14B*; and

“(b) allocates a reasonable amount, having regard to the purposes of the financial arrangements rules under section EW 1(3), for each income year over the financial arrangement’s term.

*“Equity-free fair value method*

- “(3) If the person chooses under subsection (1)(f) to use the equity-free IFRS method for the financial arrangement, the person must use a method that is the fair value method under IFRSs. However, an amount allocated to equity reserves under IFRSs must not be allocated to an income year.

*“Derivative instrument*

- “(4) In this section, **derivative instrument** has the same meaning as in NZIAS 39.

“Defined in this Act: amount, Commissioner, derivative instrument, fair value method, financial arrangement, financial arrangements rules, IFRS, IFRS taxpayer method, income year, NZIAS 39, tax year”.

- (2) Subsection (1) applies for—
- (a) the 2007–08 and later income years, unless paragraph (b) or (c) applies; or
  - (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; or
  - (c) the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007.

**61 Yield to maturity method or alternative**

- (1) In section EW 16(1), “method” is replaced by “method, if the person is not required to use the IFRS taxpayer method by section EW 15B”.
- (2) In section EW 16(2), “method,” is replaced by “method if the person is not required to use the IFRS taxpayer method by section EW 15B,”.
- (3) In section EW 16, in the list of defined terms, “IFRS taxpayer method” is inserted.
- (4) Subsections (1) to (3) apply for—
  - (a) the 2007–08 and later income years, unless paragraph (b) or (c) applies; or

- (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; or
- (c) the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007.

## **62 Straight-line method**

- (1) In section EW 17(1)(b), “EW 25(1).” is replaced by “EW 25(1); and”, and the following is added:
  - “(c) the person is not required to use the IFRS taxpayer method by section EW 15B.”
- (2) In section EW 17, in the list of defined terms, “IFRS taxpayer method” is inserted.
- (3) Subsections (1) and (2) apply for—
  - (a) the 2007–08 and later income years, unless paragraph (b) or (c) applies; or
  - (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; or
  - (c) the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007.

## **63 Market valuation method**

- (1) In section EW 18(1)(f), “way).” is replaced by “way); and”, and the following is added:
  - “(g) the person is not required to use the IFRS taxpayer method by section EW 15B.”
- (2) In section EW 18, in the list of defined terms, “IFRS taxpayer method” is inserted.
- (3) Subsections (1) and (2) apply for—

- (a) the 2007–08 and later income years, unless paragraph (b) or (c) applies; or
- (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; or
- (c) the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007.

#### **64 Choice among first 3 spreading methods**

- (1) In the heading to section EW 19, “**first 3**” is replaced by “**YTM or alternative, SL, and MV**”.
- (2) In section EW 19,—
  - (a) “A person who” is replaced by “A person who is not required to use the IFRS taxpayer method and who”:
  - (b) in the list of defined terms, “IFRS taxpayer method” is inserted.
- (3) Subsections (1) and (2) apply for—
  - (a) the 2007–08 and later income years, unless paragraph (b) or (c) applies; or
  - (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; or
  - (c) the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007.

#### **65 Determination method or alternative**

- (1) In section EW 20(1)(b)(ii), “do so.” is replaced by “do so; and”, and the following is added:
  - “(c) the person is not required to use the IFRS taxpayer method by section EW 15B.”

- (2) After section EW 20(2)(b), the following is inserted:  
“(bb) the person is not required to use the IFRS taxpayer method by section EW 15B; and”.
- (3) In section EW 20, in the list of defined terms, “IFRS taxpayer method” is inserted.
- (4) Subsections (1) to (3) apply for—
  - (a) the 2007–08 and later income years, unless paragraph (b) or (c) applies; or
  - (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; or
  - (c) the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007.

#### **66 Section EW 21 repealed**

- (1) Section EW 21 is repealed.
- (2) Subsection (1) applies for—
  - (a) the 2007–08 and later income years, unless paragraph (b) or (c) applies; or
  - (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; or
  - (c) the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007.

#### **67 Default method**

- (1) In section EW 22(c), “, or a financial reporting method” is omitted.
- (2) Section EW 22(d) is repealed.
- (3) Subsections (1) and (2) apply for—

- (a) the 2007–08 and later income years, unless paragraph (b) or (c) applies; or
- (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; or
- (c) the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007.

**68 Failure to use method for financial reporting purposes**

- (1) In section EW 23(1) and (2), “EW 20(2)(f), and EW 21(e)” is replaced by “and EW 20(2)(f)” in each place where it appears.
- (2) After section EW 23(3), the following is added:  
*“Relationship with subject matter: transitional rule for IFRS financial reporting*
- “(4) This section is modified by section EZ 50 (Transitional rule for IFRS financial reporting method).”
- (3) Subsections (1) and (2) apply for—
  - (a) the 2007–08 and later income years, unless paragraph (b) or (c) applies; or
  - (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; or
  - (c) the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007.

**69 Consistency of use of spreading method**

- (1) After section EW 24(2), the following is inserted:

*“IFRS taxpayer method*

“(2B) Section EW 25B sets out a particular consistency requirement for the IFRS taxpayer method.”

- (2) In section EW 24, in the list of defined terms, “IFRS taxpayer method” is inserted.
- (3) Subsections (1) and (2) apply for—
  - (a) the 2007–08 and later income years, unless paragraph (b) or (c) applies; or
  - (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; or
  - (c) the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007.

**70 New section EW 25B inserted**

- (1) After section EW 25, the following is inserted:

**“EW 25B Consistency of use of specific individual methods under IFRS taxpayer method***“Consistency for financial arrangement*

“(1) A person using a specific individual method under 1 of the 4 methods described in section EW 15B(6) must use that specific individual method for—

“(a) the remaining term of the financial arrangement, until section EW 29 requires them to calculate a base price adjustment for the arrangement; and

“(b) other financial arrangements that are the same as, or similar to, the financial arrangement, unless different accounting treatments under IFRSs are used for those financial arrangements.

*“Exception: change allowed*

“(2) Subsection (1)(a) does not apply, and a change in specific individual method under the IFRS taxpayer method is allowed, if—

- “(a) the person may use the new specific individual method under the IFRS taxpayer method; and
- “(b) the accounting treatment for the relevant financial arrangement under IFRSs is changed for the purposes of financial reporting in the same income year as the change in specific individual method.

*“Change allowed: spreading method adjustment*

- “(3) When a person changes their specific individual method under subsection (2), sections EW 26(3), (4), and EW 27 are treated as applying as if the person’s change in specific individual method were their change in spreading method under section EW 26(2).

*“Exception: no spreading method adjustment for change from fair value method*

- “(4) Despite subsection (3) of this section, sections EW 26(3), (4), and EW 27 are not treated as applying as described, if the old specific individual method changed from is the fair value method under the IFRS method described in section EW 15C. Instead, section EW 29(13) applies.

*“Defined in this Act: fair value method, financial arrangement, IFRS, IFRS taxpayer method, income year”.*

- (2) Subsection (1) applies for—
  - (a) the 2007–08 and later income years, unless paragraph (b) or (c) applies; or
  - (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; or
  - (c) the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007.

## **71 Change of spreading method**

- (1) In section EW 26, the following is added:

*“Exception: fair value method*

- “(6) Despite subsection (3), that subsection, subsection (4), and section EW 27 do not apply to the extent to which the person’s spreading method change involves, for a financial arrangement, a change from the fair value method under the IFRS method described in section EW 15C. Instead, section EW 29(13) applies.

*“Sound commercial reason*

- “(7) In this section, **sound commercial reason** includes—
- “(a) starting to use or ceasing to use IFRSs to prepare financial statements:
  - “(b) starting to use, for the first time, the IFRS taxpayer method for a financial arrangement.”
- (2) In section EW 26, in the list of defined terms, “fair value method”, “financial statements”, “IFRS”, and “sound commercial reason” are inserted.
- (3) Subsections (1) and (2) apply for—
- (a) the 2007–08 and later income years, unless paragraph (b) or (c) applies; or
  - (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; or
  - (c) the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007.

**72 When calculation of base price adjustment required**

- (1) After section EW 29(12), the following is added:

*“Change from fair value method under IFRS method*

- “(13) A party to a financial arrangement who, for the financial arrangement, changes from the fair value method under the IFRS method described in section EW 15C to any other method must calculate a base price adjustment as at the date of the change.”

- (2) In section EW 29, in the list of defined terms, “fair value method” is inserted.
- (3) Subsections (1) and (2) apply for—
  - (a) the 2007–08 and later income years, unless paragraph (b) or (c) applies; or
  - (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; or
  - (c) the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007.

### **73 Base price adjustment formula**

- (1) In section EW 31(7), “ignoring non-contingent fees.” is replaced by “ignoring—”, and the following is added:
  - “(i) non-contingent fees, if the relevant method is not the IFRS method described in section EW 15C:
  - “(ii) non-integral fees, if the relevant method is the IFRS method described in section EW 15C.”
- (2) In section EW 31, in the list of defined terms, “non-integral fee” is inserted.
- (3) Subsections (1) and (2) apply for—
  - (a) the 2007–08 and later income years, unless paragraph (b) or (c) applies; or
  - (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; or
  - (c) the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007.

**74 New heading and new section EW 48B inserted**

- (1) After section EW 48, the following is inserted:

*“Consideration when change from fair value method under IFRS method*

**“EW 48B Consideration when change from fair value method under IFRS method**

*“Who this section applies to*

- “(1) This section applies to a party to a financial arrangement who, for the financial arrangement,—
- “(a) changes from the fair value method under the IFRS method described in section EW 15C to any other method; and
  - “(b) must calculate a base price adjustment as at the date of the change, as provided by section EW 29(13).
- “(2) A person is treated as having been paid, on the date of the change, an amount of consideration equal to the financial arrangement’s market value on that date.

*“Defined in this Act: amount, consideration, fair value method, financial arrangement”.*

- (2) Subsection (1) applies for—
- (a) the 2007–08 and later income years, unless paragraph (b) or (c) applies; or
  - (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; or
  - (c) the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007.

**75 Meaning of CFC**

In section EX 1(1B), “1 of the tests” is replaced by “a test”.

**76 Options and similar rights in certain cases**

- (1) In section EX 11(3)(b), “under sections EX 14 to EX 17” is inserted after “10%”.
- (2) Subsection (1) applies for the 2005–06 and later income years.

**77 Associates and 10% threshold**

- (1) Section EX 15(1), other than the heading, is replaced by the following:
  - “(1) For the purpose of applying the 10% threshold in section EX 14, a person’s income interest in a CFC is increased by each income interest in the CFC, for the relevant accounting period, of a person associated with the person.”
- (2) Subsection (1) applies for the 2005–06 and later income years.

**78 Branch equivalent income or loss: calculation rules**

In section EX 21(30), “FC 8I” is replaced by “FC 8H”.

**79 CFC rules exemption**

- (1) In section EX 32(b), “, under sections EX 14 to EX 17” is inserted after “falls”.
- (2) Subsection (1) applies for the 2005–06 and later income years.

**80 Exemptions: direct income interests in FIF in grey list country**

- (1) In section EX 33(3)(c), the words before subparagraph (i) are replaced by the following:
  - “(c) the person has held shares in the company at all times after a time when—”.
- (2) Section EX 33(3)(d)(i) is replaced by the following:
  - “(i) carried on a business in New Zealand; and”.
- (3) Section EX 33(3)(g)(i) and (ii) are replaced by the following:
  - “(i) incurs in the year expenditure, other than interest, equal to or more than the lesser of \$1,000,000 and 25% of the total expenditure, other than interest, incurred by the company in the year:
  - “(ii) at all times in the year, engages a number of full-time employees or contractors equal to or more

than the lesser of 10 and 25% of the total number engaged by the company.”

- (4) Section EX 33(4)(c) is replaced by the following:
- “(c) the person has held shares in the grey list company at all times after a time when the shares were not listed on a recognised exchange; and”.
- (5) Section EX 33(4)(d) is replaced by the following:
- “(d) at all times in the year, the grey list company holds more than 50% of the voting interests in a company (the **resident company**) that, for 12 months or more, has—
- “(i) carried on a business in New Zealand; and
- “(ii) had in New Zealand more than 50% of the resident company’s assets and employees; and”.
- (6) Section EX 33(4)(f)(i) and (ii) are replaced by the following:
- “(i) incurs in the year expenditure, other than interest, equal to or more than the lesser of \$1,000,000 and 25% of the total expenditure, other than interest, incurred by the company in the year:
- “(ii) at all times in the year, engages a number of full-time employees or contractors equal to or more than the lesser of 10 and 25% of the total number engaged by the company.”
- (7) After section EX 33(4), the following is inserted:
- “*Shares acquired under venture investment agreement*
- “(4B) A person’s rights in a FIF that is a grey list company at a time in an income year are not an attributing interest at the time if the person first acquires a share or option to buy a share in the company—
- “(a) under a venture investment agreement; and
- “(b) at the same time and on the same terms as an acquisition of an interest in the FIF by the Venture Investment Fund or a company owned by the Venture Investment Fund.”
- (8) Section EX 33(5)(f) is replaced by the following:
- “(f) the share purchase agreement includes a restriction on the disposal of the shares; and”.
- (9) In section EX 33, in the list of defined terms, “non-resident” is inserted.

**81 Exemptions limited by income years: shares in certain grey list companies**

(1) Section EX 33B(1), other than the heading, is replaced by the following:

“(1) A person’s rights in a FIF are not an attributing interest in an income year beginning before 1 April 2012 if—

“(a) the rights are shares (the **shares**) in a grey list company (the **company**); and

“(b) on 17 May 2006, the company—

“(i) is not an entity described in schedule 4, part B (Foreign investment funds); and

“(ii) has more than 20 000 shareholders who have addresses in New Zealand on the company’s share register in New Zealand; and

“(iii) has shareholders referred to in subparagraph (ii) who between them hold shares in the company carrying voting interests of more than 50%; and

“(iv) is liable to income tax in a country listed in the grey list; and

“(v) has assets of which more than 50% in total value are shares in other companies carrying voting interests of more than 50%; and

“(c) on 17 May 2006, the shares—

“(i) are listed on a recognised exchange in New Zealand; and

“(ii) are listed on a recognised exchange in a grey list country; and

“(d) in the period of 30 days beginning from 18 December 2006, the company gives to the Commissioner the notice required by paragraph (b), as that paragraph read before being substituted by section 81 of the Taxation (Business Taxation and Remedial Matters) Act 2007.”

(2) Section EX 33B(2), other than the heading, is replaced by the following:

“(2) A person’s rights in a FIF are not an attributing interest in an income year beginning before 1 April 2009 if—

“(a) the rights are shares (the **shares**) in a grey list company (the **company**); and

“(b) on 17 May 2006, the company—

“(i) is not an entity described in schedule 4, part B; and

- “(ii) has shareholders of which more than 40% have addresses in New Zealand on the company’s share register in New Zealand; and
  - “(iii) has shareholders referred to in subparagraph (ii) who between them hold shares in the company carrying voting interests of more than 50%; and
  - “(iv) is liable to income tax in a country listed in the grey list; and
  - “(v) has assets of which 50% or more in total value are shares in other companies each of which is resident in New Zealand; and
  - “(vi) has assets of which 90% or more in total value are shares in other companies each of which is resident in Australia or New Zealand and is listed on a recognised exchange in Australia or New Zealand; and
- “(c) on 17 May 2006, the shares—
- “(i) are listed on a recognised exchange in New Zealand; and
  - “(ii) are listed on a recognised exchange in a grey list country; and
- “(d) in the period of 30 days beginning from 18 December 2006, the company gives to the Commissioner the notice required by paragraph (b), as that paragraph read before being substituted by section 81 of the Taxation (Business Taxation and Remedial Matters) Act 2007; and
- “(e) at all times in the year, the company—
- “(i) has assets of which 50% or more in total value are shares in other companies each of which is resident in New Zealand; and
  - “(ii) has assets of which 90% or more in total value are shares in other companies each of which is resident in Australia or New Zealand and is listed on a recognised exchange in Australia or New Zealand.”

## **82 Exemption: shares in listed Australian company**

- (1) Section EX 33C, other than the heading and list of defined terms, is replaced by the following:

*“Exemption*

- “(1) A person’s rights in a FIF in an income year are not an attributing interest if—
- “(a) the rights are a share; and
  - “(b) the share is not a share that may not, or ordinarily may not, be disposed of unless together with rights in another company; and
  - “(c) the FIF is a company that meets the requirements of subsection (2).

*“Australian listed company on approved index*

- “(2) The company must—
- “(a) at all times in the income year when the person holds a right in the company, be resident in Australia; and
  - “(b) at all times in the income year when the person holds a right in the company, not be treated as resident in a country other than Australia under and for the purposes of an agreement that—
    - “(i) is between Australia and the other country; and
    - “(ii) would be a double tax agreement if negotiated between New Zealand and the other country; and
  - “(c) have shares included in an index that is an approved index under the ASX Market Rules, made under Chapter 7 of the Corporations Act 2001 (Aust),—
    - “(i) at the beginning of the income year, if subparagraph (ii) does not apply; or
    - “(ii) when the person acquires the shares, if the person does not own shares in the company earlier in the income year; and
  - “(d) at all times in the income year when the person holds a right in the company, not be an entity described in schedule 4, part B (Foreign investment funds); and
  - “(e) at all times in the income year when the person holds a right in the company, be required under the Income Tax Assessment Act 1997 (Aust) and Income Tax Assessment Act 1936 (Aust) to maintain a franking account.”
- (2) In section EX 33C, in the list of defined terms, “direct income interest”, “income”, and “income tax” are omitted.

**83 Exemption: units in certain Australian unit trusts**

- (1) Section EX 33D(1)(c) to (e) are replaced by the following:
- “(c) at all times in the year when the person holds a right in the FIF, the unit trust is resident in Australia; and
  - “(d) at all times in the year when the unit trust makes a distribution to investors, there is an RWT proxy under section NF 2AA (Election to be RWT proxy) for the unit trust and payments by the unit trust to the person; and
  - “(e) the unit trust meets the requirements of—
    - “(i) subsection (2) relating to the assets of the unit trust that are shares (the **held shares**) being held by the unit trust at the end of the trust’s accounting year (the **trust’s year**) ending in the person’s income year and having then a market value greater than or equal to the cost of the share for the unit trust:
    - “(ii) subsection (4) relating to the distributions by the unit trust during the trust’s year.”
- (2) Section EX 33D(2) to (4) are replaced by the following:
- “Requirements for unit trust’s assets that are shares*
- “(2) A unit trust meets the requirements of this subsection if the total market value of the held shares exceeds the total cost of the held shares by an amount that is less than or equal to 3 times the amount calculated using the formula—
- disposal proceeds – share costs.
- “Definition of items in formula*
- “(3) In the formula in subsection (2),—
- “(a) **disposal proceeds** is the total proceeds derived by the unit trust during the year from disposals of shares during the year:
  - “(b) **share costs** is the total cost of the shares involved in the disposals referred to in paragraph (a).
- “Requirements for unit trust’s distributions*
- “(4) A unit trust meets the requirements of this subsection if the total amount of distributions by the unit trust during the trust’s year is equal to or more than the amount calculated using the formula—

$$\frac{0.7}{0.3} \times (\text{closing} - \text{opening} - \text{contributions}).$$

*“Definition of items in formula*

- “(5) In the formula in subsection (4),—
- “(a) **closing** is the amount by which, at the end of the trust’s year, the market value of the unit trust’s assets exceeds the market value of the unit trust’s liabilities:
- “(b) **opening** is the amount by which, at the beginning of the trust’s year, the market value of the unit trust’s assets exceeds the market value of the unit trust’s liabilities:
- “(c) **contributions** is the total amount of contributions by investors to the unit trust during the trust’s year.

*“Currency of amounts in subsections (2) to (5)*

- “(6) In subsections (2) to (5), all amounts are expressed in the currency used in the unit trust’s financial accounts.”
- (3) In section EX 33D, in the list of defined terms, “accounting year” is inserted.

#### **84 Limits on choice of calculation methods**

- (1) Section EX 40(6)(b) is replaced by the following:
- “(b) the attributing interest does not meet the requirements of subsection (8)(a):”.
- (2) Section EX 40(6)(d) is replaced by the following:
- “(d) the person is the trustee of a trust that—
- “(i) has no gifting settlor who is not a natural person or deceased person; and
- “(ii) at all times in the income year, would be a qualifying trust for a distribution made at the time; and
- “(iii) is mainly for the benefit of an organisation or trust with income that is exempt income under section CW 34 or CW 35 (which relate to the income of charities) or, at all times in the income year, mainly for the benefit of a natural person for whom the gifting settlors of the trust have natural love and affection or had natural love and affection when alive; and
- “(iv) is not a superannuation scheme.”
- (3) Section EX 40(8)(a) is replaced by the following:

- “(a) the attributing interest is—
  - “(i) of a type that the Commissioner has determined under section 91AAO of the Tax Administration Act 1994 to be an interest for which the fair dividend rate method may be used:
  - “(ii) not of a type that is listed in subsection (9); and”.
- (4) Section EX 40(9) is replaced by the following:
  - “*Fair dividend rate method: interests for which method not applicable*
- “(9) An attributing interest of a person (the **investor**) for which the Commissioner has not made a determination referred to in subsection (8)(a)(i) does not meet the requirements of subsection (8) if the interest is—
  - “(a) of a type that the Commissioner has determined under section 91AAO of the Tax Administration Act 1994 to be an interest for which the fair dividend rate method may not be used:
  - “(b) a fixed rate share under section LF 2(3) (Granting of underlying foreign tax credit):
  - “(c) a non-participating redeemable share:
  - “(d) an interest in a non-resident having assets of which 80% or more by value consist of financial arrangements denominated in New Zealand dollars:
  - “(e) a share that involves an obligation—
    - “(i) of another person to provide to the investor an amount exceeding the issue price of the share; and
    - “(ii) that is direct to the investor or indirect through an arrangement; and
    - “(iii) that is non-contingent or subject to a contingency that is sufficiently remote to be immaterial.

“*Meaning of gifting settlor*

- “(9B) A **gifting settlor**, for a trust (the **relevant trust**), is a person who is—
  - “(a) a settlor, under section HH 1(1) (Interpretation) or paragraph (a)(i) of the definition of the term, of—
    - “(i) the relevant trust:

- “(ii) a trust with a trustee who settles property on the relevant trust, directly or through the trustees of other trusts; and
- “(b) not the trustee of a trust.”

**85 Use of particular calculation methods required**

In section EX 40B, in the words before paragraph (a), “section EX 40(8)(a)” is replaced by “section EX 40(8)(a)(ii)”.

**86 Default calculation method**

Section EX 41(2)(b)(ii) and (iii) are replaced by the following:

- “(ii) the comparative value method, if subparagraph (i) does not apply and it is practical to use the comparative value method; or
- “(iii) the deemed rate of return method, if subparagraph (i) does not apply and it is not practical to use the comparative value method.”

**87 Comparative value method**

- (1) In section EX 44(4), “tax that the person is allowed as a credit under section” is replaced by “amount that the person is allowed as a credit under section LB 2 (Credit of tax for imputation credit) or”.
- (2) Section EX 44(6B)(b) is replaced by the following:
  - “(b) that meets the requirements of section EX 40(8)(a).”

**88 Fair dividend rate method**

- (1) Section EX 44B(2), other than the heading, is replaced by the following:
  - “(2) For a person who is not a unit valuer, the FIF income or loss for an income year from the attributing interests in FIFs for which the person uses the fair dividend rate method is the amount calculated for the income year using the method in—
    - “(a) section EX 44C, if paragraph (b) does not apply; or
    - “(b) section EX 44D, if the person—
      - “(i) determines the market value of the attributing interest for each period of a day in the income year; and
      - “(ii) chooses that this paragraph apply.”

- (2) After section EX 44B(4), the following is added:  
*“Treatment of attributing interests subject to returning share transfer*
- “(5) If an attributing interest in a FIF is an original share subject to a returning share transfer, for the purposes of a person using the fair dividend rate method to calculate FIF income or loss, the attributing interest is treated as being held by the share supplier.”

**89 Fair dividend rate method: usual method**

- (1) In section EX 44C(4)(b), “year.” is replaced by “year; and” and the following is added:  
“(c) that are not, at the beginning of the income year, included in a direct income interest of 10% or more in a grey list company.”
- (2) Section EX 44C(5)(b)(ii) is replaced by the following:  
“(ii) the amount (the **quick sale gains**) determined under subsection (10B).”
- (3) In section EX 44C(10)(b), “incurs during the income year in acquiring or increasing” is replaced by “incurs in acquiring or increasing during the income year”.
- (4) After section EX 44C(10), the following is inserted:  
*“Quick sale gains*
- “(10B) The quick sale gains is the greater of zero and the total for the income year of amounts calculated, for each attributing interest that is both acquired and disposed of in the income year, using the formula—  
return – (interest × average cost).

*“Definition of items in formula*

- “(10C) In the formula,—
- “(a) **return** is the total amount derived by the person from holding or disposing of the interest:
- “(b) **interest** is the amount of the interest that is both acquired and disposed of in the income year:
- “(c) **average cost** is the total amount of expenditure that the person incurs during the income year in acquiring or increasing the attributing interest in the FIF divided by

the total for the income year of the increase in the interest for each acquisition or increase.”

- (5) In section EX 44C(11), in the words before paragraph (a), “or is incurred on” is replaced by “or is derived from or incurred on”.
- (6) In section EX 44C(11)(a), “incurred” is replaced by “derived or incurred”.
- (7) After section EX 44C(12), the following is added:

*“Treatment of deemed transaction under section EX 51 or EX 54B*

- “(13) If a person is treated under section EX 51(5) or EX 54B as disposing of or acquiring a share in an income year, the disposal or acquisition is ignored for the purposes of subsection (5).”

#### **90 Fair dividend rate method: method for entities that value investors’ units**

- (1) In the heading to section EX 44D, “**entities that value investors’ units**” is replaced by “**unit valuers and persons valuing interests daily**”.
- (2) Section EX 44D(1) is replaced by the following:

*“FIF income*
- “(1) If this section applies to an entity or person (the **entity**) who calculates FIF income from attributing interests in FIFs under the fair dividend rate method, the FIF income of the entity from the interests is the total of the amounts calculated using the formula in subsection (2) for each period (the **unit valuation period**) of the income year for which the entity determines the value of the attributing interests or of investors’ interests in the entity.”
- (3) In section EX 44D(4)(b), “period.” is replaced by “period; and” and the following is added:

“(c) that are not, at the beginning of the income year, included in a direct income interest of 10% or more in a grey list company.”
- (4) Section EX 44D(7)(c)(ii) is replaced by the following:

“(ii) the amount (the **quick sale gains**) determined under subsection (12B).”

- (5) In section EX 44D(12)(b), “incurs during the unit valuation period in acquiring or increasing” is replaced by “incurs in acquiring or increasing during the unit valuation period”.
- (6) After section EX 44D(12), the following is inserted:

*“Quick sale gains*

- “(12B) The quick sale gains is the greater of zero and the total for the unit valuation period of amounts calculated, for each attributing interest that is both acquired and disposed of in the unit valuation period, using the formula—

$$\text{return} - (\text{interest} \times \text{average cost}).$$

*“Definition of items in formula*

- “(12C) In the formula—

“(a) **return** is the total amount derived by the entity from holding or disposing of the interest:

“(b) **interest** is the amount of the interest:

“(c) **average cost** is the total amount of expenditure that the entity incurs during the unit valuation period in acquiring or increasing the attributing interest in the FIF divided by the total for the unit valuation period of the increase in the interest for each acquisition or increase.”

- (7) In section EX 44D(13), in the words before paragraph (a), “or is incurred on” is replaced by “or is derived from or incurred on”.
- (8) In section EX 44D(13)(a), “incurred” is replaced by “derived or incurred”.
- (9) After section EX 44D(14), the following is added:

*“Treatment of deemed transaction under section EX 54B*

- “(15) If a person is treated under section EX 54B as disposing of or acquiring a share in an income year, the disposal or acquisition is ignored for the purposes of subsection (7).”

**91 Fair dividend rate method and cost method: calculating items in formulas for periods affected by share reorganisations**

In section EX 44E(4), “incurs during the affected period in acquiring or increasing” is replaced by “incurs in acquiring or increasing during the affected period”.

**92 Cost method**

- (1) After section EX 45B(4)(a), the following is inserted:
  - “(ab) the amount that is shown as the net asset value of the interest in audited financial statements of the person for the relevant income year made available to the general public, if—
    - “(i) paragraph (a) does not apply; and
    - “(ii) the FIF makes available to the general public audited financial statements for its accounting year ending in the relevant income year; and
    - “(iii) the person chooses that this paragraph apply; or
  - “(ac) the amount of the cost of the interest, if—
    - “(i) paragraphs (a) and (ab) do not apply; and
    - “(ii) the person acquires the interest in the 2005–06 or 2006–07 income year; or”.
- (2) In section EX 45B(4)(b), in the words before subparagraph (i), “paragraphs (a), (ab), and (ac) do not apply and” is inserted after “if”.
- (3) In section EX 45B(4)(b)(i), “for which the person has FIF income or loss” is inserted after “attributing interest”.
- (4) In section EX 45B(4)(c), “paragraphs (a), (ab), (ac), and (b) do not apply and” is inserted after “if”.
- (5) In section EX 45B(4)(d), “paragraphs (a), (ab), (ac), and (b) do not apply and” is inserted after “if”.
- (6) In section EX 45B(4)(e), “paragraphs (a), (ab), (ac), and (b) do not apply and” is inserted after “if”.
- (7) In section EX 45B(6)(b), “incurs during the relevant income year in acquiring or increasing” is replaced by “incurs in acquiring or increasing during the relevant income year”.
- (8) In section EX 45B(6)(c), “section EX 44C” is replaced by “section EX 44E”.
- (9) In section EX 45B(11)(b), “section EX 44C” is replaced by “section EX 44E”.
- (10) In section EX 45B(12)(b), “incurs during the income year before the relevant income year in acquiring or increasing” is replaced by “incurs in acquiring or increasing during the income year before the relevant income year”.
- (11) In section EX 45B(12)(c), “section EX 44C” is replaced by “section EX 44E”.

**93 Codes: comparative value method, deemed rate of return method, fair dividend rate method, and cost method**

Section EX 47(1)(c) is replaced by the following:

- “(c) the fair dividend rate method, if—
  - “(i) the FIF is not a grey list company:
  - “(ii) the person does not hold a direct income interest of 10% or more in the FIF at the beginning of the income year of the period.”.

**94 Limits on changes of method**

- (1) In section EX 50(1), “subsections (2) to (7)” is replaced by “subsections (2) to (8)”.
- (2) Section EX 50(8)(a) to (d) are replaced by the following:
  - “(a) has no gifting settlor who is not a natural person or deceased person; and
  - “(b) at all times in the income year, would be a qualifying trust for a distribution made at the time; and
  - “(c) is mainly for the benefit of—
    - “(i) an organisation or trust with income that is exempt income under section CW 34 or CW 35 (which relate to the income of charities):
    - “(ii) at all times in the income year, a natural person for whom the gifting settlors of the trust have natural love and affection or had natural love and affection when alive; and
  - “(d) is not a superannuation scheme.”

**95 Consequences of changes in method**

- (1) In section EX 51(4)(c)(ii), “year; or” is replaced by “year.”
- (2) After section EX 51(4), the following is added:

*“Changes between comparative value method and fair dividend rate method*
- “(5) If a person holding an attributing interest in a FIF changes from either of the comparative value method and the fair dividend rate method to the other of the comparative value method and the fair dividend rate method for calculating the FIF income or loss from the interest, the person is treated as having—

- “(a) disposed of the interest to an unrelated person immediately before the start of the first income year to which the new method applies; and
- “(b) reacquired the interest at the start of the income year; and
- “(c) received for the disposal and paid for the reacquisition an amount equal to the market value of the interest at the time of the disposal.”

**96 FIF rules first applying to interest for income year beginning on or after 1 April 2007**

- (1) Section EX 54B(1) is replaced by the following:

*“When this section applies*

- “(1) This section applies when a person has rights in a FIF that—
- “(a) for the period ending on a day (the **preceding day**) are—
    - “(i) not an attributing interest;
    - “(ii) an attributing interest for which the person does not have FIF income or loss;
    - “(iii) rights for which the person is a share supplier in a returning share transfer; and
  - “(b) for the period beginning on the day (the **application day**) following the preceding day are an attributing interest for which the person has FIF income or loss.”
- (2) Section EX 54B(2)(b) is replaced by the following:
- “(b) reacquired the interest at the beginning of the application day; and”.
- (3) In section EX 54B(3),—
- (a) in the words before paragraph (a), “the disposal and acquisition referred to in subsection (2)” is replaced by “the disposals in an income year, and related acquisitions, treated as occurring under this section”;
  - (b) in paragraph (a)(i), “disposal is” is replaced by “disposals are”;
  - (c) in paragraph (a)(ii), “disposal is” is replaced by “disposals are”;
  - (d) in paragraph (a)(iii), “disposal is” is replaced by “disposals are”;
  - (e) in paragraph (b), “disposal” is replaced by “disposals”.

**97 Measurement of cost**

Section EX 56(2) is replaced by the following:

*“FIFO cost flow identification*

- “(2) If sections EX 44C(12) and EX 44D(14) do not apply and it is not possible to specifically identify the cost of the interest because of multiple acquisitions or dispositions or both by the person, the first-in-first-out (the **FIFO**) method of identifying cost flows is applied.”

**98 Policyholder income formula**

- (1) Section EY 42(1) is replaced by the following:

*“Formula*

- “(1) The **policyholder income formula** is—
- $$\frac{\begin{array}{l} \text{claim due} + (\text{closing actuarial reserves} \\ \quad - \text{opening actuarial reserves}) \\ \quad - (\text{FDR adjustment} + \text{PIE adjustment}) \\ \quad - (\text{premium} - \text{underwriting result}) \end{array}}{(1 - \text{tax rate}).”}$$

- (2) After section EY 42(5), the following is inserted:

*“FDR adjustment*

- “(5B) **FDR adjustment** is the amount given by section EY 42B to the extent to which it applies.

*“PIE adjustment*

- “(5C) **PIE adjustment** is the amount given by section EY 42C to the extent to which it applies.”

- (3) Subsections (1) and (2) apply to a life insurer,—
- (a) for the 2008–09 and later income years, unless they make an election under paragraph (b) or (c); or
  - (b) on and after 1 October 2007, if they make an election under this paragraph, stating the relevant date in a notice received by the Commissioner before 1 April 2008; or
  - (c) for an income year beginning on or after 1 April 2007, if they make an election under this paragraph, stating the relevant date in a notice received by the Commissioner before 1 April 2008.

**99 New sections EY 42B and EY 42C inserted**

(1) After section EY 42, the following is inserted:

**“EY 42B Policyholder income formula: FDR adjustment**

*“When this section applies*

“(1) This section applies for the purposes of section EY 42(5B) to property that supports only actuarial reserves to the extent to which—

“(a) the property is an attributing interest in a FIF held by the life insurer, or by a portfolio tax rate entity that the life insurer has directly or indirectly invested in; and

“(b) the life insurer or the portfolio tax rate entity uses the fair dividend rate method for the property; and

“(c) section EY 42C does not apply to the property.

*“When has life insurer indirectly invested in portfolio tax rate entity?*

“(2) For the purposes of subsection (1), a life insurer is treated as indirectly investing in a portfolio tax rate entity (**PTRE A**) when a portfolio tax rate entity has invested in PTRE A and the investment may be traced back through an unbroken chain of investments in portfolio tax rate entities to a direct investment by the life insurer in a portfolio tax rate entity.

*“FDR adjustment*

“(3) In using the policyholder income formula, the life insurer may calculate the item **FDR adjustment**—

“(a) using the formula in subsection (5); or

“(b) by calculating, using any reasonable method for the information available to the life insurer, the amount credited to actuarial reserves in relation to the property, but excluding amounts which are related to FIF income under the fair dividend rate method.

*“Consistency requirement*

“(4) A life insurer, in using the policyholder income formula, must calculate the item **FDR adjustment** by always applying whichever of subsection (3)(a) or (b) they first apply.

*“Formula*

“(5) The formula described in subsection (3)(a) for the calculation of the item **FDR adjustment** is—

$$0.6 \times (\text{FIF result} - \text{FDR income}).$$

*“Definition of items in formula*

“(6) The items in the formula are defined in subsections (7) and (8).

*“FIF result*

“(7) **FIF result** is the life insurer’s gains and losses for the income year, for the property, calculated using accepted accounting practice.

*“FDR income*

“(8) **FDR income** is the amount for the income year of the life insurer’s income related to FIF income under the fair dividend rate method for the property, calculated using any reasonable method for the information available to the life insurer.

“Defined in this Act: amount, attributing interest, fair dividend rate method, FIF, FIF income, FIF loss, income, portfolio investment entity, portfolio investment-linked life fund

**“EY 42C Policyholder income formula: PILF adjustment***“When this section applies*

“(1) This section applies for the purposes of section EY 42(5C) to property that supports only actuarial reserves for a portfolio investment-linked life fund, to the extent to which the property is—

“(a) an attributing interest in a FIF,—

“(i) held by the life insurer, or by a portfolio tax rate entity that the life insurer has directly or indirectly invested in; and

“(ii) for which the life insurer or the portfolio tax rate entity uses the fair dividend rate method for the property:

“(b) shares described in section CX 44C (Proceeds from disposal of certain shares by portfolio investment entities) held by the life insurer.

*“When has life insurer indirectly invested in portfolio tax rate entity?”*

- “(2) For the purposes of subsection (1), a life insurer is treated as indirectly investing in a portfolio tax rate entity (**PTRE A**) when a portfolio tax rate entity has invested in PTRE A and the investment may be traced back through an unbroken chain of investments in portfolio tax rate entities to a direct investment by the life insurer in a portfolio tax rate entity.

*“PIE adjustment*

- “(3) In using the policyholder income formula, the life insurer may calculate the item **PILF adjustment**—
- “(a) using the formula in subsection (5); or
- “(b) by calculating, using any reasonable method for the information available to the life insurer, the amount credited to actuarial reserves in relation to the property, but excluding amounts that are—
- “(i) related to FIF income under the fair dividend rate method:
- “(ii) dividends or distributions for shares described subsection (1)(b), other than distributions from a portfolio tax rate entity to which section CX 44D(2) (Portfolio investor allocated income and distributions of income by portfolio tax rate entities) applies.

*“Consistency requirement*

- “(4) A life insurer, in using the policyholder income formula, must calculate the item **PILF adjustment** by always applying whichever of subsection (3)(a) or (b) they first apply.

*“Formula*

- “(5) The formula described in subsection (3)(a) for the calculation of the item **PILF adjustment** is—
- $$0.9 \times (\text{FIF result} - \text{FDR income}) + 0.9 \times \text{excluded shares.}$$

*“Definition of items in formula*

“(6) The items in the formula are defined in subsections (7) to (9).

*“FIF result*

“(7) **FIF result** is the life insurer’s gains and losses for the income year, for the property described in subsection (1)(a), calculated using accepted accounting practice.

*“FDR income*

“(8) **FDR income** is the amount for the income year of the life insurer’s income related to FIF income under the fair dividend rate method for the property described in subsection (1)(a), calculated using any reasonable method for the information available to the life insurer.

*“Excluded shares*

“(9) **Excluded shares** is the total for the life insurer, for shares described in subsection (1)(b), of—

“(a) the positive amount of income excluded by section CX 44C(2):

“(b) the negative amount of a deduction not allowed by section DB 17(3)(b) (Cost of revenue account property):

“(c) the gains and losses for the shares, calculated using accepted accounting practice, but excluding—

“(i) amounts already accounted for under paragraph (a) or (b) of this subsection, or under subsection (7):

“(ii) dividends and distributions for the shares, other than distributions from a portfolio tax rate entity to which section CX 44D(2) applies.

“Defined in this Act: amount, attributing interest, deduction, dividend, excluded income, fair dividend rate method, FIF, FIF income, FIF loss, income, portfolio investment-linked life fund, portfolio tax rate entity, share”.

(2) Subsection (1) applies to a life insurer for the 2008–09 and later income years, unless they make an election under subsection (3) or they choose that subsection (1) does not apply to them by furnishing a return of income for the 2008–09 tax year that ignores subsection (1).

(3) Subsection (1) applies—

- (a) on and after 1 October 2007, if the life insurer makes an election under this paragraph, stating the relevant date in a notice received by the Commissioner before 1 April 2008; or
- (b) for an income year beginning on or after 1 April 2007, if the life insurer makes an election under this paragraph, stating the relevant date in a notice received by the Commissioner before 1 April 2008.

**100 New section EZ 50 inserted**

After section EZ 49, the following is added:

**“EZ 50 Transitional rule for IFRS financial reporting method**

*“When this section applies*

- “(1) This section applies for a financial arrangement when—
  - “(a) a person starts to use a spreading method for that financial arrangement before the person adopts IFRSs for the purposes of financial reporting; and
  - “(b) that spreading method does not comply with whichever is relevant of sections EW 16(2)(d), EW 18(f), and EW 20(2)(f) because the person adopts IFRSs for the purposes of financial reporting; and
  - “(c) the person is not required by section EW 15B to use the IFRS taxpayer method; and
  - “(d) the income year is the 2007-08 income year or an earlier income year.

*“Transitional rule*

- “(2) For the financial arrangement, the person is treated as complying with whichever is relevant of sections EW 16(2)(d), EW 18(f), and EW 20(2)(f).

*“Defined in this Act: financial arrangement, IFRS, IFRS taxpayer method, income year”.*

**101 Sections FC 8H and FC 8I replaced**

- (1) Sections FC 8H and FC 8I are replaced by the following:

**“FC 8H Adjustment required if lease becomes finance lease**

- “(1) A lessor and a lessee must make an adjustment under this section if—
  - “(a) the lease is a consecutive or a successive lease—

- “(i) that is deemed to be 1 lease under the definition of **lease**; and
  - “(ii) with a term of the lease that the lessor and lessee do not contemplate, at the start of the term, will be more than 75% of the personal property lease asset’s estimated useful life; and
  - “(iii) with a term of the lease that is more than 75% of the asset’s estimated useful life:
- “(b) the lease is an operating lease that becomes a finance lease under paragraph (c) of the definition of **finance lease**.
- “(2) The lessor and lessee must each—
- “(a) calculate an adjustment for the lease; and
  - “(b) include the adjustment in a return of income for the tax year corresponding to the income year in which the lease becomes a finance lease.
- “(3) The amount of the adjustment is calculated in relation to the period described in subsection (5) using the formula—
- $$\text{finance income} - \text{finance expenditure} - \text{unadjusted income} + \text{unadjusted expenditure}.$$
- “(4) In the formula—
- “(a) **finance income** is the income that the lessor or lessee would have derived under the lease if the lease were a finance lease for the period:
  - “(b) **finance expenditure** is the expenditure that the lessor or lessee would have incurred under the lease if the lease were a finance lease for the period:
  - “(c) **unadjusted income** is the income that the lessor or lessee derived under the lease:
  - “(d) **unadjusted expenditure** is the expenditure that the lessor or lessee incurred under the lease.
- “(5) The period begins with the start of the term of the lease and ends with the end of the income year in which the lease becomes a finance lease.
- “(6) If the adjustment is positive, the amount is income of the lessor or lessee in the income year in which the lease becomes a finance lease.
- “(7) If the adjustment is negative, the amount is expenditure incurred by the lessor or lessee in the income year in which the lease becomes a finance lease.

**“FC 8I Adjustment required for certain operating leases entered before 20 June 2007**

- “(1) A lessor must make an adjustment under this section if the lease is an operating lease—
- “(a) entered before 20 June 2007; and
  - “(b) that is or is part of an arrangement meeting on 20 June 2007 the requirements of paragraph (c)(i) to (iii) of the definition of **finance lease**; and
  - “(c) with a term of the lease ending after the end of the income year including 20 June 2007; and
  - “(d) that does not meet the requirements of section FC 8H(1)(a) before the end of the income year after the income year including 20 June 2007.
- “(2) The lessor must—
- “(a) calculate an adjustment for the lease asset; and
  - “(b) include the adjustment in a return of income for the tax year corresponding to the income year after the income year including 20 June 2007.
- “(3) The amount of the adjustment is calculated using the formula—
- $$\frac{\text{total depreciation losses}}{6}.$$
- “(4) In the formula, **total depreciation losses** is the total amount of deductions for depreciation losses for the lease asset allowed to the lessor in the period described in subsection (5).
- “(5) The period begins with the start of the term of the lease and ends with the end of the income year including 20 June 2007.
- “(6) The adjustment is income under the lease of the lessor in the income year after the income year including 20 June 2007.
- “(7) The adjusted tax value of the lease asset at the beginning of the income year after the income year including 20 June 2007 is the total of the adjustment and the adjusted tax value that the lease asset would have in the absence of this section.
- “(8) For an income year beginning after 20 June 2007 in which the lease is an operating lease, the depreciation loss allowed for the lease asset other than under section EE 41(2) is five-sixths of the depreciation loss that would be allowed for the lease asset in the absence of this subsection.”

- (2) Subsection (1) applies for leases entered on or after 20 May 1999 and for income years including 20 June 2007 and later income years.

**102 Variations in control or income interests in foreign companies**

- (1) In section GC 9(4)(c), “under sections EX 14 to EX 17” is inserted after “company”.
- (2) Subsection (1) applies for the 2005–06 and later income years.

**103 New section GC 14EB inserted**

After section GC 14E, the following is inserted:

**“GC 14EB Treatment of dividends as if from qualifying company**

*“When this section applies*

- “(1) This section applies to a company (an **attribution company**) that must attribute an amount to person C under section GC 14D, when the attribution company pays a dividend (the **dividend**) and the company—
- “(a) has chosen to apply this section before paying the dividend; and
- “(b) has not revoked the choice described in paragraph (a) when it pays the dividend; and
- “(c) is not a qualifying company; and
- “(d) has no net income for the tax year in which it pays the dividend that is not net income attributed under section GC 14D, ignoring interest income that is merely incidental to its business.

*“Treatment of dividends as if from qualifying company*

- “(2) For the attribution company and the dividend, section HG 13 is treated as applying as if the attribution company was a qualifying company, and the dividend was a dividend paid by that qualifying company.

“Defined in this Act: attribution company, business, company, dividend, income, interest, qualifying company, net income”.

**104 Tax credits for family support and family plus**

- (1) The heading before section GC 28 is replaced by “*Tax credits for families*”.
- (2) In section GC 28, the heading is replaced by “**Tax credits for families**”.

**105 Dividends from qualifying company**

- (1) In section HG 13(3)(a), “section ME 8(1)” is replaced by “section ME 8(1) (section MZ 19 modifies this paragraph)”.
- (2) In section HG 13(4)(a), “subsection (3)” is replaced by “subsection (3). Section MZ 19 modifies this paragraph”.

**106 Scheme of subpart**

- (1) Section HL 2(2) is replaced by the following:  
“*Election to be type of portfolio investment entity*”
- “(2) An entity may choose under section HL 11 to be a portfolio investment entity that is a—
  - “(a) portfolio tax rate entity if the entity is—
    - “(i) a company, superannuation fund, or group investment fund; and
    - “(ii) eligible under section HL 3(1) to make an election; or
  - “(b) portfolio listed company if the entity is—
    - “(i) a company listed on a recognised exchange in New Zealand; and
    - “(ii) eligible under section HL 3(3) to make an election; or
  - “(c) portfolio defined benefit fund if the entity is—
    - “(i) a defined benefit fund; and
    - “(ii) eligible under section HL 3(5) to make an election; or
  - “(d) portfolio investment-linked life fund if the entity is—
    - “(i) a separate identifiable fund, forming part of a life insurer, holding investments subject to life insurance policies under which benefits are directly linked to the value of the investments held in the fund; and
    - “(ii) eligible under section HL 3(7) to make an election.”

- (2) In section HL 2(7)(c)(ii), “period.” is replaced by “period:” and the following is added:
- “(d) the amount of fees paid to the entity by the investor on the day:
  - “(e) the amount of rebates of fees credited to the investor by the entity on the day:
  - “(f) the amount of expenditure, for the income year ending with the day, transferred under subpart DV to the entity by the investor.”

### 107 Section HL 3 replaced

Section HL 3 is replaced by the following:

#### “HL 3 Eligibility requirements for entities

*“Eligibility requirements for entity electing to be portfolio tax rate entity*

- “(1) An entity that is choosing under section HL 11 to be a portfolio investment entity and portfolio tax rate entity must meet the eligibility requirements described in subsections (9), (10), and (11).

*“Eligibility requirements for portfolio tax rate entity*

- “(2) A portfolio tax rate entity must meet—
- “(a) the eligibility requirements described in subsections (9), (10), and (11); and
  - “(b) the further eligibility requirements described in sections HL 5C, HL 6, HL 7, HL 9, and HL 10.

*“Eligibility requirements for entity electing to be portfolio listed company*

- “(3) An entity that is choosing under section HL 11 to be a portfolio investment entity and portfolio listed company must meet the eligibility requirements described in subsections (9), (10), and (11).

*“Eligibility requirements for portfolio listed company*

- “(4) A portfolio listed company must meet—
- “(a) the eligibility requirements described in subsections (9), (10), and (11); and
  - “(b) the further eligibility requirements described in sections HL 5C, HL 6, HL 8, HL 9, and HL 10.

*“Eligibility requirements for entity electing to be portfolio defined benefit fund*

- “(5) An entity that is choosing under section HL 11 to be a portfolio investment entity and portfolio defined benefit fund must meet the eligibility requirements described in subsections (9), (10), and (11).

*“Eligibility requirements for portfolio defined benefit fund*

- “(6) A portfolio defined benefit fund must meet—
- “(a) the eligibility requirements described in subsections (9), (10), and (11); and
  - “(b) the further eligibility requirements described in sections HL 6, HL 9, and HL 10.

*“Eligibility requirements for separate identifiable fund electing to be portfolio investment-linked life fund*

- “(7) An entity that is choosing under section HL 11 to be a portfolio investment entity and portfolio investment-linked life fund must meet the eligibility requirements described in subsections (10) and (11).

*“Eligibility requirements for portfolio investment-linked life fund*

- “(8) A portfolio investment-linked life fund must meet—
- “(a) the eligibility requirements described in subsections (10) and (11); and
  - “(b) the further eligibility requirements described in sections HL 6, HL 9, and HL 10.

*“Business requirement*

- “(9) The business requirement is that the entity must not carry on a business of life insurance.

*“Residence requirement*

- “(10) The residence requirement is that the entity must be—
- “(a) resident in New Zealand; and
  - “(b) not treated under a double tax agreement as not being resident in New Zealand.

*“Entity history requirement*

- “(11) The entity history requirement is that the entity must not, before the day on which the election to be a portfolio investment entity is to be effective, have ceased to be a portfolio investment entity under section HL 14(1), unless the cessation occurred more than 5 years before the day on which the election is effective.

“Defined in this Act: company, double tax agreement, group investment fund, life insurance, portfolio defined benefit fund, portfolio investment entity, portfolio investment-linked life fund, portfolio listed company, portfolio tax rate entity, resident in New Zealand, superannuation fund”.

**108 Effect of failure to meet eligibility requirements for entities**

- (1) In section HL 4(2)(a), the words before subparagraph (i) are replaced by the following:
- “(a) a portfolio investor class of the entity fails to meet a requirement under section HL 6 or HL 9, or the entity fails to meet a requirement under section HL 10, on the last day of a quarter—”.
- (2) In section HL 4(2)(b), the words before subparagraph (i) are replaced by the following:
- “(b) the failure referred to in paragraph (a)—”.

**109 New sections HL 5B and HL 5C inserted**

After section HL 5, the following is inserted:

**“HL 5B Meaning of investor and portfolio investor class***“Investor*

- “(1) An **investor**, in relation to a portfolio investment entity or foreign investment vehicle (the **entity**), means,—
- “(a) if the entity is a company and paragraph (d) does not apply, a shareholder in the company:
- “(b) if the entity is not a company and paragraphs (c) and (d) do not apply, a person who is entitled to a proportion of the funds available for distribution by the entity—
- “(i) by reason of the rules of the entity or the terms of the trust under which the entity is established; and
- “(ii) as if the entity were a company and the person were a shareholder in the company:

- “(c) if the entity is a portfolio investment-linked life fund and paragraph (d) does not apply, a person whose benefits under the relevant life insurance policy are directly linked to the value of investments held in the portfolio investment-linked life fund:
- “(d) for a share, entitlement, or life insurance policy held through a portfolio investor proxy by a person, the portfolio investor proxy.

“*Portfolio investor class*

- “(2) A **portfolio investor class** for a portfolio investment entity means a group of 1 or more investors in the entity with each investor having an entitlement to a distribution by the entity of proceeds from portfolio entity investments such that—
  - “(a) the portfolio entity investments are the same for all the investors in the group; and
  - “(b) each investor’s interest in a portfolio entity investment represents a proportion (the **investment proportion**) of the value of the investor’s entitlement; and
  - “(c) the investment proportion for each investor and each portfolio entity investment differs from the average value of the investment proportion, for the investors in the group and the portfolio entity investment, by less than 2.5% of that average value except if subsection (3) applies.

“*Exception to requirement of subsection (2)(c)*

- “(3) The investment proportion for an investor in a group referred to in subsection (2) and a portfolio entity investment may differ by 2.5% or more from the average value for the group and the investment if—
  - “(a) the portfolio entity investment is an arrangement under which the entity is assured of receiving, from investments, sufficient proceeds for the entity to repay each investor in the group an amount contributed to the entity; and
  - “(b) the excess in difference between the investment proportion for the investor and the average value for the group

arises from differences between the portfolio investor rates of members of the group.

“Defined in this Act: investor, portfolio entity investment, portfolio investment entity, portfolio investor class, portfolio investor interest

#### “HL 5C Income interest requirement

##### “Application

“(1) This section applies to a portfolio investment entity that is not a portfolio investment-linked life fund.

##### “Requirement

“(2) The income interest requirement is that all portfolio investor interests in the entity that give rights in relation to proceeds from a portfolio entity investment give the rights in relation to all the proceeds from the investment that are not category B income.

“Defined in this Act: category B income, portfolio entity investment, portfolio investment entity, portfolio investment-linked life fund, portfolio investor interest”.

#### 110 Investor membership requirement

(1) Before section HL 6(1), the following is inserted:

##### “General investor membership requirement

“(1A) The investor membership requirement for an entity that is not a company listed on a recognised exchange in New Zealand and does not meet the requirements of subsection (3) is that each portfolio investor class of the entity must meet the requirements of subsection (1).”

(2) In section HL 6(1),—

(a) the heading is replaced by “*Investor membership requirement for portfolio investor class*”:

(b) the words before paragraph (a) are replaced by “The investor membership requirement for a portfolio investor class is that the class must include—”:

(c) in paragraph (j)(iii), “entity.” is replaced by “entity:” and the following is added:

“(k) Auckland Regional Holdings.”

(3) In section HL 6(3), the words before paragraph (a) are replaced by “There is no investor membership requirement

for a portfolio investor class, of an entity other than a company listed on a recognised exchange in New Zealand, that,—”.

- (4) In section HL 6(3)(c), “1956.” is replaced by “1956:” and the following is added:

- “(d) is a superannuation fund that—
- “(i) existed before 17 May 2006; and
  - “(ii) on or after 17 May 2006, if treated as a unit trust, would have met the requirements of 1 or more of paragraphs (a) and (c) to (e) of the definition of **qualifying unit trust**; and
  - “(iii) has no investor, other than the fund’s manager or trustee, that can control the investment decisions relating to that class.”

#### **111 Further eligibility requirements relating to investments**

Section HL 7(3), other than the heading, is replaced by the following:

- “(3) An adjustment reflecting the effect of the investor’s portfolio investor rate must be made to—
- “(a) the investor’s portfolio investor interest in the portfolio investor class or another portfolio investor class—
    - “(i) before the end of the second month after the portfolio calculation period, if the entity has made an election under section HL 21; or
    - “(ii) before the end of the third month after the end of the income year, if the entity has made an election under section HL 22; or
    - “(iii) before the end of the second month after the end of the tax year, if the entity has made an election under section HL 23:
  - “(b) the amount of each distribution to the investor as a member of the portfolio investor class or another portfolio investor class:
  - “(c) the amount of each payment required from the investor as a member of the portfolio investor class towards satisfying the entity’s portfolio entity tax liability.”

**112 Investor interest size requirement**

- (1) In section HL 9(2), the words before paragraph (a) are replaced by “There is no investor interest size requirement for an investor in a portfolio investor class that,—”.
- (2) In section HL 9(2)(c), “1956.” is replaced by “1956:” and the following is added:
  - “(d) is a superannuation fund that—
    - “(i) existed before 17 May 2006; and
    - “(ii) on or after 17 May 2006, if treated as a unit trust, would have met the requirements of 1 or more paragraphs (a) and (c) to (e) of the definition of **qualifying unit trust**; and
    - “(iii) has no investor, other than the fund’s manager or trustee, that can control the investment decisions relating to that class.”
- (3) In section HL 9(4)(j), “subsection (5).” is replaced by “subsection (5):” and the following is added:
  - “(k) Auckland Regional Holdings.”

**113 Further eligibility requirements relating to investments**

- (1) In section HL 10(1), the words before paragraph (a) are replaced by “The investment type requirement is that 90% or more by value of the entity’s assets must be—”.
- (2) In section HL 10(2)—
  - (a) after paragraph (b)(i), the following is inserted:
    - “(ib) replacement payments:”:
  - (b) paragraph (b)(iii) is replaced by the following:
    - “(iii) income under a lease of land:”:
  - (c) in paragraph (b)(iv), “referred to in subsection (1)(a) to (d)” is inserted after “property”.
- (3) In section HL 10(4), the words before paragraph (a) are replaced by “The requirements of subsection (3)(a) and (b) do not apply to an investment consisting of shares in—”.

**114 Election to become portfolio investment entity and cancellation of election**

- (1) After section HL 11(2), the following is added:

*“Exception to when election effective: certain elections relating to portfolio investment-linked life funds*

- “(2B) Despite subsection (2), an election received by the Commissioner is effective on 1 October 2007, if—
- “(a) the election is in relation to an electing entity choosing to be a portfolio investment-linked life fund; and
  - “(b) the date of receipt is before 1 April 2008; and
  - “(c) 1 October 2007 is nominated in the notice.”
- (2) In section HL 11, in the list of defined terms, “portfolio investment-linked life fund” is inserted.

**115 Unlisted company may choose to become portfolio listed company**

Section HL 11B(1)(a) is replaced by the following:

“(a) has 100 shareholders; and”.

**116 Becoming portfolio investment entity**

- (1) In section HL 12(3)(a), the words before subparagraph (i) are replaced by—
- “(a) transferring to another person all shares held by the entity, or for which the entity is a share supplier in a returning share transfer, that—”.
- (2) After section HL 12(4), the following is added:
- “Refund of dividend withholding payments made before election*
- “(5) If a dividend withholding payment account company becomes a portfolio investment entity on a day in an imputation year other than the end of the imputation year, the balance of the company’s dividend withholding payment account at the end of the imputation year for the purposes of section NH 4(5)(f) (Refund for overpayment and to company in loss) is equal to the balance of the company’s dividend withholding payment account immediately before the company becomes a portfolio investment entity.”

**117 Tax consequences from transition**

Section HL 13(1) is replaced by the following:

*“When subsection (1B) applies*

- “(1) Subsection (1B) applies when an entity chooses to become a portfolio investment entity in an income year and has an increased liability for provisional tax for the income year because of the election.

*“No penalty or interest arising from transition*

- “(1B) The entity is not liable to pay any penalty or interest for which the entity would otherwise be liable for an inaccuracy, arising from the increased liability for provisional tax, in—
- “(a) an estimate of provisional tax made before the entity chooses to become a portfolio investment entity:
  - “(b) a payment of provisional tax due before the end of the 2-month period beginning after the entity becomes a portfolio investment entity.”

**118 Treatment of income from interest if no investor entitled or investor has conditional entitlement**

Section HL 16(2)(e) is replaced by the following:

- “(e) for an entity that exists on 17 May 2006, the vesting period does not exceed the longest vesting period allowed by the entity on 17 May 2006 for an interest created on that date; and
- “(f) for an entity that does not exist on 17 May 2006,—
- “(i) the portfolio investor interest is transferred to the entity by a superannuation scheme that exists on 17 May 2006 and without significant change to the portfolio investor interest; or
  - “(ii) the vesting period does not exceed 5 years, if subparagraph (i) does not apply.”

**119 Credits received by portfolio tax rate entity or portfolio investor proxy**

- (1) In section HL 20(4), “fees” is replaced by “expenses”.
- (2) Section HL 20(11) is replaced by the following:

*“Expenses*

- “(11) **Expenses** is the total amount for the day in the portfolio allocation period of—
- “(a) fees for ongoing management and administration services paid from or charged to the account of the investor as a member of the portfolio investor class:
  - “(b) expenditure of the investor transferred under subpart DV to the entity.”

**120 Payments of tax by portfolio tax rate entity making no election**

- (1) After section HL 21(2), the following is inserted:

*“Income tax liability*

- “(2B) The income tax liability of the entity for a tax year is equal to the total portfolio entity tax liability of the entity for the portfolio calculation periods in the tax year.”
- (2) In section HL 21(3)(a), “for the tax year” is inserted after “income tax”.

**121 Payments of tax by portfolio tax rate entity choosing to make payments when investor leaves**

- (1) After section HL 23(1), the following is inserted:

*“Income tax liability*

- “(1B) The income tax liability of the entity for a tax year is equal to the total portfolio entity tax liability of the entity for the portfolio calculation periods in the tax year.”
- (2) In section HL 23(2)(a), “for the tax year” is inserted after “income tax”.
- (3) Section HL 23(2)(b) is replaced by the following:
- “(b) by the day that is—
    - “(i) the end of the month beginning from the end of the month in which the portfolio investor exit period ends, if subparagraph (ii) does not apply; or
    - “(ii) the 15 January following the end of the portfolio investor exit period, if the portfolio investor exit period ends in November.”

**122 Optional payments of tax by portfolio tax rate entities**

- (1) In section HL 23B(1), “investor’s portfolio investor interest in the entity” is replaced by “portfolio investor interest for which the investor is a member of a portfolio investor class of the entity”.
- (2) Section HL 23B(3) is replaced by the following:  
*“Time of optional payment*
- “(3) A payment under this section must be made by—
  - “(a) the end of the month beginning from the end of the month in which the portfolio calculation period ends, if paragraph (b) does not apply; or
  - “(b) the 15 January following the end of the portfolio calculation period, if the portfolio calculation period ends in November.”

**123 Portfolio investor allocated income and portfolio investor allocated loss**

- (1) In section HL 24(5), “fees” is replaced by “expenses”.
- (2) Section HL 24(6)(e) is replaced by the following:
  - “(e) **expenses** is the total amount for the day in the portfolio allocation period of—
    - “(i) fees for ongoing management and administration services paid from or charged to the account of the investor as a member of the portfolio investor class:
    - “(ii) expenditure of the investor transferred under subpart DV to the entity:”.

**124 Treatment of portfolio investor allocated loss for zero-rated portfolio investors and investors with portfolio investor exit period**

- (1) In section HL 25(2), “income year corresponding to the tax year” is replaced by “income year including the end of the portfolio tax rate entity’s income year”.
- (2) In the list of defined terms in section HL 25,—
  - (a) “portfolio allocation period” and “portfolio investor allocated income” are omitted:
  - (b) “income tax” and “portfolio tax rate entity” are inserted.

**125 Credits received by portfolio tax rate entity or portfolio investor proxy**

- (1) Section HL 27(6) is replaced by the following:

*“Application of subsections (7) to (11)*

- “(6) For an investor in a portfolio tax rate entity who is allocated under subsection (3) credits for a portfolio calculation period in an income year of the entity,—

“(a) subsections (7) and (8) apply to the credits, and the credits are allocated to the income year in which the entity’s income year ends, if—

“(i) the investor is a zero-rated portfolio investor:

“(ii) the investor is not a zero-rated portfolio investor and the entity makes payments of tax under section HL 21 and the portfolio calculation period includes part of a portfolio investor exit period:

“(b) subsections (10) and (11) apply to the credits if paragraph (a) does not apply.”

- (2) Section HL 27(7) is replaced by the following:

*“Zero-rated portfolio investors and certain investors having portfolio investor exit period: credit*

- “(7) The investor is treated as receiving for the allocated credits, for the tax year corresponding to the investor’s income year,—

“(a) a credit against income tax payable by the investor of the amount given by subsection (8) if—

“(i) the credits are under subpart LC (Foreign tax); and

“(ii) the investor is not a portfolio tax rate entity or portfolio investor proxy; or

“(b) the allocated amount of each type of credit if—

“(i) the credits are not under subpart LC:

“(ii) the investor is a portfolio tax rate entity or portfolio investor proxy.”

- (3) In section HL 27(8), in the heading, “*portfolio investment entities*” is replaced by “*portfolio tax rate entities, portfolio investor proxies*”.

- (4) Section HL 27(9) is repealed.

- (5) In section HL 27(10B)(a)(ii), “section HL 22 or HL 23” is replaced by “section HL 23”.
- (6) Section HL 27(10B)(b) is replaced by the following:
  - “(b) the investor as a member of—
    - “(i) the portfolio investor class:
    - “(ii) another portfolio investor class, if the entity chooses such a use for the credit.”
- (7) In section HL 27(11)(a)(ii),—
  - (a) “in subsection (10B)(b)” is replaced by “in subsection (10C)(b)”:
  - (b) “by subsection (10B)” is replaced by “by subsection (10C)”.

#### **126 Portfolio investor proxies**

In section HL 31(3)(d), “or the payments required from the investor,” is inserted after “distributions to the investor,”.

#### **127 Companies included in group of companies**

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

- “(2B) For the purposes of this Act, in relation to any 2 or more companies of which 1 is a portfolio tax rate entity, the companies are treated as being a group of companies for an income year or other period if—
- “(a) a portfolio tax rate entity owns 100% of the voting interests in the other companies; and
  - “(b) each company that is not a portfolio tax rate entity is a portfolio land company.”

#### **128 Net loss offset between group companies**

- (1) In section IG 2(9), “Section IE 1(4) applies” is replaced by “Sections CG 2 and DB 38 apply”.
- (2) Subsection (1) applies for the 2005–06 and later income years.

#### **129 Rebate in respect of gifts of money**

- (1) Section KC 5(1)(be) is replaced by the following:

“(be) Childfund New Zealand Limited:”.
- (2) In section KC 5(1)(cu), “Trust.” is replaced by “Trust:” and the following is added:

- “(cv) Hamlin Charitable Fistula Hospitals Trust:
- “(cw) Hope Foundation Development Trust:
- “(cx) Hope International Charitable Trust:
- “(cy) Limbs 4 All Charitable Trust:
- “(cz) New Zealand Disaster Assistance Response Team Trust:
- “(da) Operation Restore Hope Charitable Trust:
- “(db) The World Swim for Malaria Foundation (New Zealand).”

(3) Subsection (2) applies for the 2007–08 and later tax years.

### 130 New section KC 6 inserted

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

#### “KC 6 Rebate in respect of redundancy payment

- “(1) A person who derives a redundancy payment relating to a loss of employment is allowed as a rebate of income tax relating to the loss of employment the smaller of—
- “(a) \$3,600:
  - “(b) a sum equal to 6 cents for every complete dollar of the total amount derived by the person of redundancy payments, each of which—
    - “(i) relates to the loss of employment; and
    - “(ii) is not a payment referred to in subsection (3).
- “(2) The Commissioner must not make a refund under this section before the person makes an application complying with section 41B of the Tax Administration Act 1994.
- “(3) A rebate is not allowed for a redundancy payment—
- “(a) relating to retirement from employment:
  - “(b) relating to loss of seasonal employment if the loss arises from the normal seasonal work cycle:
  - “(c) relating to a contract of employment for a fixed term or for the duration of a project:
  - “(d) relating to employment for a period following notice of termination of employment:
  - “(e) paid to a director of a company by the company or by a person associated with the company under section OD 8(3):
  - “(f) paid to a person by another person associated with the person under section OD 8(3):

“(g) paid by a person to an employee who has been paid a redundancy payment by another person associated with the person under section OD 8(3).”

- (2) Subsection (1) applies for redundancy payments paid on or after 1 December 2006.

### **131 Amendments to subpart KD made in schedule 1**

- (1) The amendments to subpart KD specified in schedule 1 are made in the manner shown in that schedule.
- (2) Subsection (1) applies for the 2007–08 and later income years.

### **132 Determination of net income**

- (1) In section KD 1(1)(e)(viii), “and (c)” is inserted after “section CX 44D(1)(b)”.

- (2) After section KD 1(1)(e)(viii), the following is added:

“(ix) any amount of retirement scheme contribution that is not excluded income of the person and would be excluded income of the person in the absence of section CX 42B(2); and”.

- (3) After section KD 1(1)(h), the following is inserted:

“(hb) where the person receives a distribution from a retirement savings scheme of a retirement scheme contribution, the distribution is treated as assessable income derived by the person in the income year of the distribution if retirement scheme contribution withholding tax has been deducted from the contribution and, at the time of the distribution, the person is—

“(i) not eligible to receive New Zealand superannuation; and

“(ii) eligible to receive a retirement scheme contribution from a retirement scheme contributor; and”.

### **133 Calculation of subpart KD credit**

- (1) In section KD 2(6), as the provision applies for income years corresponding to the 2006–07 and subsequent tax years, in paragraph (b) of the definition of **full year abatement**, “spouse” is replaced by “spouse, civil union partner, or de facto partner”.

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

#### **134 Determination of amount of credit in certain cases**

In section LB 1(1),—

- (a) in paragraph (c), “so calculated” is replaced by “so calculated (section MZ 15 (Determination of credit: modifying maximum ratios) modifies this paragraph)”;
- (b) in paragraph (d), “so calculated” is replaced by “so calculated (section MZ 15 modifies this paragraph)”;
- (c) in paragraph (e), “subsection (5)” is replaced by “subsection (5) (section MZ 15 modifies this paragraph)”.

#### **135 Credit of tax for imputation credit**

- (1) In section LB 2(2), “income year” is replaced by “income year (section MZ 16 (Credit of tax for imputation credits and dividend withholding payment credits: modifying amount) modifies this subsection)”.
- (2) After section LB 2(7), the following is inserted:
- “(8) An amount is treated as if it were assessable income for the purpose of determining a taxpayer’s entitlement to a credit under this section if the amount would but for section EX 47 be assessable income of the taxpayer from an interest in an attributing interest in a foreign investment fund.”

#### **136 New section LB 3 inserted**

After section LB 2, the following is inserted:

##### **“LB 3 Credit of retirement scheme contribution withholding tax for imputation credit**

- “(1) If a retirement scheme contributor attaches an imputation credit to a retirement scheme contribution for a person in an income year, the retirement scheme contributor is entitled to a credit of retirement scheme contribution withholding tax equal to the lesser of the following amounts:
- “(a) the amount of the imputation credit;
- “(b) the liability of the retirement scheme contributor for retirement scheme contribution withholding tax on the retirement scheme contribution.

- “(2) If the amount of the imputation credit exceeds the liability of the retirement scheme contributor for retirement scheme contribution withholding tax on the retirement scheme contribution,—
- “(a) the amount of the excess is treated as an imputation credit attached to a distribution from the retirement scheme contributor to the person; and
  - “(b) the person responsible for withholding the retirement scheme contribution withholding tax must, within 30 days of the contribution, give a notice to the person showing the amount of the excess credit.”

**137 New sections LD 1B and LD 1C inserted**

After section LD 1, the following is inserted:

**“LD 1B Tax deductions from certain accident compensation payments: credit allowed to provider**

- “(1) This section applies if—
- “(a) a claimant under the Injury Prevention, Rehabilitation, and Compensation Act 2001—
    - “(i) is paid a personal service rehabilitation payment for the claimant for a period, for a key aspect of social rehabilitation referred to in the definition of **personal service rehabilitation payment** in section OB 1 (the **key aspect of social rehabilitation**); and
    - “(ii) pays another person for providing a key aspect of social rehabilitation to the claimant for a period; or
  - “(b) the Accident Compensation Corporation pays another person a personal service rehabilitation payment for the claimant for a period, for providing a key aspect of social rehabilitation to the claimant for the period.
- “(2) The person (the **provider**) is allowed a credit against the provider’s income tax liability for the tax year corresponding to the provider’s income year that includes the period.
- “(3) The amount of the credit allowed under subsection (2) is calculated using the following formula:

$$\frac{\text{amount received} \times \text{tax rate}}{1 - \text{tax rate.}}$$

- “(4) In the formula,—
- “(a) **amount received** is the amount paid to the provider for providing a key aspect of social rehabilitation to the claimant for the period, to the extent to which the amount is equal to or less than the amount of the personal service rehabilitation payment for a key aspect of social rehabilitation for the claimant for the period, after any deduction of tax under this Act:
- “(b) **tax rate** is the rate at which tax is deducted from a personal service rehabilitation payment for a key aspect of social rehabilitation for the period.

“**LD 1C Tax deductions from certain accident compensation payments: credit allowed to claimant**

- “(1) This section applies if—
- “(a) a claimant under the Injury Prevention, Rehabilitation, and Compensation Act 2001 is paid a personal service rehabilitation payment for the claimant for a period, for a key aspect of social rehabilitation referred to in the definition of **personal service rehabilitation payment** in section OB 1 (the **key aspect of social rehabilitation**); and
- “(b) the claimant pays another person (the **provider**) for providing a key aspect of social rehabilitation to the claimant for the period; and
- “(c) the amount paid to the provider is less than the amount of personal service rehabilitation payment for the claimant for the period, after any deduction of tax under this Act.
- “(2) The tax credits under section LD 1(2) for the tax deductions relating to the amount are limited to the amount calculated using the following formula:

$$\text{total tax deductions} = \frac{\text{amount paid} \times \text{tax rate}}{1 - \text{tax rate}}$$

- “(3) In the formula,—
- “(a) **total tax deductions** is the total of deductions of tax for the personal service rehabilitation payment paid to the claimant for the period:
- “(b) **amount paid** is the amount paid to the provider, described in subsections (1)(b) and (c):

“(c) **tax rate** is the rate at which tax is deducted from the personal service rehabilitation payment paid to the claimant for the period.”

**138 New section LD 4 inserted**

After section LD 3A, the following is inserted:

**“LD 4 Credit of retirement scheme contribution withholding tax for Maori authority credit**

“(1) If a retirement scheme contributor attaches a Maori authority credit to a retirement scheme contribution for a person in an income year, the retirement scheme contributor is entitled to a credit of retirement scheme contribution withholding tax equal to the lesser of the following amounts:

“(a) the amount of the Maori authority credit:

“(b) the liability of the retirement scheme contributor for retirement scheme contribution withholding tax on the retirement scheme contribution.

“(2) If the amount of the Maori authority credit exceeds the liability of the retirement scheme contributor for retirement scheme contribution withholding tax on the retirement scheme contribution,—

“(a) the amount of the excess is treated as a Maori authority credit attached to a taxable Maori authority distribution from the retirement scheme contributor to the person; and

“(b) the person responsible for withholding the retirement scheme contribution withholding tax must within 30 days of the contribution give a notice to the person showing the amount of the excess credit.”

**139 Credit of tax for dividend withholding payment credit in hands of shareholder**

In section LD 8(1)(a), “in assessable income” is replaced by “in assessable income (section MZ 16 (Credit of tax for imputation credits and dividend withholding payment credits: modifying amount) modifies this paragraph)”.

**140 New section LD 12 added**

After section LD 11, the following is added:

**“LD 12 Credit for retirement scheme contribution withholding tax if retirement scheme contribution not excluded income**

- “(1) This section applies for a taxpayer and a tax year if the taxpayer—
- “(a) derives income as a retirement scheme contribution for a period in the corresponding income year; and
  - “(b) the retirement scheme contributor pays an amount of retirement scheme contribution withholding tax under subpart NEB in relation to the retirement scheme contribution; and
  - “(c) the income is not excluded income of the taxpayer under section CX 42B.
- “(2) If the taxpayer is a New Zealand resident, the taxpayer is entitled to a credit of tax against the taxpayer’s income tax liability for the tax year equal to the amount paid as retirement scheme contribution withholding tax.
- “(3) If the taxpayer is a non-resident and subsection (4) does not apply, the taxpayer is entitled to a credit of tax against the taxpayer’s income tax liability for the tax year equal to any amount by which the amount paid as retirement scheme contribution withholding tax exceeds the amount treated under section NG 16 as being non-resident withholding tax paid in relation to the retirement scheme contribution.
- “(4) If the taxpayer is a non-resident and the retirement scheme contribution is a taxable Maori authority distribution, the taxpayer is entitled to a credit of tax against the taxpayer’s income tax liability for the tax year equal to the amount paid as retirement scheme contribution withholding tax in relation to the retirement scheme contribution.
- “(5) For the purposes of section BC 10(2)(a) and (b), if a taxpayer has surplus credits from a tax credit under this section for the tax year, the Commissioner must—
- “(a) first, use the tax credit to satisfy the taxpayer’s income tax liability for a tax year before the tax year;
  - “(b) second, use the tax credit to satisfy the taxpayer’s income tax liability for a tax year after the tax year, applying this paragraph to tax years in numerical order:

- “(c) third, use the tax credit to pay the taxpayer’s provisional tax for a tax year after the tax year, applying this paragraph to tax years in numerical order:
- “(d) fourth, use the tax credit to pay an amount that is payable by the taxpayer under an Inland Revenue Act:
- “(e) fifth, treat the tax credit as tax paid in excess and refundable or transferable to the extent that section MD 1 and Part 10B of the Tax Administration Act 1994 apply.”

#### **141 Credits in respect of dividends to non-resident investors**

The following is added to section LE 2:

- “(13) Section MZ 17 (Credits for non-resident investors) modifies subsections (2), (9) and (10).”

#### **142 Special rules for holding companies**

In section LE 3(6), in item **T**, “income year” is replaced by “income year (section MZ 17 (Credits for non-resident investors) modifies this item)”.

#### **143 Estimation method**

- (1) Section MB 6(5), except the heading, is replaced by the following:
  - “(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 their corresponding income year, and must pay provisional tax on whichever of the following relevant instalment dates for the income year occur after 30 days from their last ratio instalment date—
    - “(a) C and F for changes to a 6-monthly GST taxable period:
    - “(b) B, D, and F for other changes.”
- (2) Subsection (1) applies for provisional tax payments for the 2008–09 and later tax years.

#### **144 GST ratio method**

- (1) After section MB 7(3), the following is inserted:

*“When subsection (3C) applies instead of subsection (3)*

“(3B) Subsection (3C) applies instead of subsection (3) if,—

“(a) for the year before the preceding year referred to in subsection (3),—

“(i) an assessment of a base amount has not been made and the absence of assessment is due to an extension of time to file the return for that year or a period in that year:

“(ii) an assessment of a base amount is the subject of a dispute or challenge under the Tax Administration Act 1994:

“(iii) the year is a transitional year; and

“(b) for the year that is 2 years before the preceding year referred to in subsection (3),—

“(i) the base amounts have been assessed; and

“(ii) no assessment of a base amount is the subject of a dispute or challenge under the Tax Administration Act 1994; and

“(iii) the year is not a transitional year.

*“Amounts based on tax year 2 years before preceding tax year*

“(3C) The GST ratio under this subsection is the percentage based on the assessments of the base amounts for the year that is 2 years before the preceding year referred to in subsection (3).”

(2) After section MB 7(7), the following is inserted:

*“When subsection (7C) applies instead of subsection (7)*

“(7B) Subsection (7C) applies instead of subsection (7) if,—

“(a) for the year before the transitional year referred to in subsection (7),—

“(i) an assessment of a base amount has not been made and the absence of assessment is due to an extension of time to file the return for that year or a period in that year:

“(ii) an assessment of a base amount is the subject of a dispute or challenge under the Tax Administration Act 1994:

“(iii) the year is a transitional year; and

“(b) for the year that is 2 years before the transitional year referred to in subsection (7),—

- “(i) the base amounts have been assessed; and
- “(ii) no assessment of a base amount is the subject of a dispute or challenge under the Tax Administration Act 1994; and
- “(iii) the year is not a transitional year.

*“GST ratio based on tax year 2 years before transitional tax year*

- “(7C) The GST ratio under this subsection is the percentage based on the assessments of the base amounts for the year that is 2 years before the transitional year referred to in subsection (7).”
- (3) Subsections (1) and (2) apply for provisional tax payments for the 2008–09 and later income years.

#### **145 Provisional tax payable in instalments**

- (1) In section MB 8(6), “section MB 6 or MB 9, as applicable” is replaced by “section MB 9”.
- (2) In section MB 8(8), the words before paragraph (a) are replaced by the following:
- “(8) A new provisional taxpayer who starts a taxable activity in a tax year is liable to pay interest calculated under section 120KC of the Tax Administration Act 1994 as if the person were liable to pay provisional tax for the tax year—”.
- (3) Section MB 8(8)(b)(ii), is replaced by the following:
- “(ii) if they pay GST on a 6-monthly basis and 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:”.
- (4) Subsections (1), (2), and (3) apply for provisional tax payments for the 2008–09 and later income years.

#### **146 Calculating amount of instalment under standard and estimation methods**

- (1) In section MB 9(1)(b), “MB 8(2) and (4)” is replaced by “MB 8(2), (4), (6), and (7)”.
- (2) Subsection (1) applies for provisional tax payments for the 2008–09 and later income years.

**147 Who may use GST ratio?**

- (1) In section MB 15(2),—
  - (a) in the words before the paragraphs, “preceding tax year” is replaced by “preceding tax year and corresponding income year”;
  - (b) in paragraph (b), “whole tax year” is replaced by “whole income year”.
- (2) In section MB 15(8)(a), “in writing” is replaced by “in writing or by telephone”.
- (3) In section MB 15(11), “the tax year immediately before” is replaced by “a tax year earlier than”.
- (4) Subsections (1), (2), and (3) apply for provisional tax payments for the 2008–09 and later income years.

**148 Changing determination method**

- (1) In section MB 17(2), “Subsection (3) or (4)” is replaced by “Subsection (4) or (5)”.
- (2) In section MB 17(4), “(5), as if the election to use the GST ratio had not been made” is replaced by “(5). They are treated as never electing to use the GST ratio method and, for the purposes of section 120KE(5) of the Tax Administration Act 1994, as never changing the way they determine an amount of provisional tax under this section”.
- (3) Subsections (1) and (2) apply for provisional tax payments for the 2008–09 and later income years.

**149 Disposal of assets**

- (1) In section MB 18(2),—
  - (a) the words “income year. The adjustment must be made to both” are replaced by “income year by subtracting the value, including GST, of the relevant asset from”; and
  - (b) paragraphs (a) and (b) are replaced by the following:
    - “(a) the total taxable supplies for a taxable period for the purposes of the formula in section MB 10(1), in proportion to the output tax which is attributed under section 20(4) of that Act to that taxable period for the supply of the asset:

- “(b) the base amount of total taxable supplies for the corresponding income year under section MB 7(2), in proportion to the output tax which is attributed under section 20(4) of that Act to a taxable period in that income year for the supply of the asset.”
- (2) Subsection (1) applies for provisional tax payments for the 2008–09 and later income years.

### **150 Paying provisional tax in transitional years**

- (1) In section MB 20,—
  - (a) subsection (2)(a) and (b) are replaced by the following:
    - “(a) the 28th day of the months given by schedule 13, part B, if paragraphs (b) and (c) do not apply:
    - “(b) the 15th day of January, when the month given by schedule 13, part B is December and the year is a transitional year:
    - “(c) the 7th day of May, when the month given by schedule 13, part B is April and the year is a transitional year.”:
  - (b) in subsection (3)(b), “month.” is replaced by “month; or” and the following is added:
    - “(c) the 7th day of May, when March is the final month and the year is a transitional year.”
- (2) Subsection (1) applies for provisional tax payments for the 2008–09 and later income years.

### **151 Consequences of change in balance date**

- (1) Section MB 24(5) is replaced by the following:
  - “*Adjustment to liability*
  - “(5) The taxpayer must—
    - “(a) adjust their provisional tax liability for the part period of 1 month before the start of the new income year; and
    - “(b) pay the instalment of provisional tax for the part period, as their final taxable period, by—
      - “(i) the day that is 28 days after the end of the part period, if subparagraphs (ii) and (iii) do not apply; or
      - “(ii) 15 January, if the part period is November; or
      - “(iii) 7 May, if the part period is March.”

- (2) Subsection (1) applies for provisional tax payments for the 2008–09 and later income years.

### **152 Registering for GST or cancelling registration**

- (1) Section MB 25(5) is replaced by the following:

*“Date of cancellation*

- “(5) For the purposes of subsection (4) and the provisional tax rules, the date of the cancellation is the later of—

“(a) the date on which the cancellation of GST registration is notified;

“(b) the date on which the taxpayer ceases under section 52 of the Goods and Services Act 1985 to be liable to be registered.”

- (2) Subsection (1) applies for provisional tax payments for the 2008–09 and later income years.

### **153 Refund of excess tax**

- (1) In section MD 1(4)(a), “family support and family plus” is replaced by “tax credits for families”.
- (2) Subsection (1) applies for the 2007–08 and later income years.

### **154 Companies required to maintain imputation credit account**

In section ME 1(2)(i), “section 24” is replaced by “section 266”.

### **155 Companies electing to maintain imputation credit account**

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

- “(1) A company that is not required under section ME 1 to establish and maintain an imputation credit account is eligible under this section to have an imputation credit account if the company is—

“(a) resident in Australia; and

“(b) not a company referred to in section ME 1(2)(c) to (k); and

“(c) not treated as being resident in a country other than Australia under and for the purposes of an agreement that—

- “(i) is between Australia and the other country; and
- “(ii) would be a double tax agreement if negotiated between New Zealand and the other country.”

(2) Subsection (1) applies for the 2005–06 and later income years.

#### **156 Credits arising to imputation credit account**

(1) After section ME 4(1)(ad), the following is added:

“(ae) the amount of any qualifying company election tax paid by the company for the imputation year:”.

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

“(ae) in the case of a credit referred to in subsection (1)(ae), on the date the qualifying company election tax is paid:”.

#### **157 Allocation rules for imputation credits**

(1) In section ME 8(1), item a, “that is concurrent with the imputation year” is omitted.

(2) After section ME 8(6), the following is added:

“(7) Sections MZ 13 and MZ 14 modify this section.”

#### **158 Further tax payable where end of year debit balance or when company ceases to be imputation credit account company**

Section ME 9(4) is replaced by the following:

“(4) A company must pay any further income tax to which it is liable under subsection (3)—

“(a) not later than the last day on which the company is still an imputation credit account company, if paragraph (b) does not apply; or

“(b) by the end of the imputation year in which the company ceases to be an imputation credit account company, if the company ceases to be an imputation credit account company because it becomes a portfolio investment entity.”

#### **159 Amount of imputation credit to be attached to cash distribution**

The following is added to section ME 31:

“(3) Section MZ 20 modifies subsection (1).”

**160 Notional distribution deemed to be dividend**

The following is added to section ME 33:

“(4) Section MZ 20 modifies subsection (1).”

**161 Amount of imputation credit to be attached to cash distribution**

The following is added to section ME 36:

“(3) Section MZ 20 modifies subsection (1).”

**162 Notional distribution deemed to be dividend or taxable Maori authority distribution**

The following is added to section ME 38:

“(3) Section MZ 20 modifies subsection (1).”

**163 Branch equivalent tax account of company**

The following is added to section MF 3:

“(3) Section MZ 21 modifies this section.”

**164 Credits and debits arising to branch equivalent tax account of company**

The following is added to section MF 4:

“(7) Section MZ 21 modifies the amounts of credits, debits, and balances arising under this section.”

**165 Use of credit to reduce dividend withholding payment, or use of debit to satisfy income tax liability**

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

“(5B) An election made for a company (the **first company**) by the first company or any other company under section MF 5(4) for an income year is invalid to the extent to which the total of all those elections and any other elections for the first company under section MF 10(4) for the year is greater than an amount calculated for the first company for the year using the formula in section MF 4(1)(a) (but treating item **e** as zero).

“(5C) An amount of election that is invalid under subsection (5B)—

“(a) is not recorded as a credit in the branch equivalent tax account of the company that makes the election:

“(b) is not an amount of debit balance for which the election is made:

“(c) does not relate to the election.”

- (2) Subsection (1) applies for a person for the 2005–06 and later income years, unless the person has, for the relevant income year, taken a tax position in a return of income furnished to the Commissioner before 17 May 2007 that ignores the existence of subsection (1).
- (3) If subsection (1) does not apply to a person for an income year because of subsection (2), the person may treat subsection (1) as not existing.

#### **166 Debits and credits arising to group branch equivalent tax account**

The following is added to section MF 8:

“(7) Section MZ 21 modifies this section.”

#### **167 Use of consolidated group credit to reduce dividend withholding payment, or use of group or individual debit to satisfy income tax liability**

- (1) After section MF 10(4), the following is inserted:

“(4B) An election made for a consolidated group under section MF 10(3) by any company described in section MF 10(3)(a) to (c) for an income year is invalid to the extent to which the total of all those elections is greater than an amount calculated for the consolidated group for the year using the formula in section MF 8(2)(a) (but treating item e as zero).

“(4C) An election made for a company (the **first company**) by any consolidated group under section MF 10(4) for an income year is invalid to the extent to which the total of all those elections and any other elections for the first company under section MF 5(4) for the year is greater than an amount calculated for the first company for the year using the formula in section MF 4(1)(a) (but treating item e as zero).

“(4D) An amount of election that is invalid under subsections (4B) or (4C)—

“(a) is not recorded as a credit in the branch equivalent tax account of the company or consolidated group, as the case may be, that makes the election:

“(b) is not an amount of debit balance for which the election is made:

“(c) does not relate to the election.”

- (2) Subsection (1) applies for a person for the 2005–06 and later income years, unless the person has, for the relevant income year, taken a tax position in a return of income furnished to the Commissioner before 17 May 2007 that ignores the existence of subsection (1).
- (3) If subsection (1) does not apply to a person for an income year because of subsection (2), the person may treat subsection (1) as not existing.

**168 Allocation rules for dividend withholding payment credits**

- (1) In section MG 8(1), item a, “that is concurrent with the imputation year” is omitted.
- (2) After section MG 8(8), the following is added:  
“(9) Sections MZ 13 and MZ 14 modify this section.”

**169 Dividend with both imputation credit and dividend withholding payment credit attached**

- (1) In section MG 10(1), item a, “that is concurrent with the imputation year” is omitted.
- (2) After section MG 10(2), the following is added:  
“(3) Section MZ 13 modifies this section.”

**170 Conduit tax relief account**

The following is added to section MI 3:

- “(3) Section MZ 22 modifies this section.”

**171 Credits arising to conduit tax relief account**

The following is added to section MI 4:

- “(3) Section MZ 22 modifies this section.”

**172 Debits arising to conduit tax relief account**

The following is added to section MI 5:

- “(8) Section MZ 22 modifies this section.”

**173 Consolidated group conduit tax relief account**

The following is added to section MI 15:

- “(2) Section MZ 22 modifies this section.”

**174 Credits arising to group conduit tax relief account**

The following is added to section MI 17:

“(3) Section MZ 22 modifies this section.”

**175 Debits arising to group conduit tax relief account**

The following is added to section MI 18:

“(5) Section MZ 22 modifies this section.”

**176 Private use of motor vehicle: when schedular value not used**

- (1) In section ND 1U(1), “clause 6” is replaced by “clause 5”.
- (2) In section ND 1U(2), in the words before paragraph (a), “clause 2” is replaced by “clause 4”.
- (3) In section ND 1U(3), “clause 2” is replaced by “clause 4”.
- (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.

**177 Private use of motor vehicle: when schedular value used**

- (1) In section ND 1V(1), “clause 6” is replaced by “clause 5”.
- (2) Subsection (1) applies for a person’s liability for fringe benefit tax for a period beginning on or after 1 April 2006.

**178 New subpart NEB inserted**

After subpart NEA, the following is inserted:

“Subpart NEB—Retirement scheme contribution  
withholding tax

**“NEB 1 Retirement scheme contribution withholding tax  
imposed**

*“Retirement scheme contribution subject to withholding tax*

- “(1) A retirement scheme contribution made for a person to a retirement savings scheme is subject to retirement scheme contribution withholding tax at the retirement scheme withholding rate for the person.

*“Amount of retirement scheme contribution*

- “(2) For the purposes of the RSCWT rules, unless the context otherwise requires, the amount of a retirement scheme contribution is the total of—

- “(a) the amount received as the retirement scheme contribution by the retirement savings scheme and not deducted under section NEB 2 on behalf of the retirement scheme contributor; and
- “(b) the amount of retirement scheme contribution withholding tax payable under the RSCWT rules on the retirement scheme contribution.

“Defined in this Act: retirement savings scheme, retirement scheme contribution, retirement scheme contribution withholding tax, retirement scheme withholding rate, RSCWT rules

### “NEB 2 Retirement scheme contribution withholding tax to be deducted

#### “*Responsibility of retirement scheme contributor to deduct*

- “(1) A retirement scheme contributor who pays to a retirement savings scheme an amount that represents a retirement scheme contribution for a person must, at the time of the payment, deduct from the amount an amount of retirement scheme contribution withholding tax determined under section NEB 1.

#### “*Appointment of retirement savings scheme as agent*

- “(2) A retirement scheme contributor who pays a retirement scheme contribution to a retirement savings scheme may appoint the retirement savings scheme as agent to make the deduction required by subsection (1).

“Defined in this Act: retirement savings scheme, retirement scheme contribution, retirement scheme contribution withholding tax, retirement scheme contributor

### “NEB 3 Payment and notice of deductions

#### “*Payment and notice*

- “(1) A retirement scheme contributor or retirement savings scheme who deducts retirement scheme contribution withholding tax from a retirement scheme contribution must, not later than the 20th of the month following the month in which the deduction is made,—
  - “(a) pay the amount of the deduction to the Commissioner; and
  - “(b) give to the Commissioner, in a notice in a form acceptable to the Commissioner, a figure for the amount of

retirement scheme contribution withholding tax being paid for the month of the deduction other than by the use of imputation credits and Maori authority credits.

*“Amalgamating company*

- “(2) If an amalgamating company ceases to exist on an amalgamation, subsection (1) applies from the time of the amalgamation as if retirement scheme contribution withholding tax deductions payable by the amalgamating company in the year preceding the year in which the amalgamation takes place were payable by the amalgamated company.

“Defined in this Act: Commissioner, imputation credit, Maori authority credit, notice, retirement savings scheme, retirement scheme contribution, retirement scheme contribution withholding tax, retirement scheme contributor, tax file number

**“NEB 4 Failure to deduct**

*“Debt owing to Commissioner*

- “(1) If a retirement scheme contributor or retirement savings scheme fails to deduct retirement scheme contribution withholding tax from a retirement scheme contribution for a person as required by section NEB 1, an amount calculated using the formula in subsection (2) is a debt—
- “(a) payable to the Commissioner by the retirement scheme contributor; and
- “(b) becoming due and payable on the 20th of the month following the month in which the retirement scheme contribution was made.

*“Formula for amount of debt*

- “(2) The amount of the debt is calculated using the formula—
- $$\frac{\text{tax rate}}{1 - \text{tax rate}} \times \text{contribution to scheme} - \text{tax already paid.}$$

*“Definition of items in formula*

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

*“Tax rate*

- “(4) **Tax rate** is the retirement scheme withholding rate for the person.

*“Contribution to scheme*

- “(5) **Contribution to scheme** is the amount of the retirement scheme contribution received by the retirement savings scheme, excluding the amount of retirement scheme contribution withholding tax.

*“Tax already paid*

- “(6) **Tax already paid** is any amount of retirement scheme contribution withholding tax for the contribution that has already been paid.

“Defined in this Act: Commissioner, retirement savings scheme, retirement scheme contribution, retirement scheme contribution withholding tax, retirement scheme contributor, retirement scheme withholding rate

**“NEB 5 Retirement savings schemes***“Eligibility to be retirement savings scheme*

- “(1) An entity is eligible to be a retirement savings scheme for a person if—
- “(a) the entity is a portfolio investment entity; and
  - “(b) under the rules (the **distribution rules**) governing the distribution by the entity of funds in which the person has an interest, the availability of distributions to the person is restricted before the person reaches an age of retirement specified in the rules; and
  - “(c) under the distribution rules, the person is not permitted to make a withdrawal before the age of retirement other than a withdrawal—
    - “(i) for the repayment of a student loan as defined in the Students Loan Scheme Act 1992;
    - “(ii) for the payment of fees and expenses relating to tertiary education;
    - “(iii) for the purchase of housing, if the person does not own a home;
    - “(iv) that the person would be permitted to make if the scheme were a KiwiSaver scheme under the KiwiSaver Act 2006;
    - “(v) in circumstances specified in the rules as approved under paragraph (e); and

- “(d) under the distribution rules, the entity may require the person to provide information for the purpose of ensuring that the requirements relating to a withdrawal are met; and
- “(e) the Commissioner approves the distribution rules as being fair and reasonable.

*“Retirement savings scheme for person*

- “(2) An entity is a retirement savings scheme for a person for an income year if, in the income year,—
  - “(a) the entity is eligible to be a retirement savings scheme for the person under subsection (1); and
  - “(b) the entity holds funds from a retirement scheme contribution for the person.

“Defined in this Act: Commissioner, income year, portfolio investment entity, retirement savings scheme, retirement scheme contribution, retirement scheme contributor

**“NEB 6 Retirement scheme contributors**

*“Eligibility to be retirement scheme contributor*

- “(1) An entity is eligible to be a retirement scheme contributor for a person if—
  - “(a) the entity is—
    - “(i) the trustee of a widely-held trust that is a unit trust:
    - “(ii) a company other than a close company:
    - “(iii) a Maori authority; and
  - “(b) the person is a unit holder, shareholder, or member, of the entity.

*“Retirement scheme contributor for person*

- “(2) An entity is a retirement scheme contributor for a person for an income year if,—
  - “(a) in the income year, the entity is eligible to be a retirement scheme contributor under subsection (1); and
  - “(b) in or before the income year, the entity makes a payment intended to be a retirement scheme contribution for the person.

“Defined in this Act: close company, company, income year, Maori authority, retirement savings scheme, retirement scheme contribution, retirement scheme contributor, shareholder, trustee, unit holder, unit trust, widely-held trust

**“NEB 7 Application of other provisions to retirement scheme contribution withholding tax**

*“Section GC 20 and sections 170(2), 171, and 172 of the Tax Administration Act 1994*

- “(1) For the purposes of the RSCWT rules, section GC 20 (Agreements not to make resident withholding tax deductions to be void) and sections 170(2), 171, and 172 of the Tax Administration Act 1994, as far as they are applicable and with any necessary modifications, apply as if—
- “(a) a reference to a resident withholding tax deduction were a reference to a deduction of retirement scheme contribution withholding tax:
  - “(b) a reference to the RWT rules were a reference to the RSCWT rules.

*“Other provisions, except for RSCWT rules*

- “(2) The provisions of this Act and of the Tax Administration Act 1994 other than the provisions affected by subsection (1), as far as they are applicable and with any necessary modifications, apply as if retirement scheme contribution withholding tax were income tax levied under section BB 1 (Imposition of income tax).

*“Relationship with other RSCWT rules*

- “(3) Subsections (1) and (2) are subject to the other RSCWT rules.

*“Defined in this Act: income tax, resident withholding tax deduction, retirement scheme contribution withholding tax, RSCWT rules, RWT rules”.*

**179 Application of RWT rules**

- (1) After section NF 1(2)(b)(x), the following is added:
- “(xi) dividends that are excluded income by virtue of the application of section CX 42B or would be excluded income under that section in the absence of section CX 42B(2)(a) and (b):”.
- (2) After section NF 1(2)(b)(xi), the following is added:
- “(xii) dividends that are not non-cash dividends and that—

- “(A) have an imputation ratio, dividend withholding payment ratio, or combined imputation and dividend ratio, of 30/70 or greater; and
  - “(B) are paid by a unit trust or a group investment fund, and the unit trust, the group investment fund, or an RWT proxy for them, has not deducted resident withholding tax from any previous dividend.”
- (3) Section NF 1(2)(c) is replaced by the following:
- “(c) taxable Maori authority distributions not being retirement scheme contributions:”.

**180 Resident withholding tax deductions from dividends deemed to be dividend withholding payment credits**

- (1) In section NF 8(1), “LB 1” is replaced by “LB 1, excluding subsection (1)(d) and (e),”.
- (2) Subsection (1) applies—
- (a) for the 2008–09 and later income years, unless paragraph (b) applies:
  - (b) on and after 1 April 2008 for a portfolio tax rate entity that does not choose to be subject to section HL 22.

**181 New section NG 16B inserted**

After section NG 16A, the following is inserted:

**“NG 16B Person withholding amount as retirement scheme contribution withholding tax when liable for non-resident withholding tax**

- “(1) This section applies for a retirement scheme contributor who—
- “(a) makes a retirement scheme contribution for a non-resident; and
  - “(b) pays to the Commissioner an amount as retirement scheme contribution withholding tax relating to the retirement scheme contribution.
- “(2) The retirement scheme contributor is treated as having withheld from the retirement scheme contribution and paid to the Commissioner an amount of non-resident withholding tax equal to the lesser of—

- “(i) the amount paid as retirement scheme contribution withholding tax in relation to the retirement scheme contribution:
  - “(ii) the non-resident withholding tax payable in relation to the retirement scheme contribution.
- “(3) Section LD 12 applies to any balance of the amount paid as retirement scheme contribution withholding tax.”

## 182 Definitions

- (1) This section amends section OB 1.
- (2) In the definition of **allowable rebates**, paragraph (a) is replaced by the following:
  - “(a) means the total of the rebates and credits of tax that a person is allowed in a tax year under Part K (Rebates), excluding rebates or credits allowed under—
    - “(i) section KC 4 (Rebate in certain cases for housekeeper):
    - “(ii) section KC 5 (Rebate in respect of gifts of money):
    - “(iii) subpart KI (Rebates for portfolio tax rate entities):
    - “(iv) subpart KJ (KiwiSaver scheme and complying superannuation fund tax credits); and”.
- (3) In the definition of **applicable basic tax rate**, in paragraph (b), “(Basic rates of income tax and specified superannuation contribution withholding tax)” is omitted.
- (4) After the definition of **attributing interest**, the following is inserted:

“**attribution company** means a company described as an attribution company in section GC 14EB(1) (Treatment of dividends as if from qualifying company)”.
- (5) In the definition of **child**, in paragraph (b), “Tax credits for family support and family plus” is replaced by “Tax credits for families”.
- (6) In the definition of **child**, in paragraph (b)(iii), “family tax credit” is replaced by “minimum family tax credit”.
- (7) In the definition of **civil union partner**, “Tax credits for family support and family plus” is replaced by “Tax credits for families”.



- income, or non-residents' foreign-sourced income; and
- “(iii) is a finance lease under NZIAS 17 for the lessor, or for a company that is in the same group of companies as the lessor and derives assessable income from the arrangement, or is an arrangement under which persons who do not include the lessor bear substantially all the risks and rewards incidental to ownership of the lease asset, determined as at the time the person enters the lease and taking into account later changes to the arrangement”.
- (18) The definition of **Financial Reporting Standard No 13 1995 (Accounting for Research and Development Activities)** is repealed.
- (19) In the definition of **financial statements**, “livestock)),” is replaced by “livestock)), subpart EW (Financial arrangements rules),”.
- (20) After the definition of **gift**, the following is inserted:  
“**gifting settlor** is defined in section EX 40(10) (Limits on choice of calculation methods)”.
- (21) In the definition of **group of companies**, “section IG 1(2)” is replaced by “section IG 1(2) and (2B)”.
- (22) After the definition of **identical share**, the following is inserted:  
“**IFRS** means a New Zealand Equivalent to International Financial Reporting Standard, approved by the Accounting Standards Review Board, and as amended from time to time or an equivalent standard issued in its place  
“**IFRS taxpayer method** means the methods described in sections EW 15B to EW 15E (which relate to the IFRS method and alternative methods)  
“**impaired credit adjustment** is defined in section EW 15C(4) (IFRS method) for the purposes of that section”.
- (23) In the definition of **investor**, paragraphs (b) and (c) are replaced by the following:  
“(b) for a portfolio investment entity is defined in section HL 5B (Meaning of investor and portfolio investor class)”.

- (24) The definition of **in-work payment** is replaced by the following:  
“**in-work tax credit** means the component of the subpart KD credit given by section KD 2AAA (In-work tax credit)”.
- (25) In the definition of **land**, paragraph (a)(i) is repealed.
- (26) In paragraph (d) of the definition of **lease**, “FC 8I” is replaced by “FC 8H”.
- (27) After the definition of **minibus**, the following is inserted:  
“**minimum family tax credit** means a credit allowed by section KD 3 (Calculation of minimum family tax credit)”.
- (28) After the definition of **nil period**, the following is inserted:  
“**Niue International Trust Fund** means the trust governed by the Deed concerning the Niue International Trust Fund dated 25 October 2006 and signed by Her Majesty the Queen in right of New Zealand and the Governments of Niue and Australia”.
- (29) After the definition of **non-filing taxpayer**, the following is inserted:  
“**non-integral fee** means a fee or transaction cost that, for the purposes of financial reporting under IFRSs, is not an integral part of the effective interest rate of a financial arrangement”.
- (30) After the definition of **NRWT rules**, the following is inserted:  
“**NZIAS 2** means New Zealand Equivalent to International Accounting Standard 2, approved by the Accounting Standards Review Board and as amended from time to time, or an equivalent standard issued in its place  
“**NZIAS 8** means New Zealand Equivalent to International Accounting Standard 8, approved by the Accounting Standards Review Board and as amended from time to time, or an equivalent standard issued in its place  
“**NZIAS 17** means New Zealand Equivalent to International Accounting Standard 17, approved by the Accounting Standards Review Board and as amended from time to time, or an equivalent standard issued in its place  
“**NZIAS 32** means New Zealand Equivalent to International Accounting Standard 32, approved by the Accounting Standards Review Board and as amended from time to time, or an equivalent standard issued in its place

“**NZIAS 39** means New Zealand Equivalent to International Accounting Standard 39, approved by the Accounting Standards Review Board and as amended from time to time, or an equivalent standard issued in its place

“**NZIAS 41** is defined in section EB 6(3) (Cost) for the purposes of that section”.

- (31) After the definition of **offshore permit area**, the following is inserted:

“**old company tax rate** means a 33% basic rate that applied before the 2008–09 income year”.

- (32) After the definition of **personal property lease payment**, the following is inserted:

“**personal service rehabilitation payment**, for a person, means an amount paid for the benefit of the person—

“(a) under section 81(3) of the Injury Prevention, Rehabilitation, and Compensation Act 2001; and

“(b) by the Accident Compensation Corporation or an employer that is an accredited employer as defined in section 181 of that Act; and

“(c) in providing to the person a key aspect of social rehabilitation referred to in—

“(i) section 81(1)(b), (c), (e), or (g) (relating to attendant care, child care, home help, and training for independence) of that Act:

“(ii) section 81(1)(h) (relating to transport for independence) of that Act to the extent given by paragraph (a)(i) of the definition of **transport for independence** in schedule 1, clause 12 of that Act”.

- (33) The definition of **petroleum mining operations** is replaced by the following:

“**petroleum mining operations** is defined in section CT 6B (Meaning of petroleum mining operations)”.

- (34) In the definition of **portfolio entity investment**, “a portfolio investment entity” is replaced by “an entity”.

- (35) In the definition of **portfolio investment entity**, in paragraph (c), “fund” is replaced by “fund:”, and the following is added:

“(d) portfolio investment-linked life fund”.

- (36) After the definition of **portfolio investment entity**, the following is inserted:
- “**portfolio investment-linked life fund** means a separate identifiable fund, forming part of a life insurer, that—
- “(a) holds investments subject to life insurance policies under which benefits are directly linked to the value of the investments held in the fund; and
  - “(b) has become a portfolio investment entity under section HL 12 (Becoming portfolio investment entity); and
  - “(c) has not ceased to be a portfolio investment entity under section HL 14 (Ceasing to be portfolio investment entity)”.
- (37) The definition of **portfolio investor class** is replaced by the following:
- “**portfolio investor class** is defined in section HL 5B (Meaning of investor and portfolio investor class)”.
- (38) In the definition of **portfolio investor exit period**, paragraph (b)(ii) is replaced by the following:
- “(ii) ending on a day in the tax year on which the amount of the entity’s portfolio tax liability under section HL 20, reduced by any tax credits allocated to the investor, for the investor for the period equals or exceeds the value of the investor’s portfolio investor interest”.
- (39) The definition of **portfolio investor rate** is replaced by the following:
- “**portfolio investor rate**, at a time for an investor in a portfolio tax rate entity and for a portfolio allocation period, means—
- “(a) 33%, if paragraphs (b) and (c) do not apply; or
  - “(b) the rate, if paragraph (c) does not apply, that the investor notifies—
    - “(i) to the entity as the prescribed investor rate for the investor and the period; and
    - “(ii) in the latest notice before the time; or
  - “(c) 0%, if—
    - “(i) the entity makes payments of tax under section HL 21 (Payments of tax by portfolio tax rate entity making no election); and

- “(ii) the portfolio investor rate at the time for the investor for the portfolio calculation period would, in the absence of this paragraph, be more than 0%; and
- “(iii) the portfolio calculation period includes part of a portfolio investor exit period for the investor”.
- (40) In the definition of **portfolio land company**, in paragraph (b),—
- (a) in the words before subparagraph (i), “80%” is replaced by “80% or more”;
- (b) in subparagraph (ii), “of the company” is replaced by “of the company; and” and the following is added:
- “(c) meets the requirements of section HL 10(2) (Further eligibility requirements relating to investments) for the tax year”.
- (41) In the definition of **portfolio listed company**, in paragraph (d), “entity)” is replaced by “entity); and”, and the following is added:
- “(e) is not a portfolio investment-linked life fund”.
- (42) In the definition of **portfolio tax rate entity** in paragraph (d), “fund” is replaced by “fund; and”, and the following is added:
- “(e) is not a portfolio investment-linked life fund”.
- (43) In the definition of **qualifying person**, in paragraphs (a)(iii) and (c), “family tax credit” is replaced by “minimum family tax credit” in each place where it appears.
- (44) After the definition of **reduced deficit debit**, the following is inserted:
- “**redundancy payment** means a source deduction payment paid—
- “(a) to a person whose employment in a position is terminated because the position is superfluous to the requirements of the person’s employer; and
- “(b) in compensation for the person’s loss of employment”.
- (45) In the definition of **refundable credit**, in paragraph (d), “election)” is replaced by “election); or” and the following is added:

- “(e) for a tax credit under section LD 12 (Credit for retirement scheme contribution withholding tax if retirement scheme contribution not excluded income)”.
- (46) In the definition of **refundable rebate**, “Tax credits for family support and family plus” is replaced by “Tax credits for families”.
- (47) In the definition of **resident**, “Tax credits for family support and family plus” is replaced by “Tax credits for families”.
- (48) In the definition of **residual income tax**,—
- (a) in the words before paragraph (a), “Tax credits for family support and family plus” is replaced by “Tax credits for families”:
- (b) after paragraph (j), the following is inserted:
- “(jb) the amount of any tax credit under section LD 12 (Credit for retirement scheme contribution withholding tax if retirement scheme contribution not excluded income) credited against the income tax:”.
- (49) After the definition of **retained earnings**, the following is inserted:
- “**retirement savings scheme** for a person means an entity satisfying the requirements of section NEB 5 (Retirement savings schemes)
- “**retirement scheme contribution** for a person means a contribution that is made—
- “(a) as an amount of—
- “(i) money:
- “(ii) imputation credits:
- “(iii) Maori authority credits; and
- “(b) to an entity that is eligible to be a retirement savings scheme; and
- “(c) by an entity that is eligible to be a retirement scheme contributor; and
- “(d) for the benefit of the person; and
- “(e) because the person is a member of, or has an ownership interest in, the entity that is eligible to be a retirement scheme contributor
- “**retirement scheme contribution withholding tax** means retirement scheme contribution withholding tax payable under the RSCWT rules

“**retirement scheme contributor** means an entity satisfying the requirements of section NEB 6 (Retirement scheme contributors)

“**retirement scheme prescribed rate**, for a person and a retirement scheme contribution made for the person at a time in an income year (the **contribution year**), means—

- “(a) 39%, if none of paragraphs (b) to (d) apply; or
- “(b) 33%, if paragraphs (c) and (d) do not apply and the person has, in either of the 2 income years immediately before the contribution year, taxable income of \$60,000 or less; or
- “(c) 19.5%, if paragraph (d) does not apply and—
  - “(i) the person has, in either of the 2 income years immediately before the contribution year, taxable income of \$38,000 or less:
  - “(ii) the person is a non-resident and the retirement scheme contributor is a Maori authority and the distribution is \$200 or less:
  - “(iii) the person is a non-resident and the retirement scheme contributor is a Maori authority and the person supplies the Maori authority with a notice satisfying section 28C of the Tax Administration Act 1994; or
- “(d) 0%, if the person is a non-resident at the time and the contribution is non-resident withholding income

“**retirement scheme withholding rate**, for a person and a retirement scheme contribution made for the person at a time in an income year, means,—

- “(a) 39%, if paragraphs (b) and (c) do not apply; or
- “(b) 19.5%, if paragraph (c) does not apply and the person is a non-resident and the retirement scheme contributor is a Maori authority and the distribution is \$200 or less; or
- “(c) the rate that the person notifies to the retirement scheme contributor as the retirement scheme prescribed rate for the person and the retirement scheme contribution—
  - “(i) before the retirement scheme contribution is made; and
  - “(ii) by a notice satisfying section 28C of the Tax Administration Act 1994”.

(50) After the definition of **royalty**, the following is inserted:

“**RSCWT rules** means—

“(a) the following provisions:

“(i) section CX 42B (Contributions to retirement savings scheme):

“(ii) section LB 3 (Credit of retirement scheme contribution withholding tax for imputation credit):

“(iii) section LD 4 (Credit of retirement scheme contribution withholding tax for Maori authority credit):

“(iv) section LD 12 (Credit for retirement scheme contribution withholding tax if retirement scheme contribution not excluded income):

“(v) subpart NEB (Retirement scheme contribution withholding tax):

“(vi) section NF 1(2)(b)(xi) and (c) (Application of RWT rules):

“(vii) section NG 16B (Person withholding amount as retirement scheme contribution withholding tax when liable for non-resident withholding tax):

“(b) section 48B and Part 9 of the Tax Administration Act 1994”.

(51) In the definition of **separated person**, in paragraph (b), “Tax credits for family support and family plus” is replaced by “Tax credits for families”.

(52) After the definition of **social assistance suspensory loan**, the following is inserted:

“**sound commercial reason** is defined in section EW 26(7) (Change of spreading method) for the purposes of that section”.

(53) In the definition of **specified period**, in paragraph (a), “Tax credits for family support and family plus” is replaced by “Tax credits for families”.

(54) In the definition of **spouse**, “Tax credits for family support and family plus” is replaced by “Tax credits for families”.

(55) After the definition of **time of the sale**, the following is inserted:

“**Tokelau International Trust Fund** means the trust governed by the Deed concerning the Tokelau International Trust Fund dated 10 November 2004 and signed by Her Majesty the

Queen in right of New Zealand and the Government of Tokelau”.

- (56) In the definition of **venture investment agreement**, “for the purposes of that section” is omitted.
- (57) Subsection (25) applies for the 2005–06 and later income years.
- (58) Subsections (12), (13), (18), (19), (22), (29), (30), and (52) apply for—
  - (a) the 2007–08 and later income years, unless paragraph (b) applies; or
  - (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year.
- (59) Subsection (17) applies for leases entered on or after 20 May 1999 and for income years including 20 June 2007 and later income years.
- (60) Subsections (5), (6), (7), (8), (9), (10), (11), (14), (15), (16), (24), (27), (43), (46), (47), (48)(a), (51), (53), and (54) apply for the 2007–08 and later income years.

### **183 Meaning of source deduction payment: shareholder-employees of close companies**

- (1) The heading to section OB 2 is replaced by “**Meaning of source deduction payment**”.
- (2) In section OB 2(1), “GC 14D” is replaced by “GC 14D, or a personal services rehabilitation payment for a claimant under the Injury Prevention, Rehabilitation, and Compensation Act 2001.”

### **184 Meaning of income tax**

- (1) In section OB 6(1)(d)(i), “retirement scheme contribution withholding tax,” is inserted after “specified superannuation contribution withholding tax,”.
- (2) In section OB 6(3)(o), “, 141B,” is inserted after “sections 31”.

### **185 Further definitions of associated persons**

- (1) In section OD 8(1), “DT 2,” is omitted.

- (2) In section OD 8(3), in the words before paragraph (a), “KC 6,” is inserted after “HL 9,”.

**186 Schedule 13—Months for payment of provisional tax and terminal tax**

- (1) In schedule 13, part B, in the first column of the table for GST ratio provisional taxpayers, “7–” is replaced by “7–8”.
- (2) Subsection (1) applies for provisional tax payments for the 2008–09 and later income years.

**Part 2**

**Amendments to Tax Administration Act 1994**

**187 Tax Administration Act 1994**

Sections 188 to 268 amend the Tax Administration Act 1994.

**188 Interpretation**

- (1) In section 3(1), after the definition of **business**, the following is inserted:
- “**business group amnesty** means an amnesty declared by the Commissioner under section 226B”.
- (2) In section 3(1), in the definition of **incremental late payment penalty**, “section 139B(2B)” is replaced by “section 139B(2)(b)”.
- (3) In section 3(1), in the definition of **initial late payment penalty**, “section 139B(2A)” is replaced by “section 139B(2)(a)”.
- (4) In section 3(1), in the definition of **response period**, paragraphs (c) and (d) are replaced by the following:
- “(c) if the notice is a notice of proposed adjustment that is issued by a disputant and the initiating notice is either a notice of disputable decision issued by the Commissioner or a notice revoking or varying a disputable decision that is not an assessment,—
- “(i) the 4-month period starting on the date of issue of the initiating notice, unless subparagraph (ii) applies; or
- “(ii) the 1-year period starting on the date of issue of the initiating notice, if the notice of proposed adjustment relates solely to a claim for an amount

of tax credit under section LH 2 of the Income Tax Act 2007:

- “(d) if the notice is a notice of proposed adjustment not relating solely to a claim for an amount of tax credit under section LH 2 of the Income Tax Act 2007 that is issued by a taxpayer under section 89DA and the initiating notice is a notice of assessment issued by the taxpayer, the 4-month period starting on the date on which the taxpayer’s notice of assessment is received at an office of the Department:
  - “(e) if the notice is a notice of proposed adjustment relating solely to a claim for an amount of tax credit under section LH 2 of the Income Tax Act 2007 that is issued by a taxpayer under section 89DA and the initiating notice is a notice of assessment issued by the taxpayer,—
    - “(i) the 2-year period starting on the date on which the taxpayer’s notice of assessment is received at an office of the Department, if the taxpayer is not a member of an internal software development group and not a partner in a partnership to which section 68E applies; or
    - “(ii) the period starting on the date on which the taxpayer’s notice of assessment is received at an office of the Department and ending on the day that is 2 years after the latest day for any member of the taxpayer’s internal software development group or for the taxpayer’s partnership to furnish a return of income or joint return of income for the relevant tax year under section 37”.
- (5) In section 3(1), in paragraph (e) of the definition of **response period**, as inserted by subsection (4),—
- (a) in subparagraph (i), “2-year period” is replaced by “1-year period”:
  - (b) in subparagraph (ii), “2 years” is replaced by “1 year”.
- (6) In section 3(1), the definition of **tax agent** is replaced by the following:
- “**tax agent** means a person who—
- “(a) is eligible under section 34B(2) to be a tax agent; and
  - “(b) is listed by the Commissioner as a tax agent—

- “(i) before the date on which the Taxation (Business Taxation and Remedial Matters) Act 2007 receives the Royal assent:
  - “(ii) on or after the date on which that Act receives the Royal assent, after the person applies under section 34B to be listed by the Commissioner; and
  - “(c) is not later removed by the Commissioner from the list of tax agents”.
- (7) Subsection (4) applies for the 2008–09 and 2009–10 income years.
- (8) Subsection (5) applies for the 2010–11 and later income years.

### 189 Keeping of business records

- (1) In the heading to section 22, “**business records**” is replaced by “**business and other records**”.
- (2) After section 22(2)(c), the following is inserted:
- “(cb) is a person to whom the RSCT rules apply and who makes a retirement scheme contribution to a retirement savings scheme:”.
- (3) After section 22(2)(e), the following is inserted:
- “(eb) has a tax credit under section LH 2 of the Income Tax Act 2007:
  - “(ec) is a listed research provider under section LH 15 of that Act:”.
- (4) After section 22(2)(kb), the following is inserted:
- “(kc) the amount of the person’s tax credit under section LH 2 of the Income Tax Act 2007; and
  - “(kd) the person’s compliance with section LH 15(1) of that Act, if the person is a listed research provider under section LH 15 of that Act, to show—
    - “(i) they meet the start-up requirements and the other continuing requirements; and
    - “(ii) the amounts derived and incurred by them in performing the research and development activities on behalf of other persons; and”.
- (5) After section 22(2)(l), the following is inserted:
- “(lb) every retirement scheme contribution, and the taxable value of that contribution, made by the person to any

retirement savings scheme, those records to include, without limiting the generality of the preceding provisions of this paragraph, details of the recipient of the retirement scheme contribution and the occasion of making it; and”.

- (6) In section 22(7)(d)(iii)(C), “the trust.” is replaced by “the trust:”, and the following is added:
- “(e) for the purposes of subsection (2)(kc), other documents evidencing research and development activities.”
- (7) Subsections (1) to (6) apply for the 2008–09 and later income years.

**190 Section 28B repealed**

Section 28B is repealed.

**191 New section 28B inserted**

After section 28, the following is inserted:

**“28B Investor to advise portfolio tax rate entity of investor’s tax file number**

A resident of New Zealand who is an investor in a portfolio tax rate entity must give notice of the person’s tax file number to the entity within 1 month of the date of a request from the entity for the tax file number.”

**192 New section 28C inserted**

After section 28B, the following is inserted:

**“28C Person advising retirement savings scheme of retirement scheme prescribed rate**

A person who gives a notice that the retirement scheme prescribed rate for the person and an income year is less than 39% must include the person’s tax file number in the notice.”

**193 Shareholder dividend statement to be provided by company**

- (1) After section 29(1)(ia), the following is inserted:
- “(ib) the amount, if any, of the dividend paid to a retirement savings scheme as a retirement scheme contribution for the shareholder:

- “(ic) the name of the retirement savings scheme to which any retirement scheme contribution was paid:
  - “(id) the amount, if any, of imputation credit used to satisfy a liability of the company for retirement scheme contribution withholding tax:
  - “(ie) the amount, if any, of imputation credit remaining after the company has used an imputation credit in satisfying a liability for retirement scheme contribution withholding tax:”.
- (2) In section 29(1)(id), as inserted by subsection (1), “retirement scheme contribution withholding tax” is replaced by “RSCT”.
- (3) In section 29(1)(ie), as inserted by subsection (1), “retirement scheme contribution withholding tax” is replaced by “RSCT”.

#### **194 Maori authority to give notice of amounts distributed**

- (1) After section 31(1)(e), the following is inserted:
- “(eb) the amount, if any, of the distribution paid to a retirement savings scheme as a retirement scheme contribution for the shareholder:
  - “(ec) the name of the retirement savings scheme to which any retirement scheme contribution was paid:
  - “(ed) the amount, if any, of Maori authority credit used to satisfy a liability of the company for retirement scheme contribution withholding tax:
  - “(ee) the amount, if any, of Maori authority credit remaining after the company has used an imputation credit in satisfying a liability for retirement scheme contribution withholding tax:”.
- (2) In section 31(1)(ed), as inserted by subsection (1), “retirement scheme contribution withholding tax” is replaced by “RSCT”.
- (3) In section 31(1)(ee), as inserted by subsection (1), “retirement scheme contribution withholding tax” is replaced by “RSCT”.

**195 Portfolio tax rate entity to give statement to investors and request information**

Section 31B(2B) and (3) are replaced by the following:

- “(2B) A portfolio tax rate entity must give a notice required by subsection (1) or (2) before the end of the 1-month period beginning after the end of the period to which the notice relates.
- “(3) If subsections (1) and (2) do not apply to an investor in a portfolio tax rate entity, the entity must give to the investor information that the Commissioner considers relevant for each tax year in a notice—
- “(a) by the 30 June after the end of the tax year, if paragraph (b) does not apply; or
  - “(b) by the end of the second month following the month in which the corresponding income year for the portfolio tax rate entity ends, if the corresponding income year ends after the tax year.”

**196 Annual returns of income**

- (1) In the heading to section 33, “**Annual returns**” is replaced by “**Returns**”.
- (2) In section 33(1), “portfolio tax rate entity” is replaced by “portfolio tax rate entity who makes payments of income tax under section HL 21 or HL 23 of the Income Tax Act 2004”.
- (3) In section 33(1), as amended by subsection (2), “section HL 21 or HL 23 of the Income Tax Act 2004” is replaced by “section HL 22 or HL 24 of the Income Tax Act 2007”.
- (4) After section 33(1B), the following is inserted:

“(1C) A portfolio tax rate entity or portfolio investor proxy who makes payments of income tax under section HL 21 or HL 23 of the Income Tax Act 2004 must furnish to the Commissioner the returns for which the entity is responsible under section 57B.”
- (5) In section 33(1C), as inserted by subsection (4), “section HL 21 or HL 23 of the Income Tax Act 2004” is replaced by “section HL 22 or HL 24 of the Income Tax Act 2007”.

**197 Annual returns of income not required**

- (1) After section 33A(1)(a)(iiib), the following is inserted:

- “(iic) a personal service rehabilitation payment for a claimant under the Injury Prevention, Rehabilitation, and Compensation Act 2001; or”.
- (2) In section 33A(1)(a)(iv), “(iib)” is replaced by “(iic)”.
- (3) Section 33A(2)(d)(i) is replaced by the following:
- “(i) a schedular payment, if it is not—
- “(A) an amount or proportion of a schedular payment for which the Commissioner has made a determination under section RD 8(3) of the Income Tax Act 2007:
- “(B) income that is a personal service rehabilitation payment for a claimant under the Injury Prevention, Rehabilitation, and Compensation Act 2001:”.
- (4) After section 33A(2)(d), the following is inserted:
- “(db) has an amount of tax credit under section LH 2 of the Income Tax Act 2007; or”.
- (5) Subsection (4) applies for the 2008–09 and later income years.

#### **198 New section 33C inserted**

After section 33B, the following is inserted:

#### **“33C Return not required for certain providers of personal services**

A natural person who derives income in an income year for providing personal services to a person who is a claimant under the Injury Prevention, Rehabilitation, and Compensation Act 2001 is not required to furnish a return of income for the corresponding tax year if—

- “(a) a personal service rehabilitation payment is made for the claimant and for the personal services; and
- “(b) the taxable income of the person does not exceed \$9,500 for the tax year; and
- “(c) tax is withheld at the rate of 15% from the personal service rehabilitation payment; and
- “(d) the person is not required to furnish a return of income under section 33A(1) for the tax year, ignoring for the purposes of that section income from providing personal services for which personal service rehabilitation payments are made.”

**199 New section 34B inserted**

After section 34, the following is inserted:

**“34B Commissioner to list tax agents**

- “(1) The Commissioner must compile and maintain a list of persons who are tax agents.
- “(2) A person is eligible to be a tax agent if the person—
- “(a) prepares the returns of income required to be furnished for 10 or more taxpayers; and
  - “(b) is 1 of the following:
    - “(i) a practitioner carrying on a professional public practice;
    - “(ii) a person carrying on a business or occupation in which returns of income are prepared;
    - “(iii) the Maori Trustee.
- “(3) A person who is not a tax agent and who is eligible to be a tax agent may give a notice (the **application**) to the Commissioner in a form approved by the Commissioner—
- “(a) stating that the person wishes to be listed as a tax agent; and
  - “(b) providing the information required by subsection (11), if the person is not a natural person; and
  - “(c) providing any other information required by the Commissioner.
- “(4) The Commissioner may request further information from the person (the **applicant**) making the application and obtain information relating to the applicant from other persons before deciding whether to list the applicant as a tax agent.
- “(5) The Commissioner must list the applicant as a tax agent if the Commissioner is satisfied by the available information that—
- “(a) the applicant is entitled to make the application; and
  - “(b) listing the applicant as a tax agent would not adversely affect the integrity of the tax system.
- “(6) An applicant is listed as a tax agent from the date given in the Commissioner’s notice informing the applicant of the Commissioner’s decision to list the applicant as a tax agent.
- “(7) The Commissioner must refuse to list an applicant as a tax agent if the Commissioner is satisfied that—
- “(a) the applicant is not entitled to make the application;
  - “(b) listing the applicant as a tax agent would adversely affect the integrity of the tax system.

- “(8) The Commissioner may remove a person from the list of tax agents if the Commissioner is satisfied that—
- “(a) the applicant is not eligible to be a tax agent:
  - “(b) continuing to list the applicant as a tax agent would adversely affect the integrity of the tax system.
- “(9) Before refusing to put a person on the list of tax agents, or removing a person from the list, the Commissioner must—
- “(a) give notice to the person of the Commissioner’s reasons for the proposed decision:
  - “(b) consider any arguments against the proposed decision that are provided by the person within the period, beginning from the day of the notice,—
    - “(i) of 30 days, unless subparagraph (ii) or (iii) applies; or
    - “(ii) allowed by the Commissioner of less than 30 days, if the Commissioner considers such a period is necessary to protect the integrity of the tax system; or
    - “(iii) allowed by the Commissioner of more than 30 days, if the Commissioner considers such a period is appropriate in the circumstances.
- “(10) A person listed as a tax agent is removed from the list on the date of the Commissioner’s notice that informs the person of the Commissioner’s decision to remove the person from the list.
- “(11) An entity that is not a natural person must provide to the Commissioner the information described in subsection (12) if the entity—
- “(a) makes an application under subsection (3):
  - “(b) is a tax agent who—
    - “(i) has not made an application under subsection (3) and has not previously provided information to the Commissioner as required by this subsection:
    - “(ii) has previously provided information to the Commissioner as required by this subsection and that information is inaccurate.
- “(12) The information that subsection (11) requires an entity to provide to the Commissioner consists of the names of the following persons:

- “(a) each person having the duties of tax manager, chief financial officer, chief executive officer, or director, if the entity is a body corporate other than a closely-held company:
  - “(b) each shareholder of the entity, if the entity is a closely-held company:
  - “(c) each partner in the entity, if the entity is a partnership:
  - “(d) each member of the entity, if the entity is an unincorporated body.
- “(13) An entity that is a tax agent and is required by subsection (11) to provide information to the Commissioner must provide the information by—
- “(a) the day 12 months after the day on which the Taxation (Business Taxation and Remedial Matters) Act 2007 receives the Royal assent, if the entity has not made an application under subsection (3) and has not previously provided information to the Commissioner as required by subsection (11):
  - “(b) the end of the 12-month period beginning from the first day on which the information most recently provided to the Commissioner as required by subsection (11) is inaccurate.”

## **200 Dates by which annual returns to be furnished**

After section 37(4A), the following is inserted:

- “(4B) If the Commissioner extends under subsection (4) the time for a person listed as a tax agent to furnish a return of income for a taxpayer and the person ceases to be a tax agent before the extension of time would have expired, the Commissioner must extend the taxpayer’s time for furnishing the return to a date of 31 March on or after the date that would have applied if the person had continued to be a tax agent.”

## **201 Returns to annual balance date**

In section 38(1B), “section HL 22 of the Income Tax Act 2004” is replaced by “section HL 23 of the Income Tax Act 2007”.

**202 Annual returns by persons who receive subpart KD credit**

- (1) In section 41(3)(b), “family tax credit” is replaced by “minimum family tax credit”.
- (2) Subsection (1) applies for the 2007–08 and later income years.

**203 New section 41B inserted**

- (1) After section 41A, the following is inserted:

**“41B Return by person claiming rebate on redundancy payment**

- “(1) A person allowed a rebate under section KC 6 of the Income Tax Act 2004 may apply to the Commissioner for a refund.
- “(2) An application under subsection (1) must be made in the manner required by the Commissioner, be signed by the person, and be accompanied by—
  - “(a) any information the Commissioner requires, including—
    - “(i) the amount of the payment that is a redundancy payment under section KC 6 of the Income Tax Act 2004; and
    - “(ii) the name of the payer of the redundancy payment; and
    - “(iii) the date on which the redundancy payment was made; and
  - “(b) written verification of the details referred to in paragraph (a), in a document signed by the payer of the redundancy payment or other form satisfactory to the Commissioner.
- “(3) An application for a refund must be made in the period—
  - “(a) beginning after the date of the redundancy payment; and
  - “(b) ending with the day that is 4 years after the date of the redundancy payment.
- “(4) When the Commissioner has considered an application for a refund, the Commissioner must, by notice, inform the taxpayer of the amount of the rebate allowed under section KC 6 of the Income Tax Act 2004 and of the amount of refund allowed.
- “(5) A refund allowed under subsection (1) must be paid as if it were tax paid in excess.

- “(6) A refund allowed under subsection (1), to the extent it exceeds the correct amount of refund, is recoverable as an excess credit of tax under section 142D.
- “(7) Part VII does not apply to a refund or an excess refund made under this section.
- “(8) Part IX applies to applications made under this section.”
- (2) In section 41B, as inserted by subsection (1), “section KC 6 of the Income Tax Act 2004” is replaced by “sections ML 1 to ML 3 of the Income Tax Act 2007” in all places in which it occurs.

**204 Non-active companies may be excused from filing returns**

- (1) After section 43A(2)(d)(ii), the following is inserted:
- “(iib) give rise to an amount of tax credit under section LH 2 of the Income Tax Act 2007; or”.
- (2) Subsection (1) applies for the 2008–09 and later income years.

**205 New section 47B inserted**

After section 47, the following is inserted:

**“47B RSCT statements provided by retirement scheme contributor or retirement savings scheme**

- “(1) This section applies when a retirement scheme contributor or retirement savings scheme withholds an amount of RSCT from a retirement scheme contribution other than a contribution made by way of an imputation credit or Maori authority credit.
- “(2) The contributor or scheme must provide to the Commissioner a statement in a form acceptable to the Commissioner showing the amount of retirement scheme contribution, the amount of RSCT relating to the contribution, and any other particulars required by the Commissioner.
- “(3) The statement must be provided no later than the 20th of the month after the month in which the amount was withheld.

Compare: 2004 No 35 s NEB 3(1)(b)”.

**206 New section 48B inserted**

- (1) After section 48, the following is inserted:

**“48B Reconciliation statement for retirement scheme contribution withholding tax**

- “(1) If a retirement scheme contributor has made a retirement scheme contribution to a retirement savings scheme for a person in an income year, the retirement scheme contributor, or the retirement savings scheme acting on behalf of the retirement scheme contributor, must deliver to the Commissioner a reconciliation statement for the income year showing the information required by—
- “(a) subsection (2), relating to the person; and
  - “(b) subsection (3), relating to the retirement scheme contributor.
- “(2) The reconciliation statement must show the following information for the income year relating to the person referred to in subsection (1):
- “(a) the total amount of retirement scheme contribution withholding tax payable on retirement scheme contributions; and
  - “(b) the total amount of imputation credits and Maori authority credits used in meeting the liability for retirement scheme contribution withholding tax; and
  - “(c) the total amount of retirement scheme contribution withholding tax paid or payable other than by using imputation credits and Maori authority credits; and
  - “(d) the amount of each retirement scheme contribution subject to retirement scheme contribution withholding tax; and
  - “(e) the rate used to calculate the retirement scheme contribution withholding tax on the retirement scheme contribution; and
  - “(f) the retirement scheme contribution withholding tax for the retirement scheme contribution; and
  - “(g) the amount of imputation credits attached to the retirement scheme contribution; and
  - “(h) the amount of imputation credits used to meet the liability for retirement scheme contribution withholding tax on the retirement scheme contribution; and
  - “(i) the amount of Maori authority credits attached to the retirement scheme contribution; and

- “(j) the amount of Maori authority credits used to meet the liability for retirement scheme contribution withholding tax on the retirement scheme contribution; and
  - “(k) the amount of retirement scheme contribution withholding tax remaining owing on the retirement scheme contribution after the use of imputation credits and Maori authority credits; and
  - “(l) the amount of retirement scheme contribution withholding tax on the retirement scheme contribution paid other than by the use of imputation credits and Maori authority credits; and
  - “(m) the tax file number, if a rate of less than 39% is used to calculate the retirement scheme contribution withholding tax on a retirement scheme contribution; and
  - “(n) the amount of the imputation credits or Maori authority credits attached to the retirement scheme contribution that are not used to meet the liability for retirement scheme contribution withholding tax; and
  - “(o) the total amount of non-resident withholding tax payable on retirement scheme contributions; and
  - “(p) the amount of each retirement scheme contribution that is non-resident withholding income; and
  - “(q) any other particulars the Commissioner may require.
- “(3) The reconciliation statement must show the following information for the income year relating to the retirement scheme contributor referred to in subsection (1):
- “(a) the total amount of retirement scheme contributions for which retirement scheme contribution withholding tax is payable; and
  - “(b) the total amount of retirement scheme contribution withholding tax payable on retirement scheme contributions; and
  - “(c) the total amount of imputation credits used in meeting the liability for retirement scheme contribution withholding tax; and
  - “(d) the total amount of Maori authority credits used in meeting the liability for retirement scheme contribution withholding tax; and
  - “(e) the total amount of retirement scheme contribution withholding tax paid or payable other than by using imputation credits and Maori authority credits.

- “(4) The reconciliation statement required by subsection (1) for an income year must be received by the Commissioner on or before the end of the second month following the end of the income year.”
- (2) In section 48B(2), as inserted by subsection (1),—
- (a) in paragraphs (a) to (f), (h), and (j) to (n), “retirement scheme contribution withholding tax” is replaced by “RSCT” in all places in which it appears:
  - (b) in paragraph (o), “non-resident withholding tax” is replaced by “NRWT”:
  - (c) in paragraph (p), “non-resident withholding income” is replaced by “non-resident passive income”.
- (3) In section 48B(3), as inserted by subsection (1), in paragraphs (a) to (e), “retirement scheme contribution withholding tax” is replaced by “RSCT” in all places in which it appears.

**207 Portfolio tax rate entities and portfolio investor proxies to make returns, file annual reconciliation statement**

- (1) In section 57B(1), in the words before paragraph (a), “section HL 22 or HL 23 of the Income Tax Act 2004” is replaced by “section HL 23 or HL 24 of the Income Tax Act 2007”.
- (2) Section 57B(1)(b) is replaced by the following:
- “(b) by the day that is the end of the month beginning from the end of the portfolio calculation period.”
- (3) In section 57B(2), “section HL 22 of the Income Tax Act 2004” is replaced by “section HL 23 of the Income Tax Act 2007”.
- (4) In section 57B(3), in the words before paragraph (a), “section HL 23 of the Income Tax Act 2004” is replaced by “section HL 24 of the Income Tax Act 2007”.
- (5) Section 57B(3)(a)(ii) is replaced by the following:
- “(ii) by the day given by subsection (3B) for the portfolio investor exit period; and”.
- (6) After section 57B(3), the following is inserted:
- “(7) A person who is required to perform responsibilities under subsection (3)(a) for a portfolio investor exit period must perform the responsibilities by the day that is—

- “(a) the end of the 1-month period beginning from the end of the portfolio investor exit period, if paragraphs (b) and (c) do not apply; or
  - “(b) the 15 January following the end of the portfolio investor exit period, if the portfolio investor exit period ends in November; or
  - “(c) the end of the month beginning from the end of the month in which the portfolio investor exit period ends, if the day given by paragraph (a) does not exist.”
- (7) In section 57B(4)(a)(ii),—
- (a) “section HL 22 or HL 23 of the Income Tax Act 2004” is replaced with “section HL 23 or HL 24 of the Income Tax Act 2007”:
  - (b) “section HL 21(5)” is replaced with “section HL 22(5)”.
- (8) In section 57B(4)(b), “for the tax year” is inserted after “income tax”.
- (9) After section 57B(6), the following is added:
- “(7) A person who is a portfolio tax rate entity or portfolio investor proxy and makes a payment of income tax under section HL 23B of the Income Tax Act 2004 for a period in an income year that is not included in a return required by subsection (3) must file a tax return for the period—
- “(a) in the prescribed form showing—
    - “(i) the amount of the payment for the period; and
    - “(ii) the information concerning the payment that would be required in a return under subsection (3); and
    - “(iii) further information that the Commissioner considers relevant; and
  - “(b) by the day that is—
    - “(i) the end of the month beginning from the end of the month in which the period ends, if subparagraph (ii) does not apply; or
    - “(ii) the 15 January following the end of the period, if the period ends in November.”
- (10) In section 57B(7) as added by subsection (9), in the words before paragraph (a), “section HL 23B of the Income Tax Act 2004” is replaced by “section HL 25 of the Income Tax Act 2007”.

**208 Disclosure of interest in foreign company or foreign investment fund**

(1) After section 61(1B), the following is inserted:

“(1C) A portfolio tax rate entity that does not make payments of tax under section HL 22 of the Income Tax Act 2004 is required to make a disclosure under subsection (1) in the prescribed form by the due date for the entity’s return under section 57B for the tax year.”

(2) In section 61(1C) as added by subsection (1), “section HL 22 of the Income Tax Act 2004” is replaced by “section HL 23 of the Income Tax Act 2007”.

**209 New sections 68D and 68E inserted**

(1) Before section 69, the following is inserted:

**“68D Statements in relation to research and development tax credits: single persons**

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

“(a) is not a member of an internal software development group; and

“(b) is not a partner in a partnership to which section 68E applies.

“(2) The person must furnish, in the form and electronic format prescribed by the Commissioner, a statement in relation to research and development tax credits under section LH 2 of the Income Tax Act 2007 that they claim for a tax year.

“(3) The statement described in subsection (2) must be furnished to the Commissioner no later than—

“(a) the day that is 30 days after the last day for furnishing a return of income for the relevant tax year under section 37; or

“(b) the day that is 2 years after the last day for furnishing a return of income for the relevant tax year under section 37, if—

“(i) that tax year is the 2008–09 or 2009–10 tax year; and

“(ii) the person has not claimed, in a return of income for that tax year, research and development tax credits under section LH 2 of the Income Tax Act 2007.

“(4) A person is treated as complying with this section for the purposes of section LH 2(1)(d) of the Income Tax Act 2007 before the last day for furnishing a statement under subsection (3).

**“68E Statements in relation to research and development tax credits: internal software development groups and partnerships**

“(1) This section applies to—

“(a) an internal software development group:

“(b) a partnership that chooses to apply this section.

“(2) The nominated member of an internal software development group or the partnership must furnish, in the electronic format prescribed by the Commissioner, a statement in relation to research and development tax credits under section LH 2 of the Income Tax Act 2007 that the members of the internal software development group or partners of the partnership claim for a tax year.

“(3) The statement described in subsection (2) must be furnished to the Commissioner no later than—

“(a) the day that is—

“(i) 30 days after the latest day for any member of the internal software group or for the partnership to furnish a return of income or joint return of income for the relevant tax year under section 37; or

“(ii) such later day that the Commissioner may allow, if the Commissioner considers that a failure to meet the requirements of subparagraph (i) is a result of simple oversight; or

“(b) the day that is 2 years after the latest day for any member of the internal software group or for the partnership to furnish a return of income or joint return of income for the relevant tax year under section 37, if—

“(i) that tax year is the 2008–09 or 2009–10 tax year; and

“(ii) no member or partner has claimed, in a return of income for that tax year, research and development tax credits under section LH 2 of the Income Tax Act 2007.

“(4) A member of an internal software development group and a partner in a partnership are treated as complying with this section for purposes of section LH 2(1)(d) of the Income Tax Act 2007 before the last day for furnishing a statement under subsection (3).”

(2) Subsection (1) applies for the 2008–09 and later income years.

#### **210 Particulars to be included in income statement**

(1) In section 80E(2)(ea), “family support and family plus” is replaced by “Working for Families tax credits”.

(2) Subsection (1) applies for the 2007–08 and later income years.

#### **211 What Commissioner must do on receipt of application**

In section 80KD(2)(c),—

(a) in subparagraph (ii), “family support” is replaced by “family tax credit”:

(b) in subparagraph (iii), “in-work payment” is replaced by “in-work tax credit”:

(c) in subparagraph (vi), “family tax credit” is replaced by “minimum family tax credit”.

#### **212 Payment by instalment of family support (without abatement)**

(1) In the heading to section 80KK, “**family support**” is replaced by “**family tax credit**”, and in subsections (1), (2), (4), and (5), “family support” is replaced by “family tax credit” in all places in which it appears.

(2) In section 80KK(3)(a)(ii), “family assistance credit” is replaced by “WFF tax credit”.

#### **213 Payment of tax credit by chief executive**

In section 80KN(1)(b) and (2), “family assistance credit” is replaced by “WFF tax credit” in all places in which it appears.

#### **214 Determining family assistance credit**

(1) In the heading to section 80KO, “**family assistance credit**” is replaced by “**WFF tax credit**”.

(2) In section 80KO, “family assistance credit” is replaced by “WFF tax credit”.

- (3) In section 80KO(b), “family support” is replaced by “family tax credit”.

**215 When entitlement to income-tested benefit ends**

In section 80KP, in subsections (1) and (2), “family support” is replaced by “family tax credit” in all places in which it appears.

**216 No authority to pay family assistance credit**

- (1) In the heading to section 80KQ, “family assistance credit” is replaced by “WFF tax credit”.
- (2) In section 80KQ(1), “family assistance credit” is replaced by “WFF tax credit”.

**217 Request by chief executive to stop payment of family assistance credit**

- (1) In the heading to section 80KR, “family assistance credit” is replaced by “WFF tax credit”.
- (2) In section 80KR(1)(b), “family assistance credit” is replaced by “WFF tax credit”.

**218 Payment of tax credit taken over by Commissioner**

- (1) In section 80KU(1)(b), “family assistance credit, family tax credit, or family support” is replaced by “WFF tax credit, family tax credit, or minimum family tax credit”.
- (2) In section 80KU(2), “in-work payment” is replaced by “in-work tax credit”.

**219 Effect of extra instalment on entitlement to tax credit**

- (1) In section 80KW(1)(a), “family assistance credit or family tax credit” is replaced by “WFF tax credit or minimum family tax credit”.
- (2) Section 80KW(2)(b) is replaced by the following:  
“(b) when the person has received payments under section 80KI for the whole of a tax year in 27 instalments as described in subsection (1)(c)(i).”
- (3) In section 80KW(4)(a)(i), “family assistance credit” is replaced by “WFF tax credit”.

- (4) In section 80KW(4)(a)(ii), “family tax credit” is replaced by “minimum family tax credit”.
- (5) Section 80KW(5)(b) is replaced by the following:
  - “(b) when the person has received payments under section 80KN for the whole of a tax year in 53 instalments as described in subsection (1)(c)(ii).”
- (6) In section 80KW(7)(a)(i), “family assistance credit” is replaced by “WFF tax credit”.
- (7) In section 80KW(7)(a)(ii), “family tax credit” is replaced by “minimum family tax credit”.

**220 Officers to maintain secrecy**

- (1) Before section 81(4)(g), the following is inserted:
  - “(fc) communicating to a person who is a member, employee, or agent, of the New Zealand Customs Service, information that—
    - “(i) the person is authorised by the New Zealand Customs Service to receive; and
    - “(ii) relates to a person who is liable to pay financial support under the Child Support Act 1991; and
    - “(iii) the Commissioner considers is not undesirable to disclose and is reasonably necessary for the purposes specified in sections 280K and 280L of the Customs and Excise Act 1996.”
- (2) After section 81(4)(lb), the following is inserted:
  - “(lc) communicating to a taxpayer whose return of income is being or has been prepared by another person as an agent of the taxpayer—
    - “(i) whether the person is listed as a tax agent:
    - “(ii) any decision of the Commissioner removing the person from the list of tax agents or refusing to list the person as a tax agent.”

**221 Disclosure of information concerning actions of tax advisor**

- (1) The heading to section 81B is replaced by “**Disclosure of information concerning tax advisor or person acting as tax agent**”.
- (2) In section 81B, the following is added as subsection (2):

- “(2) Despite section 81, the Commissioner may supply information about a person to an association or group if—
- “(a) the person is, or purports to be, a member of the association or group as a person who is in a business of preparing tax returns for other people; and
  - “(b) the members of the association or group are subject to—
    - “(i) a professional code of conduct; and
    - “(ii) a disciplinary process that enforces compliance with the code of conduct; and
  - “(c) the information—
    - “(i) is relevant to a decision of the Commissioner removing the person from the list of tax agents or refusing to list the person as a tax agent:
    - “(ii) in the Commissioner’s opinion, is or would be relevant to a decision referred to in subparagraph (i).”

**222 Disclosure of information for purposes of entitlement card**

In section 83(2), “family assistance credit” is replaced by “WFF tax credit”.

**223 Disclosure of information for family support double payment identification**

- (1) In section 84(1)(a) and (4), “family assistance credit” is replaced by “WFF tax credit” in all places in which it appears.
- (2) In section 84(6), the defined term **family assistance credit** is replaced by the following:

“**WFF tax credit** means an interim instalment of WFF tax credit.”

**224 Disclosure of information in relation to family income assistance**

- (1) In section 85G,—
  - (a) in the heading: “**family income assistance**” is replaced by “**Working for Families tax credits**”;
  - (b) in subsection (1)(a), “family support credit” is replaced by “family tax credit”.

- (2) In section 85G(1)(a) and (4)(a) and (b), “family assistance credit” is replaced by “WFF tax credit” in all places in which it appears.
- (3) In section 85G(6), the defined term **family assistance credit** is replaced by the following:  
“**WFF tax credit** means an interim instalment of WFF tax credit:”.
- (4) Subsection (1) applies for the 2007–08 and later income years.
- (5) Subsections (2) and (3) apply for the 2008–09 and later income years.

#### **225 Use of information supplied under section 85GA**

In the heading to section 85GC, “**section 85GA**” is replaced by “**section 85GB**”.

#### **226 Where Commissioner accepts adjustment proposed by disputant**

Section 89J, other than the heading, is replaced by the following:

- “(1) If the Commissioner accepts or is deemed to accept an adjustment proposed by a disputant, and section 89L does not apply, the Commissioner must include or take account of the adjustment in—
- “(a) a notice of assessment issued to the disputant; and
  - “(b) any further notice of assessment or further amended assessment issued to the disputant.
- “(2) Despite subsection (1), the Commissioner may issue a notice of assessment or an amended assessment that does not include or take into account an adjustment that the Commissioner has accepted, or is deemed to have accepted, if the Commissioner considers that the disputant in relation to the adjustment—
- “(a) was fraudulent:
  - “(b) wilfully misled the Commissioner.”

#### **227 Determinations relating to financial arrangements**

- (1) After section 90AC(1)(b), the following is inserted:  
“(bb) the method that may be applied to determine the income derived or expenditure incurred for a financial arrangement or class of financial arrangements under section

EW 15B(5)(c) or EW 15D(2)(d) of the Income Tax Act 2004:”.

- (2) In section 90AC(1)(bb), as inserted by subsection (1), “section EW 15B(5)(c) or EW 15D(2)(d) of the Income Tax Act 2004” is replaced by “section EW 15E(2)(d) or EW 15I(2)(c) of the Income Tax Act 2007”.

**228 Determination on type of interest in FIF and use of fair dividend rate method**

- (1) Section 91AAO(2) and (3) are replaced by the following:
- “(2) In making a determination, the Commissioner may take into account the following:
- “(a) the principle that the fair dividend rate method should not be used for an attributing interest in a FIF that is economically equivalent to a loan denominated in New Zealand dollars:
  - “(b) the extent to which the assets of a FIF—
    - “(i) are loans, fixed rate shares as defined in section LF 2 of the Income Tax Act 2004, or arrangements with a fixed economic return:
    - “(ii) are denominated in New Zealand dollars:
    - “(iii) have a value in New Zealand dollars that is substantially unaffected by variations in currency exchange rates:
  - “(c) the compliance costs incurred by a person required to use the fair dividend rate method:
  - “(d) arrangements affecting the assets of a FIF and interests held directly or indirectly in a FIF.
- “(3) A determination may be made for income years specified in the determination.
- “(3B) A determination does not apply for a person and an income year beginning before the date of the determination unless the person chooses that the determination apply for the income year.”
- (2) Section 91AAO(2)(b)(i), as inserted by subsection (1), is replaced by the following:
- “(i) are loans, fixed-rate shares as defined in section LL 9 of the Income Tax Act 2007, or arrangements with a fixed economic return:”.

- (3) Section 91AAO(5) is replaced by the following:
- “(5) The Commissioner must:
- “(a) notify the making of a determination in the *Gazette* within 30 days of the date of the determination; and
  - “(b) publish the determination in a publication of the department as soon as possible.”

**229 New heading and section 91AAP inserted**

- (1) After section 91AAO, the following is inserted:

*“Determinations relating to research and development tax credits*

**“91AAP Determinations relating to requirements for research and development tax credits**

- “(1) For the purposes of a person or group of persons claiming a tax credit under section LH 2 of the Income Tax Act 2007, if the person or group of persons applies in writing requesting a determination under this section, the Commissioner may determine whether—
- “(a) a person meets the eligibility requirements in section LH 3 of the Income Tax Act 2007:
  - “(b) expenditure or depreciation loss meets the requirements of the definition of **eligible expenditure** in section LH 4 of that Act:
  - “(c) an activity meets the requirements of the definition of research and development activities in section LH 7 of that Act.
- “(2) An application under subsection (1) must be made in accordance with relevant regulations, or, if there are no relevant regulations, in accordance with a procedure that the Commissioner prescribes.
- “(3) Subject to this section, a determination made under subsection (1) is treated as made under that subsection, and as valid, on and after the date on which the Commissioner signs it.
- “(4) A determination made under subsection (1) is binding on the Commissioner but not binding on the person or group of persons who request it.
- “(5) A determination under subsection (1) is void, and treated as not existing, from the earliest of—

- “(a) the date on which legislation comes into force which, to the detriment of the person or group of persons relying on the determination, repeals or amends law relevant to the determination:
  - “(b) the date on which a material misrepresentation or omission occurs, whether intentional or not:
  - “(c) the date on which the Commissioner sends a notice to the person or group of persons that the Commissioner has withdrawn the determination.
- “(6) Despite subsection (5)(c), a determination that the Commissioner has withdrawn is valid, and treated as existing, to the extent that an activity to which the determination relates is started before the date on which the notice of withdrawal is sent.
- “(7) A determination under subsection (1) may not be disputed or challenged under Part 4A or 8A.”
- (2) Subsection (1) applies for the 2008–09 and later income years.

**230 Taxation laws in respect of which binding rulings may be made**

- (1) In section 91C(1)(f), in the words before subparagraph (i), “paragraphs (a) to (e)” is replaced by “paragraphs (a) to (eb)”.
- (2) In section 91C(1)(f)(i), “paragraph (e)” is replaced by “paragraph (e) or (eb)”.
- (3) After section 91C(3), the following is added:
- “(4) Despite subsection (1), the Commissioner may not make a binding ruling on the following provisions and matters:
  - “(a) whether a person meets the eligibility requirements in section LH 3 of the Income Tax Act 2007:
  - “(b) whether expenditure or depreciation loss meets the requirements of the definition of **eligible expenditure** in section LH 4 of that Act:
  - “(c) whether an activity meets the requirements of the definition of research and development activities in section LH 7 of that Act.”
- (4) Subsections (1) and (2) apply for the 2005–06 and later income years.
- (5) Subsection (3) applies for the 2008–09 and later income years.

**231 New section 98B inserted**

(1) After section 98, the following is inserted:

**“98B Assessment of retirement scheme contribution  
withholding tax**

“(1) The Commissioner may, for any person who is chargeable with retirement scheme contribution withholding tax under section NEB 2 of the Income Tax Act 2004, make an assessment of the amount of the retirement scheme contribution on which, in the Commissioner’s judgment, retirement scheme contribution withholding tax ought to be imposed and an assessment of the amount of that tax.

“(2) The person is liable to pay the tax so assessed except to the extent that the person establishes in proceedings challenging the assessment that the assessment is excessive or that the person is not chargeable with the tax assessed.

“(3) Sections 109, 111, and 113 shall apply, so far as may be, with respect to an assessment made under subsection (1) of this section as if—

“(a) in those sections, the term “taxpayer” included a person who is chargeable with retirement scheme contribution withholding tax; and

“(b) in section 113, the term “tax already assessed” included retirement scheme contribution withholding tax already assessed under subsection (1) of this section.

“(4) An assessment made under this section shall be subject to challenge in the same manner as an assessment of income tax imposed under section BB 1 of the Income Tax Act 2004, and Part VIIIA of this Act shall apply accordingly.”

(2) Section 98B(1), as inserted by subsection (1), is replaced by the following:

“(1) The Commissioner may, for any person who is chargeable with RSCT under section RH 2 of the Income Tax Act 2007, make an assessment of the amount of the retirement scheme contribution on which, in the Commissioner’s judgment, RSCT ought to be imposed and an assessment of that tax.”

(3) Section 98B(3)(a) and (b), as inserted by subsection (1), is replaced by the following:

“(a) in those sections, the term ‘taxpayer’ included a person who is chargeable with RSCT; and

“(b) in section 113, the term “tax already assessed” included RSCT already assessed under subsection (1) of this section.”

- (4) In section 98B(4), as inserted by subsection (1), “Income Tax Act 2004” is replaced by “Income Tax Act 2007”.

### **232 Time bar for amendment of income tax assessment**

- (1) After section 108(1A), the following is inserted:

“(1B) Despite subsection (1), the Commissioner may not amend an assessment so as to increase an amount of research and development tax credit under section LH 2 of the Income Tax Act 2007 if—

“(a) a taxpayer furnishes an income tax return for the 2008–09 or a later tax year; and

“(b) 2 years have passed from the end of the tax year in which the taxpayer provides the tax return; and

“(c) the taxpayer has not issued a notice of proposed adjustment to the Commissioner for an amount of research and development tax credit for the relevant tax year within the relevant response period.”

- (2) In section 108(1B)(b), as inserted by subsection (1), “2 years have” is replaced by “1 year has”.

- (3) Subsection (1) applies for the 2008–09 and 2009–10 income years.

- (4) Subsection (2) applies for the 2010–11 and later income years.

### **233 Extension of time bars**

- (1) In section 108B(3)(d), “section 108” is replaced by “section 108(1)”.

- (2) Subsection (1) applies for the 2008–09 and later income years.

### **234 Commissioner may at any time amend assessments**

- (1) In section 113(1), “section 89N” is replaced by “sections 89N and 113D”.

- (2) Subsection (1) applies for the 2008–09 and later income years.

### **235 New section 113D inserted**

- (1) After section 113C, the following is inserted:

**“113D Amended assessments for research and development tax credits**

If a taxpayer has issued a notice of proposed adjustment for their claim for an amount of research and development tax credit under section LH 2 of the Income Tax Act 2007 within the relevant response period, the Commissioner may not amend an assessment so as to increase the amount of tax credit by more than the adjustment proposed in the notice of proposed adjustment.”

- (2) Subsection (1) applies for the 2008–09 and later income years.

**236 Residual income tax of new provisional taxpayer**

- (1) Section 120KC(1)(b) is replaced by the following:

“(b) in 2 equal instalments on the interest instalment dates, for the corresponding year,—

“(i) D and F, if section RC 9(9)(b)(i) applies; or

“(ii) C and F, if section RC 9(9)(b)(ii) applies:”.

- (2) Subsection (1) applies for the 2008–09 and later income years.

**237 Heading to example replaced**

The heading to the example after section 120KC is replaced by “**Example:** Section 120KD”.

**238 Provisional tax instalments in transitional years**

- (1) In section 120KD(1), “section 120KE(1)” is replaced by “section 120KE(1) or (3)”.

- (2) In section 120KD(2), the second sentence is replaced by “The date interest starts is the day after the day on which payment of the instalment is due under section RC 21 of that Act.”

- (3) Subsections (1) and (2) apply for the 2008–09 and later income years.

**239 Heading to example replaced**

The heading to the example after section 120KD is replaced by “**Example:** Section 120KE”.

**240 Provisional tax and rules on use of money interest**

- (1) Section 120KE(6) is replaced by the following:

- “(6) A taxpayer is not entitled to use of money interest for overpaid tax under section 120D until the later of—
- “(a) the day after the date—
    - “(i) on which they notify the Commissioner under section RC 18(2); or
    - “(ii) set out in section RC 18(3) (as the case may be):
  - “(b) the day after their last instalment date.”
- (2) Subsection (1) applies for the 2008–09 and later income years.

#### **241 Late filing penalties**

- (1) In the heading to section 139A, “**penalties**” is replaced by “**penalty for certain returns**”.
- (2) In section 139A(5), the words before paragraph (a) are replaced by the following:
- “(5) Except in the case of a late filing penalty resulting from an employer monthly schedule or from a tax return required under sections 16 to 18 of the Goods and Services Tax Act 1985, the Commissioner must, not less than 30 days before imposing a late filing penalty,—”.
- (3) After section 139A(5), the following is added:
- “(6) In the case of a late filing penalty for failing to file an employer monthly schedule by the due date, the Commissioner must—
- “(a) give notice to the taxpayer that a late filing penalty will be payable for a further failure to file an employer monthly schedule on time, if the taxpayer has filed on time all employer monthly schedules due for filing in the period—
    - “(i) beginning with the later of 1 April 1999 and the day 12 months before the due date; and
    - “(ii) ending before the due date; or
  - “(b) give notice to the taxpayer that the penalty is payable, if the taxpayer has not filed on time all employer monthly schedules due for filing in the period referred to in paragraph (a).”
- (4) Subsections (1) and (3) apply for employer monthly schedules due on or after 1 April 1999.

- (5) Subsection (2) applies for a tax return required to be furnished under sections 16 to 18 of the Goods and Services Tax Act 1985 and due on or after 1 April 2008.

**242 New section 139AAA inserted**

- (1) After section 139A, the following is inserted:

**“139AAA Late filing penalty for GST returns**

- “(1) This section applies to a tax return (a **GST return**) required to be furnished by a registered person under sections 16 to 18 of the Goods and Services Tax Act 1985.
- “(2) A registered person is liable to pay a late filing penalty if—
- “(a) the registered person does not complete and provide a GST return by the due date for filing the GST return; and
  - “(b) the registered person has failed to file on time a GST return due in the period—
    - “(i) beginning with the later of 1 April 2008 and the day 12 months before the due date; and
    - “(ii) ending before the due date; and
  - “(c) the Commissioner notifies the registered person that the penalty is payable.
- “(3) The late filing penalty for a GST return for a registered person is—
- “(a) \$250, if on the due date for filing the GST return the registered person accounts for tax payable on an invoice basis or hybrid basis; or
  - “(b) \$50, if on the due date for filing the GST return the registered person accounts for tax payable on a payments basis.
- “(4) The Commissioner must—
- “(a) give notice to the registered person that a late filing penalty will be payable for a further failure to file a GST return on time, if the registered person has filed on time all GST returns due for filing in the period—
    - “(i) beginning with the later of 1 April 2008 and the day 12 months before the due date; and
    - “(ii) ending before the due date; or
  - “(b) give notice to the registered person that the penalty is payable, if the registered person has not filed on time all

GST returns due for filing in the period referred to in paragraph (a).”

- (2) Subsection (1) applies for a tax return required to be furnished under sections 16 to 18 of the Goods and Services Tax Act 1985 and due on or after 1 April 2008.

### **243 Late payment penalty**

- (1) Section 139B(1) to (3A) are replaced by the following:

“(1) This section applies to a taxpayer if and to the extent that the taxpayer does not pay by the due date (the **default date**) an amount of tax (the **unpaid tax**), calculated by the taxpayer as payable or for which the taxpayer is assessed, and—

“(a) the unpaid tax is provisional tax or a penalty relating to a failure to pay provisional tax:

“(b) the taxpayer has failed to pay on time an amount of tax due for payment in the period—

“(i) beginning with the later of 1 April 2008 and the day 2 years before the default date; and

“(ii) ending before the default date:

“(c) the taxpayer has paid on time all amounts of tax due for payment in the period referred to in paragraph (b) and—

“(i) the Commissioner gives the taxpayer a notice setting a further date for payment of the unpaid tax; and

“(ii) the taxpayer does not pay the unpaid tax before the date that is the earlier of the further date and the date that is 1 month after the date of the notice.

“(2) The taxpayer is liable to pay a late payment penalty consisting of—

“(a) an initial late payment penalty equal to the total of—

“(i) 1% of the unpaid tax; and

“(ii) 4% of the amount of tax to pay at the end of the sixth day after the day on which a penalty under subparagraph (i) is imposed; and

“(b) an incremental late payment penalty equal to 1% of the amount of tax to pay determined on each day that falls 1 month after a day on which a penalty is imposed under—

“(i) this subsection:

“(ii) subsection (2A)(a) or (2B) as they were before the enactment of section 243 of the Taxation (Business Taxation and Remedial Matters) Act 2007.

- “(3) An initial late payment penalty is added to the unpaid tax to which it relates—
- “(a) on the day after the default date for the unpaid tax, if it is imposed under subsection (2)(a)(i):
  - “(b) at the end of the sixth day after the day referred to in paragraph (a), if it is imposed under subsection (2)(a)(ii).”
- (2) In section 139B(3B),—
- (a) “subsection (2A)(b)” is replaced by “subsection (2)(a)(ii)”:
  - (b) “subsection (2A)(a)” is replaced by “subsection (2)(a)(i)”.
- (3) Subsections (1) and (2) apply for unpaid tax that on or after 1 April 2008 becomes due for payment.

#### **244 Imposition of late payment penalties when financial relief sought**

- (1) In section 139BA(1),—
- (a) “section 139B(2A)(a)” is replaced by “section 139B(2)(a)(i)”:
  - (b) “section 139B(2A)(b)” is replaced by “section 139B(2)(a)(ii)”.
- (2) Subsection (1) applies for unpaid tax that on or after 1 April 2008 becomes due for payment.

#### **245 Late payment penalty and provisional tax**

- (1) In section 139C(2), in the definition of **provisional tax payable**, the following is inserted after paragraph (aa):
- “(ab) for an instalment date and a taxpayer to whom section RC 11 of the Income Tax Act 2007 applies, means the lesser of—
    - “(i) the amount calculated under section RC 11 of that Act:
    - “(ii) the amount calculated as payable under section RC 11 of that Act, if the GST ratio is substituted for a GST ratio which is calculated using the

taxpayer's residual income tax for the tax year and taxable supplies for the corresponding income year:".

- (2) Subsection (1) applies for the 2008–09 and later income years.

**246 Imputation penalty tax payable where end of year debit balance**

- (1) After section 140B(2), the following is added:

“(3) The amount given by subsection (2) for the year ending 31 March 2010 is reduced by the amount of imputation penalty tax payable under section 140BB.”

- (2) Subsection (1) applies for the 2008–09 and later income years.

**247 New section 140BB inserted**

- (1) After section 140B, the following is inserted:

**“140BB Imputation penalty tax payable in some circumstances**

“(1) This section applies when a company has an end of year debit balance under section OA 3(3) and (4) of the Income Tax Act 2007 for its imputation credit account as at 31 March 2010, if the company is treated, for the purposes of this section, as only having—

“(a) credits and balances to the extent to which they arise from memorandum account debits, credits, and balances, refunds, tax, tax credits, transfers, withholdings, or other items dealt with, arising, or calculated using an old company tax rate; and

“(b) debits and balances to the extent to which the company has, as provided by section OZ 8 of the Income Tax Act 2007, attached imputation credits in excess of the 30/70 imputation ratio or the 30/70 combined imputation and dividend withholding payment ratio.

“(2) The company is liable for a special tax known as imputation penalty tax.

“(3) The amount of imputation penalty tax is 10% of the positive difference between zero and the end of year debit balance described in subsection (1).”

- (2) Subsection (1) applies for the 2008–09 and later income years.

**248 Dividend withholding payment penalty tax payable where end of year debit balance**

- (1) After section 140C(2), the following is added:
  - “(3) The amount given by subsection (2) for the year ending 31 March 2010 is reduced by the amount of dividend withholding payment penalty tax payable under section 140CA.”
- (2) Subsection (1) applies for the 2008–09 and later income years.

**249 New section 140CA inserted**

- (1) After section 140C, the following is inserted:
  - “**140CA FDP penalty tax payable in some circumstances**
  - “(1) This section applies when a company has an end of year debit balance under section OA 3(3) and (4) of the Income Tax Act 2007 for its FDP account as at 31 March 2010, if the company is treated, for the purposes of this section, as only having—
    - “(a) credits and balances to the extent to which they arise from memorandum account debits, credits, and balances, refunds, tax, tax credits, transfers, withholdings, or other items dealt with, arising, or calculated using an old company tax rate; and
    - “(b) debits and balances to the extent to which the company has, as provided by section OZ 8 of the Income Tax Act 2007, attached imputation credits in excess of the 30/70 FDP ratio or the 30/70 combined imputation and FDP ratio.
  - “(2) The company is liable to a special tax known as FDP penalty tax.
  - “(3) The amount of imputation penalty tax is 10% of the positive difference between zero and the end of year debit balance described in subsection (1).”
- (2) Subsection (1) applies for the 2008–09 and later income years.

**250 Tax shortfalls**

- (1) In section 141(7)(b), “or a reduction in tax to pay” is inserted after “refund of tax”.
- (2) In section 141(7), in the words after paragraph (c), “or reduction,” is inserted after “increased refund.”
- (3) After section 141(7), the following is inserted:

“(7B) The Commissioner may exercise the discretion under subsection (7) in relation to a taxpayer and an associated person having a different return period if—

- “(a) subsection (7) would apply to the taxpayer in the absence of this subsection if the associated person’s return period were the same as the taxpayer’s return period; and
- “(b) the taxpayer’s return period affected by the adjustment referred to in subsection (7)(a) overlaps the associated person’s return period affected by the adjustment referred to in subsection (7)(b); and
- “(c) the taxpayer’s tax position is not an abusive tax position and does not involve evasion or a similar act.”

(4) After section 141(7B), the following is inserted:

“(7C) Subsection (7D) applies if—

- “(a) the Commissioner makes an adjustment to a taxpayer’s tax position (**taxpayer A**) for a tax credit under section LH 2 of the Income Tax Act 2007 relating to internal software development as that term is defined in section LH 17 of that Act; and
- “(b) the adjustment described in paragraph (a) results in a tax shortfall; and
- “(c) the Commissioner makes an adjustment to another taxpayer’s tax position (**taxpayer B**) for a tax credit under section LH 2 of that Act relating to internal software development as defined in section LH 17 of that Act; and
- “(d) the adjustment described in paragraph (c) is for the same tax year as the adjustment described in paragraph (a); and
- “(e) for taxpayer B, an entitlement to an amount of refund or increased refund of tax (the **refund amount**) results from the adjustment described in paragraph (c); and
- “(f) for the period to which the adjustments described in paragraphs (a) and (c) relate, taxpayer A and taxpayer B are members of the same internal software development group, as that term is defined in section LH 17 of that Act; and
- “(g) the tax credits described in paragraphs (a) and (c) relate to expenditure or depreciation loss under subpart LH incurred while taxpayer A and taxpayer B are members

of the same internal software development group, as that term is defined in section LH 17 of that Act.

- “(7D) If this subsection applies because of subsection (7C) of this Act, then, for the purposes of imposing a penalty, the Commissioner may treat an amount that is less than or equal to taxpayer B’s refund amount, described in subsection (7C)(e), as an amount of tax paid by taxpayer A. Treating the amount as tax paid by taxpayer A for the purposes of imposing a penalty reduces taxpayer A’s shortfall.”
- (5) Subsections (1) to (3) apply for tax positions taken on or after 1 April 2008.
- (6) Subsection (4) applies for the 2008–09 and later income years.

#### **251 Not taking reasonable care**

- (1) After section 141A(2), the following is inserted:
- “(2B) A taxpayer who, in taking a tax position, relies on an action or advice of a tax advisor engaged by the taxpayer, or by a company in the same group of companies as the taxpayer, takes reasonable care in relying on the action or advice except if the taxpayer—
- “(a) is the employer of the tax advisor:
  - “(b) does not provide to the tax advisor adequate information relating to the tax position:
  - “(c) does not provide to the tax advisor adequate instructions relating to the tax position:
  - “(d) has reason to believe that the action or advice is incorrect:
  - “(e) has previously, for a period ending less than 4 years before the beginning of the period to which the tax position relates, had a tax shortfall for the same type of tax arising from a corresponding tax position and does not take reasonable care to avoid the further tax shortfall.”
- (2) Subsection (1) applies for tax positions taken on or after 1 April 2008.

#### **252 Unacceptable tax position**

- (1) In section 141B(1B), “numbers in a return” is replaced by “numbers used in, or for use in preparing, a return”.
- (2) After section 141B(1B), the following is inserted:

- “(1C) A taxpayer does not take an unacceptable tax position if—
- “(a) the taxpayer adopts IFRSs for the purposes of financial reporting before the 2007–08 income year; and
  - “(b) the taxpayer’s tax position relates to a period—
    - “(i) starting on and including the first day of the first income year for which a person adopts IFRSs for the purposes of financial reporting; and
    - “(ii) finishing on and including the last day of the 2006–07 income year; and
  - “(c) a tax shortfall for a return period in the period described in paragraph (b) arises from actual or potential accounting under IFRSs; and
  - “(d) the tax shortfall is due to an application of IFRSs which, if viewed objectively, passes the standard of being about as likely as not to represent acceptable accounting practice under IFRSs; and
  - “(e) the taxpayer has fully-disclosed the IFRS-related tax position.”
- (3) Section 141B(2) is replaced by the following:
- “(2) A taxpayer is liable to pay a shortfall penalty if the taxpayer takes an unacceptable tax position in relation to income tax and the tax shortfall arising from the taxpayer’s tax position is more than both—
- “(a) \$50,000;
  - “(b) 1% of the taxpayer’s total tax figure for the relevant return period.”
- (4) Section 141B(3)(b) is replaced by the following:
- “(b) where the taxpayer has no tax to pay in respect of the return period, an amount equal to the product of—
- “(i) the net loss of the taxpayer in respect of the return period, ascertained in accordance with the provisions of the Income Tax Act 2007 and treated as having a positive value; and
  - “(ii) the basic rate of income tax for companies in the relevant return period,—”.
- (5) Subsections (3) and (4) apply for tax positions taken on or after 1 April 2008.

### **253 Abusive tax position**

- (1) Section 141D(4) is replaced by the following:

- “(4) This section applies to a taxpayer if the taxpayer has taken an unacceptable tax position.”
- (2) Subsection (1) applies for tax positions taken on or after 1 April 2008.

**254 Evasion or similar act**

- (1) After section 141E(2), the following is inserted:
- “(2B) No person shall be chargeable with a shortfall penalty under subsection (1)(b) for taking a tax position if the person is chargeable with a shortfall penalty under section 141ED for taking the tax position.”
- (2) Subsection (1) applies for tax positions taken on or after 1 April 2008.

**255 New section 141ED inserted**

- (1) After section 141EC, the following is inserted:
- “141ED Not paying employer monthly schedule amount**
- “(1) A taxpayer is liable to pay a shortfall penalty (referred to as a penalty for not paying employer monthly schedule amount) if—
- “(a) the taxpayer—
- “(i) completes an employer monthly schedule showing an amount of tax (the **returned amount**) payable by the taxpayer to the Commissioner for the return period; and
- “(ii) provides the employer monthly schedule to the Commissioner; and
- “(iii) fails to pay to the Commissioner by the due date an amount owing to the Commissioner (the **unpaid amount**) of the returned amount; and
- “(b) the Commissioner, after the due date for the returned amount, gives to the taxpayer a notice (the **Commissioner’s notice**)—
- “(i) that the taxpayer is liable to pay a penalty for failing to pay the unpaid amount by the due date and how the penalty is calculated; and
- “(ii) of the circumstances in which further penalties will be imposed and how a further penalty will be calculated; and

- “(iii) of actions that the taxpayer may take to avoid the imposition of further penalties; and
- “(c) subsection (3) does not apply to the taxpayer.
- “(2) Before giving to the taxpayer the first Commissioner’s notice in relation to the returned amount, the Commissioner must give to the taxpayer a notice that a penalty may be imposed under this section if the unpaid amount is not paid.
- “(3) A taxpayer is not liable to pay a penalty for not paying employer monthly schedule amount in relation to an unpaid amount if—
- “(a) the taxpayer is a receiver or liquidator—
- “(i) appointed after the end of the return period referred to in subsection (1)(a); and
- “(ii) having insufficient funds available to pay the unpaid amount:
- “(b) the taxpayer—
- “(i) agrees with the Commissioner, before the penalty date under subsection (4) for the due amount, to an instalment arrangement (the **instalment arrangement**), of the same type as an instalment arrangement referred to in section 177B, to pay the unpaid amount; and
- “(ii) pays the unpaid amount under the instalment arrangement.
- “(4) A penalty payable for not paying employer monthly schedule amount in relation to an unpaid amount has a due date (the **penalty date**) that is—
- “(a) the date of the Commissioner’s notice, if the penalty is the first penalty in relation to the returned amount; or
- “(b) one month after the penalty date for the preceding penalty, if paragraph (a) does not apply.
- “(5) The amount of the penalty for not paying employer monthly schedule amount in relation to an unpaid amount is—
- “(a) 10% of the unpaid amount on the day before the penalty date, if the taxpayer—
- “(i) fails to agree to an instalment arrangement with the Commissioner before the day that is 1 month after the penalty date; and
- “(ii) fails to pay the unpaid amount before the day that is 1 month after the penalty date; or

- “(b) 10% of the unpaid amount on the day before the penalty date, if the taxpayer—
  - “(i) agrees to an instalment arrangement with the Commissioner before the penalty date; and
  - “(ii) fails to comply with the instalment arrangement before the day that is 1 month after the penalty date; or
- “(c) 5% of the unpaid amount on the day before the penalty date, if—
  - “(i) the taxpayer pays the unpaid amount, or agrees to an instalment arrangement with the Commissioner, after the penalty date and before the day that is 1 month after the penalty date; and
  - “(ii) paragraph (b) does not apply.
- “(6) A taxpayer may be liable to pay more than 1 penalty for not paying employer monthly schedule amount arising from an employer monthly schedule.
- “(7) The maximum amount of penalties under this section that may be imposed is 150% of the returned amount that is unpaid when the first penalty is imposed under this section.
- “(8) If the penalty date for a penalty would, in the absence of this subsection, be a date in a month that does not exist in the month, the penalty date is the date of the last day in the month.”
- (2) Subsection (1) applies for tax positions taken on or after 1 April 2008.

**256 Reduction in penalty for voluntary disclosure of tax shortfall**

- (1) Section 141G(3)(a) is replaced by the following:
  - “(a) for pre-notification disclosure is—
    - “(i) 100%, if the shortfall penalty is for not taking reasonable care, for taking an unacceptable tax position, or for an unacceptable interpretation; or
    - “(ii) 75%, if subparagraph (i) does not apply:”.
- (2) Subsection (1) applies for voluntary disclosures made on or after 17 May 2007.

**257 Reduction where temporary shortfall**

- (1) Section 141I(3) is replaced by the following:

- “(3) A tax shortfall is a temporary tax shortfall for the return period of a tax position if, when the Commissioner considers the assessment of a shortfall penalty, the Commissioner is satisfied that—
- “(a) the tax shortfall has been or will be, in an earlier or later return period, permanently reversed or corrected—
    - “(i) before the end of the 4-year period beginning after the day on which the taxpayer took the tax position; and
    - “(ii) with the effect that the taxpayer pays or returns for the relevant return periods the correct total amount of tax, not including penalties and interest, in respect of the tax position; and
    - “(iii) as a result of actions taken by the taxpayer or by the operation of law or circumstances; and
  - “(b) no tax shortfall will arise in a later return period in respect of a similar tax position; and
  - “(c) no arrangement exists with the purpose or effect of creating for another return period a tax deferral or advantage related to the tax position.”
- (2) Subsection (1) applies for tax positions taken on or after 1 April 2008.

### **258 Limitation on reduction of shortfall penalty**

- (1) Section 141J, other than the heading, is replaced by the following:
- “(1) This section applies to a shortfall penalty payable by a taxpayer if—
- “(a) the taxpayer makes a voluntary disclosure; and
  - “(b) the shortfall penalty is payable in respect of a temporary tax shortfall; and
  - “(c) the shortfall penalty would be reduced under section 141G or 141H in the absence of this section.
- “(2) The shortfall penalty is reduced by—
- “(a) 100%, if—
    - “(i) the shortfall penalty is for not taking reasonable care, for taking an unacceptable tax position, or for taking a tax position involving an unacceptable interpretation of a tax law; and

- “(ii) the tax shortfall is voluntarily disclosed under section 141G before notification of a pending tax audit or investigation; or
- “(b) 75%, if paragraph (a) does not apply.
- “(3) A shortfall penalty to which this section applies is not reduced under any other section.”
- (2) Subsection (1) applies for voluntary disclosures made on or after 17 May 2007.

**259 Section 141KB repealed**

- (1) Section 141KB is repealed.
- (2) Subsection (1) applies for tax positions taken on or after 1 April 2008.

**260 Due date for payment of late filing penalty**

- (1) In section 142(1), “or a return required by sections 16 to 18 of the Goods and Services Tax Act 1985” is inserted after “an employer monthly schedule”.
- (2) After section 142(1A), the following is inserted:
  - “(1B) The due date for the payment of a late filing penalty for a return required by sections 16 to 18 of the Goods and Services Tax Act 1985 for a taxable period is—
    - “(a) the 28th day of the second month following the end of the taxable period, if paragraphs (b) and (c) do not apply; or
    - “(b) the 15th day of February, if the month following the end of the taxable period is December; or
    - “(c) the 7th day of June, if the month following the end of the taxable period is April.”
- (3) Subsections (1) and (2) apply for a tax return required to be furnished under sections 16 to 18 of the Goods and Services Tax Act 1985 and due on or after 1 April 2008.

**261 New due date for payment of tax that is not penalty**

- (1) Section 142A(1), (1B), and (2) are replaced by the following:
  - “(1) This section applies if the Commissioner makes for a taxpayer—
    - “(a) an assessment (the **new assessment**) of tax for which the taxpayer has not been assessed earlier:

- “(b) an amended assessment (the **increased assessment**)—
  - “(i) of an amount of tax exceeding the amount for which the taxpayer is liable immediately before the increased assessment; and
  - “(ii) made less than 30 days before, or on or after, the due date for the tax for which the taxpayer is liable immediately before the increased assessment.
- “(2) The Commissioner must—
  - “(a) fix a date that is 30 or more days after the date of the notice of the assessment for the payment of—
    - “(i) the tax under a new assessment:
    - “(ii) the increase of tax under an increased assessment; and
  - “(b) give notice of the date to the taxpayer in the notice of the assessment.”
- (2) In section 142A(3),—
  - (a) in the words before paragraph (a), “Subsections (1) and (2) do” is replaced by “Subsection (2) does”:
  - (b) in paragraph (b), “subsection (1) or” is deleted.
- (3) Section 142A(4) is repealed.

## 262 Knowledge offences

- (1) In section 143A(5)(f), “2006.” is replaced by “2006:” and the following is added:
  - “(g) a deduction of retirement scheme contribution withholding tax.”
- (2) Section 143A(5)(g), as inserted by subsection (1), is replaced by the following:
  - “(g) an amount of RSCT withheld.”

## 263 Imposition of civil and criminal penalties

- (1) In section 149(2), “, other than under section 141ED,” is inserted after “shortfall penalty”.
- (2) In section 149(5), “, other than under section 141ED,” is inserted after “shortfall penalty”.
- (3) Subsections (1) and (2) apply for tax positions taken on or after 1 April 2008.

**264 Remission for reasonable cause**

In section 183A(1)(h), “2006.” is replaced by “2006:” and the following is added:

- “(i) a penalty for not paying employer monthly schedule amount imposed by section 141ED.”

**265 Remission consistent with collection of highest net revenue over time**

In section 183D(1), after paragraph (bc), the following is inserted:

- “(bd) a penalty for not paying employer monthly schedule amount imposed by section 141ED; and”.

**266 Small amounts of penalties and interest not to be charged**

In section 183F(1), after paragraph (ba), the following is inserted:

- “(bb) a taxpayer is not liable to pay a penalty for not paying employer monthly schedule amount if the unpaid amount on the day before the date of the Commissioner’s notice under section 141ED(1)(b) is less than \$100.”

**267 Power to make interim payments of family assistance credit**

- (1) In the heading to section 225A, “**family assistance credit**” is replaced by “**WFF tax credit**”.
- (2) In section 225A(2)(b)(iii), “family assistance credit” is replaced by “WFF tax credit”.
- (3) In section 225A(2)(b)(iv), “family assistance credit” is replaced by “WFF tax credit”.

**268 New section 226B inserted**

After section 226, the following is inserted:

**“226B Business group amnesties**

- “(1) The Commissioner may declare an amnesty (a **business group amnesty**) under this section in relation to a group of persons, each of whom carries on a type of activity as the

- person's main business (the **affected business**), if the Commissioner considers that declaring the amnesty is consistent with—
- “(a) protection of the integrity of the tax system; and
  - “(b) collection over time of the highest net revenue that is practicable within the law.
- “(2) The Commissioner, when declaring a business group amnesty, must announce the days that begin and end the period for which the business group amnesty is available.
- “(3) The Commissioner may change a day that begins or ends the period for which a business group amnesty is available by an announcement made on or before the day.
- “(4) A person is eligible to benefit from a business group amnesty if the person—
- “(a) is carrying on the affected business when the amnesty becomes available; and
  - “(b) has carried on the affected business throughout the period of 3 income years ending before the income year in which the amnesty becomes available; and
  - “(c) has not previously benefited from a business group amnesty; and
  - “(d) has not been notified of a pending tax audit or investigation before the amnesty becomes available.
- “(5) During the period for which a business group amnesty is available, a person may give a notice to the Commissioner in a form prescribed by the Commissioner—
- “(a) stating that the person wishes to benefit from the amnesty; and
  - “(b) stating that the person is carrying on the affected business; and
  - “(c) stating the period for which, and the place at which, the person has carried on the affected business as a business; and
  - “(d) providing a statement of assets and liabilities for the income year ending before the income year in which the business group amnesty becomes available; and
  - “(e) giving details of actions and omissions relating to the business that the person considers might give rise to an assessment, amended assessment, or prosecution if the person did not benefit from the amnesty; and

- “(f) providing any other information required by the Commissioner.
- “(6) A person who is eligible under subsection (4) and gives a notice under subsection (5) is a person (an **affected person**) who benefits from the amnesty.
- “(7) The Commissioner may, as if the business group amnesty were not declared,—
- “(a) investigate the financial affairs of an affected person for the period of—
- “(i) the income year ending before the income year in which the Commissioner declares the amnesty; and
- “(ii) the income year in which the Commissioner declares the amnesty; and
- “(b) make an assessment or amended assessment of the affected person for the income years referred to in paragraph (a).
- “(8) After an affected person gives a notice under subsection (5), the Commissioner must not, in relation to income years before the income years referred to in subsection (7)(a),—
- “(a) begin an investigation of the income and deductions of the affected person relating to the affected business:
- “(b) make an assessment or amended assessment of the affected person based on figures for income and deductions relating to the affected business that differ from the figures for income and deductions relating to the affected business included by the affected person in a return of income provided before the date of the notice under subsection (5), except if subsection (10) applies.
- “(9) After an affected person gives a notice under subsection (5), the Commissioner must not begin under this or another Act a prosecution of the affected person for an action or omission before or in giving the notice if—
- “(a) the affected person provides information relating to the action or omission to the Commissioner; and
- “(b) subsection (10) does not apply.
- “(10) The Commissioner may make an assessment, make an amended assessment, or bring a prosecution, that would otherwise be contrary to subsection (8) or (9), if the assessment or prosecution arises from an investigation of which the person is

given notice, and that the Commissioner begins, before the affected person gives the notice under subsection (5).

- “(11) The Commissioner must report in writing to the Minister on the results of a business group amnesty in a report accompanying a report under section 141L.
- “(12) The Minister must lay a copy of the report before the House of Representatives at the same time as the report under section 141L.”

### **Part 3**

#### **Amendments to other Acts and Regulations**

##### *Estate and Gift Duties Act 1968*

#### **269 Exemption for gifts to charities and certain bodies**

- (1) In section 73(2)(l) of the Estate and Gift Duties Act 1968, “1996.” is replaced by “1996:” and the following is added:
- “(m) any gift to the trustee of the Tokelau International Trust Fund, as defined in section OB 1 of the Income Tax Act 2004, for the purposes of that trust.”
- (2) Section 73(2)(m), as inserted by subsection (1), is replaced by the following:
- “(m) any gift to the trustee of the Tokelau International Trust Fund, as defined in section YA 1 of the Income Tax Act 2007, for the purposes of that trust.”
- (3) In section 73(2)(m) of the Estate and Gift Duties Act 1968, “trust.” is replaced by “trust:” and the following is added:
- “(n) any gift to the trustee of the Niue International Trust Fund, as defined in section OB 1 of the Income Tax Act 2004, for the purposes of that trust.”
- (4) Section 73(2)(n), as inserted by subsection (3), is replaced by the following:
- “(n) any gift to the trustee of the Niue International Trust Fund, as defined in section YA 1 of the Income Tax Act 2007, for the purposes of that trust.”

*Goods and Services Tax Act 1985***270 Goods and Services Tax Act 1985**

Sections 271 to 279 amend the Goods and Services Tax Act 1985.

**271 Interpretation**

- (1) This section amends section 2(1).
- (2) In the definition of **tax invoice**, “section 24” is replaced by “sections 24 and 24BA”.

**272 Value of supply of goods and services**

- (1) In section 10(7), as amended by section YA 2 and schedule 21 of the Income Tax Act 2004, “sections CX 23” is replaced by “sections CX 18”.
- (2) In section 10(7), as amended by section ZA 2 and schedule 49 of the Income Tax Act 2007, “sections CX 27” is replaced by “sections CX 20”.

**273 Zero-rating of goods**

- (1) After section 11(1)(e), the following is inserted:
  - “(eb) subject to subsection (4), the goods supplied—
    - “(i) are supplied to a recipient who is a non-resident; and
    - “(ii) have been entered for export under the Customs and Excise Act 1996 by the supplier or will be entered for export by the supplier in the course of or as a condition of making the supply; and
    - “(iii) are exported by the recipient; and
    - “(iv) are not intended by the recipient for later importation into New Zealand for use other than in making taxable supplies or exempt supplies, with the absence of such an intention being confirmed by the recipient in a document retained by the supplier; and
    - “(v) are not used or altered by the recipient before being exported, except to the extent necessary to prepare the goods for export; and

- “(vi) leave New Zealand under an arrangement agreed by the supplier and the recipient at or before the time of the supply; and
- “(vii) do not leave New Zealand in the possession of a passenger or crew member of an aircraft or ship; or”.
- (2) In section 11(1)(l), subparagraphs (i) and (ii) and the words before subparagraph (i) are replaced by the following:
- “(1) the goods supplied are consumable stores intended for use on—
- “(i) an aircraft on a flight, or going, to a destination outside New Zealand; or
- “(ii) a fishing ship outside, or going outside, New Zealand fisheries waters; or
- “(iib) a ship, other than a pleasure craft, carrying consumable stores to a foreign-going ship or to a fishing ship that meets the requirements in subparagraph (ii); or”.
- (3) In section 11(4),—
- (a) “If subsection (1)(d) or (1)(e) applies and the goods are not exported by the supplier” is replaced by “If subsection (1)(d), (e), or (eb) applies and the person required to export the goods does not do so”:
- (b) “subsection (1)(d) and (1)(e)” is replaced by “subsection (1)(d), (e), and (eb)”.
- (4) In section 11(9), in the definition of **consumable stores**, paragraph (a), “intend to consume” is replaced by “have available to consume”.
- (5) In section 11(9), the definition of **foreign-going ship** is replaced by the following:
- “**foreign-going ship** means a ship on a voyage, or going, to a destination outside New Zealand, other than a pleasure craft or a fishing ship”.

#### 274 Zero-rating of services

In section 11A(1)(m)(i), “section 11(1)(a) to (e)” is replaced by “section 11(1)(a) to (eb)”.

**275 Special returns**

- (1) In section 17(1), in the words before the paragraphs, “, on or before the 28th day of the month following the month within which the sale was made,” is omitted.
- (2) After section 17(1), the following is inserted:
  - “(1B) A return that a person is required to furnish to the Commissioner under subsection (1) must be furnished on or before—
    - “(a) the 28th of the month following the end of the month in which the relevant sale was made, if paragraphs (b) or (c) do not apply; or
    - “(b) the 15th day of January, if November is the month in which the relevant sale was made; or
    - “(c) the 7th day of May, if March is the month in which the relevant sale was made.”
- (3) Subsections (1) and (2) apply for taxable periods ending on or after 30 November 2007.

**276 Calculation of tax payable**

In section 20(2)(a), “sections 24 and 25” is replaced by “sections 24, 24BA, and 25”.

**277 New section 24BA inserted**

After section 24, the following is inserted:

**“24BA Shared tax invoices**

- “(1) A shared invoice is a tax invoice, if the invoice contains the following particulars:
  - “(a) the words “tax invoice” in a prominent place;
  - “(b) the name and registration number of the principal supplier;
  - “(c) the name and address of the recipient;
  - “(d) the date upon which the tax invoice is issued;
  - “(e) a description of the goods and services supplied;
  - “(f) the consideration for the supply, inclusive of tax charged, and—
    - “(i) the tax charged, and the consideration for the supply, excluding tax charged; or
    - “(ii) where the amount of tax charged is the tax fraction of the consideration, a statement that the consideration includes a charge in respect of the tax.

- “(2) A tax invoice under this section is treated as provided by each supplier.
- “(3) Where a tax invoice to which this section applies has been issued in respect of a supply, the principal supplier must maintain sufficient records to enable the name, address, and registration number, if any, of the supply’s supplier to be ascertained.
- “(4) For the purposes of this section,—
- “**principal supplier** means, for a shared invoice,—
- “(a) the supplier responsible for issuing the invoice, unless paragraph (b) applies:
- “(b) the representative member of a group of companies for the purposes of section 55
- “**shared invoice** means a single invoice for goods and services (other than goods deemed to be supplied pursuant to section 5(2)) supplied by 2 or more suppliers, if the suppliers use a single invoice because they—
- “(a) have statutory obligations which make it practical to use a single invoice:
- “(b) are part of the same group of companies for the purposes of section 55.”

### 278 Relief from tax where new start grant made

- (1) In section 48A(3)(a), “section CX 41B(4) or EW 47B(4) of the Income Tax Act 2004” is replaced by “section CX 48(4) or EW 46(4) of the Income Tax Act 2007”.
- (2) In section 48A(3), in the words after paragraph (c), “section CX 41B(4) and (5) or section EW 47B(4) and (5) of the Income Tax Act 2004” is replaced by “section CX 48(4) and (5) or EW 46(4) and (5) of the Income Tax Act 2007”.

### 279 Group of companies

- (1) Section 55(1) is replaced by the following:
- “(1) For the purposes of this Act, 2 or more companies (the **companies**) are eligible to be a group of companies at a time if,—
- “(a) at the time and under section IG 1 of the Income Tax Act 2004, the companies—
- “(i) are a group of companies:
- “(ii) are part of a group of companies:

- “(iii) would be a group of companies or part of a group of companies but for 1 or more of the companies being a portfolio tax rate entity; and
- “(b) the companies,—
- “(i) at the time, are each a registered person:
- “(ii) in a 12-month period that includes the time, make a total value of taxable supplies to persons other than the companies that is at least 75% of the total value of all supplies made in that period by the companies to persons other than the companies.”
- (2) In section 55(1)(a), as inserted by subsection (1), “section IG 1 of the Income Tax Act 2004” is replaced by “section IC 3 of the Income Tax Act 2007”.

### ***Income Tax Act 1994***

#### **280 Income Tax Act 1994**

Sections 281 to 288 amend the Income Tax Act 1994.

#### **281 Public and local authorities' exempt income**

Section CB 3(b)(ii)(A) is replaced by the following:

“(A) any council-controlled organisation, other than a council-controlled organisation operating a hospital as a charitable activity on behalf of the local authority:”.

#### **282 Non-profit bodies' and charities' exempt income**

- (1) In section CB 4(1)(n), “trust.” is replaced by “trust:” and the following is added:
- “(o) any amount derived by the trustee of the Tokelau International Trust Fund.”
- (2) In section CB 4(1)(o), “Fund.” is replaced by “Fund:” and the following is added:
- “(p) any amount derived by the trustee of the Niue International Trust Fund.”
- (3) Section CB 4(3)(a) and (b) are replaced by the following:
- “(a) a council-controlled organisation, other than a council-controlled organisation operating a hospital as a charitable activity:

“(b) a local authority in respect of income derived from a council-controlled organisation, other than from a council-controlled organisation operating a hospital as a charitable activity on behalf of the local authority.”

- (4) Subsection (1) applies for the 1999–2000 and later income years.
- (5) Subsection (2) applies for the 2003–04 and later income years.

### **283 Other exempt income**

- (1) In section CB 9(i), “grant.” is replaced by “grant:” and the following is added:

“(j) any amount derived as a distribution from the trustee of the Tokelau International Trust Fund.”

- (2) In section CB 9(j), “Fund.” is replaced by “Fund:” and the following is added:

“(k) any amount derived as a distribution from the trustee of the Niue International Trust Fund.”

- (3) Subsection (1) applies for the 1999–2000 and later income years.
- (4) Subsection (2) applies for the 2003–04 and later income years.

### **284 What constitutes an interest in a foreign investment fund**

- (1) After section CG 15(2), the following is inserted:

“(2B) If a person is treated under section CG 23(7) to (8) as disposing of or acquiring rights in an income year, the disposal or acquisition is ignored for the purposes of subsection (2)(d).”

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

### **285 Companies required to maintain imputation credit account**

In section ME 1(2)(i), “section 24” is replaced by “section 266”.

### **286 Use of credit to reduce dividend withholding payment, or use of debit to satisfy income tax liability**

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

- “(5B) An election made in respect of a company (the **first company**) by the first company or any other company under section MF 5(4) for an income year is invalid to the extent that the total of all those elections and any other elections in respect of the first company under section MF 10(4) for the year is greater than an amount calculated for the first company for the year using the formula in section MF 4(1)(a) (but treating item e as nil).
- “(5C) An amount of election that is invalid under subsection (5B)—
- “(a) is not recorded as a credit in the branch equivalent tax account of the company that makes the election:
  - “(b) is not an amount of debit balance in respect of which the election is made:
  - “(c) does not relate to the election.”
- (2) Subsection (1) applies for a person for the 1997–98 and later income years, unless the person has, for the relevant income year, taken a tax position in a return of income furnished to the Commissioner before 17 May 2007 that ignores the existence of subsection (1).
- (3) If subsection (1) does not apply to a person for an income year because of subsection (2), the person may treat subsection (1) as not existing.

**287 Use of consolidated group credit to reduce dividend withholding payment or use of group or individual debit to satisfy income tax liability**

- (1) After section MF 10(4), the following is inserted:
- “(4B) An election made in respect of a consolidated group under section MF 10(3) by any company described in section MF 10(3)(a) to (c) for an income year is invalid to the extent that the total of all those elections is greater than an amount calculated for the consolidated group for the year using the formula in section MF 8(2)(a) (but treating item e as nil).
- “(4C) An election made in respect of a company (the **first company**) by any consolidated group under section MF 10(4) for an income year is invalid to the extent that the total of all those elections and any other elections in respect of the first company under section MF 5(4) for the year is greater than an amount calculated for the first company for the year using the formula in section MF 4(1)(a) (but treating item e as nil).

- “(4D) An amount of election that is invalid under subsections (4B) or (4C)—
- “(a) is not recorded as a credit in the branch equivalent tax account of the company or consolidated group (as the case may be) that makes the election:
  - “(b) is not an amount of debit balance in respect of which the election is made:
  - “(c) does not relate to the election.”
- (2) Subsection (1) applies for a person for the 2005–06 and later income years, unless the person has, for the relevant income year, taken a tax position in a return of income furnished to the Commissioner before 17 May 2007 that ignores the existence of subsection (1).
- (3) If subsection (1) does not apply to a person for an income year because of subsection (2), the person may treat subsection (1) as not existing.

## 288 Definitions

- (1) This section amends section OB 1.
- (2) After the definition of **New Zealand tax**, the following is inserted:
- “**Niue International Trust Fund** means the trust governed by the Deed concerning the Niue International Trust Fund dated 25 October 2006 and signed by Her Majesty the Queen in right of New Zealand and the Governments of Niue and Australia”.
- (3) In the definition of **taxable bonus issue**, paragraph (b) is replaced by the following:
- “(b) any bonus issue that the company elects in accordance with section CF 8(a) (or with section 3(3)(a)(i) of the Income Tax Act 1976) to be a bonus issue that will be treated as a dividend for the purposes of this Act, if the bonus issue—
- “(i) is issued fully paid from the reserves of the company:
  - “(ii) would not be exempt income under section CB 10(2) to (5), if a dividend:”.
- (4) After the definition of **timing regime**, the following is inserted:

“**Tokelau International Trust Fund** means the trust governed by the Deed concerning the Tokelau International Trust Fund dated 10 November 2004 and signed by Her Majesty the Queen in right of New Zealand and the Government of Tokelau”.

- (5) Subsection (3) applies for an issue of shares made on or after 16 November 2004.

### *Taxation Review Authorities Act 1994*

#### **289 Taxation Review Authorities Act 1994**

Sections 290 and 291 amend the Taxation Review Authorities Act 1994.

#### **290 New section 22B inserted**

After section 22, the following is inserted:

##### **“22B Power to order costs for filing fees**

An Authority may order the Commissioner to pay to an objector or a disputant an amount of costs not more than the filing fee paid by the objector or disputant under the relevant regulation.”

#### **291 Regulations**

In section 30(2)(d), “this Act.” is replaced by “this Act.”, and the following is added:

- “(e) prescribing the circumstances in which any fees paid or to be paid in respect of the filing of any proceedings brought under this Act may be refunded, remitted, or waived, in whole or in part.”

### *Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006*

#### **292 Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006**

Sections 18, 19, 26, 47, 49, 127, 192, 215, and 216 of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 are repealed.

*Customs and Excise Act 1996***293 New sections 280J, 280K, and 280L inserted**

After section 280I of the Customs and Excise Act 1996, the following is inserted:

**“280J Defined terms for sections 280K and 280L**

In sections 280K and 280L, unless the context otherwise requires,—

“**Commissioner** means the Commissioner of Inland Revenue as defined in section 3(1) of the Tax Administration Act 1994

“**Department** means the Inland Revenue Department

“**financial support debt** means an amount owing to the Commissioner of—

“(a) financial support as defined in section 2 of the Child Support Act 1991:

“(b) a penalty or interest under the Child Support Act 1991

“**identifying information** means personal information that identifies an individual

“**officer of the Department** has the meaning given to it by section 3(1) of the Tax Administration Act 1994

“**serious default** means the state of having an amount of financial support debt due and owing to the Commissioner of Inland Revenue and satisfying criteria agreed by the Commissioner and the Privacy Commissioner in consultation with the Chief Executive.

**“280K Disclosure of arrival and departure information for purposes of Child Support Act 1991**

“(1) The purpose of this section is to facilitate the exchange of information between the Customs and the Department for the purpose of assisting the Commissioner to—

“(a) locate any person who is in serious default in the payment of any financial support debt; and

“(b) take appropriate debt recovery action against that person.

“(2) For the purpose of this section, the Commissioner may supply any identifying information to the Chief Executive.

“(3) If, in relation to a person who is in serious default, identifying information is supplied in accordance with subsection (2), the

Chief Executive may compare that information with any arrival and departure information held by the Customs that may relate to that person.

- “(4) If the Customs has arrival or departure information relating to a person who is in serious default, the Chief Executive may, for the purpose of this section, supply to the Commissioner any of the following information held by the Customs:
- “(a) the person’s name:
  - “(b) the person’s date of birth:
  - “(c) the person’s tax file number:
  - “(d) the time and date on which the person arrived in New Zealand or, as the case may be, departed from New Zealand:
  - “(e) information provided by the person when arriving in New Zealand or, as the case may be, departing from New Zealand.
- “(5) The Chief Executive and the Commissioner may, for the purpose of this section, determine by written agreement between them—
- “(a) the frequency with which information may be supplied:
  - “(b) the form in which information may be supplied:
  - “(c) the method by which information may be supplied.

**“280L Direct access to arrival and departure information for purposes of Child Support Act 1991**

- “(1) The purpose of this section is to facilitate the Department’s access to information stored in a database for the purpose of assisting the Commissioner to—
- “(a) locate any person who is in serious default in the payment of any financial support debt:
  - “(b) take appropriate debt recovery action against that person.
- “(2) The Chief Executive may, for the purpose of this section, allow the Commissioner to access a database in accordance with a written agreement entered into by the Chief Executive and the Commissioner.
- “(3) In accessing a database for the purpose of this section, the Commissioner—

- “(a) may only search for arrival or departure information relating to preselected persons who are of interest to the Commissioner; and
  - “(b) must not search for—
    - “(i) any information other than arrival or departure information;
    - “(ii) any information about a person who is not in serious default.
- “(4) The Commissioner must take all reasonable steps to ensure that—
- “(a) only persons with appropriate powers delegated to them by the Commissioner—
    - “(i) have access to the database; and
    - “(ii) use the database; and
  - “(b) a record is kept of—
    - “(i) every occasion on which persons access a database; and
    - “(ii) the reason for accessing the database; and
    - “(iii) the identity of the person who accessed the database; and
  - “(c) every person who accesses a database for the purpose of this section complies with subsection (3).
- “(5) In this section,—
- “**access a database** includes remote access to a database
  - “**database** means any information recording system used by the Customs to store arrival or departure information.”

### *Health (Drinking Water) Amendment Act 2007*

#### **294 New Part 2A inserted**

In section 7 of the Health (Drinking Water) Amendment Act 2007, in section 69H(3)(a), “section OB 1 of the Income Tax Act 2004” is replaced by “section YA 1 of the Income Tax Act 2007”.

*Housing Restructuring and Tenancy Matters Act 1992*

**295 Amendments to Housing Restructuring and Tenancy  
Matters Act 1992 made in schedule 2**

The amendments to the Housing Restructuring and Tenancy Matters Act 1992 specified in schedule 2 are made in the manner shown in that schedule.

*Privacy Act 1993*

**296 Privacy Act 1993**

Sections 297 and 298 amend the Privacy Act 1993.

**297 Notice of adverse action proposed**

After section 103(1B), the following is inserted:

“(1C) Nothing in subsection (1) prevents the Commissioner of Inland Revenue from immediately taking action to recover amounts relating to financial support under the Child Support Act 1991 owed to the Commissioner by an individual who is identified in information supplied to the Commissioner under section 280K or 280L of the Customs and Excise Act 1996.”

**298 Schedule 3—Information matching provisions**

In schedule 3, in the entry for the Customs and Excise Act 1996, “, 280K, 280L” is added after “280D”.

*Rates Rebate Act 1973*

**299 Amendments to Rates Rebate Act 1973 made in schedule  
2**

The amendments to the Rates Rebate Act 1973 specified in schedule 2 are made in the manner shown in that schedule.

*Social Security Act 1964*

**300 Amendments to Social Security Act 1964 made in  
schedule 2**

The amendments to the Social Security Act 1964 specified in schedule 2 are made in the manner shown in that schedule.

***Goods and Services Tax (Grants and Subsidies) Order 1992***

**301 Schedule—Goods and Services Tax (Grants and Subsidies) Order 1992**

(1) The following is added to the schedule of the Goods and Services Tax (Grants and Subsidies) Order 1992:

“6 The Commissioner of Inland Revenue crediting, transferring, refunding, dealing with, or otherwise paying, a person’s tax credit under the Income Tax Act 2007 or the Tax Administration Act 1994, if that tax credit is one which the person has under section LH 2 of the Income Tax Act 2007.”

(2) Subsection (1) applies for the 2008–09 and later income years.

***Health Entitlement Cards Regulations 1993***

**302 Amendments to Health Entitlement Cards Regulations 1993 made in schedule 2**

The amendments to the Health Entitlement Cards Regulations 1993 specified in schedule 2 are made in the manner shown in that schedule.

***Income Tax (Withholding Payments) Regulations 1979***

**303 Schedule—Tax deductions from withholding payments**

The following is added to the schedule of the Income Tax (Withholding Payments) Regulations 1979:

**“Part F**

Class of payment	Rate of tax deduction
A personal service rehabilitation payment for a claimant under the Injury Prevention, Rehabilitation, and Compensation Act 2001”.	15c per \$1

***Social Security (Temporary Additional Support) Regulations 2005***

**304 Amendments to Social Security (Temporary Additional Support) Regulations 2005 made in schedule 2**

The amendments to the Social Security (Temporary Additional Support) Regulations 2005 specified in schedule 2 are made in the manner shown in that schedule.

*Student Allowances Regulations 1998***305 Amendments to Student Allowances Regulations 1998  
made in schedule 2**

The amendments to the Student Allowances Regulations 1998 specified in schedule 2 are made in the manner shown in that schedule.

*Amendments to Income Tax Act 2007***306 Income Tax Act 2007**

Sections 307 to 562 amend the Income Tax Act 2007.

**307 Commencement**

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

*“Charitable entities*

“(1B) Despite subsection (1), sections CW 41(2) and CW 42(1)(b) come into force on 1 July 2008.”

**308 Withholding liabilities**

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

*“Retirement scheme contributions*

“(5B) A person who makes a retirement scheme contribution to a retirement savings scheme must pay RSCT under the RSCT rules.”

- (2) In section BE 5, in the list of defined terms, “retirement savings scheme”, “retirement scheme contribution”, “RSCT”, and “RSCT rules” are inserted.

**309 Disposal: amount from major development or division  
and not already in income**

Section CB 13(2) is replaced by the following:

*“Exclusions*

- “(2) Subsection (1) is overridden by the exclusions for residential land in section CB 17, for business premises in section CB 20, for farm land in section CB 21, and for investment land in section CB 23.”

**310 Residential exclusion from sections CB 12 and CB 13**

In section CB 17(1), in the words before paragraph (a), “Section CB 12 does” is replaced by “Sections CB 12 and CB 13 do”.

**311 Business exclusion from section CB 12**

- (1) In the heading to section CB 20, “**section CB 12**” is replaced by “**sections CB 12 and CB 13**”.
- (2) In section CB 20, in the words before paragraph (a), “Section CB 12 does” is replaced by “Sections CB 12 and CB 13 do”.

**312 Investment exclusion from section CB 12**

- (1) In the heading to section CB 23, “**section CB 12**” is replaced by “**sections CB 12 and CB 13**”.
- (2) In section CB 23, in the words before paragraph (a), “Section CB 12 does” is replaced by “Sections CB 12 and CB 13 do”.

**313 New section CB 23B added**

After section CB 23, the following is added:

**“CB 23B Land partially sold or sold with other land**

Sections CB 6 to CB 23 apply to an amount derived from the disposal of land if the land is—

- “(a) part of the land to which the relevant section applies:
- “(b) the whole of the land to which the relevant section applies:
- “(c) disposed of together with other land.

“Defined in this Act: amount, dispose, land

Compare: 2004 No 35 s CB 5A”.

**314 Certain disposals by portfolio investment entities**

Section CB 26 is replaced by the following:

**“CB 26 Certain disposals by portfolio investment entities**

*“When this section applies*

- “(1) This section applies when—
  - “(a) a portfolio investment entity or the New Zealand Superannuation Fund (the **entity**) disposes of a share in a company; and

- “(b) section CX 55 (Proceeds from certain disposals by portfolio investment entities or New Zealand Superannuation Fund) applies to the income from the disposal; and
- “(c) a dividend from the share is—
  - “(i) declared before the disposal; and
  - “(ii) paid to a holder of the share who, after the disposal, becomes entitled to the dividend.

“*Income*

- “(2) The entity is treated as deriving an amount calculated using the formula—  

$$(\text{declaration shares} - \text{distribution shares}) \times \text{distribution.}$$

“*Definition of items in formula*

- “(3) In the formula,—
  - “(a) **declaration shares** is the number of shares held by the entity when the dividend is declared:
  - “(b) **distribution shares** is the number of shares for which the entity derives a dividend:
  - “(c) **distribution** is,—
    - “(i) for a share issued by a company that has an imputation credit account, the amount of the dividend that is not fully imputed as described in section RF 9(2) (When dividends fully imputed or fully credited); or
    - “(ii) otherwise, the amount of the dividend.

“*Positive result*

- “(4) The amount calculated using the formula must be more than zero.

“Defined in this Act: amount, company, dividend, imputation credit account, income, portfolio investment entity, share

Compare: 2004 No 35 s CB 4B”.

### 315 Foreign investment fund income

- (1) Section CD 36(b) is replaced by the following:
  - “(b) the person calculates their foreign investment fund (FIF) income or loss in relation to the interest and the period in which the amount is paid under—
    - “(i) the comparative value method:

- “(ii) the deemed rate of return method:
- “(iii) the cost method:
- “(iv) the fair dividend rate method; and
- “(c) for a calculation under paragraph (b)(iv),—
  - “(i) the FIF is not a grey list company:
  - “(ii) the person does not hold a direct income interest of 10% or more in the FIF at the beginning of the income year in which the period falls.”
- (2) In section CD 36, in the list of defined terms, “grey list company” and “income year” are inserted.

**316 Available subscribed capital (ASC) amount**

In section CD 43(27)(b), “dividend” is replaced by “dividend (section OZ 13 (Fully credited dividends: modifying actual ratio) may apply to modify this paragraph)”.

**317 When does person have attributed repatriation from controlled foreign company?**

In section CD 45(1)(b), “EX 16” is replaced by “EX 17”.

**318 Prevention of double taxation of share cancellation dividends**

In section CD 53(5)(b), “RSCT,” is inserted before “RWT,”.

**319 Tax credits added to caregiver’s income**

Section CE 12 is replaced by the following:

**“CE 12 Tax credits for personal service rehabilitation payments**

*“When this section applies*

- “(1) This section applies when a person has a tax credit in a tax year under section LB 7 (Tax credits related to personal service rehabilitation payments: providers).

*“Income*

- “(2) An amount equal to the credit is income of the person in the corresponding income year.

*“Defined in this Act: amount, corresponding income year, income, income year, personal service rehabilitation payment, tax credit, tax year*

*Compare: 2004 No 35 s CE 12”.*

**320 Benefits, pensions, compensation, and government grants**

- (1) Section CF 1(2)(g) is replaced by the following:  
“(g) a personal service rehabilitation payment for a person under the Injury Prevention, Rehabilitation, and Compensation Act 2001.”
- (2) In section CF 1, in the list of defined terms, “personal service rehabilitation payment” is inserted.

**321 Adjustments under consecutive or successive finance leases**

Section CH 6 is replaced by the following:

**“CH 6 Adjustments for certain finance and operating leases**

*“When this section applies*

- “(1) This section applies when an adjustment is made under section FA 11 or FA 11B (which relate to adjustments for leases that become finance leases and certain operating leases).

*“Income: leases that become finance leases*

- “(2) The amount of a positive adjustment under section FA 11 is income of the lessor or the lessee, as applicable, in the income year in which the lease becomes a finance lease.

*“Income: operating leases entered into before 20 June 2007*

- “(3) The amount of the adjustment under section FA 11B is income of the lessor in the income year after the income year in which 20 June 2007 falls.

*“Defined in this Act: amount, finance lease, income, income year, lease, operating lease*

Compare: 2004 No 35 ss FC 8H(6), FC 8I(6)”.

**322 When FIF income arises**

- (1) In section CQ 5(1)(d) and (e), “any time during the year” is replaced by “any time in the year” in each place in which it appears.
- (2) After section CQ 5(1), the following is inserted:

*“Treatment of transaction under section EX 63, EX 65, or EX 67*

“(1B) If a person is treated under section EX 63(5), EX 65, or EX 67 (which relate to changes in method or application of FIF rules) as disposing of or acquiring rights in an income year, the disposal or acquisition is ignored for the purposes of subsection (1)(d) and (e).”

### **323 New section CQ 7 added**

After section CQ 6, the following is added:

#### **“CQ 7 Treatment of attributing interests subject to returning share transfer**

If an attributing interest in a FIF is an original share subject to a returning share transfer, for the purposes of a person using the fair dividend rate method to calculate FIF income or loss, the attributing interest is treated as held by the share supplier.

“Defined in this Act: attributing interest, fair dividend rate method, FIF income, original share, returning share transfer, supplier

Compare: 2004 No 35 s EX 44B(5)”. ”

### **324 Withdrawals**

In section CS 1(6), “RSCT,” is inserted before “RWT,”.

### **325 Exclusions of withdrawals of various kinds**

Section CS 2(5) is repealed.

### **326 Meaning of petroleum miner**

(1) Section CT 6(1), other than the heading, is replaced by the following:

“(1) **Petroleum miner**, for a permit area, means a person who undertakes petroleum mining operations in the permit area.”

(2) In section CT 6(2), in the words before paragraph (a), “an activity described in subsection (3)” is replaced by “petroleum mining operations”.

(3) Section CT 6(3) and (4) are repealed.

(4) In section CT 6, in the list of defined terms,—

(a) “petroleum mining operations” is inserted:

(b) “removal or restoration operations” is omitted.

**327 New section CT 6B inserted**

After section CT 6, the following is inserted:

**“CT 6B Meaning of petroleum mining operations**

*“Meaning*

- “(1) **Petroleum mining operations** means an activity included in those described in subsection (2) and not excluded by subsection (3).

*“Activities: inclusions*

- “(2) The activities are those carried out in connection with—
- “(a) prospecting or exploring for petroleum:
  - “(b) developing a permit area for producing petroleum:
  - “(c) producing petroleum:
  - “(d) processing, storing, or transmitting petroleum before its dispatch to a buyer, consumer, processor, refinery, or user:
  - “(e) removal or restoration operations.

*“Activities: exclusions*

- “(3) The activities do not include further treatment to which all the following apply:
- “(a) it occurs after the well stream has been separated and stabilised into crude oil, condensate, or natural gas; and
  - “(b) it is done—
    - “(i) by liquefaction or compression; or
    - “(ii) for the extraction of constituent products; or
    - “(iii) for the production of derivative products; and
  - “(c) it is not treatment at the production facilities.

“Defined in this Act: permit area, petroleum, removal or restoration operations  
Compare: 2004 No 35 s CT 6B”.

**328 Proceeds of share disposal by qualifying foreign equity investor**

- (1) In section CW 12(4), in the definition of **foreign exempt entity**,—
- (a) paragraph (c) is replaced by the following:
  - “(c) under the laws of the territory, or part of the territory, is not subject to a tax on income other than as a body that handles income of the members; and”:

- (b) in paragraph (f)(iii), “taxation laws” is replaced by “laws” in all places in which it appears:
  - (c) in paragraph (f)(iii), “subparagraph (ii)” is replaced by “subparagraph (ii); and” and the following is added:
    - “(g) does not have a holder of a direct or indirect interest in the capital of the legal entity who,—
      - “(i) is resident in New Zealand:
      - “(ii) when treated as holding the voting interests of a person associated under the 1990 version provisions with the resident, holds a voting interest of 10% or more”.
- (2) In section CW 12(4), in the definition of **foreign exempt partnership**,—
- (a) paragraph (c) is replaced by the following:
    - “(c) under the laws of the territory, or part of the territory, is not subject to a tax on income other than as a body that handles income of the members; and”:
  - (b) in paragraph (h)(ii), “taxation laws” is replaced by “laws” in all places in which it appears:
  - (c) in paragraph (h)(ii), “subparagraph (i)” is replaced by “subparagraph (i); and” and the following is added:
    - “(i) does not have a holder of a direct or indirect interest in the capital of the legal entity who,—
      - “(i) is resident in New Zealand:
      - “(ii) when treated as holding the voting interests of a person associated under the 1990 version provisions with the resident, holds a voting interest of 10% or more”.
- (3) In section CW 12(4), in the definition of **foreign exempt person**,—
- (a) paragraph (d) is replaced by the following:
    - “(d) under the laws of the territory, or part of the territory, derives the proceeds from a disposal of shares or options that are held by the person; and”:
  - (b) in paragraph (e)(ii), “taxation laws” is replaced by “laws” in all places in which it appears:
  - (c) in paragraph (e)(ii), “subparagraph (i)” is replaced by “subparagraph (i); and” and the following is added:
    - “(f) does not have a holder of a direct or indirect interest in the capital of the legal entity who,—

- “(i) is resident in New Zealand:
  - “(ii) when treated as holding the voting interests of a person associated under the 1990 version provisions with the resident, holds a voting interest of 10% or more”.
- (4) In section CW 12(5)(a) and (b), are replaced by the following:
- “(a) under a double tax agreement that is in force between New Zealand and the territory, if there is an agreement and it provides for the residency of the person; or
  - “(b) otherwise, under the laws of the territory.”

### **329 Payment to claimant of certain accident compensation payments**

Section CW 35, together with its heading, is replaced by the following:

#### **“CW 35 Personal service rehabilitation payments**

An amount paid to a person for an income year as a personal service rehabilitation payment is exempt income of the person if—

- “(a) they are paid the amount under the Injury Prevention, Rehabilitation, and Compensation Act 2001; and
- “(b) they pay an amount to another person for providing them in the income year a key aspect of social rehabilitation referred to in the definition of **personal service rehabilitation payment**; and
- “(c) the amount paid is equal to or more than the amount of personal service rehabilitation payment for the income year after taking into account any amount of tax withheld.

“Defined in this Act: amount, amount of tax, exempt income, income year, pay, personal service rehabilitation payment

Compare: 2004 No 35 s CW 28B”.

### **330 Local authorities**

Section CW 39(4)(c)(i) is replaced by the following:

- “(i) a council-controlled organisation, other than a council-controlled organisation operating a hospital as a charitable activity on behalf of the local authority; or”.

**331 Charities: non-business income**

Section CW 41(4), other than the heading, is replaced by the following:

- “(4) This section does not apply to an amount of income derived by—
- “(a) a council-controlled organisation, other than a council-controlled organisation operating a hospital as a charitable activity:
  - “(b) a local authority from a council-controlled organisation, other than from a council-controlled organisation operating a hospital as a charitable activity on behalf of the local authority.”

**332 Charities: business income**

Section CW 42(2), other than the heading, is replaced by the following:

- “(2) This section does not apply to an amount of income derived by—
- “(a) a council-controlled organisation, other than a council-controlled organisation operating a hospital as a charitable activity:
  - “(b) a local authority from a council-controlled organisation, other than from a council-controlled organisation operating a hospital as a charitable activity on behalf of the local authority.”

**333 New section CW 59B inserted**

After section CW 59, the following is inserted:

**“CW 59B Income of and distributions by certain international funds***“Trustees*

- “(1) An amount derived by a person is exempt income of the person if they are—
- “(a) the trustee of the Niue International Trust Fund:
  - “(b) the trustee of the Tokelau International Trust Fund.

*“Distributions*

- “(2) An amount derived by a person is exempt income of the person if the income is a distribution by—

- “(a) the trustee of the Niue International Trust Fund:
- “(b) the trustee of the Tokelau International Trust Fund.

“Defined in this Act: amount, distribution, exempt income, income, Niue International Trust Fund, Tokelau International Trust Fund, trustee

Compare: 2004 No 35 ss CW 49C, CW 49D”.

### 334 New section CX 50B inserted

After section CX 50, the following is inserted:

#### “CX 50B Contributions to retirement savings schemes

“*Excluded income*

- “(1) A retirement scheme contribution is excluded income of a person if they are—
  - “(a) the person for whose benefit the contribution is made to the extent to which the contribution is an amount of—
    - “(i) money:
    - “(ii) an imputation credit or a Maori authority credit that is used to meet the liability of the retirement scheme contributor for RSCT on the contribution:
  - “(b) the retirement savings scheme.

“*Exclusions*

- “(2) Subsection (1)(a) does not apply if the person for whose benefit the contribution is made—
  - “(a) is non-resident, and the contribution is non-resident passive income:
  - “(b) supplies to the retirement scheme contributor or the retirement savings scheme, a tax rate applying to the amount of tax withheld that is less than the retirement scheme prescribed rate for the person:
  - “(c) includes the amount of the contribution in a return of income for the income year in which the contribution is made.

“Defined in this Act: excluded income, income year, non-resident, non-resident passive income, retirement savings scheme, retirement scheme contribution, retirement scheme contributor, retirement scheme prescribed rate, return of income

Compare: 2004 No 35 s CX 42B”.

**335 Proceeds from certain disposals by portfolio investment entities or New Zealand Superannuation Fund**

(1) Section CX 55(1) is replaced by the following:

*“What this section applies to*

“(1) This section applies to an amount of income derived by an entity referred to in subsection (1B) from the disposal of a share, other than a non-participating redeemable share, issued by a company—

“(a) resident in New Zealand and not treated under a double tax agreement as not resident in New Zealand; or

“(b) resident in Australia and not treated as resident in a country other than Australia under an agreement that—

“(i) is between Australia and that other country; and

“(ii) would be a double tax agreement if negotiated between New Zealand and that other country.

*“Entities*

“(1B) The entities referred to in subsection (1) are—

“(a) a portfolio investment entity;

“(b) the New Zealand Superannuation Fund;

“(c) a life insurer in relation to that part of the life insurer that is a portfolio investment-linked life fund.

*“When this section does not apply*

“(1C) This section does not apply if the entity is assured, under an arrangement with another person, of having a gain on the disposal.”

(2) In section CX 55(2), “or life insurer” is inserted after “Fund”.

(3) In section CX 55, in the list of defined terms, “portfolio investment-linked life fund” is inserted.

**336 Portfolio investor allocated income and distributions of income by portfolio investment entities**

(1) Section CX 56(1) is replaced by the following:

*“Portfolio investor allocated income*

“(1) Portfolio investor allocated income derived under section CP 1 (Portfolio investor allocated income) in a portfolio calculation period in an income year by an investor in a portfolio tax rate entity is excluded income of the investor if—

- “(a) the prescribed investor rate for the investor and the portfolio calculation period is more than zero; and
  - “(b) the prescribed investor rate for the investor and the portfolio calculation period is not more than the portfolio investor rate for the investor and the portfolio calculation period when the entity calculates in relation to the portfolio investor allocated income—
    - “(i) the portfolio entity tax liability of the entity; or
    - “(ii) the amount of a payment under section HL 25 (Optional payments of tax by portfolio tax rate entities) that the entity intends to be a final payment of the portfolio entity tax liability of the entity in relation to the portfolio investor allocated income; and
  - “(c) for a portfolio tax rate entity making payments of tax under section HL 22 (Payments of tax by portfolio tax rate entity making no election), the portfolio investor allocated income is not allocated to a portfolio allocation period that includes part of a portfolio investor exit period for the investor.”
- (2) In section CX 56(2), “distribution by” is replaced by “distribution or dividend of”.
  - (3) In section CX 56(3), in the words before paragraph (a), “distribution by” is replaced by “distribution or dividend of”.
  - (4) Section CX 56(3)(a)(i) is replaced by the following:
    - “(i) is a natural person or a trustee; and”.
  - (5) In section CX 56, in the list of defined terms, “dividend” is inserted.

### **337 Cost of revenue account property**

- (1) Section DB 23(2)(a) is replaced by the following:
  - “(a) the person is a portfolio investment entity or a life insurer in relation to that part of the life insurer that is a portfolio investment-linked life fund; and”.
- (2) In section DB 17, in the list of defined terms, “portfolio investment-linked life fund” is inserted.

**338 Research or development**

- (1) Section DB 34(2), “paragraph 5.1 or 5.2 of the reporting standard” is replaced by “paragraph 68(a) of the reporting standard, applying, for the purposes of that paragraph, paragraphs 54 to 67 of the reporting standard”.
- (2) Section DB 34(3) is repealed.
- (3) In section DB 34(4)(a), “of paragraph 2.3 of the reporting standard” is replaced by “it is an amount written off as an immaterial amount for financial reporting purposes”.
- (4) Section DB 34(4)(b) is replaced by the following:
  - “(b) would be required, if the expenditure were material, to recognise it for financial reporting purposes under paragraph 68(a) of the reporting standard, applying, for the purposes of that paragraph, paragraphs 54 to 67 of the reporting standard.”
- (5) Section DB 34(5)(b) is replaced by the following:
  - “(b) has written off the expenditure as an immaterial amount for financial reporting purposes; and”.

**339 Some definitions**

Section DB 35(1), other than the heading, is replaced by the following:

- “(1) In this section, and in section DB 34,—
  - “**development** is defined in paragraph 8 of the reporting standard
  - “**reporting standard** means the New Zealand Equivalent to International Accounting Standard 38, approved by the Accounting Standards Review Board, as amended from time to time, or an equivalent standard issued in its place
  - “**research** is defined in paragraph 8 of the reporting standard.”

**340 Charitable or other public benefit gifts by company**

- (1) Section DB 41(1) is repealed.
- (2) In section DB 41(2),—
  - (a) “The company” is replaced by “A company”.

- (b) “described in section LD 3(2) (Meaning of charitable or other public benefit gift) or” is inserted after “any of the kinds”.
- (3) In section DB 41(3), “5% of” is omitted.

### **341 New heading and new section DB 51B inserted**

After section DB 51, the following is inserted:

#### *“Adjustments for leases that become finance leases*

##### **“DB 51B Adjustments for leases that become finance leases**

*“When this section applies*

- “(1) This section applies when an adjustment made under section FA 11 (Adjustments for leases that become finance leases) is negative.

*“Deduction*

- “(2) The amount of the adjustment is a deduction of the lessor or the lessee, as applicable, in the income year in which the lease becomes a finance lease.

*“Link with subpart DA*

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

*“Defined in this Act: deduction, finance lease, general limitation, general permission, income year, lease*

*Compare: 2004 No 35 s FC 8H(7)”*

### **342 Portfolio investment entities: zero-rated portfolio investors and allocated losses**

- (1) In section DB 53(2)(a), “or HL 23 (Payments of tax by portfolio tax rate entity choosing to pay provisional tax)” is omitted.
- (2) In section DB 53(2)(a), “the end of the portfolio calculation period” is replaced by “the end of the portfolio tax rate entity’s income year”.
- (3) In section DB 53, in the compare note, “DB 17” is replaced by “DB 43B”.

**343 Accident compensation payment for attendant care**

Section DF 4 is replaced by the following:

**“DF 4 Payments for social rehabilitation**

*“When this section applies*

- “(1) This section applies when a person is paid under the Injury Prevention, Rehabilitation, and Compensation Act 2001 a personal service rehabilitation payment for an income year and the amount is assessable income of the person.

*“Deduction*

- “(2) The person is allowed a deduction for an amount calculated using the formula—

$$\frac{\text{amount paid}}{1 - \text{tax rate.}}$$

*“Definitions of items in formula*

- “(3) In the formula,—
- “(a) **amount paid** is the amount paid by the person for a key aspect of social rehabilitation provided to them for the income year, to the extent to which the amount is less than the amount of personal service rehabilitation payment paid to them for the income year after taking into account any amount of tax withheld:
- “(b) **tax rate** is the rate of tax applying to the personal service rehabilitation payment under schedule 4, part H, clause 1 (Rates of tax for schedular payments).

*“Link with subpart DA*

- “(4) This section supplements the general permission and overrides the capital limitation and private limitation for the amount described in subsection (2). The other general limitations still apply.

*“Defined in this Act: amount, amount of tax, assessable income, capital limitation, general limitation, general permission, income year, pay, personal service rehabilitation payment, private limitation, tax*

Compare: 2004 No 35 s DF 4”.

**344 When FIF loss arises**

- (1) In section DN 6(1)(d), “at any time during the income year” is replaced by “at any time in the year”.

- (2) In section DN 6(1)(e), “at any time during the year” is replaced by “at any time in the year”.
- (3) After section DN 6(1) the following is inserted:  
*“Treatment of transaction under section EX 63, EX 65, or EX 67*  
“(1B) If a person is treated under section EX 63(5), EX 65 or EX 67 (which relate to changes in method or application of FIF rules) as disposing of or acquiring rights in an income year, the disposal or acquisition is ignored for the purposes of subsection (1)(d) and (e).”

### **345 Acquiring film rights**

- (1) In section DS 1(2)(c), “expenditure.” is replaced by “expenditure; or” and the following is added:  
“(c) section DS 2B applies to the expenditure.”
- (2) In section DS 1(4), “any other provision of this Act” is replaced by “a provision of this Act other than section DS 2B”.

### **346 Film production expenditure**

- (1) Section DS 2(3) and (4) are replaced by the following:  
*“Exclusion*  
“(3) This section does not apply to film production expenditure if the film—
  - “(a) is produced mainly for broadcast in New Zealand by a person who operates a television station, a television network, or a cable television system:
  - “(b) is intended to be shown as an advertisement:
  - “(c) section DS 2B applies to the film production expenditure.  
*“Timing of deduction*  
“(4) The deduction is allocated under—
  - “(a) section EJ 4 (Expenditure incurred in acquiring film rights in feature films) or EJ 5 (Expenditure incurred in acquiring film rights in films other than feature films) if the film is one for which a large budget screen production grant is made; or

- “(b) section EJ 7 (Film production expenditure for New Zealand films having no large budget screen production grant) or EJ 8 (Film production expenditure for other films having no large budget screen production grant) if the film is not one for which a large budget screen production grant is made.”
- (2) In section DS 2(5), “any other provision of this Act” is replaced by “a provision of this Act other than section DS 2B”.

### 347 New section DS 2B inserted

After section DS 2, the following is inserted:

#### “DS 2B Expenditure when film or film right intended for disposal

*“When this section applies*

- “(1) This section applies when—
- “(a) a person incurs film production expenditure or expenditure in acquiring a film right; and
- “(b) at the time of incurring the expenditure, the person intends to dispose of the film or film right.

*“Deduction*

- “(2) The person is allowed a deduction for the amount of the expenditure allocated under section EA 2 (Other revenue account property).

*“Link with subpart DA*

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

“Defined in this Act: amount, capital limitation, deduction, film, film production expenditure, film right, general limitation, general permission

Compare: 2004 No 35 s DS 2B”.

### 348 Maori authorities: donations

- (1) In section DV 12(1)(b), “of any of the kinds listed in schedule 32 (Recipients of charitable or other public benefit gifts)” is replaced by “to which section LD 3(2) (Meaning of charitable

or other public benefit gift) or schedule 32 (Recipients of charitable or other public benefit gifts) applies”.

- (2) In section DV 12(2), “5% of” is omitted.

### **349 Cost**

- (1) In section EB 6(1), “or as described in subsection (1B)(b)” is inserted after “accounting practice”.

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

*“Valuation at cost: agricultural produce*

“(1B) Despite subsection (1), a person who uses NZIAS 41 for their trading stock in their financial statements must—

“(a) value their closing stock at cost; and

“(b) include and allocate costs so that the value of their closing stock is not materially different from the value of the closing stock obtained by applying NZIAS 2, ignoring paragraph 20 of NZIAS 2.”

- (3) In section EB 6(2), “Financial Reporting Standard No 4 (Accounting for Inventories) approved under the Financial Reporting Act 1993” is replaced by “NZIAS 2”.

- (4) After section EB 6(2), the following is inserted:

*“Definition*

“(3) In this section, **NZIAS 41** means New Zealand Equivalent to International Accounting Standard 41, approved by the Accounting Standards Review Board as amended from time to time, or an equivalent standard issued in its place.”

- (5) In section EB 6, in the list of defined terms, “NZIAS 2” and “NZIAS 41” are inserted.

### **350 Discounted selling price**

- (1) In section EB 9(3)(a), “Financial Reporting Standard No 4 (Accounting for Inventories) approved under the Financial Reporting Act 1993” is replaced by “NZIAS 2”.

- (2) In section EB 9, in the list of defined terms, “NZIAS 2” is inserted.

**351 Valuing closing stock consistently**

- (1) In section EB 12, “Financial Reporting Standard No 1 (Disclosure of Accounting Policies) approved under the Financial Reporting Act 1993” is replaced by “NZIAS 8”.
- (2) In section EB 12, in the list of defined terms, “NZIAS 8” is inserted.

**352 Discounted selling price for low-turnover traders**

- (1) In section EB 19(4)(a), “Financial Reporting Standard No 4 (Accounting for Inventories) approved under the Financial Reporting Act 1993” is replaced by “NZIAS 2”.
- (2) In section EB 19, in the list of defined terms, “NZIAS 2” is inserted.

**353 Valuing closing stock consistently for low-turnover traders**

- (1) In section EB 22(1), “Financial Reporting Standard No 1 (Disclosure of Accounting Policies) approved under the Financial Reporting Act 1983” is replaced by “NZIAS 8”.
- (2) In section EB 22, in the list of defined terms, “NZIAS 8” is inserted.

**354 Reduction: bloodstock not previously used for breeding in New Zealand**

- (1) In the heading to section EC 41, “**other than as shuttle stallions**” is added after “**New Zealand**”.
- (2) Section EC 41(1)(b) is replaced by the following:  
“(b) before a person (**person A**) acquired it, was not used for breeding in New Zealand by any other person.”
- (3) After section EC 41(1) the following is inserted:  
“*Further bloodstock to which this section applies*  
“(1B) This section also applies to bloodstock that, before person A acquired it, was used by another person for breeding in New Zealand if—  
“(a) the other person transferred the bloodstock to person A under a matrimonial agreement to which section FB 18 (Bloodstock) applies:

- “(b) the other person was a company in the same wholly-owned group as person A at the time person A acquired the bloodstock from the other person:
- “(c) the bloodstock is a stallion that, for each year in which the stallion was used for breeding in New Zealand before being acquired by person A, was—
  - “(i) owned by a non-resident; and
  - “(ii) removed from New Zealand after the breeding season; and
  - “(iii) not subject to a reduction under this section.”

**355 Valuation of excepted financial arrangements**

- (1) In section ED 1(6), “Financial Reporting Standard No 1 (Disclosure of Accounting Policies) approved under the Financial Reporting Act 1993” is replaced by “NZIAS 8”.
- (2) In section ED 1, in the list of defined terms, “NZIAS 8” is inserted.

**356 Special rate or provisional rate**

After section EE 35(3), the following is added:

*“Exception*

- “(4) Section FA 11B(7) (Adjustments for certain operating leases) overrides this section.”

**357 Meaning of adjusted tax value**

In section EE 55, the following is added as subsection (2):

*“Exception*

- “(2) Section FA 11B(6) (Adjustments for certain operating leases) overrides this section.”

**358 Meaning of annual rate**

After section EE 61(7), the following is added:

*“Exception*

- “(8) Section FA 11B(7) (Adjustments for certain operating leases) overrides this section.”

**359 Allocation of income and deductions by portfolio tax rate entity**

- (1) In the heading to section EG 3, “**income and deductions**” is replaced by “**income, deductions, and tax credits**”.
- (2) After section EG 3(2), the following is added:  
“*Tax credits*”
- “(3) A tax credit received by a portfolio tax rate entity is allocated to the portfolio allocation period under subsection (2) of the income year to which the credit relates.”
- (3) In section EG 3, in the list of defined terms, “tax credit” is inserted.

**360 Expenditure incurred in acquiring film rights in feature films**

Section EJ 4(1), other than the heading, is replaced by the following:

- “(1) A deduction for expenditure that a person incurs in acquiring a film right is allocated under this section if the film is a feature film and—
  - “(a) the deduction is allowed under section DS 1 (Acquiring film rights):
  - “(b) the deduction is allowed under section DS 2 (Film production expenditure) and the film is one for which a large budget screen production grant is made.”

**361 Expenditure incurred in acquiring film rights in films other than feature films**

Section EJ 5(1), other than the heading, is replaced by the following:

- “(1) A deduction for expenditure that a person incurs in acquiring a film right is allocated under this section if the film is not a feature film and—
  - “(a) the deduction is allowed under section DS 1 (Acquiring film rights):
  - “(b) the deduction is allowed under section DS 2 (Film production expenditure) and the film is one for which a large budget screen production grant is made.”

**362 Film production expenditure for New Zealand films**

- (1) In the heading to section EJ 7, “**having no large budget screen production grant**” is added after “**New Zealand films**”.
- (2) Section EJ 7(1), other than the heading, is replaced by the following:
  - “(1) A deduction under section DS 2 (Film production expenditure) for film production expenditure is allocated under this section if—
    - “(a) the film is not one for which a large budget screen production grant is made; and
    - “(b) the film has a final certificate under section EJ 6.”

**363 Film production expenditure for films other than New Zealand films**

- (1) The heading to section EJ 8 is replaced by “**Film production expenditure for other films having no large budget screen production grant**”.
- (2) Section EJ 8(1), other than the heading, is replaced by the following:
  - “(1) A deduction under section DS 2 (Film production expenditure) for film production expenditure is allocated under this section if—
    - “(a) the film is not one for which a large budget screen production grant is made; and
    - “(b) the film does not have a final certificate under section EJ 6.”

**364 What spreading methods do**

- (1) Before section EW 14(2)(a), the following is inserted:
  - “(aa) a method for IFRS, to which sections EW 15B to EW 15I relate; or”.
- (2) Section EW 14(2)(e) is repealed.

**365 What is included when spreading methods used**

- (1) In section EW 15(1)(a), “ignoring non-contingent fees; and” is replaced by “ignoring—”, and the following is added:

- “(i) non-contingent fees, if the relevant method is not the IFRS financial reporting method in section EW 15D:
  - “(ii) non-integral fees, if the relevant method is the IFRS financial reporting method in section EW 15D; and”.
- (2) In section EW 15(1)(b), “ignoring non-contingent fees; and” is replaced by “ignoring—”, and the following is added:
  - “(i) non-contingent fees, if the relevant method is not the IFRS financial reporting method in section EW 15D:
  - “(ii) non-integral fees, if the relevant method is the IFRS financial reporting method in section EW 15D; and”.
- (3) In section EW 15, in the list of defined terms, “IFRS” and “non-integral fee” are inserted.

### **366 New sections EW 15B to EW 15I inserted**

After section EW 15, the following is inserted:

#### **“EW 15B Applying IFRSs to financial arrangements**

*“When sections EW 15C to EW 15I apply*

- “(1) Sections EW 15C to EW 15I apply when a person who is a party to a financial arrangement uses IFRSs to prepare financial statements and to report for financial arrangements.

*“Certain methods available for use and certain mandatory*

- “(2) Sections EW 15C to EW 15I set out—
  - “(a) the methods available to the person to use for calculating and allocating income and expenditure under a financial arrangement:
  - “(b) the circumstances in which a person must use certain other methods.

*“Defined in this Act: financial arrangement, financial statements, IFRS, income*

Compare: 2004 No 35 s EW 15B

**“EW 15C Preparing and reporting methods**

*“Who this section applies to*

“(1) A person who uses IFRSs to prepare financial statements and to report for financial arrangements must use 1 of the following methods for the financial arrangement:

“(a) the IFRS financial reporting method in section EW 15D:

“(b) a determination alternative in section EW 15E:

“(c) the expected value method in section EW 15F:

“(d) the modified fair value method in section EW 15G.

*“Exclusions*

“(2) Subsection (1) does not apply in the circumstances set out in sections EW 15H and EW 15I.

“Defined in this Act: fair value method, financial arrangement, financial statements, IFRS

Compare: 2004 No 35 s EW 15B(6)

**“EW 15D IFRS financial reporting method**

*“General IFRS rules*

“(1) Under the IFRS financial reporting method, a person must allocate an amount to an income year under IFRS rules modified, as applicable, under subsection (2).

*“Modifications*

“(2) The allocation is modified as follows:

“(a) if the financial arrangement is a financial asset, an amount arising from an impaired credit adjustment under IFRSs is not allocated to an income year:

“(b) even though an amount arising from the use of the fair value method may be allocated to equity reserves under IFRSs, the amount must be allocated to an income year for tax purposes.

*“Meaning of impaired credit adjustment*

“(3) For the purposes of this section, **impaired credit adjustment** means—

- “(a) for a financial arrangement accounted for under the fair value method, the movement in fair value through the decline in credit quality of the arrangement:
- “(b) for a financial arrangement not accounted for under the fair value method, credit impairment adjustments made under IFRSs.

“Defined in this Act: amount, fair value method, IFRS, impaired credit adjustment, income year, tax

Compare: 2004 No 35 s EW 15C

### “EW 15E Determination alternatives

“*When this section applies*

- “(1) This section applies when—
  - “(a) a person chooses in a return of income to use a determination alternative to IFRS for a financial arrangement; and
  - “(b) the method is available under its terms for the person to use; and
  - “(c) the financial arrangement is not treated under IFRSs as a hedge of a financial arrangement (**financial arrangement A**), and—
    - “(i) section EW 15D applies or has applied to financial arrangement A; and
    - “(ii) the method used for financial arrangement A is or was the fair value method or a method that accounts for gains and losses related to the hedge.

“*General IFRS rules*

- “(2) The person must use 1 of the following methods modified, as applicable, under subsection (3):
  - “(a) *Determination G9C: Financial arrangements that are denominated in a currency other than New Zealand dollars: an expected value approach:*
  - “(b) *Determination G14B: Forward contracts for foreign exchange and commodities: an expected value approach:*
  - “(c) *Determination G27: Swaps:*
  - “(d) a determination made by the Commissioner under section 90AC(1)(bb) of the Tax Administration Act 1994:

- “(e) a method other than those set out in paragraphs (a) to (d) if the alternative—
  - “(i) has regard to the purposes of the financial arrangements rules under section EW 1(3); and
  - “(ii) is for a financial arrangement similar to 1 to which the methods set out in paragraphs (a) to (d) may apply; and
  - “(iii) results in the allocation to each income year of amounts that are not materially different from those that would have been allocated using 1 of the methods set out in paragraphs (a) to (d).

“*Modifications*

- “(3) For a determination alternative that is *Determination G9C or G14B*, the allocation is modified as follows:
  - “(a) the term **forward contract** is treated as including a conditional or unconditional agreement to pay or be paid an amount calculated by reference to the price of property or services, without the property being delivered or the services being performed:
  - “(b) a requirement that all companies in a group of companies to which the person belongs choose to use the determination alternative is treated as met if—
    - “(i) all companies in the group choose *Determination G9C or G14B* in writing on or before the 63rd day after the person enters into the financial arrangement, or a later time as the Commissioner allows; and
    - “(ii) the financial arrangement is the first financial arrangement of the group for which *Determination G9C or G14B* may be used.

“*Succeeding determinations*

- “(4) For the purposes of this section, the determinations set out in subsection (2)(a) to (c) include a determination that succeeds the determination.

“Defined in this Act: amount, company, financial arrangement, financial arrangements rules, group of companies, IFRS, income year, pay, return of income

Compare: 2004 No 35 s EW 15D

**“EW 15F Expected value method***“When this section applies***“(1) This section applies when—**

- “(a) a person has entered into a financial arrangement in the ordinary course of their business and the person is not in the business of dealing in relation to the financial arrangement; and**
- “(b) the financial arrangement is denominated in a currency other than New Zealand dollars or is a derivative instrument; and**
- “(c) the financial arrangement is not treated under IFRSs as a hedge of a financial arrangement (**financial arrangement A**), and—**
  - “(i) section EW 15D applies or has applied to financial arrangement A; and**
  - “(ii) the method used for financial arrangement A is or was the fair value method or a method that accounts for gains and losses related to the hedge; and**
- “(d) the person and all companies in a group of companies to which the person belongs have chosen to use the expected value method by notifying the Commissioner at the time of filing a return of income.**

*“Method chosen***“(2) The person must use a method that—**

- “(a) has the features of an expected value approach described in *Determinations G9C and G14B*; and**
- “(b) allocates a reasonable amount for each income year of the term of the financial arrangement, having regard to the purposes of the financial arrangements rules under section EW 1(3).**

*“Meaning of derivative instrument***“(3) For the purposes of this section and section EW 15G, **derivative instrument** has the same meaning as in NZIAS 39.**

“Defined in this Act: amount, business, Commissioner, company, derivative instrument, financial arrangement, financial arrangements rules, group of companies, IFRS, notify, return of income

Compare: 2004 No 35 s EW 15E(1), (2)

**“EW 15G Modified fair value method**

*“When this section applies*

“(1) This section applies when—

- “(a) a person has entered into a financial arrangement in the ordinary course of their business and the person is not in the business of dealing in relation to the financial arrangement; and
- “(b) the financial arrangement is denominated in a currency other than New Zealand dollars or is a derivative instrument; and
- “(c) the financial arrangement is not treated under IFRSs as a hedge of a financial arrangement (**financial arrangement A**), and—
  - “(i) section EW 15D applies or has applied to financial arrangement A; and
  - “(ii) the method used for financial arrangement A is or was the fair value method or a method that accounts for gains and losses related to the hedge; and
- “(d) the person and all companies in a group of companies to which the person belongs have chosen to use the fair value method by notifying the Commissioner at the time of filing a return of income.

*“Method chosen*

“(2) The person must use a method that is the fair value method under IFRSs. However an amount allocated to equity reserves under IFRSs must not be allocated to an income year.

“Defined in this Act: amount, business, Commissioner, company, derivative instrument, fair value method, financial arrangement, group of companies, IFRS, notify, return of income

Compare: 2004 No 35 s EW 15E(1), (3)

**“EW 15H Mandatory use of some determinations**

*“Required methods*

- “(1) Section EW 15C(1) does not apply when any of the following determinations apply to a person and a financial arrangement:
- “(a) *Determination G5C: Mandatory conversion convertible notes:*

- “(b) *Determination G22: Optional conversion convertible notes denominated in New Zealand dollars convertible at the option of the holder:*
- “(c) *Determination G22A: Optional convertible notes denominated in New Zealand dollars:*
- “(d) *Determination G29: Agreements for sale and purchase of property denominated in foreign currency: exchange rate to determine the acquisition price and method for spreading income and expenditure:*
- “(e) a method other than those set out in paragraphs (a) to (d) if the alternative—
  - “(i) has regard to the purposes of the financial arrangements rules under section EW 1(3); and
  - “(ii) is for a financial arrangement similar to 1 to which the methods set out in paragraphs (a) to (d) may apply; and
  - “(iii) results in the allocation to each income year of amounts that are not materially different from those that would have been allocated using 1 of the methods set out in paragraphs (a) to (d).

*“Succeeding determinations*

- “(2) For the purposes of this section, the determinations set out in subsection (1)(a), (c), and (d) include a determination that succeeds the determination.

“Defined in this Act: amount, financial arrangement, financial arrangements rules, income year

Compare: 2004 No 35 s EW 15B(3)

**“EW 15I Mandatory use of yield to maturity method for some arrangements**

*“When this section applies*

- “(1) This section applies and section EW 15C(1) does not apply when—
  - “(a) a person is not required to use a method under section EW 15H for a financial arrangement; and
  - “(b) the financial arrangement—
    - “(i) includes in part an excepted financial arrangement; or

- “(ii) is treated by the person or its issuer, all or in part, as an equity instrument under IFRSs; or
- “(iii) is an agreement for the sale and purchase of property or services.

“*Methods*

- “(2) The person must use 1 of the following methods to allocate an amount to an income year if the method is available under its terms for the person to use:
  - “(a) the yield to maturity method:
  - “(b) *Determination G26: Variable rate financial arrangements* or a determination that succeeds it:
  - “(c) a determination made by the Commissioner under section 90AC(1)(bb) of the Tax Administration Act 1994:
  - “(d) a method other than those set out in paragraphs (a) to (c) if the alternative—
    - “(i) has regard to the purposes of the financial arrangements rules under section EW 1(3); and
    - “(ii) is for a financial arrangement similar to 1 to which the methods set out in paragraphs (a) to (c) may apply; and
    - “(iii) results in the allocation to each income year of amounts that are not materially different from those that would have been allocated using 1 of the methods set out in paragraphs (a) to (c).

“*Meaning of equity instrument*

- “(3) For the purposes of this section, **equity instrument** has the same meaning as in NZIAS 32.

“Defined in this Act: agreement for the sale and purchase of property or services, amount, Commissioner, equity instrument, excepted financial arrangement, financial arrangement, financial arrangements rules, IFRS, income year, issue

Compare: 2004 No 35 s EW 15B(4)”.

**367 Yield to maturity method or alternative**

- (1) In section EW 16(1), “method” is replaced by “method, if the person is not required to use a method under section EW 15B”.

- (2) In section EW 16(2), in the words before paragraph (a), “method” is replaced by “method, if the person is not required to use a method under section EW 15B”.
- (3) In section EW 16, in the list of defined terms, “IFRS” is inserted.

### **368 Straight-line method**

- (1) In section EW 17(1)(b), “EW 25(1).” is replaced by “EW 25(1); and”, and the following is added:  
“(c) the person is not required to use a method under section EW 15B.”
- (2) In section EW 17, in the list of defined terms, “IFRS” is inserted.

### **369 Market valuation method**

- (1) In section EW 18(1)(f), “way.” is replaced by “way; and”, and the following is added:  
“(g) the person is not required to use a method under section EW 15B.”
- (2) In section EW 18, in the list of defined terms, “IFRS” is inserted.

### **370 Choice among first 3 spreading methods**

- (1) In the heading to section EW 19, “**first 3**” is replaced by “**some**”.
- (2) In section EW 19, “A person who” is replaced by “A person who is not required to use a method under section EW 15B and who”.
- (3) In section EW 19, in the list of defined terms, “IFRS” is inserted.

### **371 Determination method or alternative**

- (1) In section EW 20(1)(b)(ii), “do so.” is replaced by “do so; and”, and the following is added:  
“(c) the person is not required to use a method under section EW 15B.”
- (2) After section EW 20(2)(b), the following is inserted:

“(bb) the person is not required to use a method under section EW 15B; and”.

- (3) In section EW 20, in the list of defined terms, “IFRS” is inserted.

### **372 Financial reporting method**

Section EW 21 is repealed.

### **373 Default method**

- (1) In section EW 22(c), “, or a financial reporting method” is omitted.
- (2) Section EW 22(d) is repealed.

### **374 Failure to use method for financial reporting purposes**

- (1) In section EW 23(1) and (2), “EW 20(2)(f), and EW 21(e)” is replaced by “and EW 20(2)(f)” in each place in which it appears.
- (2) After section EW 23(3), the following is added:  
*“IFRS financial reporting*
- “(4) This section is modified by section EZ 32B (Transitional rule for IFRS reporting).”
- (3) In section EW 23, in the list of defined terms, “IFRS” is inserted.

### **375 Consistency of use of spreading method**

- (1) After section EW 24(2), the following is inserted:  
*“IFRS method*
- “(2B) Section EW 25B sets out a particular consistency requirement for a method for IFRS preparers.”
- (2) In section EW 24, in the list of defined terms, “IFRS” is inserted.

**376 New section EW 25B inserted**

After section EW 25, the following is inserted:

**“EW 25B Consistency of use of IFRS method***“Consistency*

- “(1) A person who uses a method for IFRS under section EW 15C for a financial arrangement must use the method for—
- “(a) the remaining term of the arrangement until section EW 29 requires them to calculate a base price adjustment for the arrangement:
  - “(b) other financial arrangements that are the same as, or similar to, the arrangement unless a different accounting treatment under IFRSs is used.

*“Exception*

- “(2) Despite subsection (1)(a), a person may change a method for IFRS if—
- “(a) the new method is available to them to use; and
  - “(b) the accounting treatment for the financial arrangement under IFRSs is changed in the same income year in which the method is changed for tax purposes.

*“Spreading method adjustment*

- “(3) For the purposes of subsection (2), section EW 26(3), (4), and EW 27 apply as if the change in method were a change under section EW 26(2). However, those sections do not apply if the change is from the fair value method, in which case section EW 29(13) applies.

“Defined in this Act: fair value method, financial arrangement, IFRS, income year  
Compare: 2004 No 35 s EW 25B”.

**377 Change of spreading method**

- (1) After section EW 26(5), the following is inserted:

*“Exception for fair value method*

- “(6) Subsection (3) and (4) and section EW 27 do not apply to a financial arrangement if the person’s change of spreading method involves a change from the fair value method, in which case section EW 29(13) applies.

*“Meaning of sound commercial reason*

- “(7) In this section, **sound commercial reason** includes—
- “(a) starting or stopping the use of IFRSs to prepare financial statements:
  - “(b) starting to use a method for IFRS under section EW 15B for a financial arrangement for the first time.”
- (2) In section EW 26, in the list of defined terms, “fair value method”, “financial statements”, “IFRS”, and “sound commercial reason” are inserted.

**378 When calculation of base price adjustment required**

- (1) After section EW 29(12), the following is inserted:
- “Changing from fair value method*
- “(13) A party to the financial arrangement who changes from the fair value method to another method must calculate a base price adjustment at the date of the change.”
- (2) In section EW 29, in the list of defined terms, “fair value method” is inserted.

**379 Base price adjustment formula**

- (1) In section EW 31(7), “ignoring non-contingent fees; and” is replaced by “ignoring—”, and the following is added:
- “(a) non-contingent fees, if the relevant method is not the IFRS financial reporting method in section EW 15D:
  - “(b) non-integral fees, if the relevant method is the IFRS financial reporting method in section EW 15D.”
- (2) In section EW 31, in the list of defined terms, “IFRS” and “non-integral fee” are inserted.

**380 New section EW 46B inserted**

After section EW 46, the following is inserted:

**“EW 46B Consideration when party changes from fair value method***“When this section applies*

- “(1) This section applies when a party to a financial arrangement—
- “(a) changes from the fair value method to another method;
- and

“(b) is required under section EW 29(13) to calculate a base price adjustment at the date of the change.

*“Consideration*

“(2) The person is treated as having been paid an amount equal to the market value of the financial arrangement on the date of the change.

“Defined in this Act: amount, fair value method, financial arrangement

Compare: 2004 No 35 s EW 48B”.

**381 Meaning of controlled foreign company**

In section EX 1(2) “1 of the tests” is replaced by “a test”.

**382 Options and similar rights in certain cases**

In section EX 11(3)(b) “under sections EX 14 to EX 17” is inserted after “10%”.

**383 Associates and 10% threshold**

Section EX 15(1), other than the heading, is replaced by the following:

“(1) For the purpose of applying the 10% threshold in section EX 14, a person’s income interest in a CFC is increased by each income interest in the CFC, for the relevant accounting period, of a person associated with the person.”

**384 Taxable distribution from non-complying trust**

In section EX 19(4) “RSCT,” is inserted before “RWT,”.

**385 Exemption for ASX-listed Australian companies**

(1) Section EX 31, other than the heading and the list of defined terms, is replaced by the following:

*“Exemption*

“(1) A person’s rights in a FIF in an income year are not an attributing interest if—

“(a) the rights are a share; and

“(b) the share is not a share that may not, or ordinarily may not, be disposed of unless together with rights in another company; and

“(c) the FIF is a company that meets the requirements of subsection (2).

*“Australian listed company on approved index*

“(2) The company must—

“(a) at all times in the year when the person holds a right in the company, be resident in Australia; and

“(b) at all times in the year when the person holds a right in the company, not be treated as resident in a country other than Australia under an agreement that—

“(i) is between Australia and that other country; and

“(ii) would be a double tax agreement if negotiated between New Zealand and that other country; and

“(c) have shares included in an index that is an approved index under the ASX Market Rules, made under Chapter 7 of the Corporations Act 2001 (Aust),—

“(i) at the beginning of an income year, if subparagraph (ii) does not apply; or

“(ii) when the person acquires the shares, if the person does not own shares in the company earlier in the year; and

“(d) at all times in the year when the person holds a right in the company, not be an entity described in schedule 25, part B (Foreign investment funds); and

“(e) at all times in the year when the person holds a right in the company, be required under the Income Tax Assessment Act 1997 (Aust) and Income Tax Assessment Act 1936 (Aust) to maintain a franking account.”

(2) In section EX 31, in the list of defined terms, “direct income interest” and “income tax” are omitted.

**386 Exemption for Australian unit trusts with 25% turnover**  
Section EX 32 is replaced by the following:

**“EX 32 Exemption for Australian unit trusts with adequate turnover or distributions**

*“Exemption*

“(1) A person’s rights in a FIF in an income year are not an attributing interest if—

“(a) the rights are a direct income interest; and

“(b) the FIF is a unit trust; and

- “(c) at all times in the year when the person holds a right in the unit trust, the unit trust is resident in Australia; and
- “(d) at all times in the year when the person holds a right in the unit trust, the unit trust is not treated as resident in a country other than Australia under an agreement that—
  - “(i) is between Australia and that other country; and
  - “(ii) would be a double tax agreement if negotiated between New Zealand and that other country; and
- “(e) the unit trust is, at all times in the year, not an entity described in schedule 25, part B (Foreign investment funds); and
- “(f) at all times in the year when the unit trust makes a distribution to investors, there is an RWT proxy under section 15T of the Tax Administration Act 1994 for the unit trust and payments by the unit trust to the person; and
- “(g) for the trust’s accounting year (the **trust’s year**) that ends in the person’s income year, the unit trust meets—
  - “(i) the 25% minimum share turnover test in subsection (2):
  - “(ii) the 70% minimum distribution test in subsection (7).

*“25% minimum turnover test*

- “(2) The 25% minimum turnover test requires that, for the trust’s year, the amount of total net realised gains calculated under subsection (3) must be 25% or more of the amount of total net unrealised gains at the end of the year calculated under subsection (5).

*“Calculation of total net realised gains*

- “(3) The amount of total net realised gains is calculated using the formula—

$$\text{total disposal gain} - \text{total cost.}$$

*“Definition of items in formula*

- “(4) In the formula in subsection (3),—
  - “(a) **total disposal gain** is the total of amounts derived from disposal of shares by the unit trust during the trust’s year:

“(b) **total cost** is the total cost to the unit trust of those shares.

“*Calculation of total net unrealised gains*

“(5) The amount of total net unrealised gains is calculated using the formula—

total profitable shares – total cost.

“*Definition of items in formula*

“(6) In the formula in subsection (5),—

“(a) **total profitable shares** is the total of the market values of shares of the unit trust that are—

“(i) held at the end of the trust’s year; and

“(ii) have a market value greater than or equal to their cost to the unit trust:

“(b) **total cost** is the total cost to the unit trust of those shares.

“*70% minimum distribution test*

“(7) The 70% minimum distribution test requires that, for the trust’s year, the total amount of distributions by the unit trust during the trust’s year must be 70% or more of the total distributable gains for the trust’s year calculated under subsection (8).

“*Calculation of total distributable gains*

“(8) The amount of total distributable gains is calculated using the formula—

closing equity + distributions – opening equity  
– contributions.

“*Definition of items in formula*

“(9) In the formula in subsection (8),—

“(a) **closing equity** is the amount by which, at the end of the trust’s year, the market value of the unit trust’s assets is more than the market value of the unit trust’s liabilities:

“(b) **distributions** is the total amount of distributions to investors by the unit trust during the trust’s year:

“(c) **opening equity** is the amount by which, at the beginning of the trust’s year, the market value of the unit

trust's assets is more than the market value of the unit trust's liabilities:

- “(d) **contributions** is the total amount of contributions by investors by the unit trust during the trust's year.

“*Currency*

- “(10) The calculations must be done in the currency of the unit trust's financial accounts.

“Defined in this Act: accounting year, attributing interest, company, direct income interest, FIF, income year, resident in Australia, resident in New Zealand, RWT proxy, share, unit trust, year

Compare: 2004 No 35 s EX 33D”.

**387 Venture capital company emigrating to grey list country: 10-year exemption**

- (1) In section EX 36(d), the words before subparagraph (i) are replaced by the following:

“(d) the person has held shares in the company at all times after a time when—”.

- (2) Section EX 36(e)(i) is replaced by the following:

“(i) carried on business in New Zealand; and”.

- (3) Section EX 36(h)(i) and (ii) are replaced by the following:

“(i) incurs in the year, expenditure other than interest of at least \$1,000,000 or, if less than \$1,000,000, at least 25% of the total expenditure, other than interest, incurred by the company in the year; and  
“(ii) at all times in the year, engages at least 10 full-time employees or contractors or, if less than 10, at least 25% of the total number engaged by the company.”

**388 Grey list company owning New Zealand venture capital company: 10-year exemption**

- (1) In section EX 37, paragraph (d) is replaced by the following:

“(d) the person has held shares in the grey list company at all times after a time when the shares were not listed on a recognised exchange; and”.

- (2) Section EX 37(e) is replaced by the following:

- “(e) at all times in the year, the grey list company holds more than 50% of the voting interests in a company (the **resident company**) that, for 12 months or more, has—
- “(i) carried on a business in New Zealand; and
  - “(ii) had in New Zealand more than 50% of the resident company’s assets; and
  - “(iii) had in New Zealand more than 50% of the resident company’s employees; and”.
- (3) Section EX 37(g)(i) and (ii) are replaced by the following:
- “(i) incurs in the year expenditure, other than interest, of at least \$1,000,000 or, if less than \$1,000,000, at least 25% of the total expenditure, other than interest, incurred by the company in the year:
  - “(ii) at all times in the year, engages at least 10 full-time employees or contractors or, if less than 10, at least 25% of the total number engaged by the company.”

### 389 New section EX 37B inserted

After section EX 37, the following is inserted:

#### “EX 37B Share in grey list company acquired under venture investment agreement

A person’s rights in a FIF in an income year are not an attributing interest if—

- “(a) the FIF is a grey list company; and
- “(b) the person first acquires a share or option to buy a share in the company—
  - “(i) under a venture investment agreement; and
  - “(ii) at the same time and on the same terms as an acquisition of an interest in the FIF by the Venture Investment Fund or a company owned by the Venture Investment Fund.

“Defined in this Act: attributing interest, company, FIF, grey list company, income year, share

Compare: 2004 No 35 s EX 37(4B)”.

**390 Exemption for employee share purchase scheme of grey list company**

In section EX 38, paragraph (g) is replaced by the following:

- “(g) the share purchase agreement includes a restriction on the disposal of the shares that affects for the income year the value of the benefit to the person under the agreement; and”.

**391 Terminating exemption for grey list company with numerous New Zealand shareholders**

- (1) Section EX 39(1), other than the heading, is replaced by the following:

- “(1) A person’s rights in a FIF are not an attributing interest if—
- “(a) the rights are a direct income interest; and
  - “(b) the FIF is a grey list company; and
  - “(c) on 17 May 2006, the company—
    - “(i) was a grey list company; and
    - “(ii) was not an entity described in schedule 25, part B (Foreign investment funds); and
    - “(iii) had more than 20,000 shareholders who had addresses in New Zealand on the company’s share register; and
    - “(iv) had shareholders referred to in subparagraph (iii) who between them held shares in the company carrying voting interests of more than 50%; and
    - “(v) had assets of which more than 50% in total value were shares in other companies carrying voting interest of more than 50%; and
  - “(d) on 17 May 2006, the shares were listed—
    - “(i) on a recognised exchange in New Zealand; and
    - “(ii) on a recognised exchange in a grey list country.”

- (2) In section EX 39(2), “subsection (1)(a) to (f)” is replaced by “subsection (1)(b) and (c)”.

**392 Limits on choice of calculation methods**

- (1) Section EX 46(6)(b) is replaced by the following:

- “(b) the person is the trustee of a trust that—
- “(i) has no gifting settlor who is not a natural person or deceased person; and

- “(ii) at all times in the income year, is a complying trust for a distribution made at the time; and
- “(iii) is, at all times in the income year, mainly for the benefit of a natural person for whom the gifting settlors of the trust have natural love and affection (or had natural love and affection when alive) or is mainly for the benefit of an organisation or trust with income that is exempt income under section CW 41 or CW 42 (which relate to the income of charities):”.
- (2) Section EX 46(10)(c) is replaced by the following:
- “(c) an interest in a non-resident holding directly or indirectly assets of which 80% or more by value at a time in the income year—
- “(i) consist of fixed-rate shares, or financial arrangements providing funds to a person; and
- “(ii) are denominated in New Zealand dollars or, under NZIAS 39, are hedged items having a value in New Zealand dollars governed by a hedging instrument that is highly effective:”.
- (3) In section EX 46(11), including the heading, “(10)(d)” is replaced by “(10)(a) to (d)” in all places in which it appears.
- (4) After section EX 46(11), the following is added:
- “Meaning of gifting settlor*
- “(12) A **gifting settlor**, for a trust (the **relevant trust**), means a person who—
- “(a) makes a transfer of value, by disposing of property, to the trustee of—
- “(i) the relevant trust:
- “(ii) a trust with a trustee who settles property on the relevant trust, directly or through the trustees of other trusts; and
- “(b) is not the trustee of a trust.”

### 393 Comparative value method

In section EX 51(4), “tax that the person is allowed as a credit under section” is replaced by “amount that the person is allowed as a credit under section LE 1 (Tax credits for imputation credits) or”.

**394 Fair dividend rate method: usual method**

- (1) Section EX 52(1)(b) is replaced by the following:
  - “(b) is neither—
    - “(i) a unit-valuing fund that is subject to section EX 53; nor
    - “(ii) another person that determines the market value of the attributing interest for each period of a day in the income year and that chooses to apply the method in section EX 53.”
- (2) In section EX 52(5), “that the person holds at the start of the income year.” is replaced by “that—” and the following is added:
  - “(a) the person holds at the start of the income year; and
  - “(b) are not, at the beginning of the income year, included in a direct income interest of 10% or more in a grey list company.”
- (3) In section EX 52(11), “during the year in acquiring or increasing” is replaced by “in acquiring or increasing during the income year”.
- (4) In section EX 52(12), “cost” is replaced by “(interest × average cost)”.
- (5) Section EX 52(13)(b) is replaced by the following:
  - “(b) **interest** is the amount of the shareholding acquisition or increase:
  - “(c) **average cost** is the total amount of expenditure that the person incurs during the year in acquiring or increasing the attributing interest in the FIF divided by the total for the income year of the shareholding increase in the interest for each acquisition or increase.”
- (6) After section EX 52(14), the following is inserted:

“*Treatment of transaction under section EX 63 or EX 67*

“(14B) For the purposes of subsection (7), if the person is treated as disposing of or acquiring an attributing interest in an income year under section EX 63(5) or EX 67, the disposal or acquisition is ignored.”

**395 Fair dividend rate method for funds that value investors' units**

- (1) In the heading to section EX 53, “**funds that value investors' units**” is replaced by “**unit-valuing funds and others by choice**”.
- (2) In the heading to section EX 53(1), “: *first case*” is added after “*applies*”.
- (3) After section EX 53(1), the following is added:

*“When this section applies: second case*

“(1B) This section applies also when a person—
  - “(a) calculates FIF income or loss from an attributing interest in a FIF for an income year under the fair dividend rate method; and
  - “(b) the person is not subject to subsection (1); and
  - “(c) the person—
    - “(i) determines the market value of the attributing interest for each period of a day (the **unit valuation period**) in the income year; and
    - “(ii) chooses that this section applies.”
- (4) In section EX 53(2), “fund’s total FIF income from its attributing interests” is replaced by “total FIF income of the fund or person (the **interest holder**) from their attributing interests”.
- (5) In section EX 53(5), “that the fund holds at the start of the unit valuation period” is replaced by “that—” and the following is added:
  - “(a) the interest holder holds at the start of the unit valuation period; and
  - “(b) are not, at the beginning of the income year, included in a direct income interest of 10% or more in a grey list company.”
- (6) In section EX 53(8), “fund” is replaced by “interest holder”.
- (7) In section EX 53(13), “the person incurs during the period in acquiring or increasing” is replaced by “the interest holder incurs in acquiring or increasing during the period”.
- (8) In section EX 53(14), “cost” is replaced by “(interest × average cost)”.
- (9) Section EX 53(15)(a) and (b) is replaced by:

- “(a) **gain** is the total amount that the interest holder derives during the unit valuation period from holding or disposing of the acquisition or increase:
- “(b) **interest** is the amount of the shareholding acquisition or increase:
- “(c) **average cost** is the total amount of expenditure that the interest holder incurs during the period in acquiring or increasing the attributing interest in the FIF divided by the total for the period of the shareholding increase in the interest for each acquisition or increase.”

(10) After section 53(16), the following is inserted:

*“Deemed transaction under section EX 67 ignored*

“(16B) For the purposes of subsection (9), if the person is treated as disposing of or acquiring an attributing interest in an income year under section EX 67, the disposal or acquisition is ignored.”

### **396 Cost method**

(1) After section EX 56(3)(a), the following is inserted:

- “(ab) the amount that is shown as the net asset value of the interest in audited financial statements of the person for the relevant income year made available to the general public, if—
  - “(i) paragraph (a) does not apply; and
  - “(ii) the FIF makes available to the general public audited financial statements for its accounting year ending in the relevant income year; and
  - “(iii) the person chooses that this paragraph applies; or
- “(ac) the amount of the cost of the interest, if—
  - “(i) paragraphs (a) and (ab) do not apply; and
  - “(ii) the person acquires the interest in the 2005-06 or 2006-07 income year; or”.

(2) In section EX 56(3)(b), in the words before subparagraph (i), “paragraphs (a), (ab) and (ac) do not apply and” is inserted after “if”.

(3) In section EX 56(3)(b)(i), “for which the person has FIF income or loss” is inserted after “attributing interest”.

(4) In section EX 56(3)(c), “paragraphs (a), (ab), (ac), and (b) do not apply and” is inserted after “if”.

- (5) In section EX 56(3)(d), “paragraphs (a), (ab), (ac), and (b) do not apply and” is inserted after “if”.
- (6) In section EX 56(3)(e), “paragraphs (a), (ab), (ac), and (b) do not apply and” is inserted after “if”.
- (7) In section EX 56(11)(a), “during the preceding income year in acquiring or increasing” is replaced by “in acquiring or increasing during the preceding income year”.
- (8) In section EX 56(18)(a), “during the year in acquiring or increasing” is replaced by “in acquiring or increasing during the relevant income year”.

**397 Codes: comparative value method, deemed rate of return method, fair dividend rate method, and cost method**

Section EX 59(1)(c) is replaced by the following:

- “(c) the fair dividend rate method, if—
  - “(i) the FIF is not a grey list company:
  - “(ii) the person does not hold a direct income interest of 10% or more in the FIF at the beginning of the income year of the period:”.

**398 Limits on changes of method**

Section EX 62(8)(a) to (d) are replaced by the following:

- “(a) has no gifting settlor who is not a natural person or deceased person; and
- “(b) at all times in the income year, is a complying trust for a distribution made at the time; and
- “(c) is—
  - “(i) at all times in the income year, mainly for the benefit of a natural person for whom the gifting settlors of the trust have natural love and affection, or had natural love and affection when alive:
  - “(ii) mainly for the benefit of an organisation or trust with income that is exempt income under section CW 41 or CW 42 (which relate to the income of charities); and
- “(d) is not a superannuation scheme.”

**399 Consequences of changes in method**

After section EX 63(4), the following is added:

*“Changes between comparative value method and fair dividend rate method*

- “(5) If a person holding an attributing interest in a FIF changes from either of the comparative value method and the fair dividend rate method to the other of the comparative value method and the fair dividend rate method for calculating the FIF income or loss from the interest, the person is treated as having—
- “(a) disposed of the interest to an unrelated person immediately before the start of the first income year to which the new method applies; and
  - “(b) reacquired the interest at the start of the income year; and
  - “(c) received for the disposal and paid for the reacquisition an amount equal to the market value of the interest at the time of the disposal.”

**400 FIF rules first applying to interest on or after 1 April 2007**

- (1) Section EX 67(1) is replaced by the following:

*“When this section applies*

- “(1) This section applies when a person has rights in a FIF that—
- “(a) for the period ending on a day (the **preceding day**) are—
    - “(i) not an attributing interest;
    - “(ii) an attributing interest for which the person does not have FIF income or loss;
    - “(iii) rights for which the person is a share supplier in a returning share transfer; and
  - “(b) for the period beginning on the day (the **application day**) following the preceding day are an attributing interest for which the person has FIF income or loss.”
- (2) In section EX 67(3),—
- (a) in the words before paragraph (a), “the disposal and acquisition referred to in subsection (2)” is replaced by “the disposals in an income year, and related acquisitions, treated as occurring under this section”:

- (b) in paragraph (a)(i), “disposal is” is replaced by “disposals are”:
- (c) in paragraph (a)(ii), “disposal is” is replaced by “disposals are”:
- (d) in paragraph (a)(iii), “disposal is” is replaced by “disposals are”:
- (e) in paragraph (b), “disposal” is replaced by “disposals”.

**401 Measurement of cost**

Section EX 68(2) and (3) are replaced by the following:

*“FIFO cost flow identification*

- “(2) If sections EX 52(14) and EX 53(16) do not apply and it is not possible to specifically identify the cost of the interest because of multiple acquisitions or dispositions or both by the person, the first-in-first-out (the **FIFO**) method of identifying cost flows is applied.”

**402 Policyholder income formula**

- (1) Section EY 43(1) is replaced by the following:

*“Formula*

- “(1) The **policyholder income formula** is—
- $$\frac{\begin{aligned} &\text{claim due} + (\text{closing actuarial reserves} \\ &\quad - \text{opening actuarial reserves}) \\ &- (\text{FDR adjustment} + \text{PILF adjustment}) \\ &\quad - (\text{premium} - \text{underwriting result}) \end{aligned}}{(1 - \text{tax rate}).”}$$

- (2) After section EY 42(5), the following is inserted:

*“FDR adjustment*

- “(5B) **FDR adjustment** is the amount set out in section EY 43B to the extent to which it applies.

*“PILF adjustment*

- “(5C) **PILF adjustment** is the amount set out in section EY 43C to the extent to which it applies.”

**403 New sections EY 43B and EY 43C inserted**

After section EY 43, the following is inserted:

**“EY 43B Policyholder income formula: FDR adjustment**

*“What this section applies to*

- “(1) This section applies for the purposes of section EY 43(5B) to property that supports only actuarial reserves to the extent to which—
- “(a) property is an attributing interest in a FIF held by a life insurer or by a portfolio tax rate entity that the life insurer has invested in, directly or indirectly; and
  - “(b) the life insurer or the portfolio tax rate entity uses the fair dividend rate method for the property; and
  - “(c) section EY 43C does not apply.

*“When has life insurer indirectly invested in portfolio tax rate entity?*

- “(2) For the purposes of subsection (1), a life insurer is treated as investing indirectly in a portfolio tax rate entity (**PTRE A**) when a portfolio tax rate entity has invested in **PTRE A** and the investment may be traced through an unbroken chain of investments in portfolio tax rate entities to a direct investment by the life insurer in a portfolio tax rate entity.

*“FDR adjustment*

- “(3) In using the policyholder income formula, the life insurer may calculate the item **FDR adjustment**—
- “(a) using the formula in subsection (5); or
  - “(b) by calculating, using a reasonable method for the information available to the life insurer, the amount credited to actuarial reserves in relation to the property, but excluding amounts that are related to FIF income under the fair dividend rate method.

*“Consistency requirement*

- “(4) In using the policyholder income formula, the life insurer must calculate the item **FDR adjustment** by always applying whichever of subsection (3)(a) or (b) is first used.

*“Formula*

- “(5) The formula referred to in subsection (3)(a) is—  
 $0.6 \times (\text{FIF result} - \text{FDR income})$ .

*“Definition of items in formula*

- “(6) The items in the formula are defined in subsections (7) and (8).

*“FIF result*

- “(7) **FIF result** is the life insurer’s gains and losses for the income year, for the property, calculated using accepted accounting practice.

*“FDR income*

- “(8) **FDR income** is the amount for the income year of the life insurer’s income related to FIF income under the fair dividend rate method for the property, calculated using a reasonable method for the information available to the life insurer.

“Defined in this Act: amount, attributing interest, fair dividend rate method, FIF, FIF income, FIF loss, income, portfolio investment-linked life fund

Compare: 2004 No 35 s EY 42B

**“EY 43C Policyholder income formula: PILF adjustment***“What this section applies to*

- “(1) This section applies for the purposes of section EY 42(5C) to property that supports only actuarial reserves for a portfolio investment-linked life fund to the extent to which the property is—
- “(a) an attributing interest in a FIF,—
- “(i) held by the life insurer or a portfolio tax rate entity that the life insurer has invested in directly or indirectly; and
  - “(ii) for which the life insurer or portfolio tax rate entity uses the fair dividend rate method for the property:
- “(b) shares described in section CX 55 (Proceeds from certain disposals by portfolio investment entities or New Zealand Superannuation Fund) held by the life insurer.

*“When has life insurer indirectly invested in portfolio tax rate entity?”*

- “(2) For the purposes of subsection (1), a life insurer is treated as investing indirectly in a portfolio tax rate entity (**PTRE A**) when a portfolio tax rate entity has invested in **PTRE A** and the investment may be traced through an unbroken chain of investments in portfolio tax rate entities to a direct investment by the life insurer in a portfolio tax rate entity.

*“PIE adjustment*

- “(3) In using the policyholder income formula, the life insurer may calculate the item **PILF adjustment**—
- “(a) using the formula in subsection (5); or
  - “(b) by calculating, using a reasonable method for the information available to the life insurer, the amount credited to actuarial reserves in relation to the property, but excluding amounts that are—
    - “(i) related to FIF income under the fair dividend rate method;
    - “(ii) dividends or distributions for shares described in subsection (1)(b) other than a distribution from a portfolio tax rate entity to which section CX 56(2) (Portfolio investor allocated income and distributions of income by portfolio investment entities) applies.

*“Consistency requirement*

- “(4) In using the policyholder income formula, the life insurer must calculate the item **PILF adjustment** by always applying whichever of subsection (3)(a) or (b) is first used.

*“Formula*

- “(5) In using the policyholder income formula, the life insurer must calculate the item **PILF adjustment** using the following formula:

$$0.9 \times (\text{FIF result} - \text{FDR income}) + 0.9 \times \text{excluded shares.}$$

*“Definition of items in formula*

“(6) The items in the formula are defined in subsections (7) to (9).

*“FIF result*

“(7) **FIF result** is the life insurer’s gains or losses for the income year, for the property described in subsection (1)(a), calculated using accepted accounting practice.

*“FDR income*

“(8) **FDR income** is the amount for the income year of the life insurer’s income related to FIF income under the fair dividend rate method for the property described in subsection (1)(a), calculated using a reasonable method for the information available to the life insurer.

*“Excluded shares*

“(9) **Excluded shares** is the total for the life insurer, for shares described in subsection (1)(b), of—

“(a) the positive amount of income excluded by section CX 55(2):

“(b) the negative amount of a deduction not allowed by section DB 23(3)(b) (Cost of revenue account property):

“(c) the gains and losses for the shares, calculated using accepted accounting practice, but excluding—

“(i) amounts already accounted for under paragraphs (a) and (b) or under subsection (7); and

“(ii) dividends and distributions for the shares, other than distributions from a portfolio tax rate entity to which section CX 56(2) applies.

“Defined in this Act: amount, attributing interest, deduction, dividend, excluded income, fair dividend rate method, FIF, FIF income, FIF loss, income, portfolio investment-linked life fund, share

Compare: 2004 No 35 s EY 42C”.

#### **404 Terminating exemption for grey list FIF investing in Australasian listed equities**

(1) Section EZ 32(1), other than the heading, is replaced by the following:

- “(1) A person’s rights in a FIF are not an attributing interest if—
- “(a) the rights are a direct income interest (the **shares**); and
  - “(b) on 17 May 2006, the company—
    - “(i) was a grey list company; and
    - “(ii) was not an entity described in schedule 25, part B (Foreign investment funds); and
    - “(iii) had shareholders of which more than 40% had addresses in New Zealand on the company’s share register; and
    - “(iv) had shareholders referred to in subparagraph (iii) who between them held shares in the company carrying voting interests of more than 50%; and
    - “(v) had assets of which more than 50% in total value were shares in other companies that were resident in New Zealand or Australia and were listed on a recognised exchange in New Zealand or Australia; and
  - “(c) on 17 May 2006, the shares were listed —
    - “(i) on a recognised exchange in New Zealand; and
    - “(ii) on a recognised exchange in a grey list country.”
- (2) In section EZ 32(3), “subsection (1)(b) to (g)” is replaced by “subsection (1)(b) and (c)”.

#### **405 New section EZ 32B inserted**

After section EZ 32, the following is inserted:

##### **“EZ 32B Transitional rule for IFRS reporting**

*“When this section applies*

- “(1) This section applies for an income year before the 2007–08 income year when—
- “(a) a person who is a party to a financial arrangement starts to use a spreading method in section EW 16, EW 18, or EW 20 for the financial arrangement before they adopt IFRSs for the purposes of financial reporting; and
  - “(b) the person is not required to use a method under section EW 15B (Preparing and reporting methods); and
  - “(c) as a result of adopting IFRSs, the method chosen does not comply with sections EW 16(2)(d), EW 18(f), and EW 20(2)(f), as applicable.

*“Treatment*

- “(2) For the purposes of the financial arrangements rules, the person is treated as complying with the relevant section.

“Defined in this Act: financial arrangement, financial arrangements rules, IFRS, income year

Compare: 2004 No 35 s EZ 50”.

**406 Consecutive or successive finance leases**

Section FA 11 is replaced by the following:

**“FA 11 Adjustments for leases that become finance leases***“When this section applies*

- “(1) This section applies when a lease is entered into on or after 20 May 1999 and—

“(a) the lease is a consecutive or a successive lease—

“(i) that is treated as 1 lease under the definition of **lease**; and

“(ii) with a term of the lease that the lessor and lessee do not contemplate, at the start of the term, will be more than 75% of the personal property lease asset’s estimated useful life; and

“(iii) with a term of the lease that is more than 75% of the asset’s estimated useful life:

“(b) the lease is an operating lease that becomes a finance lease under paragraph (c) of the definition of **finance lease**.

*“Adjustment required*

- “(2) The lessor and lessee must each adjust their income and expenditure calculated for the lease by including an adjustment in a return of income for the tax year corresponding to the income year in which the lease becomes a finance lease.

*“Amount of adjustment*

- “(3) The amount of the adjustment is calculated for the relevant person in relation to the period described in subsection (5) using the formula—

$$\begin{aligned} & \text{finance income} - \text{finance expenditure} \\ & - \text{unadjusted income} + \text{unadjusted expenditure.} \end{aligned}$$

*“Definition of items in formula*

“(4) In the formula,—

“(a) **finance income** is the income that would have been derived by the person under the lease if the lease were a finance lease for the period:

“(b) **finance expenditure** is the expenditure that would have been incurred by the person under the lease if the lease were a finance lease for the period:

“(c) **unadjusted income** is the income derived by the person under the lease:

“(d) **unadjusted expenditure** is the expenditure incurred by the person under the lease.

*“Adjustment period*

“(5) The period starts on the date on which the lease starts and ends on the last day of the income year in which the lease becomes a finance lease.

*“Adjustment positive*

“(6) If the adjustment is positive, the amount is income of the relevant person under section CH 6 (Adjustments for certain finance and operating leases).

*“Adjustment negative*

“(7) If the adjustment is negative, the amount is a deduction of the relevant person under section DB 51B (Adjustments for leases that become finance leases).

“Defined in this Act: amount, estimated useful life, finance lease, income, income year, lease, lessee, lessor, operating lease, personal property lease asset, return of income, tax year, term of the lease

Compare: 2004 No 35 s FC 8H

**“FA 11B Adjustments for certain operating leases***“When this section applies*

“(1) This section applies when a lease is an operating lease that—

“(a) is entered into on or after 20 May 1999 and before 20 June 2007; and

“(b) is an arrangement, or part of an arrangement that, on 20 June 2007, meets the requirements of paragraph (c)(i) to (iii) of the definition of **finance lease**; and

- “(c) has a term of the lease ending after the end of the income year in which 20 June 2007 falls (the **adjustment year**); and
- “(d) does not meet the requirements of section FA 11(1) before the end of the income year after the adjustment year.

*“Adjustment required*

- “(2) The lessor must adjust their income and expenditure calculated for the lease asset by including an adjustment in a return of income for the tax year corresponding to the income year after the adjustment year.

*“Amount of adjustment*

- “(3) The amount of the adjustment is calculated using the formula—

$$\frac{\text{total depreciation losses}}{6.}$$

*“Definition of item in formula*

- “(4) In the formula, **total depreciation losses** is the total amount of depreciation loss for the lease asset for which the lessor is allowed a deduction in the period that begins with the start of the term of the lease and ends with the end of the adjustment year.

*“Income*

- “(5) The amount of the adjustment is income of the lessor under the lease under section CH 6 (Adjustments for certain finance and operating leases) in the income year after the adjustment year.

*“Adjusted tax value*

- “(6) The adjusted tax value of the lease asset at the beginning of the income year after the adjustment year is the total of the amount of the adjustment and the adjusted tax value that the lease asset would have in the absence of this section.

*“Depreciation loss*

- “(7) For an income year beginning after 20 June 2007 in which the lease is an operating lease, the amount of depreciation loss allowed for the lease asset other than under section EE 48 (Effect of disposal or event) is five-sixths of the amount of depreciation loss that would be allowed for the lease asset in the absence of this subsection.

“Defined in this Act: adjusted tax value, amount, arrangement, deduction, depreciation loss, finance lease, income, income year, lease, lessee, lessor, operating lease, return of income, tax year, term of the lease

Compare: 2004 No 35 s FC 81”.

**407 Attribution rule for income from personal services**

- (1) After section GB 27(3), the following is inserted:

*“Treatment of certain dividends*

- “(4) If a company that is required to attribute an amount to the working person under this section pays a dividend, sections HA 14 to HA 19 (which relate to qualifying companies) are treated as applying to the company and the dividend if the company—
- “(a) has no net income for the tax year in which it pays the dividend other than income attributed under this section, ignoring interest income that is incidental to the company’s business; and
- “(b) is not a qualifying company; and
- “(c) chooses to have the dividend treated as if it were paid by a qualifying company.”
- (2) In section GB 27, in the list of defined terms, “amount”, “business”, “company”, “dividend”, and “qualifying company” are inserted.
- (3) In section GB 27, in the compare note, “, GC 14EB” is added.

**408 Arrangements involving family support credits**

- (1) The heading before section GB 44 is replaced by “*Arrangements involving tax credits for families*”.
- (2) In the heading to section GB 44, “family support credits” is replaced by “tax credits for families”.

**409 Fully imputed distributions**

- (1) In section HA 15(3)(c), “for the income year of the shareholder in which the dividend is derived” is replaced by “at the time the shareholder derives the dividend, modified as applicable by section OZ 14 (Dividends from qualifying companies)”.
- (2) In section HA 15(4)(a), “modified as applicable by section OZ 14” is inserted after “ratios”.
- (3) In section HA 15(5)(a), “modified as applicable by section OZ 14” is inserted after “subsection (4)”.

**410 Scheme of subpart**

- (1) Section HL 2(2) is replaced by the following:  
“*Election to be type of portfolio investment entity*”
- “(2) An entity may choose under section HL 11 to be a portfolio investment entity and—
  - “(a) portfolio tax rate entity if the entity is—
    - “(i) a company, superannuation fund, or group investment fund; and
    - “(ii) eligible under section HL 3(1) to make an election; or
  - “(b) portfolio listed company if the entity is—
    - “(i) a company listed on a recognised exchange in New Zealand; and
    - “(ii) eligible under section HL 3(3) to make an election; or
  - “(c) portfolio defined benefit fund if the entity is—
    - “(i) a defined benefit fund; and
    - “(ii) eligible under section HL 3(5) to make an election; or
  - “(d) portfolio investment-linked life fund if the entity is—
    - “(i) a separate identifiable fund, forming part of a life insurer, holding investments subject to life insurance policies under which benefits are directly linked to the value of the investments held in the fund; and
    - “(ii) eligible under section HL 3(7) to make an election.”
- (2) In section HL 2(7)(c)(ii), “period.” is replaced by “period:” and the following is added:

- “(d) the amount of fees paid to the entity by the investor on the day:
- “(e) the amount of rebates of fees credited to the investor by the entity on the day:
- “(f) the amount of expenditure, for the income year ending with the day, transferred under subpart DV (Expenditure specific to certain entities) to the entity by the investor.”

**411 Section HL 3 replaced**

Section HL 3 is replaced by the following:

**“HL 3 Eligibility requirements for entities**

*“Eligibility requirements for entity electing to be portfolio tax rate entity*

- “(1) An entity that is choosing under section HL 11 to be a portfolio investment entity and portfolio tax rate entity must meet the eligibility requirements described in subsections (9), (10), and (11).

*“Eligibility requirements for portfolio tax rate entity*

- “(2) A portfolio tax rate entity must meet—
  - “(a) the eligibility requirements described in subsections (9), (10), and (11); and
  - “(b) the further eligibility requirements described in sections HL 5C, HL 6, HL 7, HL 9, and HL 10.

*“Eligibility requirements for entity electing to be portfolio listed company*

- “(3) An entity that is choosing under section HL 11 to be a portfolio investment entity and portfolio listed company must meet the eligibility requirements described in subsections (9), (10), and (11).

*“Eligibility requirements for portfolio listed company*

- “(4) A portfolio listed company must meet—
  - “(a) the eligibility requirements described in subsections (9), (10), and (11); and
  - “(b) the further eligibility requirements described in sections HL 5C, HL 6, HL 8, HL 9, and HL 10.

*“Eligibility requirements for entity electing to be portfolio defined benefit fund*

- “(5) An entity that is choosing under section HL 11 to be a portfolio investment entity and portfolio defined benefit fund must meet the eligibility requirements described in subsections (9), (10), and (11).

*“Eligibility requirements for portfolio defined benefit fund*

- “(6) A portfolio defined benefit fund must meet—
- “(a) the eligibility requirements described in subsections (9), (10), and (11); and
  - “(b) the further eligibility requirements described in sections HL 5C, HL 6, HL 9, and HL 10.

*“Eligibility requirements for separate identifiable fund electing to be portfolio investment-linked life fund*

- “(7) An entity that is choosing under section HL 11 to be a portfolio investment entity and portfolio investment-linked life fund must meet the eligibility requirements described in subsections (10) and (11).

*“Eligibility requirements for portfolio investment-linked life fund*

- “(8) A portfolio investment-linked life fund must meet—
- “(a) the eligibility requirements described in subsections (10) and (11); and
  - “(b) the further eligibility requirements described in sections HL 6, HL 9, and HL 10.

*“Business requirement*

- “(9) The business requirement is that the entity must not carry on a business of life insurance.

*“Residence requirement*

- “(10) The residence requirement is that the entity must be—
- “(a) resident in New Zealand; and
  - “(b) not treated under a double tax agreement as not being resident in New Zealand.

*“Entity history requirement*

“(11) The entity history requirement is that the entity must not, before the day on which the election to be a portfolio investment entity is to be effective, have ceased to be a portfolio investment entity under section HL 14(1), unless the cessation occurred more than 5 years before the day on which the election is effective.

“Defined in this Act: company, double tax agreement, group investment fund, life insurance, portfolio defined benefit fund, portfolio investment entity, portfolio investment-linked life fund, portfolio listed company, portfolio tax rate entity, resident in New Zealand, superannuation fund

Compare: 2004 No 35 s HL 3”.

#### **412 Effect of failure to meet eligibility requirements for entities**

In section HL 4(2)(a), the words before subparagraph (i) are replaced by the following:

“(a) a portfolio investor class of the entity fails to meet a requirement of section HL 6 or HL 9, or the entity fails to meet a requirement of section HL 10 on the last day of a quarter—”.

#### **413 New sections HL 5B and HL 5C inserted**

After section HL 5, the following is inserted:

##### **“HL 5B Meaning of investor and portfolio investor class**

###### *“Meaning of investor*

“(1) An **investor**, in relation to a portfolio investment entity or foreign investment vehicle (the **entity**), means,—

“(a) if the entity is a company and paragraph (d) does not apply, a shareholder in the company:

“(b) if the entity is not a company and paragraphs (c) and (d) do not apply, a person who is entitled to a proportion of the funds available for distribution by the entity—

“(i) by reason of the rules of the entity or the terms of the trust under which the entity is established; and

“(ii) as if the entity were a company and the person were a shareholder in the company:

- “(c) if the entity is a portfolio investment-linked life fund and paragraph (d) does not apply, a person whose benefits under the relevant life insurance policy are directly linked to the value of investments held in the portfolio investment-linked life fund:
- “(d) for a share, entitlement, or life insurance policy held through a portfolio investor proxy by a person, the portfolio investor proxy.

*“Meaning of portfolio investor class*

- “(2) A **portfolio investor class** for a portfolio investment entity means a group of 1 or more investors in the entity with each investor having an entitlement to a distribution by the entity of proceeds from portfolio entity investments such that—
  - “(a) the portfolio entity investments are the same for all the investors in the group; and
  - “(b) each investor’s interest in a portfolio entity investment represents a proportion (the **investment proportion**) of the value of the investor’s entitlement; and
  - “(c) the investment proportion for each investor and each portfolio entity investment differs from the average value of the investment proportion, for the investors in the group and the portfolio entity investment, by less than 2.5% of that average value except if subsection (3) applies.

*“Exception to requirement of subsection (2)(c)*

- “(3) The investment proportion for an investor in a group referred to in subsection (2) and a portfolio entity investment may differ by 2.5% or more from the average value for the group and the investment if—
  - “(a) the portfolio entity investment is an arrangement under which the entity is assured of receiving, from investments, sufficient proceeds for the entity to repay each investor in the group an amount contributed to the entity; and
  - “(b) the excess in difference between the investment proportion for the investor and the average value for the group

arises from differences between the portfolio investor rates of members of the group.

“Defined in this Act: investor, portfolio entity investment, portfolio investment entity, portfolio investor class, portfolio investor interest

Compare: 2004 No 35 s HL 5B

#### “HL 5C Income interest requirement

*“What this section applies to*

- “(1) This section applies to a portfolio investment entity that is not a portfolio investment-linked life fund.

*“Requirement*

- “(2) The income interest requirement is that all portfolio investor interests in the entity that give rights in relation to proceeds from a portfolio entity investment give the rights in relation to all the proceeds from the investment that are not category B income.

“Defined in this Act: category B income, portfolio entity investment, portfolio investment entity, portfolio investment-linked life fund, portfolio investor interest

Compare: 2004 No 35 s HL 5C”.

#### 414 Investor membership requirement

- (1) Before section HL 6(1), the following is inserted:

*“General investor membership requirement*

- “(1A) The investor membership requirement for an entity that is not a company listed on a recognised exchange in New Zealand and does not meet the requirements of subsection (3) is that each portfolio investor class of the entity must meet the requirements of subsection (1).”

- (2) In section HL 6(1),—

- (a) the heading is replaced by *“Investor membership requirement for portfolio investor class”*;
- (b) the words before paragraph (a) are replaced by “The investor membership requirement for a portfolio investor class is that the class must include—”;
- (c) in paragraph (j)(iii), “entity.” is replaced by “entity:” and the following is added:
- “(k) Auckland Regional Holdings.”

- (3) In section HL 6(3), the words before paragraph (a) are replaced by “There is no investor membership requirement for a portfolio investor class that,—”.
- (4) In section HL 6(3)(c), “1956.” is replaced by “1956:” and the following is added:
- “(d) is a superannuation fund that—
    - “(i) existed before 17 May 2006; and
    - “(ii) on or after 17 May 2006, if treated as a unit trust, would have met the requirements of 1 or more of paragraphs (a) and (c) to (e) of the definition of **public unit trust**; and
    - “(iii) has no investor, other than the fund’s manager or trustee, that can control the investment decisions relating to that class.”
- (5) Section HL 6(4)(c), is replaced by the following:
- “(c) the investor has a portfolio investor interest fraction of 5% or more; and
  - “(d) the associated person has a portfolio investor interest fraction of 5% or more.”

**415 Investor return adjustment requirement: portfolio tax rate entity**

Section HL 7(3), other than the heading, is replaced by the following:

- “(3) An adjustment reflecting the effect of the investor’s portfolio investor rate must be made to—
- “(a) the investor’s portfolio investor interest in the portfolio investor class or another portfolio investor class—
    - “(i) before the end of the second month after the portfolio calculation period, if the entity has made an election under section HL 22; or
    - “(ii) before the end of the third month after the end of the income year, if the entity has made an election under section HL 23; or
    - “(iii) before the end of the second month after the end of the tax year, if the entity has made an election under section HL 24:
  - “(b) the amount of each distribution to the investor as a member of the portfolio investor class or another portfolio investor class:

“(c) the amount of each payment required from the investor as a member of the portfolio investor class towards satisfying the entity’s portfolio entity tax liability.”

**416 Imputation credit distribution requirement: portfolio listed company**

(1) Section HL 8(1) is replaced by the following:

*“What this section applies to*

“(1) This section applies to a portfolio investment entity that—

“(a) is an imputation credit account company; and

“(b) is not a portfolio investment-linked life fund.”

(2) In section HL 8, in the list of defined terms, “portfolio investment-linked life fund” is inserted.

**417 Investor interest size requirement**

(1) In section HL 9(2), the words before paragraph (a) are replaced by “There is no investor interest size requirement for an investor in a portfolio investor class that,—”.

(2) In section HL 9(2)(c), “1956.” is replaced by “1956:” and the following is added:

“(d) is a superannuation fund that—

“(i) existed before 17 May 2006; and

“(ii) on or after 17 May 2006, if treated as a unit trust, would have met the requirements of 1 or more of paragraphs (a) and (c) to (e) of the definition of **public unit trust**; and

“(iii) has no investor, other than the fund’s manager or trustee, that can control the investment decisions relating to that class.”

(3) In section HL 9(4)(i), “subsection (5).” is replaced by “subsection (5):” and the following is added:

“(j) Auckland Regional Holdings.”

(4) Section HL 9(6)(c), is replaced by the following:

“(c) the investor has a portfolio investor interest fraction of 5% or more; and

“(d) the associated person has a portfolio investor interest fraction of 5% or more.”

**418 Further eligibility requirements relating to investments**

- (1) In section HL 10(1), the words before paragraph (a) are replaced by “The investment type requirement is that 90% or more by value of the entity’s assets must be—”.
- (2) In section HL 10(2)—
  - (a) after paragraph (b)(i), the following is inserted:  
“(ib) replacement payments:”:
  - (b) paragraph (b)(iii) is replaced by the following:  
“(iii) income under a lease of land:”:
  - (c) in paragraph (b)(iv), “referred to in subsection (1)(a) to (d)” is inserted after “property”.
- (3) In section HL 10(4), the words before paragraph (a) are replaced by “The requirements of subsection (3)(a) and (b) do not apply to an investment consisting of shares in—”.

**419 Election to become portfolio investment entity and cancellation of election**

- (1) After section HL 11(2), the following is added:  
*“Exception to when election effective: certain elections relating to portfolio investment-linked life funds*  
“(2B) Despite subsection (2), an election received by the Commissioner is effective on 1 October 2007 if—
  - “(a) the election is in relation to an electing entity choosing to be a portfolio investment-linked life fund; and
  - “(b) the date of receipt is before 1 April 2008; and
  - “(c) 1 October 2007 is nominated in the notice.”
- (2) In section HL 11, in the list of defined terms, “portfolio investment-linked life fund” is inserted.

**420 Unlisted company choosing to become portfolio listed company**

- (1) Section HL 12(1)(a) is replaced by the following:  
“(a) has 100 shareholders; and”.
- (2) In section HL 12, in the list of defined terms, “shareholder” is inserted.

**421 Becoming portfolio investment entity**

- (1) In section HL 13(3)(a), the words before subparagraph (i) are replaced by—

“(a) transferring to another person all shares held by the entity, or for which the entity is a share lender in a returning share transfer, that—”.

(2) After section HL 13(3), the following is added:

*“Refund of FDP made before election*

“(3B) If an FDPA company becomes a portfolio investment entity on a day in a tax year other than the end of the tax year, the balance of the company’s FDP account at the end of the tax year for the purposes of section RM 21(2)(c) (Refunds when loss balances used to reduce net income) is equal to the balance of the FDP account immediately before the company becomes a portfolio investment entity.”

#### **422 Tax consequences from transition**

(1) Section HL 14(1) is replaced by the following:

*“When subsection (1B) applies*

“(1) Subsection (1B) applies when an entity chooses to become a portfolio investment entity in an income year and has an increased liability for provisional tax for the income year because of the election.

*“No penalty or interest arising from transition*

“(1B) The entity is not liable to pay any penalty or interest for which the entity would otherwise be liable for an inaccuracy, arising from the increased liability for provisional tax, in—

“(a) an estimate of provisional tax made before the entity chooses to become a portfolio investment entity:

“(b) a payment of provisional tax due before the end of the 2-month period beginning after the entity becomes a portfolio investment entity.”

(2) In section HL 14, in the list of defined terms, “pay” is inserted.

#### **423 Treatment of income from interest when entitlement conditional or lacking**

Section HL 17(2)(e) is replaced by the following:

“(e) for an entity that exists on 17 May 2006, the vesting period does not exceed the longest vesting period

allowed by the entity on 17 May 2006 for an interest created on that date; and

- “(f) for an entity that does not exist on 17 May 2006,—
- “(i) the portfolio investor interest is transferred to the entity by a superannuation scheme that exists on 17 May 2006 and without significant change to the portfolio investor interest; or
  - “(ii) the vesting period does not exceed 5 years, if subparagraph (i) does not apply.”

**424 Portfolio entity tax liability and tax credits of portfolio tax rate entity for period**

- (1) In section HL 21(4), “fees” is replaced by “expenses”.
- (2) Section HL 21(11) is replaced by the following:

*“Expenses*

- “(11) **Expenses** is the total amount for the day in the portfolio allocation period of—
- “(a) fees for ongoing management and administration services paid from or charged to the account of the investor as a member of the portfolio investor class:
  - “(b) expenditure of the investor transferred under subpart DV (Expenditure specific to certain entities) to the entity.”

**425 Payments of tax by portfolio tax rate entity making no election**

- (1) After section HL 22(2), the following is inserted:

*“Income tax liability*

- “(2B) The income tax liability of the entity for a tax year is equal to the total portfolio entity tax liability of the entity for the portfolio calculation periods in the tax year.”
- (2) In section HL 22(3)(a) “for the tax year” is inserted after “income tax”.

**426 Payments of tax by portfolio tax rate entity choosing to make payments when investor leaves**

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

*“Income tax liability*

“(1B) The income tax liability of the entity for a tax year is equal to the total portfolio entity tax liability of the entity for the portfolio calculation periods in the tax year.”

(2) In section HL 24(2)(a) “for the tax year” is inserted after “income tax”.

(3) Section HL 24(2)(b) is replaced by the following:

“(b) by the day that is—

“(i) the end of the month beginning from the end of the month in which the portfolio investor exit period ends, if subparagraph (ii) does not apply; or

“(ii) the 15 January following the end of the portfolio investor exit period, if the portfolio investor exit period ends in November.”

**427 Optional payments of tax by portfolio tax rate entities**

(1) In section HL 25(1), “their portfolio investor interest in the entity” is replaced by “the portfolio investor interest for which the investor is a member of a portfolio investor class of the entity”.

(2) Section HL 25(3) is replaced by the following:

*“Time of optional payment*

“(3) A payment under this section must be made by—

“(a) the end of the month beginning from the end of the month in which the portfolio calculation period ends, if paragraph (b) does not apply; or

“(b) the 15 January following the end of the portfolio calculation period, if the portfolio calculation period ends in November.”

**428 Portfolio investor allocated income and portfolio investor allocated loss**

(1) In section HL 26(5), “fees” is replaced by “expenses”.

(2) Section HL 26(6)(e) is replaced by the following:

“(e) **expenses** is the total amount for the day in the portfolio allocation period of—

“(i) fees for ongoing management and administration services paid from or charged to the account of

the investor as a member of the portfolio investor class:

- “(ii) expenditure of the investor incurred in the investor’s income year ending with the day and transferred under subpart DV (Expenditure specific to certain entities) to the entity:”.

**429 Treatment of portfolio investor allocated loss for zero-rated portfolio investors and investors with portfolio investor exit period**

- (1) In section HL 27(2), “income year corresponding to the tax year” is replaced by “income year including the end of the portfolio tax rate entity’s income year”.
- (2) In section HL 27, in the list of defined terms,—
- (a) “portfolio allocation period” and “portfolio investor allocated income” are omitted:
- (b) “income tax” and “portfolio tax rate entity” are inserted.

**430 Credits received by portfolio tax rate entity or portfolio investor proxy**

- (1) Section HL 29(6) is replaced by the following:
- “*Application of subsections (7) to (11)*
- “(6) For an investor in a portfolio tax rate entity who is allocated under subsection (3) credits for a portfolio calculation period in an income year of the entity,—
- “(a) subsections (7) and (8) apply to the credits, and the credits are allocated to the income year in which the entity’s income year ends, if—
- “(i) the investor is a zero-rated portfolio investor:
- “(ii) the investor is not a zero-rated portfolio investor and the entity makes payments of tax under section HL 21 and the portfolio calculation period includes part of a portfolio investor exit period:
- “(b) subsections (10) and (11) apply to the credits if paragraph (a) does not apply.”
- (2) Section HL 29(7) is replaced by the following:

*“Zero-rated portfolio investors and certain investors having portfolio investor exit period: credit*

- “(7) The investor is treated as receiving for the allocated credits, for the tax year corresponding to the investor’s income year,—
- “(a) a credit against income tax payable by the investor of the amount given by subsection (8) if—
- “(i) the credits are under subpart LJ (Tax credits for foreign income tax); and
- “(ii) the investor is not a portfolio tax rate entity or portfolio investor proxy; or
- “(b) the allocated amount of each type of credit if—
- “(i) the credits are not under subpart LJ:
- “(ii) the investor is a portfolio tax rate entity or portfolio investor proxy.”
- (3) In section HL 29(8), the heading is replaced by *“Amount of credit for foreign tax: zero-rated portfolio investors, other than portfolio tax rate entities and portfolio investor proxies, and investors having portfolio investor exit period”*.
- (4) Section HL 29(9) is repealed.
- (5) In section HL 29(11)(a)(ii), “section HL 23 or HL 24” is replaced by “section HL 24”.
- (6) Section HL 29(11)(b) is replaced by the following:
- “(b) the investor as a member of—
- “(i) the portfolio investor class:
- “(ii) another portfolio investor class, if the entity chooses such a use for the credit.”
- (7) In section HL 29(13)(a)(ii),—
- (a) “in subsection (11)(b)” is replaced by “in subsection (12)(b):”
- (b) “by subsection (11)” is replaced by “by subsection (12)”.

#### **431 Portfolio investor proxies**

In section HL 33(3)(d), “or the payments required from the investor,” is inserted after “distributions to the investor,”.

#### **432 Common ownership: group of companies**

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

*“When portfolio tax rate entities included in group*

- “(2B) In relation to 2 or more companies of which 1 is a portfolio tax rate entity, the companies are treated as a group of companies at a particular time or for a particular period if—
- “(a) the portfolio tax rate entity owns 100% of the voting interests in the other companies; and
  - “(b) the other companies in the group are portfolio land companies.”
- (2) In section IC 3, in the list of defined terms, “portfolio land company” is inserted.

**433 Remaining refundable credits: PAYE, RWT, and certain other items**

- (1) After section LA 6(1)(c), the following is inserted:  
“(cb) section LB 6 (Tax credits for RSCT):”.
- (2) After section LA 6(1)(d), the following is inserted:  
“(db) subpart LH (Tax credits for expenditure on research and development), although modified by section LH 2(6) (Tax credits relating to expenditure on research and development):”.
- (3) In section LA 6, in the compare note, “LD 12(5), LH 1(6),” are inserted.

**434 Remaining refundable credits: family scheme income**

- (1) The heading to section LA 7 is replaced by “**Remaining refundable credits: tax credits for families**”.
- (2) In section LA 7(1), “family scheme income” is replaced by “families”.

**435 Use of tax credits**

In section LA 9, “Section OZ 11 (Tax credits for imputation credits and FDP credits) may apply to modify this section.” is added after “extends.”

**436 Heading: subpart LB**

The heading to subpart LB is replaced by “Subpart LB—Tax credits for payments, deductions, and family payments”.

**437 Tax credits for family scheme income**

- (1) The heading to section LB 4 is replaced by “**Tax credits for families**”.
- (2) In section LB 4,—
  - (a) “family assistance credit” is replaced by “tax credit”:
  - (b) “(Family assistance credit)” is replaced by “(Abating WFF tax credits)”.
  - (c) “family tax credit” is replaced by “minimum family tax credit”:
  - (d) “(Family tax credit)” is replaced by “(Minimum family tax credit)”.
- (3) In section LB 4, in the list of defined terms,—
  - (a) “minimum family tax credit” is inserted:
  - (b) “family assistance credit” and “family tax credit” are omitted.

**438 Tax credits for caregivers**

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

**“LB 6 Tax credits for RSCT**

*“When this section applies*

- “(1) This section applies when—
  - “(a) a person derives income as a retirement scheme contribution in an income year; and
  - “(b) the retirement scheme contributor pays RSCT for the contribution; and
  - “(c) the income is not excluded income of the person under section CX 50B (Contributions to retirement savings schemes).

*“Tax credit: New Zealand resident*

- “(2) If the person is resident in New Zealand, they have a tax credit for the tax year corresponding to the income year of an amount equal to the RSCT withheld.

*“Tax credit: non-resident*

- “(3) If the person is not resident in New Zealand, they have a tax credit for the tax year corresponding to the income year of an amount equal to the excess of RSCT withheld over NRWT paid in relation to the contribution.

*“When contribution is taxable Maori authority distribution*

- “(4) If the person is not resident in New Zealand and the retirement scheme contribution is a taxable Maori authority distribution, they have a tax credit for the tax year corresponding to the income year of an amount equal to the RSCT withheld.

“Defined in this Act: amount, excluded income, income, income year, non-resident, NRWT, pay, resident in New Zealand, retirement scheme contribution, retirement scheme contributor, RSCT, tax credit, tax year

Compare: 2004 No 35 s LD 12(1)–(4)”.

- (2) After section LB 6, the following are added:

**“LB 7 Tax credits related to personal service rehabilitation payments: providers**

*“When this section applies*

- “(1) This section applies when—

“(a) a person—

“(i) is paid under the Injury Prevention, Rehabilitation, and Compensation Act 2001 a personal service rehabilitation payment for a period for a key aspect of social rehabilitation referred to in the definition of **personal service rehabilitation payment**; and

“(ii) pays another person (a **provider**) for providing the key aspect to them for the period; or

- “(b) the Accident Compensation Corporation pays a provider a personal service rehabilitation payment for a period for providing a key aspect of social rehabilitation to the person.

*“Tax credit*

- “(2) The provider has a tax credit for the tax year corresponding to the income year in which the period falls.

*“Amount*

- “(3) The amount of the tax credit is calculated using the formula—

$$\frac{\text{amount paid} \times \text{tax rate}}{1 - \text{tax rate}}$$

*“Definition of items in formula*

“(4) In the formula,—

“(a) **amount paid** is the amount paid to the provider for providing a key aspect of social rehabilitation to the person for the period, to the extent to which the amount is equal to or less than the amount of the personal service rehabilitation payment for the period after taking into account any amount of tax withheld:

“(b) **tax rate** is the rate of tax applying to the personal service rehabilitation payment under schedule 4, part H, clause 1 (Rates of tax for schedular payments).

“Defined in this Act: amount, amount of tax, income year, pay, personal service rehabilitation payment, tax credit, tax year

Compare: 2004 No 35 s LD 1B

**“LB 8 Tax credits related to personal service rehabilitation payments: payers**

*“When this section applies*

“(1) This section applies when—

“(a) a person is paid under the Injury Prevention, Rehabilitation, and Compensation Act 2001 a personal service rehabilitation payment for a period for a key aspect of social rehabilitation referred to in the definition of **personal service rehabilitation payment**; and

“(b) the person pays another person (the **provider**) for providing the key aspect to them for the period; and

“(c) the amount paid to the provider is less than the amount of the personal service rehabilitation payment to the person for the period after taking into account any amount of tax withheld.

*“Tax credit*

“(2) The person has a tax credit for the tax year corresponding to the income year in which the period falls to the extent of the amount calculated using the formula—

$$\text{total tax withheld} - \frac{\text{amount paid} \times \text{tax rate}}{1 - \text{tax rate.}}$$

*“Definition of items in formula*

“(3) In the formula,—

“(a) **total tax withheld** is the total amount of tax withheld from the personal service rehabilitation payment paid to the person for the period:

“(b) **amount paid** is the amount paid to the provider:

“(c) **tax rate** is the rate of tax applying to the personal service rehabilitation payment under schedule 4, part H, clause 1 (Rates of tax for schedular payments).

“Defined in this Act: amount, amount of tax, income year, pay, personal service rehabilitation payment, tax credit, tax year

Compare: 2004 No 35 s LD 1C”.

**439 Tax credits for housekeeping**

In section LC 6(4), “family scheme income” is replaced by “tax credits for families”.

**440 Tax credits for charitable and other public benefit gifts**

(1) Section LD 1(1), other than the heading, is replaced by the following:

“(1) A person who makes a charitable or other public benefit gift in a tax year and who meets the requirements of section 41A of the Tax Administration Act 1994 has a tax credit for the tax year equal to the amount calculated using the formula in subsection (2).”

(2) In section LD 1(2), “subsection (1)(b)” is replaced by “subsection (1)”.

(3) In section LD 1(5), “family scheme income” is replaced by “tax credits for families”.

**441 Tax credits for imputation credits**

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

*“FIF income*

“(4B) For the purposes of this section, an amount that would, in the absence of section EX 59 (Codes: comparative value method, deemed rate of return method, fair dividend rate method, and cost method), be income of a person from an attributing interest in a FIF is treated as if it were assessable income of the person.”

- (2) In section LE 1, in the list of defined terms, “attributing interest”, “FIF”, and “income” are inserted.

#### **442 New section LE 7B**

After section LE 7, the following is inserted:

##### **“LE 7B Credit of RSCT for imputation credit**

*“Retirement scheme contributions*

- “(1) A retirement scheme contributor who attaches an imputation credit to a retirement scheme contribution for a person in an income year has a tax credit for the corresponding tax year of an amount equal to the lesser of—
- “(a) the amount of the imputation credit:
  - “(b) the liability of the contributor for RSCT on the contribution.

*“When credit more than liability*

- “(2) If the amount of the imputation credit is more than the liability of the contributor for RSCT on the contribution,—
- “(a) the amount of the excess is treated as an imputation credit attached to a distribution from the contributor to the person; and
  - “(b) the person responsible for withholding the RSCT must, within 30 days of the contribution, notify the person of the amount of the excess credit.

“Defined in this Act: amount, imputation credit, income year, notify, retirement scheme contribution, retirement scheme contributor, RSCT, tax credit, tax year

Compare: 2004 No 35 s LB 3”.

#### **443 Application of imputation ratio**

In section LE 8(1), “Section OZ 10 (Modifying ratios for imputation credits and FDP credits) may apply to modify this section.” is added after “ratios).”

#### **444 Application of combined imputation and FDP ratio**

After section LE 9(2), the following is added:

*“Relationship with section OZ 10*

- “(3) Section OZ 10 (Modifying ratios for imputation credits and FDP credits) may apply to modify this section.”

**445 Tax credits for FDP credits**

In section LF 1(1), “Section OZ 11 (Tax credits for imputation credits and FDP credits) may apply to modify this section.” is added after “income year.”

**446 Application of FDP ratio**

In section LF 6(1), “Section OZ 10 (Modifying ratios for imputation credits and FDP credits) may apply to modify this section.” is added after “ratios).”

**447 Application of combined imputation and FDP ratio**

After section LF 7(2), the following is added:

*“Relationship with section OZ 10*

- “(3) Section OZ 10 (Modifying ratios for imputation credits and FDP credits) may apply to modify this section.”

**448 New subpart LH inserted**

After subpart LF, the following is inserted:

“Subpart LH—Tax credits for expenditure on research  
and development

**“LH 1 Who this subpart applies to**

*“Persons included*

- “(1) This subpart provides for a tax credit for eligible expenditure on research and development activities incurred by a person who—

“(a) carries on a business in New Zealand as a resident or through a fixed establishment in New Zealand:

“(b) is an industry research co-operative.

*“Persons excluded*

- “(2) Subsection (1) does not apply to—

“(a) a person who is a Crown Research Institute, a tertiary institution, or a district health board:

“(b) a person associated with an entity referred to in paragraph (a):

“(c) a person controlled by 1 or more of the entities referred to in paragraph (a) or (b).

“Defined in this Act: associated person, business, control, Crown Research Institute, district health board, fixed establishment, industry research co-operative, New Zealand, research and development activities, resident, tax credit, tertiary institution

Compare: 2004 No 35 s LH 2(1)

## “LH 2 Tax credits relating to expenditure on research and development

“*When this section applies*

“(1) This section applies when—

“(a) a person to whom section LH 1(1) applies meets the requirements of section LH 3 for an income year or for a period in an income year; and

“(b) the income year is the 2008–09 income year or a later income year; and

“(c) the person incurs in the income year or period an amount of expenditure or depreciation loss on research and development activities that—

“(i) meets the requirements of subsection (3); and

“(ii) is an amount related to research and development activities performed on their own behalf and not on behalf of another person; and

“(d) the person meets the requirements of section 68D or 68E of the Tax Administration Act 1994.

“*Tax credit*

“(2) The person has a tax credit for the tax year corresponding to the income year calculated under section LH 4.

“*Minimum requirements for expenditure*

“(3) For the purposes of this subpart, the eligible expenditure referred to in section LH 4 incurred by the person in the income year must be an amount—

“(a) of \$20,000 or more, or the part-year equivalent amount calculated under subsection (4):

“(b) paid under an agreement between the person (**person A**) and another person who, at the time of making the agreement, is a listed research provider who is not associated with person A.

*“Part-year calculations*

- “(4) For the purposes of subsection (3)(a), if the person meets the requirements of section LH 1 for only part of an income year, the minimum amount is calculated using the formula—

$$\$20,000 \times \frac{\text{days in part-year}}{365}.$$

*“When expenditure treated as incurred in income year*

- “(5) In subsections (1)(c) and (3) and sections LH 3(1)(e) and LH 5(2), for the purposes of a tax credit under this subpart, the following amounts are treated as expenditure incurred in the income year:

- “(a) the opening value of trading stock in the income year under section DB 49 (Adjustment for opening values of trading stock, livestock, and excepted financial arrangements):
- “(b) an unexpired amount of expenditure in the income year under section DB 50 (Adjustment for prepayments):
- “(c) an unpaid amount of expenditure on employment income in the income year under section DB 51 (Adjustment for deferred payment of employment income) in relation to research and development activities performed in the 2008–09 income year or a later income year:
- “(d) an amount of overseas eligible expenditure under section LH 6(5).

*“Dealing with remaining tax credits: relationship with sections LA 5 and LA 6*

- “(6) If the person has a tax credit under this section remaining for the tax year under section LA 5(5) (Treatment of remaining credits), section LA 6(2) (Remaining refundable credits: PAYE, RWT, and certain other items) applies to the use of that credit, but is modified by treating the following paragraph as inserted after subsection (2)(c):

- ‘(cb) pay an amount that is payable by the person under an Inland Revenue Act.’

“Defined in this Act: amount, associated person, depreciation loss, employment income, income year, Inland Revenue Acts, listed research provider, overseas

eligible expenditure, pay, research and development activities, tax credit, tax year,  
trading stock

Compare: 2004 No 35 ss LH 1(1), (5), (7)(d), LH 3(4)

### “LH 3 Requirements

*“What is required of person?”*

“(1) For the purposes of section LH 2, the person must, for the income year or period in the income year,—

“(a) perform on their own behalf, or have another person perform, research and development activities related to—

“(i) the business referred to in section LH 1(1)(a), or an intended business of the person:

“(ii) for an industry research co-operative, the business of a person who is an industry member under section LH 16; and

“(b) control the research and development activities; and

“(c) bear the financial risk of the research and development activities; and

“(d) effectively own the results of the research and development activities, if any; and

“(e) have—

“(i) incurred expenditure described in schedule 21, part A (Expenditure and activities related to research and development) and not excluded under schedule 21, part B, for which they are allowed a deduction in the income year, or would be allowed a deduction if they derived income other than exempt income:

“(ii) an amount of depreciation loss described in schedule 21, part A and not excluded under schedule 21, part B, for depreciable property used in the research and development activities, for which they are allowed a deduction in the income year, or would be allowed a deduction if they derived income other than exempt income.

*“What is excluded*

“(2) For the purposes of section LH 2, the person must not, for the income year, perform or have another person perform the

research and development activities as a person in partnership with an entity referred to in section LH 1(2).

*“Partners in partnerships*

- “(3) If 2 or more persons perform research and development activities as partners in a partnership, a partner is treated as—
- “(a) meeting the business requirements of subsection (1)(a)(i) and section LH 1(1)(a) and the threshold set out in section LH 2(3) if the partnership, treated as an entity performing the research and development activities, would meet those requirements:
  - “(b) meeting the control and ownership requirements of subsection (1)(b) to (d) and section LH 6(4)(a) and (d) if—
    - “(i) the partnership, treated as an entity performing the research and development activities, would meet those requirements; and
    - “(ii) each partner meets the requirements of section LH 1.

*“Joint ventures*

- “(4) If 2 or more persons perform research and development activities as partners in a joint venture, a partner is treated as meeting the control and ownership requirements of subsection (1)(b) to (d) and section LH 6(4)(a) and (d) if the joint venture, treated as an entity performing the research and development activities, would meet those requirements.

*“Activities performed on person’s behalf*

- “(5) In subsections (3) and (4), the performance of research and development activities by a person includes the circumstances where the activities are performed on behalf of the person.

“Defined in this Act: amount, business, capital limitation, corresponding income year, deduction, depreciable property, depreciation loss, exempt income, income year, industry research co-operative, research and development activities, tax year

Compare: 2004 No 35 s LH 2(2)–(4)

**“LH 4 Calculation of amount of credit**

*“Formula*

- “(1) The amount of a tax credit under section LH 2(2) is calculated using the formula—

0.15 × eligible expenditure.

*“Definition of item in formula*

- “(2) **Eligible expenditure** is the amount of expenditure or depreciation loss that meets the requirements of section LH 3(1)(e) in an income year, adjusted as required under sections LH 5 and LH 6.

“Defined in this Act: amount, depreciation loss, income year, tax credit

Compare: 2004 No 35 s LH 4

**“LH 5 Adjustments to eligible expenditure**

*“Cases when adjustment may apply*

- “(1) An amount of eligible expenditure under section LH 4 is adjusted in the cases set out in subsections (2), (4), (5), and (6).

*“Treatment of prepayments and other timed amounts*

- “(2) If an amount of expenditure or depreciation loss is incurred in an income year and subpart CH (Adjustments) applies, or would apply, to the expenditure or depreciation loss, the amount of eligible expenditure is adjusted in the same way.

*“Trading stock and livestock*

- “(3) Despite subsection (2), no adjustment under section CH 1 (Adjustment for closing values of trading stock, livestock, and excepted financial arrangements) applies if—
- “(a) the expenditure or amount of depreciation loss is incurred in acquiring or producing an item that has a market value and that has been subjected to a process or transformation as part of the research and development activities; and
  - “(b) schedule 21, part A, clause 8 (Expenditure and activities related to research and development) applies to the expenditure or amount of depreciation loss.

*“Capital expenditure*

- “(4) The requirements of section LH 3(1)(e) do not apply to an amount of expenditure described in schedule 21, part A and not excluded under schedule 21, part B incurred by a person in an income year if—

- “(a) the capital limitation applies to the amount; and
- “(b) the amount is not a deduction under section DB 34 (Research and development), or would not be a deduction under the section if the person derived income other than exempt income; and
- “(c) the expenditure is incurred by the person in the intended development of depreciable property that is—
  - “(i) intangible property:
  - “(ii) tangible property not intended for use other than in the research and development activities.

*“Deferred expenditure*

- “(5) If a deduction for an amount of expenditure or depreciation loss incurred in an income year is allocated under section EJ 23 (Allocation of deductions for research, development, and resulting market development), the amount is treated as if it were a deduction allowed in the income year in which it is incurred, and not allowed in the income year to which it is allocated.

*“Internal software development*

- “(6) If the expenditure or amount of depreciation loss relates to internal software development, the amount of eligible expenditure is adjusted under sections LH 9 to LH 13.

“Defined in this Act: amount, capital limitation, deduction, depreciable property, depreciation loss, exempt income, income, income year, internal software development, New Zealand, research and development activities, trading stock

Compare: 2004 No 35 s LH 3

**“LH 6 Research and development activities outside New Zealand**

*“Expenditure not part of research and development project*

- “(1) If a person incurs expenditure or an amount of depreciation loss in research and development activities performed outside New Zealand other than as part of a research and development project, the expenditure or amount is excluded from the calculation of eligible expenditure under section LH 4.

*“Overseas expenditure on research and development project*

- “(2) If a person incurs expenditure or an amount of depreciation loss in research and development activities performed outside New Zealand as part of a research and development project, the expenditure or amount is excluded from the calculation of eligible expenditure under section LH 4 unless it is overseas eligible expenditure.

*“Activities performed on person’s behalf*

- “(3) In subsections (1) and (2), the performance of research and development activities by a person includes the circumstances where the activities are performed on behalf of the person.

*“Meaning of research and development project*

- “(4) A **research and development project**, for a person, means a process—
- “(a) consisting of co-ordinated research and development activities controlled by the person; and
  - “(b) having start and finish dates; and
  - “(c) undertaken collectively to achieve a specified objective within constraints of time, cost, and other resources; and
  - “(d) for which the person bears the financial risk and effectively owns the results, if any; and
  - “(e) for which the person incurs on research and development activities performed in New Zealand more than half of the total amount of expenditure and depreciation loss that would be eligible expenditure under section LH 4 in the absence of subsection (2).

*“Meaning of overseas eligible expenditure*

- “(5) **Overseas eligible expenditure**, for a person and an income year, means expenditure or an amount of depreciation loss that—
- “(a) would, in the absence of this subsection, be eligible expenditure under section LH 4; and
  - “(b) is incurred by the person in research and development activities performed outside New Zealand in the 2008–09 income year or a later income year as part of a research and development project; and

“(c) is limited to a maximum amount of 10% of the total eligible expenditure under section LH 4 incurred in or before the income year on research and development activities performed in New Zealand in the 2008–09 income year or a later income year as part of the research and development project.

“Defined in this Act: amount, depreciation loss, income year, New Zealand, overseas eligible expenditure, research and development activities, research and development project, tax credit, tax year

Compare: 2004 No 35 s LH 7(2)(j), (k), (4)

### “LH 7 Research and development activities and related terms

#### “*Research and development activities*

“(1) In this subpart, **research and development activities** of a person are—

“(a) systematic, investigative, and experimental activities that are performed for the purposes of acquiring new knowledge or creating new or improved materials, products, devices, processes, or services and that—

“(i) are intended to achieve an advance in science or technology by resolving scientific or technological uncertainty:

“(ii) involve an appreciable element of novelty:

“(b) other activities that are wholly or mainly for the purpose of, required for, and integral to, the performing of the activities referred to in paragraph (a).

#### “*Systematic, investigative, and experimental activities*

“(2) In this subpart, **systematic, investigative, and experimental activities** of a person are activities that—

“(a) are planned activities directed towards a particular purpose and following a logical progression of work involving hypothesis, experiment, observation, and evaluation; and

“(b) are not excluded under schedule 21, part C (Expenditure and activities related to research and development).

#### “*Scientific or technological uncertainty*

“(3) In this subpart, **scientific or technological uncertainty** means uncertainty concerning the scientific or technological

possibility of a thing, or the achievement of the thing in practice, created by an absence of relevant knowledge from the knowledge that is publicly available or deducible by a competent professional working in the field.

*“Novelty*

- “(4) In this subpart, **novelty** means a development of technology or a new use of existing technology, by comparison with the knowledge of the technology that is publicly available on a reasonably accessible worldwide basis.

*“Technology*

- “(5) In this subpart, **technology** means the practical application of scientific principles and knowledge.

“Defined in this Act: novelty, research and development activities, scientific or technological uncertainty, systematic, investigative, and experimental activities, technology

Compare: 2004 No 35 s LH 5

**“LH 8 Orders in Council**

The Governor-General may make an Order in Council—

- “(a) providing that a kind of expenditure included in the kinds of expenditure referred to in schedule 21, part A, clauses 5 and 6 (Expenditure and activities related to research and development) does not give rise to a tax credit under this subpart:
- “(b) setting the date from which the exclusion applies.

“Defined in this Act: tax credit

Compare: 2004 No 35 s LH 7(5)

**“LH 9 Internal software development: general**

*“When sections LH 10 to LH 13 apply*

- “(1) Sections LH 10 to LH 13 apply for a person and an income year if, in the absence of those sections, the person would have eligible expenditure relating to internal software development.

*“Eligible expenditure*

- “(2) The amount of eligible expenditure is adjusted to the following:

- “(a) the amount determined under section LH 10 for the income year if the person has no associated internal software developer in the income year; or
- “(b) the amount determined under section LH 11 for the income year if the person has throughout the income year an associated internal software developer with the same income year as the person, and no associated internal software developer with an income year that is different; or
- “(c) the amount determined under section LH 12 for the income year if the person has throughout the income year an associated internal software developer with an income year that is different from the person’s income year; or
- “(d) the total of amounts determined under sections LH 10 to LH 12 for each of the periods making up the income year, if paragraphs (a) to (c) do not apply.

“Defined in this Act: amount, associated internal software developer, income year, internal software development

Compare: 2004 No 35 s LH 10(1), (2)

**“LH 10 Internal software development: no associated internal software developer**

*“Eligible expenditure*

- “(1) If the person referred to in section LH 9(1) has no associated internal software developer in a period that is all or part of their income year, the person has eligible expenditure related to internal software development under section LH 4 for the period equal to the smaller of—
  - “(a) the eligible expenditure related to internal software development that the person would have for the period in the absence of this section:
  - “(b) the amount for the period calculated using the formula—

$$\text{limit} \times \frac{\text{days}}{365}.$$

*“Definition of items in formula*

- “(2) In the formula,—
  - “(a) **limit** is the amount set out in section LH 13:

“(b) **days** is the number of days in the period.

“Defined in this Act: amount, associated internal software developer, income year

Compare: 2004 No 35 s LH 10(3), (4)

**“LH 11 Internal software development: associated internal software developer with same income year**

*“Who this section applies to*

“(1) This section applies to a person referred to in section LH 9(1) if, throughout a period that is part or all of their income year, they have an associated internal software developer with the same income year as the person and have no associated internal software developer with a different income year.

*“Eligible expenditure*

“(2) The person has eligible expenditure related to internal software development under section LH 4 for the period equal to the smallest of—

“(a) the eligible expenditure related to internal software development that the person would have for the period in the absence of this section:

“(b) the amount calculated under subsection (3) for the person for the period:

“(c) the part, allocated by the internal software development group to the person, of the amount determined under subsection (5) as available for allocation by the internal software development group for the tax year.

*“Maximum amount for period*

“(3) The amount referred to in subsection (2)(b) is calculated using the formula—

$$\text{limit} \times \frac{\text{days}}{365}.$$

*“Definition of items in formula*

“(4) In the formula in subsection (3),—

“(a) **limit** is the amount set out in section LH 13:

“(b) **days** is the number of days in the period.

*“Amount available for allocation*

- “(5) The amount referred to in subsection (2)(c) that may be allocated by the internal software development group to members of the group for the tax year corresponding to the person’s income year is the lesser of—
- “(a) the total eligible expenditure related to internal software development that the members of the group would have in the absence of this section for income years corresponding to the tax year:
- “(b) the amount for the tax year calculated using the formula—

$$\text{group limit} \times \frac{\text{days}}{365}.$$

*“Definition of items in formula*

- “(6) In the formula in subsection (5)(b),—
- “(a) **group limit** is the amount set out in section LH 13:
- “(b) **days** is the number of days in the person’s income year for which there are 2 or more members of the internal software development group.

“Defined in this Act: amount, associated internal software developer, income year, internal software development group, tax year

Compare: 2004 No 35 s LH 10(5)–(10)

**“LH 12 Internal software development: associated internal software developer with different income year**

*“When this section applies*

- “(1) This section applies to a person referred to in section LH 9(1) if, throughout a period that is all or part of their income year, the person has an associated internal software developer with a different income year from the person.

*“Eligible expenditure for period less than year*

- “(2) If the period is less than the person’s income year, the person has no eligible expenditure related to internal software development under section LH 4 for the period.

*“Eligible expenditure for income year*

- “(3) If the period is the person’s income year, the person has eligible expenditure related to internal software development under section LH 4 for the period equal to the lesser of—
- “(a) the eligible expenditure related to internal software development that the person would have for the period in the absence of this section:
  - “(b) the part, allocated by the internal software development group to the person, of the amount determined under subsection (4) as available for allocation by the internal software development group for the tax year.

*“Amount available for allocation*

- “(4) The amount referred to in subsection (3)(b) that may be allocated by the internal software development group to members of the group for the tax year corresponding to the person’s income year is the lesser of—
- “(a) the total eligible expenditure related to internal software development that the members of the group would have in the absence of this section for income years corresponding to the tax year:
  - “(b) an amount equal to the limit set out in section LH 13.

“Defined in this Act: amount, associated internal software developer, income year, internal software development group, tax year

Compare: 2004 No 35 s LH 10(11)–(14)

**“LH 13 Internal software development: limit***“Amount*

- “(1) The item **limit** referred to in sections LH 10(2)(a), LH 11(4)(a), and LH 12(4)(b) and the item **group limit** in section LH 11(6)(a) is the amount of \$3,000,000 unless subsection (2) applies to increase the amount.

*“Determination of amount by Minister*

- “(2) The Minister may, by notice published in the *Gazette*, determine an amount of more than \$3,000,000 to be appropriate for the purposes of subsection (1) for a person or internal software development group who need not be named in the notice and an income year or period, if the Minister is satisfied that—

- “(a) the internal software development will be exploited mainly for the benefit of the New Zealand economy; and
- “(b) New Zealand will derive a substantial net benefit from the intended completion of the internal software development; and
- “(c) the person or the internal software development controller of the group has a commitment to retain the value of their business in New Zealand.

“*Requirements in determination*

- “(3) A determination under subsection (2)—
  - “(a) may include requirements that the Minister thinks are appropriate for the application of the determination; and
  - “(b) does not apply to a person who does not meet a requirement of the determination.

“Defined in this Act: amount, business, income year, internal software development, internal software development controller, internal software development group, New Zealand, notice

Compare: 2004 No 35 s LH 10(15), (16)

“**LH 14 Treatment of depreciation loss for certain depreciable property**

“*What this section applies to*

- “(1) This section applies to a person who owns an item of depreciable property for which no deduction has been allowed for an amount of depreciation loss because the person derives exempt income. This section applies only for the purposes of calculating eligible expenditure under this subpart.

“*Depreciation loss for tax credit*

- “(2) For the purposes of calculating the amount of depreciation loss the person has for the item under section EE 1(2) (What this subpart does), the person is treated as—
  - “(a) acquiring the item on the later of the 2 following days:
    - “(i) the first day of the 2008–09 income year;
    - “(ii) the day on which they acquire the item; and
  - “(b) allowed a deduction for depreciation loss for the item for the income years ending after the day on which the person is treated as acquiring it under this section.

*“Market value and 20% loading*

- “(3) An item treated as acquired by a person under subsection (2)(a)(i) is treated as—
- “(a) acquired for its market value; and
  - “(b) meeting the requirements of section EE 31(2)(b)(i) to (iv) (Annual rate for item acquired in person’s 1995–96 or later income year) for using the 1.2 factor, unless the item—
    - “(i) did not meet those requirements when, but for subsection (2)(a)(i), the person acquired the item; or
    - “(ii) was acquired by the person, but for subsection (2)(a)(i), before the first day of the 1995–96 income year.

“Defined in this Act: acquire, amount, deduction, depreciable property, depreciation loss, exempt income, income year, own

Compare: 2004 No 35 s LH 11

**“LH 15 Listed research providers***“Application*

- “(1) A person may apply to be a listed research provider by notifying the Commissioner that they—
- “(a) meet the 2 start-up requirements of subsection (2); and
  - “(b) undertake to meet the continuing requirements of subsection (3).

*“Start-up requirements*

- “(2) The start-up requirements are that the person—
- “(a) is capable of performing research and development activities on behalf of other persons; and
  - “(b) has in New Zealand the facilities needed to perform the research and development activities.

*“Continuing requirements*

- “(3) The continuing requirements are that the person—
- “(a) charges market prices for performing the research and development activities; and
  - “(b) is available to perform research and development activities on behalf of persons not associated with them; and

“(c) keeps records as required by section 22(2)(kd) of the Tax Administration Act 1994.

*“Published listing of applicants*

“(4) The Commissioner may list the person as a listed research provider if the Commissioner is satisfied that they meet the requirements of subsection (2). The Commissioner must publish the names of the listed research providers appropriately. Subsection (10) applies in relation to an application to list when the person applying has previously been listed under this subsection and later been removed from the list.

*“Period of listing*

“(5) A person listed under subsection (4) continues to be a listed research provider until removed from the list—

“(a) under subsection (6), following a request by the person:

“(b) under subsection (7), by notice of the Commissioner.

*“Request for removal from list*

“(6) If a listed research provider notifies the Commissioner that they wish to be removed from the list, they are removed from the list from the later of the following:

“(a) the date set out in the notice:

“(b) the date on which the Commissioner receives the notice.

*“Removal from list by Commissioner*

“(7) If the Commissioner is satisfied that a person is not meeting a requirement of subsection (2) or (3), the Commissioner may notify the person that they are no longer a listed research provider, giving the reasons for the decision for removal. The person is then removed from the list from the later of the following:

“(a) the date set out in the notice:

“(b) the date that is 1 month after the date of the notice.

*“No challenge*

“(8) No challenge to a decision by the Commissioner under subsection (7) is available.

*“When subsection (10) applies*

- “(9) Subsection (10) applies when a person—
- “(a) has been listed under subsection (4); and
  - “(b) has been removed from the list under subsection (6) or (7); and
  - “(c) reapplies under subsection (1) to be a listed research provider.

*“Conditions for relisting*

- “(10) If the Commissioner is satisfied that the person meets the requirements of subsection (2) and will meet the requirements of subsection (3), the Commissioner may list the person as a listed research provider.

“Defined in this Act: amount, associated person, Commissioner, listed research provider, New Zealand, notice, notify, research and development activities

Compare: 2004 No 35 s LH 8

#### **“LH 16 Industry research co-operatives**

An **industry research co-operative** is a person who performs or commissions research and development activities mainly on behalf of other persons (the **industry members**), each of whom—

- “(a) carries on a business activity in New Zealand as a resident or through a fixed establishment in New Zealand; and
- “(b) would meet the requirements of section LH 2 if—
  - “(i) the person performed the research and development activities, or had the research and development activities performed on the person’s behalf; and
  - “(ii) section LH 2(3)(a) did not apply; and
- “(c) contributes to the financing of the research and development activities by payments made—
  - “(i) to the industry research co-operative;
  - “(ii) as a levy imposed under section 4 of the Commodity Levies Act 1990:

“(iii) as a levy imposed under section 5 of the Building Research Levy Act 1969.

“Defined in this Act: business, Commissioner, fixed establishment, industry research co-operative, New Zealand, research and development activities, resident

Compare: 2004 No 35 s LH 9

#### “LH 17 Some definitions

In this subpart,—

“**associated internal software developer**, for a person (**person A**) who is performing, or having another person perform, internal software development at a time, means another person—

- “(a) who is performing, or having another person perform, internal software development at the time; and
- “(b) for whom the internal software development controller is the same as the internal software development controller of person A

“**internal software development**, for a person, means a research and development activity of developing software with—

- “(a) a purpose of having the software used in—
  - “(i) the internal administration of business activities of the person or of another person associated with them:
  - “(ii) providing services to customers of the person or another person associated with them whose main reason for using the services is to obtain a service other than the use of the person’s computer technology or software:
- “(b) the main purpose that is neither—
  - “(i) selling, renting, licensing, hiring, or leasing the software by the person to customers of which 2 or more are not associated with the person nor with each other:
  - “(ii) including the software as an integral part of an electrical or mechanical device for which the software is developed and that has for the person the main purpose of being sold, rented, licensed, hired, or leased to customers as part of the person’s business

“**internal software development controller**, for a person (**person A**) who is performing, or having another person perform, internal software development, means a group of 1 or more persons—

- “(a) having the power to govern, directly or indirectly, the financial and operating policies of person A to obtain benefits from person A’s activities; and
- “(b) having no other person or persons with the power to govern, directly or indirectly, the financial and operating policies of the group to obtain benefits from the group’s activities

“**internal software development group**, for an internal software development controller (the **controller**) and a tax year, means a group of entities of which each entity is a member at a time, in the entity’s income year corresponding to the tax year, when—

- “(a) the controller is the internal software development controller of the entity; and
- “(b) the entity is performing, or having another person perform, internal software development; and
- “(c) the entity has an associated internal software developer.

“Defined in this Act: associated person, deduction, income year, internal software development, internal software development controller, internal software development group, research and development activities, tax year

Compare: 2004 No 35 s LH 12”.

#### 449 New section LO 2B

After section LO 2, the following is inserted:

##### “LO 2B Credit of RSCT for Maori authority credit

“*Retirement scheme contributions*

- “(1) A retirement scheme contributor who attaches a Maori authority credit to a retirement scheme contribution for a person in an income year has a credit of RSCT equal to the lesser of—
  - “(a) the amount of the Maori authority credit:
  - “(b) the liability of the contributor for RSCT on the contribution.

“*When credit more than liability*

- “(2) If the amount of the Maori authority credit is more than the liability of the contributor for RSCT on the contribution,—

- “(a) the amount of the excess is treated as a Maori authority credit attached to a taxable Maori authority distribution from the contributor to the person; and
- “(b) the person responsible for withholding the RSCT must, within 30 days of the contribution, notify the person of the amount of the excess credit.

“Defined in this Act: amount, income year, Maori authority credit, notify, retirement scheme contribution, retirement scheme contributor, RSCT

Compare: 2004 No 35 s LD 4”.

#### **450 Tax credits for supplementary dividends**

- (1) In section LP 2(2), the item “67/187” in the formula is replaced by “7/10”.
- (2) After section LP 2(6), the following is added:
  - “(7) Section OZ 12 (Tax credits for non-resident investors) may apply to modify subsection (2).”

#### **451 Application of benchmark dividend rules and imputation credit ratio**

After section LP 5(2), the following is added:

- “(3) Section OZ 12 (Tax credits for non-resident investors) may apply to modify this section.”

#### **452 Relationship with exempt income rules**

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

- “(5) Section OZ 12 (Tax credits for non-resident investors) may apply to modify subsection (3)(c).”

#### **453 What this subpart does**

Section MA 1, other than the heading, is replaced by the following:

“This Part identifies the tax credits to which a person is entitled—

- “(a) under the family scheme for a tax year, *see* subparts MA to MF and MZ (which relate to working for families tax credits):
- “(b) under the superannuation savings scheme for a year beginning on 1 July and ending on 30 June, *see* subpart

MK (Tax credits for KiwiSaver schemes and complying superannuation funds):

- “(c) for a redundancy payment, *see* subpart ML (Tax credits for redundancy payments).”

#### 454 Avoidance arrangements

In section MA 6, “family support credits” is replaced by “tax credits for families”.

#### 455 Some definitions for family scheme

(1) In section MA 8,—

- (a) before the definition of **chief executive**, the following is inserted:

“**abating WFF tax credit** means a tax credit under section MD 1 (Abating WFF tax credit)”:

- (b) in the definition of **child tax credit**, “family assistance credit” is replaced by “WFF tax credit”:

(c) the definition of **family assistance credit** is repealed:

- (d) in the definition of **family credit abatement**, “family assistance credit” is replaced by “abating WFF tax credit”:

(e) the definition of **family plus** is repealed:

- (f) the definition of **family support** is replaced by the following:

“**family tax credit** means the component of the abating WFF tax credit calculated using the formula in section MD 3 (Calculation of family tax credit)”:

- (g) the definition of **family tax credit** existing before this Act is repealed:

- (h) the definition of **in-work payment** is replaced by the following:

“**in-work tax credit** means the component of the abating WFF tax credit calculated using the formula in section MD 10 (Calculation of in-work tax credit)”:

- (i) after the definition of **in-work tax credit**, the following is inserted:

“**minimum family tax credit** means a tax credit under section ME 1 (Minimum family tax credit)”:

- (j) the definition of **net family scheme income** is repealed:

- (k) in the definition of **parental tax credit**, “family assistance credit” is replaced by “abating WFF tax credit”:
- (l) after the definition of **social assistance payment**, the following is inserted:

“**WFF tax credit** means a tax credit under either section MD 1 (Abating WFF tax credit) or ME 1 (Minimum family tax credit)”.

- (2) In section MA 8, in the list of defined terms,—
  - (a) “abating WFF tax credit”, “minimum family tax credit”, and “WFF tax credit” are inserted:
  - (b) “family assistance credit” is omitted.

#### **456 Adjustments for calculation of family scheme income**

- (1) In section MB 1(5), “and (c)” is inserted after “section CX 56(1)(b)”.
- (2) After section MB 1(5), the following is added:

*“Retirement scheme contributions*

“(5B) For the purposes of subsection (1), an amount of retirement scheme contribution that is not excluded income of the person and would be their excluded income in the absence of section CX 50B(2) (Contributions to retirement savings schemes) is not included in family scheme income.”
- (3) In section MB 1, in the list of defined terms, “retirement scheme contribution” is inserted.

#### **457 New section MB 6**

After section MB 5, the following is added:

##### **“MB 6 Treatment of distributions from retirement savings schemes**

*“When this section applies*

- “(1) This section applies when—
  - “(a) a person receives a distribution of a retirement scheme contribution from a retirement savings scheme in an income year; and
  - “(b) RSCT has been withheld from the contribution; and
  - “(c) at the time of the distribution, the person is—
    - “(i) not eligible for New Zealand superannuation; and

“(ii) eligible for a distribution of a retirement scheme contribution from a retirement scheme contributor.

*“Assessable income*

“(2) For the purposes of calculating family scheme income, the distribution is assessable income of the person derived in the income year in which the distribution is made.

“Defined in this Act: assessable income, family scheme income, income year, New Zealand superannuation, retirement savings scheme, retirement scheme contribution, retirement scheme contributor, RSCT

Compare: 2004 No 35 s KD 1(1)(hb)”.

**458 What this subpart does**

(1) In section MC 1(1), “family support and family plus” is replaced by “WFF tax credits”.

(2) Section MC 1(2) to (4) is replaced by the following:

*“WFF tax credits*

“(2) The WFF tax credit is the amount of a person’s entitlement and tax credit made up of—

“(a) the family tax credit calculated under section MD 3 (Calculation of family tax credit):

“(b) the in-work tax credit, *see* sections MD 4 to MD 10 (which relate to the entitlement to and calculation of the in-work tax credit), or the child tax credit continued under section MZ 1 (Entitlement to child tax credit):

“(c) the parental tax credit, *see* sections MD 11 and MD 12 (which relate to the entitlement to and calculation of the parental tax credit):

“(d) the minimum family tax credit, *see* section ME 1 (Minimum family tax credit).

*“Classification of credits*

“(3) For the purposes of the calculation of an amount of a WFF tax credit, entitlements and tax credits under the family scheme are divided into—

“(a) abating WFF tax credits, made up of the family tax credit, in-work tax credit or child tax credit, and the parental tax credit:

“(b) the minimum family tax credit.”

- (3) In section MC 1, in the list of defined terms,—
- (a) “abating WFF tax credit”, “in-work tax credit”, “minimum family tax credit”, and “WFF tax credit” are inserted:
  - (b) “family assistance credit”, “family plus”, “family support”, and “in-work payment,” are omitted.

**459 Third requirement: residence**

In section MC 5(2)(a), “Family assistance credit” is replaced by “Abating WFF tax credit”, and “Family tax credit” is replaced by “Minimum family tax credit”.

**460 When person does not qualify**

- (1) In section MC 6(a), “a family assistance credit” is replaced by “an abating WFF tax credit”.
- (2) In section MC 6(b), “a family tax credit” is replaced by “an in-work tax credit, parental tax credit, or minimum family tax credit”.
- (3) In section MC 6, in the list of defined terms,—
  - (a) “abating WFF tax credit”, “in-work tax credit”, “minimum family tax credit”, and “parental tax credit” are inserted:
  - (b) “family assistance credit” and “family tax credit,” are omitted.

**461 When spouse or partner entitled under family scheme**

In section MC 7(2)(b), “for all WFF tax credits other than the in-work tax credit,” is inserted before “the Commissioner”.

**462 Continuing requirements**

- (1) In section MC 8(e), “family assistance credit” is replaced by “WFF tax credit”.
- (2) In section MC 8(f), “protected family support” is replaced by “protected family tax credit”.
- (3) In section MC 8, in the list of defined terms,—
  - (a) “protected family tax credit” and “WFF tax credit” are inserted:
  - (b) “family assistance credit” and “protected family support” are omitted.

**463 Credits for person aged 18**

- (1) In section MC 9(1), “Family assistance credit” is replaced by “Abating WFF tax credit”, and “Family tax credit” is replaced by “Minimum family tax credit”.
- (2) In section MC 9(2), “a family assistance credit” is replaced by “an abating WFF tax credit”, and “family tax credit” is replaced by “minimum family tax credit”.
- (3) In section MC 9, in the list of defined terms,—
  - (a) “abating WFF tax credit” and “minimum family tax credit” are inserted:
  - (b) “family assistance credit” is omitted.

**464 Principal caregiver**

- (1) In the heading to section MC 10(2), “*family assistance credit*” is replaced by “*abating WFF tax credit*”, and “*family support*” is replaced by “*family tax credit*”.
- (2) In section MC 10(2), “family support” is replaced by “family tax credit”.
- (3) In the heading to section MC 10(3), “*in-work payment*” is replaced by “*in-work tax credit*”.
- (4) In the heading to section MC 10(4), “*in-work payment*” is replaced by “*in-work tax credit*”.
- (5) In section MC 10(4), “in-work payment” is replaced by “in-work tax credit”.
- (6) In section MC 10, in the list of defined terms,—
  - (a) “abating WFF tax credit”, “family tax credit”, and “in-work tax credit”, are inserted:
  - (b) “family assistance credit”, “family support”, and “in-work payment” are omitted.

**465 Heading: subpart MD**

The heading to subpart MD is replaced by “Subpart MD—Abating WFF tax credits”.

**466 Family assistance credit**

- (1) The heading to section MD 1 is replaced by “**Abating WFF tax credit**”.
- (2) In section MD 1(1), “**family assistance credit**” is replaced by “**abating WFF tax credit**”.

- (3) In the formula in section MD 1(2),—
  - (a) the item “family support” is replaced by “family tax credit”:
  - (b) the item “payment or credit” is replaced by “in-work tax credit or child tax credit”:
  - (c) the item “family credit abatement” is replaced by “credit abatement”.
- (4) In section MD 1(3)(a), “family support” is replaced by “family tax credit” in all places in which it appears.
- (5) In section MD 1(3)(b), “payment or credit” is replaced by “in-work tax credit or child tax credit”, and “in-work payment” is replaced by “in-work tax credit” in all places in which it appears.
- (6) Section MD 1(3)(d) is replaced by the following:
  - “(d) **credit abatement** is the total amount, for the entitlement period, of—
    - “(i) a family credit abatement calculated using the formula in section MD 13(2) other than an amount used as described in section MD 16(3)(b); and
    - “(ii) a parental tax credit abatement calculated using the formula in section MD 16(2).”
- (7) In section MD 1, in the list of defined terms,—
  - (a) “abating WFF tax credit”, “family tax credit”, and “in-work tax credit”, are inserted:
  - (b) “family support” and “in-work payment” are omitted.

#### **467 Calculating net contributions to credits**

- (1) In section MD 2(1), “family support, the in-work payment” is replaced by “family tax credit, the in-work tax credit”.
- (2) In section MD 2(2)(a), “family support, in-work payment” is replaced by “family tax credit, the in-work tax credit”.
- (3) In section MD 2(2)(c)(i), “family support” is replaced by “family tax credit”.
- (4) In section MD 2(2)(c)(ii), “in-work payment” is replaced by “in-work tax credit”.
- (5) After section MD 2(2), the following is added:

*“Credit abatements*

- “(3) Section MD 16 overrides this section in relation to the amount of the family credit abatement and the parental tax credit abatement. ”
- (6) In section MD 2, in the list of defined terms,—
- (a) “family tax credit” and “in-work tax credit” are inserted:
- (b) “family support” and “in-work payment” are omitted.

**468 Calculation of family support**

- (1) The heading before section MD 3 is replaced by “*Family tax credit*”.
- (2) In the heading to section MD 3, “**support**” is replaced by “**tax credit**”.
- (3) In section MD 3(1), “family support” is replaced by “family tax credit”.
- (4) In section MD 3(7), “Family support” is replaced by “A family tax credit”.
- (5) In section MD 3, in the list of defined terms,—
- (a) “family tax credit” is inserted:
- (b) “family support” is omitted.

**469 Entitlement to in-work payment**

- (1) The heading before section MD 4 is replaced by “*In-work tax credit*”.
- (2) In the heading to section MD 4, “**payment**” is replaced by “**tax credit**”.
- (3) In section MD 4(1), “payment” is replaced by “tax credit”.
- (4) In the heading to section MD 4(2), “*payment*” is replaced by “*tax credit*”.
- (5) In section MD 4(2), “payment” is replaced by “tax credit”.
- (6) In section MD 4, in the list of defined terms,—
- (a) “in-work tax credit” is inserted:
- (b) “in-work payment” is omitted.

**470 First requirement: person’s age**

- (1) In section MD 5, “payment” is replaced by “tax credit”.
- (2) In section MD 5, in the list of defined terms,—

- (a) “in-work tax credit” is inserted:
- (b) “in-work payment” is omitted.

**471 Second requirement: principal care**

- (1) In section MD 6(1), “payment” is replaced by “tax credit”.
- (2) In section MD 6, in the list of defined terms,—
  - (a) “in-work tax credit” is inserted:
  - (b) “in-work payment” is omitted.

**472 Third requirement: residence**

- (1) In section MD 7(1), “payment” is replaced by “tax credit”.
- (2) In section MD 7, in the list of defined terms,—
  - (a) “in-work tax credit” is inserted:
  - (b) “in-work payment” is omitted.

**473 Fourth requirement: person not receiving benefit**

- (1) In section MD 8, “payment” is replaced by “tax credit”.
- (2) In section MD 8, in the list of defined terms,—
  - (a) “in-work tax credit” is inserted:
  - (b) “in-work payment” is omitted.

**474 Fifth requirement: full-time earner**

- (1) In section MD 9(1), “in-work payment” is replaced by “in-work tax credit”.
- (2) In section MD 9, in the list of defined terms,—
  - (a) “in-work tax credit” is inserted:
  - (b) “in-work payment” is omitted.

**475 Calculation of in-work payment**

- (1) In the heading to section MD 10, “**payment**” is replaced by “**tax credit**”.
- (2) In section MD 10(1), “payment” is replaced by “tax credit”.
- (3) In section MD 10(3)(c)(ii), “payment” is replaced by “tax credit”.
- (4) In section MD 10, in the list of defined terms,—
  - (a) “in-work tax credit” is inserted:
  - (b) “in-work payment” is omitted.

**476 Calculation of family credit abatement**

- (1) The heading before section MD 13 is replaced by “*Credit abatement*”.
- (2) In section MD 13(3)(b), “support” is replaced by “tax credit”.
- (3) In section MD 13, in the list of defined terms,—
  - (a) “protected family tax credit” is inserted:
  - (b) “protected family support” is omitted.

**477 Person receiving protected family support**

- (1) In the heading to section MD 14, “support” is replaced by “tax credit”.
- (2) In section MD 14(1), “support” is replaced by “tax credit”.
- (3) In section MD 14, in the list of defined terms,—
  - (a) “protected family tax credit” is inserted:
  - (b) “protected family support” is omitted.

**478 New section MD 16**

After section MD 15, the following is added:

**“MD 16 Calculation of parental tax credit abatement**

*“When this section applies*

- “(1) This section applies when—
- “(a) a person is entitled under section MD 11 to a parental tax credit for a parental entitlement period; and
  - “(b) they choose to have the credit paid in a lump sum; and
  - “(c) the birth occurs within 56 days of the end of the tax year.

*“Amount of abatement*

- “(2) Despite section MD 2, the amount of the person’s parental tax credit abatement for the parental entitlement period is calculated using the formula—

$$\text{full-year abatement} \times \frac{56}{365} - \text{amount used.}$$

*“Definition of items in formula*

- “(3) In the formula,—
- “(a) **full-year abatement** has the same meaning as the item **full-year abatement** in section MD 13(3)(a):

“(b) **amount used** means an amount of family credit abatement under section MD 13 for an entitlement period that ends on the last day of the tax year to the extent to which the abatement would be applied under section MD 2(2)(c)(i) and (ii) in calculating a net contribution.

“Defined in this Act: amount, entitlement period, family credit abatement, parental entitlement period, parental tax credit, pay, tax year

Compare: 2004 No 35 s KD 2B”.

**479 Heading: subpart ME**

The heading to subpart ME is replaced by “Subpart ME—Minimum family tax credit”.

**480 Family tax credit**

- (1) The heading to section ME 1 is replaced by “**Minimum family tax credit**”.
- (2) In section ME 1(1), “**minimum**” is inserted before “**family**”.
- (3) In section ME 1(3)(b), “calculated using the formula in section ME 3,” is inserted after “net family scheme income.”.
- (4) In section ME 1, in the list of defined terms,—
  - (a) “minimum family tax credit” is inserted:
  - (b) “family tax credit” is omitted.

**481 Meaning of employment for this subpart**

- (1) In section ME 2(1), “minimum” is inserted before “family”.
- (2) In section ME 2, in the list of defined terms,—
  - (a) “minimum family tax credit” is inserted:
  - (b) “family tax credit” is omitted.

**482 New section ME 3**

After section ME 2, the following is added:

**“ME 3 Meaning of net family scheme income**

*“When this section applies*

- “(1) This section applies for the purposes of this subpart.

*“Formula*

- “(2) **Net family scheme income**, for a person and a relationship period, means the amount calculated using the formula—

$$\text{adjusted income} \times \frac{52}{\text{weeks}} - \text{adjusted liability} + \text{amount received} - \text{amount paid}.$$

*“Definition of items in formula*

“(3) In the formula,—

“(a) **adjusted income** is—

“(i) the amount of the person’s net income under section MB 1 (Adjustments for calculation of family scheme income) for the tax year in which the relationship period falls to the extent to which the amount is attributable to the weeks in the relationship period for which the person is a full-time earner; and

“(ii) calculated without reference to the amounts referred to in section MB 1(2) and (3):

“(b) **weeks** is the number of weeks in the relationship period for which the person is a full-time earner:

“(c) **adjusted liability** is the amount that would be the person’s income tax liability—

“(i) treating the amount of adjusted income under paragraph (a) as if it were the person’s net income; and

“(ii) taking into account any tax credit under section LC 1 or LC 2 (which relate to tax credits for persons on low incomes):

“(d) **amount received** is the amount referred to in section MB 1(2) for the tax year:

“(e) **amount paid** is the amount of the deduction referred to in section MB 1(3) for the tax year.

“Defined in this Act: amount, deduction, full-time earner, income tax liability, net income, pay, relationship period, tax credit, tax year

Compare: 2004 No 35 s OB 1 “net specified income””.

#### **483 Application for payment of tax credit by instalment**

In section MF 1(1)(a), “Family assistance credit” is replaced by “Abating WFF tax credit”, and “Family” is replaced by “Minimum family”.

#### **484 When person not entitled to payment by instalment**

(1) In section MF 2(1)(b), “a family assistance credit” is replaced by “an abating WFF tax credit”.

- (2) In section MF 2, in the list of defined terms,—
  - (a) “abating WFF tax credit” is inserted:
  - (b) “family assistance credit” is omitted.

**485 Calculating amount of interim family assistance credit**

- (1) In the heading to section MF 3, “family assistance credit” is replaced by “WFF tax credit”.
- (2) In section MF 3(2)(c), “family assistance credit” is replaced by “WFF tax credit”.
- (3) In section MF 3, in the list of defined terms,—
  - (a) “WFF tax credit” is inserted:
  - (b) “family assistance credit” is omitted.

**486 Requirements for calculating instalment of tax credit**

- (1) In section MF 4(1), “Family assistance credit” is replaced by “Abating WFF tax credit”, and “Family tax credit” is replaced by “Minimum family tax credit”.
- (2) In section MF 4(1)(b)(ii), “family support” is replaced by “family tax credit”, and “in-work payment” is replaced by “in-work tax credit”, and “family tax credit” is replaced by “minimum family tax credit”.
- (3) In section MF 4, in the list of defined terms,—
  - (a) “in-work tax credit” and “minimum family tax credit” are inserted:
  - (b) “family support” and “in-work payment” are omitted.

**487 Recovery of overpaid tax credit**

In section MF 5(1), “Family assistance credit” is replaced by “Abating WFF tax credit”, and “Family tax credit” is replaced by “Minimum family tax credit”.

**488 Overpayment of tax credit**

In section MF 6(1), “Family assistance credit” is replaced by “Abating WFF tax credit”, and “Family tax credit” is replaced by “Minimum family tax credit”.

**489 Orders in Council**

- (1) In section MF 7(1)(a), “family support” is replaced by “family tax credit” in all places in which it appears.

- (2) In section MF 7(1)(b), “in-work payment” is replaced by “in-work tax credit” in all places in which it appears.
- (3) In section MF 7(1)(d), “family tax credit” is replaced by “minimum family tax credit” in all places in which it appears.
- (4) In the heading to section MF 7(4), “*in-work payment*” is replaced by “*in-work tax credit*”.
- (5) In section MF 7(4), “in-work payment” is replaced by “in-work tax credit”.
- (6) In section MF 7, in the list of defined terms,—
  - (a) “in-work tax credit” and “minimum family tax credit” are inserted:
  - (b) “family support” and “in-work payment” are omitted.

#### 490 New subpart ML inserted

After section MK 8, the following is inserted:

“Subpart ML—Tax credits for redundancy payments

##### “ML 1 What this subpart does

“*Redundancy payments*

- “(1) This subpart provides a tax credit for a person who derives a redundancy payment for loss of employment.

“*Exclusions*

- “(2) Despite subsection (1), no tax credit arises for a redundancy payment—
- “(a) related to—
    - “(i) retirement from employment:
    - “(ii) loss of seasonal employment arising from the normal seasonal work cycle:
    - “(iii) a contract of employment for a fixed term or for the duration of a project:
    - “(iv) employment for a period following notice of termination of employment:
  - “(b) paid—
    - “(i) to a director of a company by the company or a person associated with the company under the 1988 version provisions:
    - “(ii) to a person by a person associated with them under the 1988 version provisions:

“(iii) by a person to an employee who has been paid a redundancy payment by a person associated with the person under the 1988 version provisions.

“Defined in this Act: 1988 version provisions, associated person, company, director, employee, employment, pay, tax credit

Compare: 2004 No 35 s KC 6(1), (3)

#### “ML 2 Tax credit for redundancy payments

A person who derives a redundancy payment for loss of employment has a tax credit for a tax year of an amount equal to the lesser of—

“(a) \$3600:

“(b) an amount of 6 cents for every complete dollar of the total amount of the redundancy payment derived by the person.

“Defined in this Act: amount, employment, pay, tax credit, tax year

Compare: 2004 No 35 s KC 6(1)

#### “ML 3 Payment by Commissioner

The person referred to in section ML 2 must apply under section 41B of the Tax Administration Act 1994 to the Commissioner for payment of the tax credit.

“Defined in this Act: Commissioner, pay, tax credit

Compare: 2004 No 35 s KC 6(2)”.

#### 491 Entitlement to child tax credit

- (1) In section MZ 1(1)(b), “in-work payment” is replaced by “in-work tax credit” in all places in which it appears.
- (2) In section MZ 1(3), “in-work payment” is replaced by “in-work tax credit”.
- (3) In section MZ 1, in the list of defined terms,—
  - (a) “in-work tax credit” is inserted:
  - (b) “in-work payment” is omitted.

**492 Calculation of maximum permitted ratios**

After section OA 18(3), the following is added:

*“Relationship with sections OZ 8 and OZ 9*

- “(4) Sections OZ 8 and OZ 9 (which relate to the calculation of maximum permitted ratios in certain income years) may apply to modify this section.”

**493 Australian companies with imputation credit accounts**

- (1) In section OB 2(2)(a)(i), “(c) to (e)” is replaced by “(b) to (f)”.

- (2) Section OB 2(2)(a)(ii) is replaced by the following:

“(ii) is treated as resident in a country other than Australia under an agreement between Australia and the other country that would be a double tax agreement if negotiated between New Zealand and that other country; or”.

**494 ICA payment of tax**

After section OB 4(3)(e), the following is inserted:

“(eb) income tax paid by a tax credit under sections LA 2 and LH 2 (which relate to tax credits for research and development and their use); or”.

**495 New sections OB 7B and OB 7C**

After section OB 7, the following is inserted:

**“OB 7B ICA payment of qualifying company election tax**

*“Credit*

- “(1) An ICA company has an imputation credit for an amount of qualifying company election tax paid under section HA 40 (Liability for qualifying company election tax).

*“Table reference*

- “(2) The imputation credit in subsection (1) is referred to in table O1: imputation credits, row 5B (payment of qualifying company election tax).

*“Credit date*

“(3) The credit date is the day the qualifying company election tax is paid.

“Defined in this Act: amount, ICA company, imputation credit, pay, qualifying company election tax

Compare: 2004 No 35 s ME 4(1)(ae), (2)(ae)

**“OB 7C ICA expenditure on research and development**

*“Credit*

“(1) An ICA company has an imputation credit for an amount of a tax credit that the company has under section LH 2 (Tax credits relating to expenditure on research and development).

*“Table reference*

“(2) The imputation credit in subsection (1) is referred to in table O1: imputation credits, row 5C (tax credit for research and development expenditure).

*“Credit date*

“(3) The credit date is the day the Commissioner is notified in the company’s return of income of the entitlement to the credit.

“Defined in this Act: amount, Commissioner, ICA company, imputation credit, return of income, tax credit

Compare: 2004 No 35 s ME 4(1)(ib), (2)(g)”.

**496 ICA attribution for personal services**

In section OB 16(1), “49.25%” is replaced by “42.86%”.

**497 Table O1: imputation credits**

In table O1 after row 5, the following rows are inserted:

“5B	Payment of qualifying company election tax	day of payment	section OB 7B
“5C	Tax credit for research and development expenditure	day return filed	section OB 7C”.

**498 ICA on-market cancellation**

- (1) In section OB 42(1), the item “RWT rate” in the formula is replaced by “tax rate” in all places in which it appears.
- (2) Section OB 42(2)(b) is replaced by the following:

“(b) **tax rate** is the basic rate of income tax set out in schedule 1, part A, clause 2 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits) for the tax year in which the acquisition occurs.”

**499 Further income tax when company stops being ICA company**

(1) Section OB 66(2), other than the heading, is replaced by the following:

“(2) The company must pay the further income tax to the Commissioner—

“(a) by the day the company stops being an ICA company;  
or

“(b) for a company that is no longer an ICA company because it becomes a portfolio investment entity, by the end of the tax year in which it stops being an ICA company.”

(2) In section OB 66, in the list of defined terms, “portfolio investment entity” is inserted.

**500 Statutory producer boards attaching imputation credits to cash distributions**

After section OB 73(8) the following is added:

*“Relationship with section OZ 15*

“(9) Section OZ 15 (Attaching imputation credits and notional distributions: modifying amounts) may apply to modify subsection (4).”

**501 Statutory producer boards’ notional distributions that are dividends**

After section OB 75(5) the following is added:

*“Relationship with section OZ 15*

“(6) Section OZ 15 (Attaching imputation credits and notional distributions: modifying amounts) may apply to modify subsection (2).”

**502 Co-operative companies attaching imputation credits to cash distributions**

After section OB 78(7) the following is added:

*“Relationship with section OZ 15*

- “(8) Section OZ 15 (Attaching imputation credits and notional distributions: modifying amounts) may apply to modify subsection (3).”

**503 Co-operative companies’ notional distributions that are dividends**

After section OB 80(4) the following is added:

*“Relationship with section OZ 15*

- “(5) Section OZ 15 (Attaching imputation credits and notional distributions: modifying amounts) may apply to modify subsection (2).”

**504 FDP credits and imputation credits attached to dividends**

After section OC 29(6) the following is added:

*“Relationship with section OZ 8*

- “(7) Section OZ 8 (Attaching imputation credits and FDP credits: maximum permitted ratio) may apply to modify this section.”

**505 General rules for companies with CTR accounts**

After section OD 1(6) the following is added:

*“Relationship with section OZ 17*

- “(7) Section OZ 17 (CTRA reductions) may apply to modify the credits and debits arising under this subpart.”

**506 CTR credits and imputation credits attached to dividends**

After section OD 22(6) the following is added:

*“Relationship with section OZ 8*

- “(7) Section OZ 8 (Attaching imputation credits and FDP credits: maximum permitted ratio) may apply to modify this section.”

**507 Branch equivalent tax accounts of companies**

After section OE 2(6) the following is added:

*“Relationship with section OZ 16*

- “(7) Section OZ 16 (BETA reductions) may apply to modify the application of sections OE 6 to OE 16.”

**508 BETA payment of income tax**

- (1) In section OE 7(2), “same consolidated group” is replaced by “same group of companies”.

- (2) After section OE 7(3), the following is inserted:

*“Maximum amount*

- “(3B) Despite subsection (3) and section OP 101(2) (Consolidated BETA payment of income tax), the amount that may be applied to satisfy the income tax liability must be no more than the amount calculated for the company that has the attributed CFC income under section OE 6(1), treating the item **debit balances** as zero.”

- (3) In section OE 7(4), “company’s branch equivalent tax account” is replaced by “branch equivalent tax account of the company that made the election under subsection (3)”.

**509 BETA unused amount of debit balance**

In section OE 8(1), “same consolidated group” is replaced by “same group of companies”.

**510 MACA payment of tax**

After section OK 2(3)(c), the following is inserted:

“(cb) income tax paid by a tax credit under sections LA 2 and LH 2 (which relate to tax credits for research and development and their use); or”.

**511 New section OK 4B**

After section OK 4, the following is inserted:

**“OK 4B MACA expenditure on research and development**

*“Credit*

- “(1) A Maori authority has a Maori authority credit for an amount of a tax credit that the authority has under section LH 2 (Tax credits relating to expenditure on research and development).

*“Table reference*

“(2) The Maori authority credit in subsection (1) is referred to in table O17: Maori authority credits, row 4B (tax credit for research and development expenditure).

*“Credit date*

“(3) The credit date is the day the authority’s return of income is filed.

“Defined in this Act: amount, Commissioner, Maori authority credit, return of income, tax credit

Compare: 2004 No 35 s MK 4(1)(gb), (2)(db)”.

**512 Table O17: Maori authority credits**

In table O17 after row 4, the following row is inserted:

“4B Tax credit for research and development expenditure day return filed section OK 4B.”

**513 When credits and debits arise only in consolidated imputation group accounts**

After section OP 5(2)(b), the following is inserted:

“(bb) section OP 11B, row 6B (tax credit for research and development expenditure):”.

**514 Consolidated ICA payment of tax**

After section OP 7(3)(f), the following is inserted:

“(fb) income tax paid by a tax credit under sections LA 2 and LH 2 (which relate to tax credits for research and development and their use); or”.

**515 New section OP 11B**

After section OP 11, the following is inserted:

**“OP 11B Consolidated ICA expenditure on research and development**

*“Credit*

“(1) A consolidated imputation group has an imputation credit for an amount of a tax credit that a group company has under section LH 2 (Tax credits relating to expenditure on research and development).

*“Table reference*

- “(2) The imputation credit in subsection (1) is referred to in table O19: imputation credits of consolidated groups, row 6B (tax credit for research and development expenditure).

*“Credit date*

- “(3) The credit date is the day the return of income relating to the amount is filed.

“Defined in this Act: amount, Commissioner, company, consolidated imputation group, imputation credit, return of income, tax credit

Compare: 2004 No 35 s ME 11(1)(ib), (2)(db)”.

**516 Table O19: imputation credits of consolidated imputation groups**

In table O19 after row 6, the following row is inserted:

- “6B Tax credit for research and development expenditure day return filed section OP 11B.”

**517 CTR accounts of consolidated groups**

After section OP 78(2), the following is added:

*“Relationship with section OZ 17*

- “(3) Section OZ 17 (CTRA reductions) may apply to modify the credits and debits arising under sections OP 81 to OP 96.”

**518 When credits and debits arise only in branch equivalent tax group accounts**

After section OP 99(4), the following is added:

*“Relationship with section OZ 16*

- “(5) Section OZ 16 (BETA reductions) may apply to modify the application of sections OP 100 to OP 108.”

**519 Consolidated BETA payment of income tax**

- (1) After section OP 101(2), the following is inserted:

*“Maximum amount*

- “(2B) Despite subsection (2) and section OE 7(3) (BETA payment of income tax), the amount that may be applied to satisfy the income tax liability must be no more than the amount calculated under section OE 6(1) for the company that has the

attributed CFC income or under section OP 100(1) for the consolidated group, in both cases treating the item **debit balances** as zero.”

- (2) In section OP 101(3), “the group’s branch equivalent tax account” is replaced by “the branch equivalent tax account of the group or group company B, as applicable”.
- (3) In section OP 101, in the compare note, “MF 10(3),” is inserted.

#### **520 New sections OZ 7 to OZ 17 added**

After section OZ 6, the following is added:

##### **“OZ 7 Memorandum accounts in transitional period**

Sections OZ 8 to OZ 15 apply for a period (the **transitional period**)—

- “(a) beginning the first day of a person’s 2008–09 income year; and
- “(b) ending on 31 March 2010.

“Defined in this Act: income year

Compare: 2004 No 35 ss MZ 10(1)(a), MZ 11(1)(a), MZ 12(1)(a), MZ 13(1)(a), MZ 14(1)(a), MZ 15(1)(a), MZ 16(1)(a), MZ 17(1)(a)

##### **“OZ 8 Attaching imputation credits and FDP credits: maximum permitted ratio**

*“When this section applies*

- “(1) This section applies when—
  - “(a) a company pays a dividend in the transitional period; and
  - “(b) the company has a credit balance in its imputation credit account and FDP account from income, expenditure, memorandum account debits, credits, and balances, refunds, tax, tax credits, transfers, amounts withheld, or other items dealt with, arising, or calculated using an old company tax rate.

*“Rate applying for transitional period*

- “(2) If the amount of the imputation credit or FDP credit attached to the dividend is limited by the maximum permitted ratio set out in section OA 18 (Calculation of maximum permitted

ratios), the company may choose to treat the item **tax rate** in the formula in section OA 18(2) as 33%.

“Defined in this Act: amount, company, dividend, FDP account, FDP credit, imputation credit, imputation credit account, income, maximum permitted ratio, tax credit, tax year, transitional period

Compare: 2004 No 35 s MZ 13

### “OZ 9 Benchmark dividends: ratio change

“*When this section applies*

“(1) This section applies when—

- “(a) a company pays a dividend in the transitional period; and
- “(b) the dividend is a later dividend for the purposes of sections OB 61(4) and OC 28(4) (which relate to the benchmark dividend rules), as applicable; and
- “(c) the relevant benchmark dividend—
  - “(i) was 1 to which section OZ 8 applied; or
  - “(ii) has a ratio of 33/67, for a reason other than the application of section OZ 8.

“*When ratio treated as same as ratio for benchmark dividend*

“(2) If, in the cases set out in subsection (3), the imputation ratio or FDP ratio of the later dividend is less than that of the relevant benchmark dividend, the ratio is treated as the same as that of the relevant benchmark dividend.

“*Cases*

“(3) The cases referred to in subsection (2) are the following:

- “(a) in the case of a benchmark dividend described in subsection (1)(c)(i), section OZ 8 does not apply to the later dividend through the lack of a relevant credit balance described in section OZ 8 (1)(b):
- “(b) in the case of a benchmark dividend described in subsection (1)(c)(ii), the later dividend has a ratio of 30/70.

“Defined in this Act: benchmark dividend, company, dividend, FDP ratio, imputation ratio, transitional period

Compare: 2004 No 35 s MZ 14

**“OZ 10 Modifying ratios for imputation credits and FDP credits**

*“When this section applies*

“(1) This section applies when—

“(a) a person derives a dividend in the period from 1 October 2007 to 31 March 2010; and

“(b) the dividend and the imputation credits and FDP credits attached to the dividend, as applicable, have —

“(i) an imputation ratio greater than 30/70 and less than or equal to 33/67; or

“(ii) an FDP ratio greater than 30/70 and less than or equal to 33/67; or

“(iii) a combined imputation and FDP ratio greater than 30/70 and less than or equal to 33/67.

*“Ratio applying*

“(2) For the purposes of section OA 5(2) and (3) (Credits), if the amount of the imputation credit or FDP credit, as applicable, is limited by the maximum permitted ratio set out in section OA 18 (Calculation of maximum permitted ratios), the relevant ratio is treated as 33/67.

“Defined in this Act: combined imputation and FDP ratio, dividend, FDP credit, FDP ratio, imputation credit, imputation ratio, maximum permitted ratio, transitional period

Compare: 2004 No 35 s MZ 15

**“OZ 11 Tax credits for imputation credits and FDP credits**

*“When this section applies*

“(1) This section applies when—

“(a) a person derives a dividend in the transitional period; and

“(b) the dividend, and the imputation credits and FDP credits attached to the dividend, as applicable, have—

“(i) an imputation ratio greater than 30/70 and less than or equal to 33/67; or

“(ii) an FDP ratio greater than 30/70 and less than or equal to 33/67; or

“(iii) a combined imputation and FDP ratio greater than 30/70 and less than or equal to 33/67; and

“(c) the person is a new tax rate person in the period for the dividend.

*“Imputation ratio and FDP ratio*

“(2) For a ratio described in subsection (1)(b)(i) or (ii), the amount of the tax credit that the person has is calculated using the formula—

$$\text{dividend and credits} \times 0.30.$$

*“Definition of item in formula*

“(3) In the formula in subsection (2), **dividend and credits** is the amount of the imputation credit or FDP credit, as applicable, included in the person’s assessable income for the purposes of section LE 1(1) or LF 1(1) (which relate to tax credits for imputation credits and FDP credits), together with the amount of dividend to which the relevant credit is attached.

*“Combined imputation and FDP ratio*

“(4) For a ratio described in subsection (1)(b)(iii), the total amount of tax credit that the person has is calculated using the formula—

$$\text{dividend and credits} \times 0.30.$$

*“Definition of item in formula*

“(5) In the formula in subsection (4), **dividend and credits** is the total amount of the imputation credit and FDP credit included in the person’s assessable income for the purposes of section LE 1(1) and LF 1(1), together with the amount of the dividend to which the credits are attached. For the purposes of the calculation of the total tax credit, imputation credits are reduced before FDP credits.

“Defined in this Act: amount, assessable income, basic tax rate, combined imputation and FDP ratio, dividend, FDP credit, FDP ratio, imputation credit, imputation ratio, tax credit, total tax credit, transitional period

Compare: 2004 No 35 s MZ 16

**“OZ 12 Tax credits for non-resident investors**

*“When this section applies*

- “(1) This section applies when—
- “(a) a company pays or derives a dividend with an imputation credit attached in the transitional period; and
  - “(b) the dividend and imputation credit, to the extent to which, in the absence of subpart LP (Tax credits for supplementary dividends),—
    - “(i) the combined imputation and FDP ratio is greater than 30/70 and less than or equal to 33/67; or
    - “(ii) the imputation ratio is greater than 30/70 and less than or equal to 33/67; and
  - “(c) section LP 2(1) (Tax credits for supplementary dividends) applies to the company, or the company is a supplementary dividend holding company.

*“When ratio equal to old rate*

- “(2) For a ratio described in subsection (1)(b)(i) or (ii) that is equal to 33/67, then any tax credit that the company has is calculated using the formula in section LP 2(2), treating 7/10 as 67/120.

*“When ratio less than old rate*

- “(3) For a ratio described in subsection (1)(b)(i) or (ii) that is less than 33/67, then, to the extent to which a part of the amount of the dividend and imputation credit has a ratio of 33/67 through the application of section OZ 8, any tax credit that the company has is calculated using the formula in section LP 2(2), treating 7/10 as 67/120.

*“Benchmark calculations*

- “(4) In the application of sections GB 35, GB 36, OA 18, OB 60, OB 61, OC 28 (which relate to imputation and FDP credit ratios) under section LP 5 (Application of benchmark dividend rules and imputation credit ratio), the provisions apply using the ratio 33/67 and the old company tax rates.

*“Relationship with exempt income rules*

- “(5) If the company derives a dividend to which this section applies, item **tax rate** in the formula in section LP 8(2) (Relationship with exempt income rules) is treated as 33%, to the

extent to which a part of the supplementary dividend was calculated as described in subsection (2) or (3).

“Defined in this Act: amount, combined imputation and FDP ratio, company, dividend, imputation credit, imputation ratio, non-resident, pay, supplementary dividend, supplementary dividend holding company, tax credit, transitional period

Compare: 2004 No 35 s MZ 17

#### “OZ 13 Fully credited dividends: modifying actual ratio

“*What this section applies to*

- “(1) This section applies in the transitional period to a dividend for which, in the absence of this section, the actual ratio under section CD 43(26) (Available subscribed capital (ASC) amount) is greater than 30/70 and less than or equal to 33/67.

“*Ratio for calculation*

- “(2) In the calculation under section CD 43(26), the part of the dividend that is fully credited, the actual ratio is treated as 30/70.

“Defined in this Act: dividend, fully credited, transitional period

Compare: 2004 No 35 s MZ 18

#### “OZ 14 Dividends from qualifying companies

“*When this section applies*

- “(1) This section applies when—
- “(a) a qualifying company pays a dividend in the transitional period; and
  - “(b) section OZ 8 applies to the dividend.

“*Exempt income*

- “(2) In the calculation under section HA 14 (Dividends paid by qualifying companies) the extent to which the dividend is exempt income of the person, item **tax rate** in the formula in section HA 15(2) (Fully imputed dividends) is treated as 0.33.

“Defined in this Act: dividend, exempt income, qualifying company, transitional period

Compare: 2004 No 35 s MZ 19

**“OZ 15 Attaching imputation credits and notional distributions: modifying amounts**

*“When this section applies*

“(1) This section applies when—

- “(a) a statutory producer board or a co-operative company determines to pay a cash distribution or make a notional distribution in the transitional period; and
- “(b) the board or company has a credit balance in its imputation credit account from income, expenditure, memorandum account debits, credits, and balances, refunds, tax, tax credits, transfers, amounts withheld, or other items dealt with, arising, or calculated using an old company tax rate.

*“Statutory producer boards’ imputation credits*

“(2) In the calculation under section OB 73(4) (Statutory producer boards attaching imputation credits to cash distributions), the board may choose to treat item **tax rate** in the formula as 33%.

*“Statutory producer boards’ notional distributions*

“(3) In the calculation under section OB 75(2) (Statutory producer boards’ notional distributions that are dividends), the board may choose to treat item **tax rate** in the formula as 33%.

*“Co-operative companies’ imputation credits*

“(4) In the calculation under section OB 78(3) (Co-operative companies attaching imputation credits to cash distributions), the company may choose to treat item **tax rate** in the formula as 33%. This subsection does not apply to a Maori authority.

*“Co-operative companies’ notional distributions*

“(5) In the calculation under section OB 80(2) (Co-operative companies’ notional distributions that are dividends), the company may choose to treat item **tax rate** in the formula as 33%. This subsection does not apply to a Maori authority.

“Defined in this Act: amount, co-operative company, imputation credit account, income, Maori authority, statutory producer board, tax credit, transitional period

Compare: 2004 No 35 s MZ 20

**“OZ 16 BETA reductions**

*“What this section applies to*

“(1) This section applies to—

“(a) a credit and a debit in the branch equivalent tax account of a company or a consolidated group before the first day of their 2008–09 income year:

“(b) a credit and a debit arising to the branch equivalent tax account of a company or a consolidated group on or after the first day of their 2008–09 income year, if the credit and debit relate to their 2007–08 or earlier income years.

*“Reduction*

“(2) The amount of the credit and debit are reduced by multiplying the amount by 30/33.

“Defined in this Act: amount, branch equivalent tax account, company, consolidated group, income year

Compare: 2004 No 35 s MZ 21

**“OZ 17 CTRA reductions**

*“What this section applies to*

“(1) This section applies to—

“(a) a credit and a debit in the CTR account of a company or a consolidated group before the first day of their 2008–09 income year:

“(b) a credit and a debit arising to the CTR account of a company or a consolidated group on or after the first day of their 2008–09 income year, if the credit and debit relate to their 2007–08 or earlier income years.

*“Reduction*

“(2) The amount of the credit and debit are reduced by multiplying the amount by 30/33.

“Defined in this Act: amount, company, consolidated group, CTR account, income year

Compare: 2004 No 35 s MZ 22”.

**521 What this Part does**

(1) After section RA 1(g), the following is inserted:

“(gb) the payment of retirement scheme contribution tax (RSCT), *see* subpart RH; and”.

- (2) In section RA 1, in the list of defined terms, “retirement scheme contribution” and “RSCT” are inserted.

## **522 New section RA 6B**

After section RA 6, the following is added:

### **“RA 6B Withholding and payment obligations for retirement scheme contributions**

A person who makes a contribution to a retirement savings scheme must withhold and pay RSCT for the contribution to the Commissioner under subpart RH (Withholding tax on retirement scheme contributions) by the due dates.

“Defined in this Act: Commissioner, pay, retirement savings scheme, RSCT

Compare: 2004 No 35 s NEB 1”.

## **523 When obligations not met**

- (1) In section RA 10(1)(a), “a retirement scheme contribution,” is inserted after “an employer’s superannuation contribution,”.
- (2) In section RA 10, in the compare note, “NEB 4(1),” is inserted.

## **524 Payment dates for interim and other tax payments**

- (1) After section RA 15(1)(b), “provided by them.” is replaced by “provided by them; or” and the following is added:
- “(c) to withhold and pay under section RA 6B an amount of tax to the Commissioner for a retirement scheme contribution.”.
- (2) Section RA 15(3)(b), is replaced by the following:
- “(b) for PAYE, RWT, NRWT, and RSCT payable monthly under section RD 4(1)(a), RE 21(2) and (7), RF 13(3), or RH 2(2) (which set out the basis for payment of PAYE, RWT, NRWT, and RSCT), as applicable, the last day of a month:”.
- (3) In section RA 15, in the list of defined terms, “retirement scheme contribution,” is inserted.
- (4) In section RA 15, in the compare note, “NEB 3(1),” is inserted.

**525 Amalgamation of companies**

In section RA 20, in the compare note, “NEB 3(2),” is inserted.

**526 New section RA 24**

After section RA 23, the following is added:

**“RA 24 Application of other provisions for purposes of RSCT rules**

For the purposes of the RSCT rules, sections 170(2), 171, and 172 of the Tax Administration Act 1994, modified as necessary, apply as if—

- “(a) a reference to an amount of tax withheld were a reference to RSCT:
- “(b) a reference to the RWT rules were a reference to the RSCT rules.

“Defined in this Act: amount of tax, RSCT rules, RWT rules

Compare: 2004 No 35 s NEB 7(1)”.

**527 Estimation method**

Section RC 7(6), other than the heading, is replaced by the following:

- “(6) If, under section RC 18(5), a person changes the way they determine the amount of provisional tax after the date of an instalment, they must estimate their residual income tax for their corresponding income year, and must pay provisional tax on whichever of the following instalment dates for the income year occur after 30 days from their last ratio instalment date:
  - “(a) C and F for changes to a 6-monthly GST taxable period:
  - “(b) B, D, and F for other changes.”

**528 GST ratio method**

- (1) After section RC 8(3), the following is inserted:

*“When no assessment for tax year before preceding tax year*

- “(3B) Subsection (3) does not apply and the GST ratio is the percentage based on the assessments of the base amounts for the year that is 2 years before the preceding tax year if—
  - “(a) for the year before the preceding tax year—

- “(i) an assessment of a base amount has not been made and the absence of an assessment arises because of an extension of time for filing a return for the year, or a period in the year:
  - “(ii) an assessment of a base amount is the subject of a dispute or challenge under the Tax Administration Act 1994:
  - “(iii) the year is a transitional year; and
- “(b) for the year that is 2 years before the preceding tax year—
- “(i) the base amounts have been assessed; and
  - “(ii) the circumstances in paragraph (a)(ii) and (iii) do not exist.”

- (2) After section RC 8(7), the following is inserted:

*“When no assessment for tax year before preceding tax year*

- “(7B) Subsection (7) does not apply and the GST ratio is the percentage based on the assessments of the base amounts for the year that is 2 years before the transitional year if—
- “(a) for the year before the transitional year—
- “(i) an assessment of a base amount has not been made and the absence of an assessment arises because of an extension of time for filing a return for the year, or a period in the year:
  - “(ii) an assessment of a base amount is the subject of a dispute or challenge under the Tax Administration Act 1994:
  - “(iii) the year is a transitional year; and
- “(b) for the year that is 2 years before the transitional year—
- “(i) the base amounts have been assessed; and
  - “(ii) the circumstances in paragraph (a)(ii) and (iii) do not exist.”

### **529 Provisional tax payable in instalments**

- (1) In section RC 9(7), “section RC 7 or RC 10, as applicable” is replaced by “section RC 10”.
- (2) In section RC 9(9), the words before paragraph (a) are replaced by the following:

- “(9) A person with a new provisional tax liability who starts a taxable activity in a tax year is liable to pay interest calculated under section 120KC of the Tax Administration Act 1994 as if they were liable to pay provisional tax for the tax year—”.
- (3) Section RC 9(9)(b)(ii) is replaced by the following:
- “(ii) if they pay GST on a 6-monthly basis and 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:”.

**530 Calculating amount of instalment under standard and estimation methods**

In section RC 10(1)(b), “section RC 9(3) and (7)” is replaced by “section RC 9(3) and (5)”.

**531 Who may use GST ratio?**

- (1) In section RC 16(2), “preceding tax year:” is replaced by “preceding tax year and corresponding income year:”.
- (2) In section RC 16(2)(b), “whole tax year” is replaced by “whole income year”.
- (3) In section RC 16(5), “the tax year before” is replaced by “a tax year earlier than”.

**532 When GST ratio must not be used**

In section RC 17(4)(a), “in writing or by telephone” is inserted after “apply”.

**533 Changing calculation method**

- (1) In section RC 18(2), “Subsection (3) and (4)” is replaced by “Subsection (4) or (5)”.
- (2) In section RC 18(4), “(5), as if the election to use the GST ratio had not been made” is replaced by “(5). The person is treated as never having chosen to use the GST ratio method and, for the purposes of section 120KE(5) of the Tax Administration Act 1994, as never having changed the way they determine an amount of provisional tax under this section”.

**534 Disposal of assets**

Section RC 19(2), other than the heading, is replaced by the following:

- “(2) The person may choose to take the disposal of the asset into account in adjusting their taxable supplies for the relevant taxable period and income year, by subtracting the value, including GST, of the asset from—
- “(a) the total taxable supplies for a taxable period for the purposes of the formula in section RC 11(1), in proportion to the output tax which is attributed under section 20(4) of that Act to that taxable period for the supply of the asset:
  - “(b) the base amount of total taxable supplies for the corresponding income year under section RC 8(2), in proportion to the output tax which is attributed under section 20(4) of that Act to a taxable period in that income year for the supply of the asset.”

**535 Paying provisional tax in transitional years**

- (1) Section RC 21(2)(a) and (b) is replaced by the following:
- “(a) the 28th day of the months set out in schedule 3 part B (Payment of provisional tax and terminal tax) unless paragraph (b) or (c) applies:
  - “(b) 15 January, when the month set out in schedule 3, part B is December and the year is a transitional year:
  - “(c) 7 May, when the month set out in schedule 3, part B is April and the year is a transitional year.”
- (2) In section RC 21(3)(b), “month.” is replaced by “month; or” and the following is added:
- “(c) 7 May, when March is the final month and the year is a transitional year.”

**536 Consequences of a change in balance date**

Section RC 25(6), other than the heading, is replaced by the following:

- “(6) The person must—
- “(a) adjust their provisional tax liability for the part-period of 1 month before the start of the new income year; and
  - “(b) pay the instalment of provisional tax for the part-period as their final taxable period—

- “(i) 28 days after the end of the part period, unless subparagraph (ii) or (iii) applies; or
- “(ii) by 15 January if the part-period falls in November; or
- “(iii) by 7 May if the part period falls in March.”

**537 Registering for GST or cancelling registration**

Section RC 26(5), other than the heading, is replaced by the following:

- “(5) For the purposes of subsection (4) and the provisional tax rules, the date of cancellation is the later of the date on which—
  - “(a) the cancellation of GST registration is notified:
  - “(b) the person’s liability under section 52 of the Goods and Services Tax Act 1985 stops.”

**538 What this subpart does**

In section RD 1(c), “and RSCT rules” is inserted after “the ESCT rules”.

**539 PAYE income payments**

In section RD 3(1)(b)(ii), “subsection (2).” is replaced by “subsection (2):” and the following is added:

- “(iii) a personal service rehabilitation payment under the Injury Prevention, Rehabilitation, and Compensation Act 2001.”

**540 Private use of motor vehicle: when schedular value not used**

- (1) In section RD 56(1), “clause 5” is replaced by “clause 9”.
- (2) In section RD 56(2), in the words before paragraph (a), “clause 4(a)” is replaced by “clause 8(a)”.
- (3) In section RD 56(3), “clause 4(a)” is replaced by “clause 8(a)”.

**541 Private use of motor vehicle: when schedular value used**

In section RD 57(1), “clause 5” is replaced by “clause 9”.

**542 Resident passive income**

- (1) In section RE 2(1)(c), “other than a retirement scheme contribution” is added after “distribution”.
- (2) In section RE 2(5)(g), “payment.” is replaced by “payment:” and the following is added:
  - “(h) a dividend that is excluded income under section CX 50B (Contributions to retirement savings schemes) or would be excluded income under that section in the absence of subsection (2)(a) and (b):
  - “(i) a dividend other than a non-cash dividend that—
    - “(i) has an imputation ratio, FDP ratio, or combined imputation and FDP ratio of 30/70 or more; and
    - “(ii) is paid by a unit trust or group investment fund (or RWT proxy on their behalf) that has not withheld RWT from any earlier dividend.”
- (3) In section RE 2, in the list of defined terms, “combined imputation and FDP ratio”, “excluded income”, “FDP ratio”, “group investment fund”, “imputation ratio”, “non-cash dividend”, “RWT”, “RWT proxy”, “unit trust” are inserted.

**543 When amount of tax treated as FDP credit**

In section RE 23(2), “LE 9,” is omitted, and “LF 6 to” is omitted.

**544 New section RF 16 inserted**

After section RF 15, the following is inserted:

**“RF 16 Relationship with RSCT rules**

*“When this section applies*

- “(1) This section applies when a retirement scheme contributor makes a retirement scheme contribution for a person who is non-resident and pays RSCT for the contribution.

*“NRWT*

- “(2) The contributor is treated as having withheld from the contribution an amount of NRWT equal to the lesser of—
  - “(a) the amount of RSCT paid;
  - “(b) the NRWT payable in relation to the contribution.

*“Treatment of balance*

- “(3) Section LB 6 (Tax credits for RSCT) applies to any balance of RSCT paid.

“Defined in this Act: non-resident, NRWT, pay, retirement scheme contribution, retirement scheme contributor, RSCT

Compare: 2004 No 35 s NG 16B”.

**545 New subpart RH inserted**

After section RG 7, the following is inserted:

“Subpart RH—Withholding tax on retirement scheme contributions

**“RH 1 RSCT rules and their application***“Meaning*

- “(1) The **RSCT rules** means—
- “(a) this subpart; and
  - “(b) section BE 1(5B) (Withholding liabilities); and
  - “(c) section CX 50B (Contributions to retirement savings schemes); and
  - “(d) section LB 6 (Tax credits for RSCT); and
  - “(e) section LE 7B (Credit of RSCT for imputation credit); and
  - “(f) section LO 2B (Credit of RSCT for Maori authority credit); and
  - “(g) section MB 1(5B) (Adjustments for calculation of family scheme income); and
  - “(h) section MB 6 (Treatment of distributions from retirement savings schemes); and
  - “(i) schedule 1, part D, clause 7; and
  - “(j) sections 28C and 48B and Part 9 of the Tax Administration Act 1994.

*“Application*

- “(2) The RSCT rules apply to a retirement scheme contributor who makes a retirement scheme contribution.

“Defined in this Act: retirement scheme contribution, retirement scheme contributor, RSCT rules

Compare: 2004 No 35 s OB 1 “RSCWT rules”

**“RH 2 Retirement scheme contributions***“Contribution for benefit of members*

- “(1) A **retirement scheme contribution** means a contribution in money by a retirement scheme contributor to a retirement savings scheme for the benefit of a person who is a member of, or who has an ownership interest in, the contributor.

*“Tax credits*

- “(2) For the purposes of subsection (1), money includes an amount of an imputation credit or a Maori authority credit.

*“Determining amount of contribution*

- “(3) The amount of a retirement scheme contribution is the sum of—
- “(a) the amount of the contribution received by the retirement savings scheme and not withheld under subsection (5) on behalf of the retirement scheme contributor; and
  - “(b) the amount of tax for the retirement scheme contribution.

*“Payment of amount of tax*

- “(4) A retirement scheme contributor who pays an amount that represents a retirement scheme contribution must withhold and pay to the Commissioner the amount of tax for the contribution. The amount is payable monthly under section RA 15 (Payment dates for interim and other tax payments).

*“Appointment of agent*

- “(5) For the purposes of subsection (4), a contributor may appoint the retirement savings scheme as agent in relation to the calculation and payment of the amount of tax.

“Defined in this Act: amount, amount of tax, Commissioner, imputation credit, Maori authority credit, retirement savings scheme, retirement scheme contribution, retirement scheme contributor

Compare: 2004 No 35 ss NEB 1(2), NEB 2, NEB 3(1)(a), OB 1 “retirement scheme contribution”

**“RH 3 Retirement savings schemes***“Requirements for entity*

- “(1) An entity is a retirement savings scheme for a person if the entity—
- “(a) is a portfolio investment entity; and
  - “(b) holds funds from a retirement scheme contribution for the person; and
  - “(c) has rules (the **distribution rules**) governing the distribution by the entity of funds in which the person has an interest that—
    - “(i) are approved by the Commissioner as fair and reasonable; and
    - “(ii) meet the requirements of subsection (2).

*“Requirements for rules*

- “(2) The rules must provide that—
- “(a) the availability of a distribution to the person is restricted before the person reaches an age of retirement set out in the rules:
  - “(b) the person is not permitted to make a withdrawal before the age of retirement other than a withdrawal—
    - “(i) to repay a student loan under the Student Loan Scheme Act 1992:
    - “(ii) to pay fees and expenses related to tertiary education:
    - “(iii) to buy a home if the person does not own one:
    - “(iv) that the person would be permitted to make if the scheme were a KiwiSaver scheme under the KiwiSaver Act 2006:
    - “(v) in circumstances set out in the distribution rules that have been approved under subsection (1)(c)(i):
  - “(c) the entity may require the person to provide information to ensure that the requirements relating to a withdrawal are met.

“Defined in this Act: Commissioner, income year, portfolio investment entity, retirement savings scheme, retirement scheme contribution, retirement scheme contributor

Compare: 2004 No 35 s NEB 5

**“RH 4 Retirement scheme contributors**

An entity is a retirement scheme contributor for a person for an income year if—

- “(a) the entity is—
  - “(i) the trustee of a widely-held trust that is a unit trust:
  - “(ii) a company other than a close company:
  - “(iii) a Maori authority; and
- “(b) the person is a unit holder, shareholder, or member of the entity:
- “(c) in or before the income year, the entity makes a payment intended to be a retirement scheme contribution for the person.

“Defined in this Act: close company, company, income year, Maori authority, pay, retirement savings scheme, retirement scheme contribution, retirement scheme contributor, shareholder, trustee, unit holder, unit trust, widely-held trust

Compare: 2004 No 35 s NEB 6

*“Calculating amounts of tax***“RH 5 Calculating amounts of tax for retirement scheme contribution**

The amount of tax for a retirement scheme contribution is the amount determined under schedule 1, part D, clause 7 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits).

“Defined in this Act: amount of tax, retirement scheme contribution

Compare: 2004 No 35 s NEB 1(1)

**“RH 6 Calculating amounts of tax on failure to withhold**

*“When this section applies*

- “(1) This section applies when a retirement scheme contributor or retirement savings scheme does not withhold an amount of tax for a retirement scheme contribution under section RH 2(4).

*“Calculation of amount*

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

$$\frac{\text{tax rate}}{1 - \text{tax rate}} \times \text{contribution to scheme} - \text{tax already paid.}$$

*“Definition of items in formula*

“(3) In the formula,—

“(a) **tax rate** is the rate of RSCT for the person set out in schedule 1, part D, clause 7 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits):

“(b) **contribution to scheme** is the amount of the retirement scheme contribution received by the retirement savings scheme excluding the amount of tax:

“(c) **tax already paid** is any amount of tax for the contribution that has already been paid.

“Defined in this Act: amount, amount of tax, retirement savings scheme, retirement scheme contribution, retirement scheme contributor, RSCT

Compare: 2004 No 35 s NEB 4(1)”.

**546 Using refund to satisfy tax liability**

In section RM 10(4), “family scheme income” is replaced by “tax credits for families”.

**547 Standard method: 2008–09 and 2009–10 income years**

(1) In section RZ 3(1), “portfolio tax rate entity’s” is replaced by “persons”, and “entity uses a 30% basic tax rate” is replaced by “person is a new tax rate person”.

(2) In section RZ 3, in the list of defined terms, “new tax rate person” is inserted.

(3) In section RZ 3, in the compare note, “ss” is replaced by “s”, and “, OB 1 ‘new tax rate person’” is omitted.

**548 GST ratio method: 2008–09 and 2009–10 income years**

(1) In section RZ 4(1), “portfolio tax rate entity’s” is replaced by “persons”, and “entity uses a 30% basic tax rate” is replaced by “person is a new tax rate person”.

(2) In section RZ 4, in the list of defined terms, “new tax rate person” is inserted.

(3) In section RZ 4, in the compare note, “ss” is replaced by “s”, and “, OB 1 ‘new tax rate person’” is omitted.

**549 Calculating amounts under standard method: 2008–09 and 2009–10 income years**

- (1) In section RZ 5(1), “portfolio tax rate entity’s” is replaced by “persons”, and “entity uses a 30% basic tax rate” is replaced by “person is a new tax rate person”.
- (2) In section RZ 5, in the list of defined terms, “new tax rate person” is inserted.
- (3) In section RZ 5, in the compare note, “ss” is replaced by “s”, and “, OB 1 ‘new tax rate person’” is omitted.

**550 Definitions**

- (1) This section amends section YA 1.
- (2) After the definition of **1990 version provisions**, the following is inserted:

“**abating WFF tax credit** is defined in section MA 8 (Some definitions for family scheme) for the purposes of subparts MA to MF and MZ (which relate to tax credits for families)”
- (3) In the definition of **amount of tax**, “RSCT rules,” is inserted after “ESCT rules,”.
- (4) In the definition of **ancillary tax**, the following is inserted after paragraph (k):

“(kb) RSCT:”.
- (5) After the definition of **associated**, the following is inserted:

“**associated internal software developer** is defined in section LH 17 (Some definitions) for the purposes of subpart LH (Tax credits for expenditure on research and development)”.
- (6) In the definition of **basic tax rate**, in paragraph (a), “RSCT,” is inserted after “RWT,”.
- (7) In the definition of **charitable organisation**, “listed in schedule 32 (Recipients of charitable or other public benefit gifts)” is replaced by “to which section LD 3(2) (Meaning of charitable or other public benefit gift) or schedule 32 (Recipients of charitable or other public benefit gifts) applies”.
- (8) In the definition of **child**, paragraph (c), “Family assistance credit” is replaced by “Abating WFF tax credit”, and “Family tax credit” is replaced by “Minimum family tax credit”.

- (9) After the definition of **depreciation recovery income**, the following is inserted:  
“**derivative instrument** is defined in section EW 15F (Expected value method) for the purposes of that section and section EW 15G (Modified fair value method)”.
- (10) In the definition of **development**, “for the purposes of sections DB 34, EE 1, EJ 22, and EJ 23 (which relate to deductions and allocation of deductions for development expenditure)” is replaced by “for the purposes of that section and section DB 34 (Research or development)”.
- (11) After the definition of **distribution**, the following is inserted:  
“**district health board** means a district health board established by or under section 19 of the New Zealand Public Health and Disability Act 2000”.
- (12) In the definition of **employee**, paragraph (c)(i), “section RD 5(1)(b)(iii), (2),” is replaced by “section RD 5(1)(b)(iii), (3),”.
- (13) In the definition of **employment**, paragraph (b), “Family tax credit” is replaced by “Minimum family tax credit”.
- (14) After the definition of **environmental restoration account**, the following is inserted:  
“**equity instrument** is defined in section EW 15I(3) (Mandatory use of yield to maturity method for some arrangements) for the purposes of that section”.
- (15) After the definition of **fair dividend rate method**, the following is inserted:  
“**fair value method** means a method of calculating income or expenditure for an income year that takes into account movements in fair value as determined under IFRSs”.
- (16) The definition of **family assistance credit** is repealed.
- (17) The definition of **family plus** is repealed.
- (18) The definition of **family support** is repealed.
- (19) In paragraph (b) of the definition of **finance lease**, “life)” is replaced by “life):” and the following is added:  
“(c) the person enters on or after 20 June 2007 and is, or is part of, an arrangement that, when the person enters the lease or when a change in the terms of the arrangement

changes the allocation or size of the risks and rewards incidental to ownership of the lease asset,—

- “(i) involves the use of the asset outside New Zealand for all or most of the term of the lease; and
- “(ii) involves income of any person who is not the lessor, arising from the use of the asset by any person, that is exempt income, or excluded income, or non-residents’ foreign sourced income; and
- “(iii) is a finance lease under NZIAS 17 for the lessor, or for a company that is in the same group of companies as the lessor and derives assessable income from the arrangement, or is an arrangement under which persons who do not include the lessor bear substantially all the risks and rewards incidental to ownership of the lease asset, determined as at the time the person enters the lease and taking into account later changes to the arrangement”.

- (20) In the definition of **financial statements**, “subpart EB (Valuation of trading stock (including dealer’s livestock))” is replaced by “subparts EB (Valuation of trading stock (including dealer’s livestock)) and EW (Financial arrangements rules)”.
- (21) After the definition of **geothermal well**, the following is inserted:

“**gifting settlor** is defined in section EX 46(12) (Limits on choice of calculation methods)”.
- (22) In the definition of **group of companies**, “section IC 3(1)” is replaced by “section IC 3”.
- (23) After the definition of **identical share**, the following is inserted:

“**IFRS** means a New Zealand Equivalent to International Financial Reporting Standard, approved by the Accounting Standards Review Board, and as amended from time to time or an equivalent standard issued in its place

“**impaired credit adjustment** is defined in section EW 15D(3) (IFRS financial reporting method) for the purposes of that section”.

- (24) After the definition of **indirect income interest**, the following is inserted:
- “**industry research co-operative** means a person who is an industry research co-operative under section LH 16 (Industry research co-operatives)”.
- (25) After the definition of **intermediary**, the following is inserted:
- “**internal software development** is defined in section LH 17 (Some definitions) for the purposes of subpart LH (Tax credits for expenditure on research and development)
- “**internal software development controller** is defined in section LH 17 (Some definitions) for the purposes of subpart LH (Tax credits for expenditure on research and development)
- “**internal software development group** is defined in section LH 17 (Some definitions) for the purposes of subpart LH (Tax credits for expenditure on research and development)”.
- (26) In the definition of **investor**, paragraphs (b) and (c) are replaced by the following:
- “(b) for a portfolio investment entity is defined in section HL 5B (Meaning of investor and portfolio investor class)”.
- (27) The definition of **in-work payment** is replaced by the following:
- “**in-work tax credit** is defined in section MA 8 (Some definitions for family scheme) for the purposes of subparts MA to MF and MZ (which relate to tax credits for families)”.
- (28) After the definition of **listed PAYE intermediary**, the following is inserted:
- “**listed research provider** means a person who is listed as a listed research provider under section LH 15 (Listed research providers)”.
- (29) After the definition of **minibus**, the following is inserted:
- “**minimum family tax credit** is defined in section MA 8 (Some definitions for family scheme) for the purposes of subparts MA to MF and MZ (which relate to tax credits for families)”.

- (30) In the definition of **net family scheme income**, “section MA 8 (Some definitions for family scheme)” is replaced by “section ME 3 (Meaning of net family scheme income)”.
- (31) After the definition of **new start grant**, the following is inserted:
- “**new tax rate person**,—
- “**(a)** means a person who uses a 30% basic tax rate for 2008–09 and later income years:
- “**(b)** includes a portfolio tax rate entity”.
- (32) After the definition of **New Zealand tax**, the following is inserted:
- “**Niue International Trust Fund** means the trust governed by the Deed concerning the Niue International Trust Fund dated 25 October 2006 and signed by Her Majesty the Queen in right of New Zealand and the Governments of Niue and Australia”.
- (33) After the definition of **non-filing taxpayer**, the following is inserted:
- “**non-integral fee** means a fee or transaction cost that, for the purposes of financial reporting under IFRSs, is not an integral part of the effective interest rate of a financial arrangement”.
- (34) After the definition of **notional sale price**, the following is inserted:
- “**novelty** is defined in section LH 7(4) (Research and development activities and related terms) for the purposes of subpart LH (Tax credits for expenditure on research and development)”.
- (35) After the definition of **NRWT rules**, the following is inserted:
- “**NZIAS 2** means New Zealand Equivalent to International Accounting Standard 2, approved by the Accounting Standards Review Board and as amended from time to time, or an equivalent standard issued in its place
- “**NZIAS 8** means New Zealand Equivalent to International Accounting Standard 8, approved by the Accounting Standards Review Board and as amended from time to time, or an equivalent standard issued in its place

“**NZIAS 17** means New Zealand Equivalent to International Accounting Standard 17, approved by the Accounting Standards Review Board and as amended from time to time, or an equivalent standard issued in its place

“**NZIAS 32** means New Zealand Equivalent to International Accounting Standard 32, approved by the Accounting Standards Review Board and as amended from time to time, or an equivalent standard issued in its place

“**NZIAS 39** means New Zealand Equivalent to International Accounting Standard 39, approved by the Accounting Standards Review Board and as amended from time to time, or an equivalent standard issued in its place

“**NZIAS 41** is defined in section EB 6(3) (Cost) for the purposes of that section”.

- (36) After the definition of **offshore permit area**, the following is inserted:

“**old company tax rate** means a 33% basic tax rate applying before the 2008–09 income year”.

- (37) After the definition of **outstanding balance**, the following is inserted:

“**overseas eligible expenditure** is defined in section LH 6(5) (Research and development activities outside New Zealand) for the purposes of subpart LH (Tax credits for expenditure on research and development)”.

- (38) After the definition of **personal property lease payment**, the following is inserted:

“**personal service rehabilitation payment**, for a person, means an amount paid for the person’s benefit—

“(a) under section 81(3) of the Injury Prevention, Rehabilitation, and Compensation Act 2001; and

“(b) by the Accident Compensation Corporation or an employer that is an accredited employer as defined in section 181 of that Act; and

“(c) in providing to the person a key aspect of social rehabilitation referred to in—

“(i) section 81(1)(b), (c), (e), or (g) (relating to attendant care, child care, home help, and training for independence) of that Act:

- “(ii) section 81(1)(h) (relating to transport for independence) of that Act to the extent provided by paragraph (a)(i) of the definition of **transport for independence** in schedule 1, clause 12 of that Act”.
- (39) The definition of **petroleum mining operations** is replaced by the following:  
“**petroleum mining operations** is defined in section CT 6B (Meaning of petroleum mining operations)”.
- (40) In the definition of **portfolio entity investment**, “a portfolio investment entity” is replaced by “an entity”.
- (41) In the definition of **portfolio investment entity**, paragraph (c), “fund” is replaced by “fund:”, and the following is added:  
“(d) portfolio investment-linked life fund”.
- (42) After the definition of **portfolio investment entity**, the following is inserted:  
“**portfolio investment-linked life fund** means a separate identifiable fund forming part of a life insurer, that—  
“(a) holds investments subject to life insurance policies under which benefits are directly linked to the value of the investments held in the fund; and  
“(b) has become a portfolio investment entity under section HL 13 (Becoming portfolio investment entity); and  
“(c) has not ceased to be a portfolio investment entity under section HL 15 (Ceasing to be portfolio investment entity)”.
- (43) The definition of **portfolio investor class** is replaced by the following:  
“**portfolio investor class** is defined in section HL 5B (Meaning of investor and portfolio investor class)”.
- (44) In the definition of **portfolio investor exit period**, paragraph (b)(ii) is replaced by the following:  
“(ii) ending on a day in the tax year on which the amount of the entity’s portfolio tax liability under section HL 21 reduced by any tax credits allocated to the investor, for the investor for the period equals or is more than the value of the investor’s portfolio investor interest; and”.

- (45) The definition of **portfolio investor rate** is replaced by the following:
- “**portfolio investor rate**, for an investor in a portfolio tax rate entity and for a portfolio calculation period, means—
- “(a) 33%, if paragraphs (b) and (c) do not apply; or
- “(b) the rate, if paragraph (c) does not apply, that the investor notifies—
- “(i) to the entity as the prescribed investor rate for the investor and the period; and
- “(ii) in the latest notice before the time; or
- “(c) 0%, if—
- “(i) the entity makes payments of tax under section HL 22 (Payments of tax by portfolio tax rate entity making no election); and
- “(ii) the portfolio investor rate for the investor for the portfolio calculation period would, in the absence of this paragraph, be more than 0%; and
- “(iii) the portfolio calculation period includes part of a portfolio investor exit period for the investor”.
- (46) In the definition of **portfolio land company**, in paragraph (b),
- (a) in the words before subparagraph (i), “80%” is replaced by “80% or more”;
- (b) in subparagraph (ii), “of the company” is replaced by “of the company; and” and the following is added:
- “(c) meets the requirements of section HL 10(2) (Further eligibility requirements relating to investments) for the tax year”.
- (47) In the definition of **portfolio listed company**, paragraph (d), “entity)” is replaced by “entity); and”, and the following is added:
- “(e) is not a portfolio investment-linked life fund”.
- (48) In the definition of **portfolio tax rate entity**, paragraph (d), “fund” is replaced by “fund; and”, and the following is added:
- “(e) is not a portfolio investment-linked life fund”.
- (49) In the definition of **principal caregiver**, “family assistance credit, family support, in-work payment,” is replaced by “WFF tax credit, in-work tax credit,”.

- (50) The definition of **protected family support** is replaced by the following:  
“**protected family tax credit**, for a person, means an amount of family scheme income derived in the way set out in section MD 14 (Person receiving protected family tax credit)”.
- (51) After the definition of **reduced deficit debit**, the following is inserted:  
“**redundancy payment** means a PAYE income payment paid—  
“(a) to a person whose employment is terminated because their employer no longer needs an employee to perform the duties performed by the person as an employee; and  
“(b) in compensation for the loss of the employment”.
- (52) In the definition of **refundable tax credit**, paragraph (a), “family income assistance” is replaced by “family payments”, and the following is inserted after paragraph (b):  
“(bb) a tax credit under subpart LH (Tax credits for expenditure on research and development)”.
- (53) In the definition of **reporting standard**, “that section and” is inserted after “the purposes of”.
- (54) In the definition of **research**, “for the purposes of sections DB 34, EE 1, EJ 22, and EJ 23 (which relate to deductions and allocation of deductions for development expenditure)” is replaced by “for the purposes of that section and section DB 34 (Research or development)”.
- (55) After the definition of **research**, the following is inserted:  
“**research and development activities** is defined in section LH 7(1) (Research and development activities and related terms) for the purposes of subpart LH (Tax credits for expenditure on research and development)  
“**research and development project** is defined in section LH 6(3) (Research and development activities outside New Zealand)”.
- (56) In the definition of **residual income tax**, in paragraph (b), the following are inserted:  
“(iiib) section LB 6 (Tax credits for RSCT):  
“(vb) section LH 2 (Tax credits relating to expenditure on research and development):”.

- (57) After the definition of **retained earnings**, the following is inserted:
- “**retirement savings scheme** for a person means an entity eligible under section RH 3 (Retirement savings schemes)
  - “**retirement scheme contribution** is defined in section RH 2 (Retirement scheme contributions)
  - “**retirement scheme contributor** means an entity eligible under section RH 4 (Retirement scheme contributors)
  - “**retirement scheme prescribed rate**, for a person and a retirement scheme contribution made for the person at a time in an income year, means a rate of—
    - “(a) 0% if the person is a non-resident at the time and the contribution is non-resident passive income; or
    - “(b) 19.5% if the person—
      - “(i) has, in either of the 2 income years immediately before the year in which the contribution is made, taxable income of \$38,000 or less:
      - “(ii) is a non-resident and the retirement scheme contributor is a Maori authority, and the distribution is \$200 or less:
      - “(iii) is a non-resident and the retirement scheme contributor is a Maori authority and the person supplies the Maori authority with a notice under section 28C of the Tax Administration Act 1994; or
    - “(c) 33% if the person has, in either of the 2 income years immediately before the year in which the contribution is made, taxable income of \$60,000 or less; or
    - “(d) 39%”.
- (58) After the definition of **royalty**, the following is inserted:
- “**RSCT** means retirement scheme contribution tax
  - “**RSCT rules** is defined in section RH 1 (RSCT rules and their application)”.
- (59) After the definition of **schedular taxable income**, the following is inserted:
- “**scientific or technological uncertainty** is defined in section LH 7(3) (Research and development activities and related terms) for the purposes of subpart LH (Tax credits for expenditure on research and development)”.

- (60) In the definition of **shareholder**, in paragraph (c), “(PDA)” is replaced by “(PCA)”.
- (61) After the definition of **social assistance suspensory loan**, the following is inserted:  
“**sound commercial reason** is defined in section EW 26(7) (Change of spreading method) for the purposes of that section”.
- (62) After the definition of **supply**, the following is inserted:  
“**systematic, investigative, and experimental activities** is defined in section LH 7(2) (Research and development activities and related terms) for the purposes of subpart LH (Tax credits for expenditure on research and development)”.
- (63) After the definition of **taxpayer**, the following is inserted:  
“**technology** is defined in section LH 7(5) (Research and development activities and related terms) for the purposes of subpart LH (Tax credits for expenditure on research and development)”.
- (64) After the definition of **terminating share**, the following is inserted:  
“**tertiary institution** means a body established under section 162 of the Education Act 1989”.
- (65) After the definition of **time of the sale**, the following is inserted:  
“**Tokelau International Trust Fund** means the trust governed by the Deed concerning the Tokelau International Trust Fund dated 10 November 2004 and signed by Her Majesty the Queen in right of New Zealand and the Government of Tokelau”.
- (66) After the definition of **transferor**, the following is inserted:  
“**transitional period** is defined in section OZ 7 (Memorandum accounts in transitional period) for the purposes of sections OZ 8 to OZ 15”.
- (67) In the definition of **venture investment agreement**, “for the purposes of that section” is omitted.
- (68) After the definition of **voting interest**, the following is inserted:

“**WFF tax credit** means Working for Families tax credit and is defined in section MA 8 (Some definitions for family scheme)”.

**551 Company and company’s associate: 1988 version provisions**

After section YB 4(3), the following is inserted:

“*Exclusion: subpart LH*”

“(3B) Despite subsection (3), this section does not apply for the purposes of section LH 1(2) (Who this subpart applies to).”

**552 Partnerships: partnership and associate of partner**

After section YB 17(3)(c), “those provisions.” is replaced by “those provisions; and”, and the following is added:

“(d) for the purposes of the 1990 version provisions (which are certain provisions relating to petroleum mining and some other miscellaneous rules), the term **associated** has the meaning that it has for the purposes of those provisions.”

**553 Some definitions**

(1) After section YB 20(2)(o), the following is inserted:

“(ob) subpart LH (Tax credits for expenditure on research and development):”.

(2) After section YB 20(2)(s), the following is inserted:

“(sb) sections ML 1 to ML 3 (which relates to tax credits for redundancy payments):”.

**554 Schedule 1—Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits**

(1) In the heading to schedule 1, “**RSCT**,” is inserted before “**RWT**,”.

(2) In schedule 1, part A, clause 6 “**Taxable income: trustees of certain funds**” is inserted as a heading to the clause.

(3) After schedule 1, part D, clause 6, the following is added:

***“Basic rates for RSCT***

**“7 Retirement scheme contributions**

The payment rate for an amount of a retirement scheme contribution made by a retirement scheme contributor for a person is set out in table 5.

**“Table 5**

<b>“Row</b>	<b>Conditions</b>	<b>Payment rate</b>
“1	The person responsible for withholding RSCT— (a) has been notified under section 28C of the Tax Administration Act 1994 that 19.5 cents in the dollar is the person’s retirement scheme prescribed rate; and (b) has been supplied with the tax file number of the person	0.195
“2	The person— (a) is a non-resident; and (b) the retirement scheme contributor is a Maori authority; and (c) the distribution is \$200 or less	0.195
“3	The person responsible for withholding RSCT— (a) has been notified under section 28C of the Tax Administration Act 1994 that 33 cents in the dollar is equal to or greater than the person’s retirement scheme prescribed rate (b) has been supplied with the tax file number of the person	0.330
“4	When rows 1 and 2 do not apply.	0.390

**“How to use this table**

“Find the applicable condition, in the middle column, in order to find the relevant rate to apply, in the right column.”

**555 Schedule 2—Basic tax rates for PAYE income payments**

In schedule 2, part B, table 1, row 3, “RD 11(2)(b) or RD 18(3)” is replaced by “RD 10(2)(b) or RD 17(3)”.

**556 Schedule 4—Rates of tax for schedular payments**

After schedule 4, part H, the following is added:

“Part I

“Personal service rehabilitation payments

- “1 A personal service rehabilitation payment for a person under the Injury Prevention, Rehabilitation, and Compensation Act 2001 has a 0.15 rate of tax for each dollar of the payment.”

**557 Schedule 14—Depreciable intangible property**

In the shoulder note for schedule 14, “EE 2” is replaced by “EE 62”.

**558 New schedule 21**

After schedule 20, schedule 21 in schedule 3 of this Act is inserted.

**559 Schedule 32—Recipients of charitable or other public benefit gifts**

To omit “Christian Children’s Fund of New Zealand Limited (CCFNZ)” and substitute “Childfund New Zealand Limited”.

To insert “Hamlin Charitable Fistula Hospitals Trust”, “Hope Foundation Development Trust”, “Hope International Charitable Trust”, “Limbs 4 All Charitable Trust”, “New Zealand Disaster Assistance Response Team Trust”, “Operation Restore Hope Charitable Trust”, and “The World Swim for Malaria Foundation (New Zealand)”.

**560 Schedule 49—Enactments amended**

In schedule 49, the 2 headings and related items after the item relating to the Income Tax (Social Assistance Suspensory Loans) Order 1995 (SR 1995/79) are replaced by the following:

**“Injury Prevention, Rehabilitation, and Compensation (Work Account Levies) Regulations 2007 (SR 2007/70)**

“Regulation 3, definition of **tax year**: ‘section OB 1 of the Income Tax Act 2004’ is replaced by ‘section YA 1 of the Income Tax Act 2007’.

**“Injury Prevention, Rehabilitation, and Compensation  
(Earners’ Levy) Regulations 2007 (SR 2007/71)**

“Regulation 3, definition of **tax year**: ‘section OB 1 of the  
Income Tax Act 2004’ is replaced by ‘section YA 1 of the  
Income Tax Act 2007’.”

**561 Schedule 50—Amendments to Tax Administration Act  
1994**

To omit the items relating to section 33A(1)(a)(iiic),  
33C(1)(b), 120KE(6)(a), and 141B.

**562 Consequential amendments to Income Tax Act 2007**

The sections of the Income Tax Act 2007 listed in schedule 4  
are amended in the way indicated by that schedule.

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## Schedule 1

### Amendments to subpart KD of the Income Tax Act 2004

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#### Subpart KD

Subpart KD, heading: “**Tax credits for family support and family plus**” is replaced by “**Tax credits for families**”.

#### Section KD 1A

Section KD 1A, heading: “**Family support and family plus**” is replaced by “**Working for Families tax credits**”.

Section KD 1A(1): “family support and family plus” is replaced by “a Working for Families tax credit, consisting of the family tax credit, the in-work tax credit, or the child tax credit continued under section KD 2AAAB, the parental tax credit, and the minimum family tax credit, after abatement (if any)”.

Section KD 1A(2): repeal.

#### Section KD 2

Section KD 2(2), formula: the formula is replaced by “**FTC + IWTCorCTC + PTC – FCA**”.

Section KD 2(2), item FSC: “FSC” is replaced by “FTC”.

Section KD 2(2), item FSC: “family support credit” is replaced by “family tax credit”.

Section KD 2(2), item IWP or CTC: “**IWP or CTC**” is replaced by “**IWTCorCTC**”.

Section KD 2(2), item IWP or CTC as amended above, paragraphs (a) and (b)(i): “in-work payment” is replaced by “in-work tax credit” in each place where it appears.

Section KD 2(3): “family support credit” is replaced by “family tax credit”.

Section KD 2(6), formula: “NRFFS” is replaced by “NRFFTC”.

Section KD 2(6), item NRFFS: “NRFFS” is replaced by “NRFFTC”.

Section KD 2(6), item NRFFS: “ring-fenced family support recipient” is replaced by “ring-fenced family tax credit recipient”.

Section KD 2(6B): “**ring-fenced family support recipient**” is replaced by “**ring-fenced family tax credit recipient**”.

#### Section KD 2AAA

Section KD 2AAA, heading: “**In-work payment**” is replaced by “**In-work tax credit**”.

**Section KD 2AAA**—*continued*

Section KD 2AAA(1): “in-work payment” is replaced by “in-work tax credit”.

Section KD 2AAA(2), words before the formula and paragraph (b) of item **children**: “in-work payment” is replaced by “in-work tax credit” in each place where it appears.

**Section KD 2AAAB**

Section KD 2AAAB(b): “in-work payment” is replaced by “in-work tax credit”.

**Section KD 2AA**

Section KD 2AA(3): “family support credit” is replaced by “family tax credit”.

Section KD 2AA(3A): “in-work payment” is replaced by “in-work tax credit”.

**Section KD 2A**

Section KD 2A, heading: “**family support credit, in-work payment**” is replaced by “**family tax credit, in-work tax credit**”.

Section KD 2A, in the words before paragraphs and in paragraph (a): “the family support credit, in-work payment” is replaced by “the family tax credit, the in-work tax credit” in each place where it appears.

Section KD 2A(c)(i): “family support credit” is replaced by “family tax credit”.

Section KD 2A(c)(ii): “in-work payment” is replaced by “in-work tax credit”.

**Section KD 3**

Section KD 3, heading: “**family tax credit**” is replaced by “**minimum family tax credit**”.

**Section KD 3A**

Section KD 3A, heading: “**family tax credit**” is replaced by “**minimum family tax credit**”.

**Section KD 5**

Section KD 5(4)(c)(ii): “family support credit” is replaced by “family tax credit”.

Section KD 5(4)(c)(iib): “in-work payment” is replaced by “in-work tax credit”.

Section KD 5(4)(c)(iv): “family tax credit” is replaced by “minimum family tax credit”.

**Section KD 5**—*continued*

Section KD 5(6A)(b)(ii): “family support credit, in-work payment, child tax credit, parental tax credit, family credit abatement, and family tax credit” is replaced by “family tax credit, in-work tax credit, child tax credit, parental tax credit, family credit abatement, and minimum family tax credit”.

**Section KD 5C**

Section KD 5C, heading: “**family support amounts, abatement threshold amounts, amounts of in-work payment and parental tax credit, and amount of family tax credit**” is replaced by “**family tax credit amounts, abatement threshold amounts, amounts of in-work tax credit and parental tax credit, and amount of minimum family tax credit**”.

Section KD 5C(1)(a): “family support credits” is replaced by “family tax credits”.

Section KD 5C(1)(c): “in-work payment” is replaced by “in-work tax credit”.

Section KD 5C(4): “in-work payment” is replaced by “in-work tax credit”.

**Section KD 6**

Section KD 6(1A)(b): “family support credit” is replaced by “family tax credit”.

**Section KD 7**

Section KD 7(2B): “family support credit” is replaced by “family tax credit”.

**Section KD 7A**

Section KD 7A(1)(a): “family tax credit” is replaced by “minimum family tax credit”.

Section KD 7A(2), item a, paragraph (b): “family tax credit” is replaced by “minimum family tax credit”.

Section KD 7A(3), item a, paragraph (b): “family tax credit” is replaced by “minimum family tax credit”.

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and 305

## Schedule 2

### Amendments to other Acts and Regulations

#### *Public Acts*

##### **Housing Restructuring and Tenancy Matters Act 1992 (1992 No 76)**

Section 46(2)(c), in the words before the subparagraphs and in subparagraph (i): “family support” is replaced by “family tax credits” in each place where it appears.

Section 46(3)(b), in the words before the subparagraphs and in subparagraph (i): “family support” is replaced by “family tax credits” in each place where it appears.

Schedule 2, clause 4, heading: “**family support**” is replaced by “**family tax credit**”.

Schedule 2, clause 5, heading: “**family support**” is replaced by “**family tax credit**”.

Schedule 2, clause 5: “child support” is replaced by “family tax credit”.

Schedule 2, clause 9(c): “family tax credit” is replaced by “minimum family tax credit”.

Schedule 2, clause 10(a)(ii): “in-work payment” is replaced by “in-work tax credit”.

##### **Rates Rebate Act 1973 (1973 No 5)**

Section 2(1), definition of **income**, paragraph (d)(vi): “family support” is replaced by “family tax credit”.

##### **Social Security Act 1964 (1964 No 136)**

Schedule 18, part 1, clause 1, definition of **base rate**, paragraphs (b) and (d): “family support” is replaced by “family tax credit” in each place where it appears.

Schedule 18, part 1, clause 1, definition of **base rate**, paragraphs (e)(ii) and (g)(ii): “family support” is replaced by “family tax credit” in each place where it appears.

#### *Regulations*

##### **Health Entitlement Cards Regulations 1993 (SR 1993/169)**

Regulation 2, definition of **family credit income**, paragraph (b): “family tax credit” is replaced by “minimum family tax credit”.

**Social Security (Temporary Additional Support) Regulations  
2005 (SR 2005/334)**

Regulation 13, example 1, items 1 and 4: “family support” is replaced by “family tax credit” in each place where it appears.

Regulation 13, example 2, items 1 and 4: “family support” is replaced by “family tax credit” in each place where it appears.

Schedule 3, part 1, clause 1(b): “family support credit of tax” is replaced by “family tax credit”.

**Student Allowances Regulations 1998 (SR 1998/277)**

Regulation 2(1), definition of **personal income**, paragraph (d): “family support” is replaced by “family tax credit”.

Regulation 2(1), definition of **spousal or partner’s income**, paragraph (d): “family support” is replaced by “family tax credit”.

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**Schedule 3**  
**New schedule 21 inserted in Income Tax Act 2007**

LH 3(1), LH 5(3), (4), LH  
7(2), LH 8

**Schedule 21**

**Expenditure and activities related to research and  
development**

“Part A

“Eligible amounts of expenditure and depreciation loss

- “1 Expenditure in relation to an employee that is—
- “(a) for a period in which the employee performs the research and development activities; and
  - “(b) salary, wages, an allowance, a bonus, a commission, extra salary, overtime, holiday pay, long service pay, a fringe benefit or FBT, an employer’s superannuation contribution or ESCT, or an insurance premium paid on behalf of the employee that is not a fringe benefit.
- “2 An amount of depreciation loss for an income year for property used in performing the research and development activities if—
- “(a) the property is not in a pool with other depreciable property, or is in a pool of depreciable property used wholly in performing research and development activities; and
  - “(b) for property produced by the research and development activities, the property is produced for a purpose other than use in the research or development activities, and all the activities involved in the construction of the property are research and development activities; and
  - “(c) for property produced by the research and development activities, the development costs of the property are not eligible expenditure under section LH 4.
- “3 Expenditure on employee training, recruitment, relocation, and travel, to the extent to which it is incurred directly for the research and development activities.
- “4 Expenditure on materials incorporated into a trial model or preliminary version of a product or plant in the research and development activities.

**Schedule 21**—*continued*

- “5 Expenditure on administration of internal business activities, administration of employment-related matters, repairs and maintenance, cleaning, and security—
- “(a) that is expenditure in relation to an employee that is listed in clause 1(b) or expenditure on items consumed or payments for services performed on behalf of the person; and
  - “(b) to the extent to which it is incurred directly for the research and development activities; and
  - “(c) that is not excluded by Order in Council under section LH 8 from the application of this paragraph.
- “6 Expenditure on rates, utilities, insurance of buildings, plant, and equipment, or leasing of buildings, plant, and equipment—
- “(a) to the extent to which it is incurred directly for the research and development activities; and
  - “(b) that is not excluded by Order in Council under section LH 8 from the application of this paragraph.
- “7 Expenditure on items consumed in the research and development activities.
- “8 Expenditure or an amount of depreciation loss incurred in acquiring or producing items that have a market value after being subjected to a process or transformation as part of the research and development activities to the extent to which the expenditure or amount is more than the amount of—
- “(a) the sale proceeds of the items sold other than to an associated person:
  - “(b) the market value of the items not sold or sold to an associated person.
- “9 Payments to another person for performance of the research and development activities on behalf of the person.

## “Part B

“Excluded amounts of expenditure and depreciation loss

- “1 Expenditure under a financial arrangement.
- “2 An amount of depreciation loss under section EE 11(3) to (5) or EE 39 for property unless the property is—

**Schedule 21**—*continued*

- “(a) produced by research and development activities for a purpose other than use in the research and development activities; and
  - “(b) used wholly or mainly in the research and development activities; and
  - “(c) not used after the research and development activities end.
- “3 Expenditure on property or services, other than a right to use property, bought directly or indirectly by the person (the **buyer**) from an associated person (an **associate**), to the extent to which the amount is more than the amount of expenditure or depreciation loss that—
- “(a) is incurred by the associate in obtaining the goods or services from a person who is not associated with the associate or the buyer and does not obtain the property or services from a person associated with the associate or the buyer; and
  - “(b) meets the requirements of sections LH 3(1)(e) and LH 5 and is not excluded under section LH 6.
- “4 Expenditure on a right to use property of an associated person to the extent to which the amount is more than the market value of the right.
- “5 An amount of depreciation loss for property to the extent to which the amount, as a proportion of the total amount of depreciation loss for the property for the income year, is more than the proportion of the time for which the property is used in the income year that is the time for which the property is used in performing the research and development activities.
- “6 An amount of depreciation loss—
- “(a) for depreciable property bought by the person from an associated person who has used the property in research and development activities; and
  - “(b) to the extent to which the amount of depreciation loss arises from an excess of the purchase price over the adjusted tax value of the property for the associated person at the time of the purchase.

**Schedule 21**—*continued*

- “7 The part of expenditure or amount of depreciation loss incurred in acquiring or producing items having a market value after being subjected to a process or transformation as part of the research and development activities, that is not more than—
- “(a) the sale proceeds of the items sold other than to an associated person;
  - “(b) the market value of the items not sold or sold to an associated person.
- “8 Expenditure or an amount of depreciation loss incurred in buying, leasing, or obtaining a right to use core technology, being knowledge or anything produced by the application of knowledge, that is—
- “(a) a product of activities of which the research and development activities are an extension, continuation, development, or completion:
  - “(b) the basis for new knowledge that is to be obtained as a purpose of the research and development activities:
  - “(c) the basis for new or improved materials, products, devices, processes, or services, that are to be created as a purpose of the research and development activities.
- “9 Expenditure or an amount of depreciation loss incurred in internal software development to the extent to which it is more than the eligible expenditure for the person under sections LH 9 to LH 13.
- “10 Expenditure or an amount of depreciation loss in relation to which a grant is provided to the person by a public authority or local authority.
- “11 Expenditure or an amount of depreciation loss met from funds that, as a condition of a grant to the person by a public authority or local authority, are required to be provided or paid to the person or contributed by the person.
- “12 Expenditure or an amount of depreciation loss incurred as a condition of a grant to another person by a public authority or local authority.
- “13 Donations.

**Schedule 21**—*continued*

- “14 Professional fees incurred in determining whether activities are research and development activities, whether the person meets the requirements for the tax credit, or whether the expenditure is eligible.
- “15 Expenditure or an amount of depreciation loss incurred in buying, leasing, or obtaining a right to use intangible property.
- “16 Expenditure or an amount of depreciation loss of an industry research co-operative that is funded by a person who does not meet the requirements set out in section LH 1(1)(a) or who is referred to in section LH 1(2).

## “Part C

“Activities excluded from being systematic, investigative, and experimental activities

- “1 Prospecting for, exploring for, or drilling for, minerals, petroleum, natural gas, or geothermal energy.
- “2 Research in social sciences, arts, or humanities.
- “3 Market research, market testing, market development, or sales promotion, including consumer surveys.
- “4 Quality control or routine testing of materials, products, devices, processes, or services.
- “5 Making cosmetic or stylistic changes to materials, products, devices, processes, or services.
- “6 Routine collection of information.
- “7 Commercial, legal, and administrative aspects of patenting, licensing, or other activities.
- “8 Activities involved in complying with statutory requirements or standards.
- “9 Management studies or efficiency surveys.
- “10 Reproduction of a commercial product or process by a physical examination of an existing system or from plans, blueprints, detailed specifications, or publicly available information.
- “11 Pre-production activities, such as a demonstration of commercial viability, tooling-up, and trial runs.”

**Schedule 4**

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**Consequential amendments to Income Tax Act 2007**

In the Income Tax Act 2007, the reference to the title of schedule 1 “Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits” is replaced by “Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits” in the following sections:

CB 28(5)(a)	CD 53(5)(b)	CS 1(6)
EK 7(5)(a)	EK 8(5)(a)	EK 12(4)(b)(i)
EK 23(2)(b)(i)	EX 19(4)	EX 50(5)(c)
EY 43(8)	FE 22(3)	FF 6(3)(d)
FF 7(4)(b)	FM 26(3)(b)	FM 28(4)(b)
HA 15(3)	HA 41(6)	HC 22(3)(b)
HC 34(1)	HF 1(2)(f)	HL 29(8)(b)(ii)
LC 1(1)	LC 2(1)	LE 2(4)(b)
LJ 5(6)(c)	LL 2(4)(b)	LL 6(4)(d)
LP 8(3)(c)	LP 10(2)(d)	LQ 1(3)(b)
OA 18(3)	OB 19(2)(b)	OB 42(2)(b)
OB 46(2)(b)	OB 69(8)(b)	OB 73(5)(b)
OB 75(3)(b)	OB 78(4)(b)	OB 80(3)(b)
OC 36(3)(d)	OC 37(3)(c)	OC 38(3)(f)
OE 6(2)(c)(i)	OE 7(7)(a)	OE 8(3)(b)(i)
OP 100(2)(c)(i)	OP 102(3)(b)(i)	RD 50(3)(a)
RD 51(3)(b)	RD 69(1)	RD 70(3)(a)
RD 72(3)(a)	RE 11(3)	RE 12(3)(a)
RE 13(3)(a)	RE 14(3)(a)	RE 15(3)(a)
RE 16(4)(a)	RE 17(3)(a)	RE 18(2)(a)
RE 19(2)	RF 9(3)(c)	RG 4(2)(d)(i)
RG 6(3)(b)	RM 21(2)	YA 1: basic tax rate

**Legislative history**

11 December 2007

Divided from Taxation (Annual Rates, Business Taxation, KiwiSaver, and Remedial Matters) Bill (Bill 119–2), third reading