

# **Taxation (International Taxation, Life Insurance, and Remedial Matters) Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

This bill introduces important changes to current taxation law.

The bill provides for the reform of the international tax rules, with the intention of allowing New Zealand residents with active businesses in overseas markets to compete on an equal footing with their competitors.

The reform of the taxation of life insurance business is also provided for in this bill. The reform aligns life insurance taxation rules closer to the accounting treatment of life insurance profits, and at the same time extends portfolio investment entity rules to life insurer's savings products.

The bill provides for payroll giving, so as to enable employers, employees, and donee organisations to establish a system that is flexible and meets their needs, and allows compliance costs, especially for employers, to be managed.

The taxation of emissions units arising under the *Climate Change Response Act 2002* is provided for.

The definitions of *associated persons* in the Income Tax Act 2007 are being reformed. The reform provides for a more robust “associated persons” concept, as a tax base maintenance measure.

The bill provides for raising tax thresholds, so that compliance costs for small- and medium-sized enterprises are reduced.

The tax treatment of relocation payments and overtime meal allowances for employees is clarified.

The bill includes changes to the income tax rules for petroleum mining. Deductions for petroleum mining undertaken in a foreign country through a branch are ringfenced. The distinction between onshore and offshore development is removed, and the reserve depletion method is introduced for deductions.

The bill provides for the new film grant – the *Screen Production Incentive Fund* grant – announced in Budget 2008.

The bill introduces specific tax rules for the treatment of honoraria and payments that reimburse expenditure incurred in undertaking voluntary activities.

Numerous other changes are also included in this bill.

### *Reform of international tax rules*

This bill gives effect to a major package of reforms to the international tax rules by introducing a tax exemption for offshore companies owned by New Zealand businesses, and by exempting most foreign dividends received by New Zealand companies from tax. The New Zealand tax system plays an important role in fostering a competitive business environment and it is therefore important that New Zealand’s international tax rules are not out of line with systems in comparable jurisdictions. The current rules impose additional tax costs on globally connected firms that are not faced by firms resident in other countries. This difference has become more pronounced over time creating an incentive for New Zealand firms to migrate, in particular to Australia.

New Zealand currently taxes New Zealand residents on their worldwide income. This includes any income earned by a foreign company that is controlled by New Zealand residents, known as a *controlled foreign company* or *CFC*. The only exceptions are that all income of a CFC in 1 of 8 “grey list” countries, including Australia, is exempt and

that “conduit” companies can get tax relief on their foreign-sourced income to the extent that they are owned by non-residents.

The proposals for reform introduced in this bill represent a fundamental overhaul of New Zealand’s international tax rules. The proposals follow the release of the government discussion document *New Zealand’s International Tax Review: a direction for change* in December 2006 and the government’s in-principle decisions announced in Budget 2007. These in-principle decisions were subject to extensive consultation and further development. Detailed design features were released in the form of 2 officials’ issues papers in October and December of 2007. Final proposals reflect the detailed submissions to the issues papers.

The proposals have 3 objectives:

- allowing firms to get on with legitimate business activity by removing tax-based impediments to offshore investment;
- minimising compliance costs; and
- maintaining a level of protection for the domestic tax base.

The proposals include a tax exemption for the foreign active income of CFCs, the exemption of most foreign dividends from tax when paid to New Zealand companies, and related reforms to contain the associated risks to the New Zealand tax base.

#### *CFC active income exemption*

Under an active income exemption only passive income earned by a CFC will be taxed in New Zealand; all other income will be exempt from New Zealand tax. Passive income will be limited mainly to interest, dividends, royalties, and rents, and some income from services performed in New Zealand (“base company income”). There are a number of important exclusions from passive income:

- Payments from a CFC with an active business to another CFC in the same jurisdiction will generally not be passive.
- Rents from land or property in the CFC’s jurisdiction will not be passive.
- Most royalties derived from property developed by the CFC will not be passive, as long as the CFC is regularly engaged in similar development and the property does not have a connection to New Zealand.

Businesses that have passive income that is less than 5% of gross income will qualify for an “active business exemption” and will not be required to attribute any passive income at all. Eligibility for the active business exemption can be determined using financial accounting information, including consolidated information within a jurisdiction, to minimise compliance costs. Most active businesses are expected to be eligible.

#### *Foreign dividend exemption*

Most foreign dividends received by companies will be exempted from income tax. This differs from the current rules, under which dividends from CFCs and non-portfolio foreign investment funds (FIFs) are taxed.

Despite the general exemption, dividends from fixed-rate shares and dividends which are deductible in a foreign jurisdiction will continue to be taxed. To prevent double New Zealand taxation, these payments will be treated as interest and the CFC will be allowed a deduction against any attributed passive income.

#### *Other changes*

The introduction of an active income exemption and a foreign dividend exemption represents fundamental reform and requires a basic redesign of the international tax system, resulting in a number of significant consequential changes.

First, the “grey list” exemption for CFCs, which currently exempts CFCs in 8 countries from accrual taxation, is replaced by the active business exemption, regardless of where the company is located, and by a general exemption for CFCs in Australia. The purpose of the Australian exemption is to limit the possible compliance costs for small to medium enterprises, for which Australia is typically the first port of call when expanding offshore.

Secondly, the conduit relief mechanism will be repealed, although conduit companies will be given the option to retain existing credit balances for 2 years. Active income will effectively receive conduit treatment because of the active income and foreign dividend exemptions. The policy arguments for relief from taxation for active income do not extend to passive income.

Thirdly, the interest allocation rules that currently apply to inbound investments are proposed to be extended to outbound investment to prevent excessive interest deductions being used to shelter domestic income. These measures are essential for the protection of the domestic tax base from arrangements to artificially shift domestic income into a CFC, particularly given that neither offshore active income nor most foreign dividends will be subject to New Zealand tax (Australia has similar rules).

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Because of the risk that some interest costs may not be tax deductible, generous safe harbours and de minimis rules are provided. The effect of the proposed rules will be that interest deductions will be denied only when the New Zealand company's debt to asset ratio exceeds 75% and 110% of the worldwide group's debt to asset ratio. Even then, only debt in excess of these thresholds would be subject to interest denial. Moreover, firms with more than 90% of their assets in New Zealand or interest deductions of less than \$250,000 would generally be exempt from applying the rules.

As there is a significant risk that fixed-rate shares could be used to undermine the interest allocation rules, fixed-rate shares issued to New Zealand taxpayers will be treated as debt. These shares can be economic substitutes for debt and an after-tax financing benefit relative to debt can be obtained by their issue in circumstances where the interest on the debt will be denied by the interest allocation rules.

#### *Insurance companies*

The income of financial institutions is generally treated as passive income, so they would not receive the benefits of the active income exemption under the current proposals. Consideration is being given to extending the active income exemption to financial institutions in a second phase of the international tax review. In the meantime, transitional arrangements are proposed for insurance companies, allowing

them to apply for a Commissioner's determination qualifying them for the active income exemption if they can demonstrate that they are active in nature.

### *Reform of life insurance*

The comprehensive changes to the taxation of life insurance in this bill introduce an integrated framework extending many portfolio investment entity (PIE) benefits to all savers in life products. They also tax life insurers on their actual profits from term insurance rather than on the basis of the present artificial formulas that give unintended tax concessions. The proposals also provide a lead-in period of up to 5 years for existing term policies (without renewal other than certain minor adjustments) though this grandfathering can extend beyond this period for single premium policies or to the extent a level term premium is fixed.

Under the new rules, life insurers will be taxed on 2 bases: the shareholder base (representing income net of certain reinsurance derived for the benefit of shareholders) and the policyholder base (representing income derived for the benefit of policyholders). Detailed provisions apply to taxing participating policy income between the shareholder and policyholder bases.

The shareholder base will be taxed at the corporate rate. The shareholder base will be subject to standard provisions relating to tax losses carried forward, group company loss offsets, and imputation credit accounts.

Policyholder base income will be taxed at 30%, though life insurers will be permitted to elect to attribute investment income from investment-linked products to policyholders at their PIE marginal tax rates. Imputation credits apportioned to policyholder income are debited from the shareholder base imputation credit account.

The PIE exclusion of Australasian equity trading gains will be extended to all policyholder base investment income with investments held by life insurers on behalf of policyholders treated as sold and re-acquired at the market value on the last day of the income year prior to the life insurer being subject to the new rules.

Policyholder base losses (including losses arising from the gross-up of excess imputation credits) at the end of the income year can be car-

ried forward without restriction. Shareholder base income (or losses) cannot be offset against policyholder base losses (or income).

Reinsurance contracts entered into for the first time on or after 1 April 2009 which do not meet a number of conditions will be subject to tax under the financial arrangement rules rather than included in the shareholder base tax calculation. For reinsurance contracts entered into before that date, existing rules will apply for the greater of the duration of the contract (without renewal) or to 31 March 2014.

The total life office base tax loss determined under current rules, after any offsets, existing at the end of the life insurer's income year that ends on or includes 31 March 2009 can be carried forward by the life insurer for application against the shareholder base and the policyholder base in subsequent income years, subject to shareholder continuity and other conditions being met. Other than for provisions consequent on the cancellation of the policyholder credit account and policyholder net losses determined under the current rules, existing memorandum account and other tax balances are carried forward into the new rules.

These changes will take effect from the life insurer's first income year beginning on or after 1 April 2009.

#### *Reforming the definitions of "associated persons" in the Income Tax Act 2007*

The income tax definitions of "associated persons" are mainly used in an anti-avoidance capacity to counter non-arm's length transactions that could undermine the intent of our tax laws. There are a number of major weaknesses in the general associated persons definitions and, in particular, the definition which applies to land sales. The legislative intent of the land sale tax rules is that property dealers, developers, builders, and their associated entities are generally taxed on all gains on property sold within 10 years of acquisition, and that they cannot claim to hold non-taxable investment portfolios.

The existing weaknesses represent a significant risk to the tax base and the bill proposes amendments to the law. The main changes will:

- address the weaknesses in the current definitions in relation to trusts. In particular, there will be new tests focussing on a trust's settlor (that is, the person who provides the trust property);

- provide more robust rules aggregating the interests of associates to prevent the tests for associating 2 companies and a company and an individual being circumvented by the fragmentation of interests among close associates;
- provide a tripartite test associating 2 persons if they are each associated with the same third person, thereby making the associated persons tests as a whole more difficult to circumvent.

The changes are consistent with a key theme of the government's tax policy work programme, which is ensuring that the income tax system is robust.

The current income tax definitions of associated persons and other income tax provisions employing a similar concept are to be rationalised.

Most of the proposed reforms will apply from the 2009–10 income year. In the case of land sales, the new rules apply to land acquired on or after 1 April 2009.

#### *Goods and services tax*

The bill amends the Goods and Services Tax Act 1985 for the following purposes:

- Allowing certain loyalty programme operators to defer the imposition of GST until the redemption of loyalty points to ensure that no GST is being paid on the provision of international travel, which is normally a zero-rated supply.
- Amending an anti-avoidance rule to allow certain exported second-hand goods, which will not be re-imported into New Zealand, to be zero-rated if the exporter has claimed a second-hand goods deduction. Currently, zero-rating is generally denied if such a deduction is claimed.
- Confirming the application of GST to Parliamentary appropriations received by the Office of the Clerk of the House of Representatives and the Parliamentary Service, and validating GST paid by these bodies in earlier taxable periods.

#### *Tax treatment of reimbursements and honoraria paid to volunteers*

The bill introduces specific tax rules for the treatment of payments that reimburse expenditure incurred in undertaking voluntary activ-



ities. Reimbursement payments received by people who meet the qualifying criteria for being considered a volunteer will be treated as exempt income under the new provisions. The rules also make it clear that a payment characterised as an honorarium, even if it includes an element of reimbursement for expenditure incurred, is treated as a schedular payment and the PAYE rules apply to the whole payment.

#### *Relocation payments and overtime meal allowances*

To resolve uncertainty as to the tax treatment of payments by employers in relocating their employees and providing them with overtime meal allowances, various amendments are proposed to the income tax law.

Relocation payments will be exempt from income tax and, where relevant, fringe benefit tax if:

- the employee's relocation is as a result of taking up new employment with a new employer, taking up new duties at a new location with the existing employer, or continuing in the current job, but at a new location;
- the employee's existing residence could not be within reasonable travelling distance of the new workplace, except when accommodation is provided as an integral part of the job, such as for church clergy;
- the expense is on the proposed list of eligible relocation expenses;
- the payment reflects the expenditure incurred;
- the expenditure has been incurred within certain time limits.

For an overtime meal allowance to be exempt from income tax and, where relevant, fringe benefit tax:

- Either the employee's employment contract will need to specify that he or she is eligible for a payment in relation to overtime hours worked, or the employer must have a policy or practice of paying an overtime meal allowance.
- The allowance will need to reflect either the actual expenditure incurred by the employee or a reasonable estimate of the expected costs likely to be incurred.

- “Overtime” is defined as the time worked on the day beyond the person’s ordinary hours of work as set out in the employment agreement when the employee has worked more than 2 hours of overtime beyond the ordinary hours on that day.

These changes will apply from the 2002–03 income year.

### *Payroll giving scheme*

The bill introduces a voluntary payroll giving scheme that will allow employees to make regular payroll donations from their pay. It will also enable employees to receive the tax benefit of their payroll donations each payday in real-time without the need to have donation receipts. People who make donations other than through payroll giving will continue to claim the charitable donation tax credit at the end of the tax year.

The proposed payroll giving scheme results from options canvassed in the government’s November 2007 discussion document, *Payroll giving: providing a real-time benefit for charitable giving*. The changes will apply from 1 April 2009.

The new scheme will have the following key features:

- Participation in payroll giving will be voluntary for employers and employees.
- Payroll giving is available only to employees whose employers file their employer monthly schedules electronically.
- Employees who choose to make payroll donations will receive a tax credit on the amount of those donations each payday. The tax credit is calculated on a set rate of 33⅓% of the donation made.
- The tax credit is offset against the PAYE calculated on the employee’s gross pay, thereby reducing the amount of PAYE payable for that period. The maximum tax credit permitted is limited to the employee’s PAYE deduction on the salary or wages each pay period.
- Payroll donations must be made to a society, institution, association, organisation, trust, or fund as described in section LD 3(2) of the Income Tax Act 2007 or listed in Schedule 32. Employers are responsible for ensuring that payroll donations are transferred to those organisations.

- Any payroll donations must be transferred within a 3-month period.
- Employees who donate through payroll giving are not eligible for the end of year tax credit on those donations.

*Changes to tax thresholds for small and medium enterprises*

Following completion of the first phase of a review intended to reduce the tax compliance costs of SMEs, the government has decided to introduce the following changes to tax thresholds:

- the threshold for PAYE once-a-month filing and payment increases from \$100,000 to \$250,000 (based on annual PAYE deductions);
- the threshold for FBT annual return filing increases from \$100,000 to \$250,000 (based on annual PAYE deductions);
- owner-employees of closely held businesses will be allowed to file FBT returns annually, regardless of their annual PAYE deductions, when their FBT liability is for no more than 2 vehicles;
- the safe harbour threshold for provisional tax use of money interest (UOMI) increases from \$35,000 to \$50,000 (based on annual residual income tax);
- the GST registration threshold increases from \$40,000 to \$50,000 (based on annual GST turnover);
- the GST six-monthly return filing threshold increases from \$250,000 to \$500,000 (based on annual turnover);
- non-individuals will be allowed to return income tax for financial arrangements on a cash accounting basis, and the threshold for the straight-line basis of accounting for financial arrangements is increased from \$1.5 million to \$1.85 million (based on the total level of financial arrangements);
- the low value trading stock threshold for the exemption for adjustments is increased from \$5,000 to \$10,000 (based on the value of trading stock).

These amendments will apply from 1 April 2009. The second phase of the review, which relates to more complex compliance cost reduction initiatives, is currently under way.

*Minor, remedial, or consequential matters*

Included in the bill are minor or remedial amendments relating to the following aspects of tax law and administration.

**Tax pooling**

Provisional taxpayers do not always know how much their tax liability will be for the year and therefore how much to pay in provisional tax. Provisional tax pooling allows taxpayers to reduce their exposure to use of money interest as a result of uncertainty about provisional tax payments by purchasing funds from a tax pooling intermediary with a backdated effective date. The tax pooling rules are not available for regular tax payments, like GST, where the tax liability is known with certainty at time of payment.

Some taxpayers have accessed pooling funds with a backdated effective date to pay outstanding GST liabilities in order to remove their exposure to penalties as well as use of money interest. This was not the intent of the tax pooling rules. Accordingly, a number of remedial amendments are made to the tax pooling rules in the Income Tax Act 2007 to ensure the legislation reflects the original intent of the rules and that the only regular payments the tax pooling rules apply to are provisional tax.

A further amendment will assist taxpayers who are facing uncertainty about their tax liability by extending tax pooling to the additional tax payable as a result of a reassessment (including voluntary disclosures and the resolution of a dispute) for all tax types. Where the taxpayer is reassessed and is liable for penalties, the tax pooling funds will only reduce exposure to use of money interest, not any penalties imposed.

Taxpayers will only be able to access pooling funds with a backdated effective date for the difference between the amount originally payable and the amount payable as a result of a reassessment. Taxpayers will have 60 days from the date the Commissioner issues a notice of assessment to access tax pooling funds to pay the re-assessed amount. This is in keeping with the period for payment before penalties are imposed for late payment.

The legislation will also be clarified to allow transfers of excess tax from all tax types for deposit into a tax pooling account and to ensure that where a taxpayer transfers money to pay provisional or terminal tax with an effective date after the taxpayer's terminal tax date, the

payment should be applied first to the interest outstanding and then to the outstanding tax liability. This is consistent with the treatment of other payments made after the taxpayer's terminal tax date.

In order to foster competition between tax pooling intermediaries, a new provision will enable the free transfer of tax pooling funds between intermediaries while retaining the original effective date. This will be available to both new and existing deposits.

### **Migrant workers**

Several remedial amendments are being introduced, to reduce the compliance costs incurred by migrant workers, who come to New Zealand to work under the recognised seasonal employer policy. The compliance costs will be reduced by correctly deducting tax from migrant workers during the year and removing the requirement for these workers to file end of year tax returns. The amendments apply from 1 April 2009.

### **General insurance**

The amendments clarify that movements in a general insurer's Outstanding Claims Reserve (OCR) determined under the requirements of International Financial Reporting Standard (IFRS) 4 will be deductible, provided the amount of the movement and how it is determined is well documented, reflects the company's business experience, and is made for sound commercial or business reasons and not for income tax purposes. The amendments apply from the first income year that the insurer adopts IFRS 4.

### **Banking continuity**

The bill introduces changes to ensure shareholder continuity is preserved for certain restructuring arrangements that result in no change of economic ownership of a group of companies. The preservation of shareholder continuity will ensure that no unintended consequences of the continuity rules as they apply to imputation credits and losses will arise as a result of the restructuring. In the absence of the amendments the concessionary continuity rules would not provide continuity, and the core continuity rule could not be readily applied. The amendments will apply from 1 April 2008.

### **Petroleum mining tax rules**

This bill contains a number of proposed amendments that relate to the tax treatment of petroleum mining. The bill contains the following proposals for the petroleum mining rules:

- Deductions for expenditure on petroleum mining undertaken via a branch in another country will be allowed to be allocated only against petroleum mining income from foreign branch operations. The amendment ensures that New Zealand receives its proper share of benefit from New Zealand petroleum resources by preventing foreign branch petroleum mining expenditure being offset against income from petroleum mining in New Zealand.
- A series of amendments will remove disincentives that may affect investment in oil and gas exploration and development in New Zealand. These amendments apply to expenditure incurred on or after 1 April 2008.
- A remedial amendment ensures that a petroleum mining anti-avoidance provision does not inappropriately reduce a taxpayer's deductions.

### **KiwiSaver**

The bill contains several remedial amendments relating to KiwiSaver. There are 2 substantial amendments, 1 relating to the employer tax credit and the other relating to employers liability to pay compulsory employer contributions in cases of belated automatic enrolment. Section 13 of the KiwiSaver Act 2006 is also removed, so that automatic enrolment will not occur for employees who transfer between schools.

A number of other KiwiSaver amendments that are minor in nature are included in the bill and are needed to give full effect to initial policy decisions or to rectify technical deficiencies in the legislation. The application dates of these amendments range from retrospective application from 1 July 2007 to application from the date of enactment.

#### *Employer tax credit annual square-up*

The first substantial amendment introduces an annual square-up to ensure that employers receive their full entitlement to the employer

tax credit. This amendment is necessary as the existing formula in the KiwiSaver Act 2006 does not provide all eligible employers with the full entitlement to the tax credit. The square-up process means that employers are able to claim up to \$1,042.86 each year for each employee and do not have to keep track of when extra pays and therefore tax credit shortfalls occur during the year. This proposed amendment will apply from 1 April 2009 (relating to employer contributions made from 1 April 2008).

*Liability to pay compulsory employer contributions in cases of belated automatic enrolment*

The second substantial amendment limits employers' liability to pay compulsory employer contributions in cases where the employer has failed to comply with the automatic enrolment provisions of the KiwiSaver Act 2006. The liability is limited to the lesser of the duration of the current employment relationship or a time period of the first year of current employment (provided the employee becomes a KiwiSaver member during either of those periods). The amendment is necessary as, currently, employers are liable to back pay any unpaid compulsory employer contributions from the time automatic enrolment should have occurred without any limitation. The amendment strikes a balance between the employer's obligation to automatically enrol (and make employer contributions) and the employee's obligations to make contributions from their salary or wages in order to receive employer contributions by becoming a member of KiwiSaver. This proposed amendment will apply retrospectively from 1 April 2008.

*Removal of section 13*

An amendment removes section 13 of the KiwiSaver Act. As a result, automatic enrolment will not occur for employees who transfer between schools. The amendment is necessary as to date automatic enrolment has not applied because the Boards of Trustees of a school (the employer for KiwiSaver purposes) are exempt from automatically enrolling new employees. This exemption will be revoked from 1 October 2008, when the State Sector Retirement Savings Scheme and the Teachers Retirement Savings Scheme, the vehicles which provided the exempt employer status, are closed to new enrolments. The Boards of Trustees' exemption for automatic en-

rolment will therefore be revoked, creating compliance problems for Boards of Trustees and the Education Service Payroll, particularly for transferring employees and employees in multiple employment across the education sector. This amendment will therefore apply retrospectively from 1 October 2008.

### **Niue joint ventures**

This amendment allows the 66% common ownership requirement for loss grouping to be varied by an Order in Council in relation to Niue development projects. The purpose of the concession is to assist in the development of the Niuean economy.

The proposed amendment allows the percentage thresholds in sections IC 2(2), IC 3 and IC 5(1)(a) of the Income Tax Act 2007 to be varied by an Order in Council in relation to Niue development companies. An order may be made if the Governor-General is satisfied that the company is carrying on a business that has been or is carried on wholly or mainly for the development of Niue or has been or is important to the development of Niue. Alternatively, an order may be made if the Governor-General is satisfied that the company has incurred expenditure wholly or mainly in deriving income from Niue or in the course of carrying on a business in Niue for the purpose of deriving income. The amendment comes into force on 1 April 2008 and has effect for the 2008-09 and subsequent income years.

### **Tax recovery arrangements**

An amendment is made to the Tax Administration Act 1994 to clarify that bilateral tax recovery arrangements entered into in double tax agreements (DTAs) may provide for charges associated with a collectible foreign tax debt to also be collected. The change is aimed at resolving uncertainty over what charges, such as penalties, interest, and costs of collection, New Zealand can collect on behalf of other countries under a DTA arrangement. The amendment will apply from 1 April 2008.

### **Right of non-disclosure**

The right of non-disclosure in sections 20B to 20G of the Tax Administration Act 1994 is being amended to allow the right to apply to documents that the Commissioner has sought to be disclosed during



litigation. The amendment will allow the Courts to have access to the facts (the tax contextual information), but not to the tax advisor's view of the facts.

Currently, the ability of the Commissioner or taxpayer to challenge the claim that a book or document is a "tax advice document" subject to the non-disclosure right is determined by a District Court Judge. This can create difficulties if the matter is being heard in another court. A further amendment is being made to allow the determination to be made by the court hearing the matter. The amendment will apply to challenge proceedings filed on or after the date of enactment.

### **Portfolio investment entity tax rules**

The bill makes a number of remedial amendments to the new tax rules for portfolio investment entities ("PIEs") that are consistent with their policy intent.

The most significant of these amendments concerns land-owning companies. As well as holding shares and debt investments, PIEs can also directly own land; passive investments in land are a core element of a diversified investment portfolio. However, land-rich active businesses could potentially use this ability to their advantage by restructuring themselves as PIEs. This is contrary to the policy intent of the PIE rules, which were designed to be used by widely held passive savings vehicles.

In particular, the loopholes allow a land-rich active business to be effectively split up into a land-owning PIE and an operating company, using a structure that ensures the operating company does not "taint" the land-owning company and prevent it from being a PIE. This could be done by:

- stapling shares in the land-owning PIE to shares in the operating company; or
- leasing the PIE's land and buildings to an associated operating company and ensuring that the operating company does not represent a significant portion of the PIE's overall investments.

The PIE rules are amended so that rental income received by a PIE from an associated company (which includes companies that are stapled to the PIE) does not count as qualifying income when applying the PIE eligibility criteria.

In September 2007 the government announced that it would act to close these loopholes. Accordingly, the amendments will apply from 1 October 2007, in line with the start date of the PIE rules.

### **Offshore portfolio share investment rules**

A number of remedial amendments are made to the new tax rules for offshore portfolio investment in shares. These amendments are to ensure that the new rules achieve their intended policy effect.

New tax rules for offshore portfolio investment in shares were enacted by the Taxation (Savings, Investment, and Miscellaneous Provisions) Act 2006. The new rules apply for income years beginning on or after 1 April 2007. The new rules generally apply to an investment by a New Zealand resident in a foreign company when the investor owns less than 10% of the company. Under the new rules, offshore portfolio investment in shares is taxed consistently, regardless of the country where the investment is located and whether the investment is made by an individual directly or through a collective investment vehicle.

The new tax rules for offshore portfolio investment in shares mainly relate to the foreign investment fund rules. The main changes were that the “grey list” exemption in the foreign investment fund rules has been removed and the new fair dividend rate method, which broadly taxes 5% of a person’s offshore share portfolio’s opening value each year, has been introduced.

The amendments in the bill are of a remedial nature and address technical problems that have been identified with the new rules or amend the rules to cater for different circumstances; all the amendments are consistent with the policy intent of the new tax rules for offshore portfolio investment in shares.

The amendments contained in the Income Tax Act 2007 are effective from 1 April 2008. The smaller number of amendments to the Income Tax Act 2004 are effective from 1 April 2007.

### **Research and development**

The following amendments are proposed with effect from the commencement date of the new R&D rules, that is, the beginning of the 2008–09 income year. The amendments are minor and technical in nature.

*Eligibility of deferred salary expenditure and deferred overseas expenditure*

The current legislation denies the credit for salary expenditure accrued but not paid out in a year. However, the credit is not given when the salary is subsequently paid out either. The same issue arises for overseas expenditure which is not eligible to be claimed in the year in which it is incurred, and ought to become eligible in a later year.

To address this, the legislation will be amended to enable the credit to be claimed in the year the salary is paid out, and the year in which the overseas expenditure ought to become eligible.

*Alignment of eligibility rules for “process” R&D with normal rules*

Certain types of R&D may consist of “process” testing. For example, once an experimental production plant has been constructed, it will need to be tested. The R&D provisions include specific rules which deal with the costs incurred in this kind of R&D. These rules are different from those that apply to other types of R&D expenditure. The legislation will be amended to bring the eligibility requirements for process R&D expenditure into line with that for other R&D expenditure.

*Individual filing by partners in a partnership*

Current legislation allows partnerships to file an R&D statement on behalf of all partners. This approach raises issues because it is difficult to define what amounts ought to be included, and administrative complexities arise when dealing with partners who are in multiple partnerships. The legislation will therefore be amended to require all partners to file R&D statements individually.

*Supporting information required before processing*

While current legislation requires information supporting the R&D claim to be provided, that information may not be provided at the same time as the claim is initially made. Because there are questions about Inland Revenue’s legal ability to defer processing the R&D claim until the supporting information is received the legislation will be amended to enable Inland Revenue to defer processing an R&D claim until all of the supporting information has been received.

*Alignment of dates*

There are inconsistencies in the basis for calculating various key dates under the R&D rules. Amendments are proposed so that the basis for calculating these key dates will be aligned to a common reference point of the due date for filing the initial claim.

*Minor administrative amendments*

The legislation will be amended to deal with the following minor administrative matters so as to confirm existing policy:

- The imputation rules will be clarified to ensure that when an R&D credit is refunded it leads to a debit in the imputation credit account (or Maori authority credit account).
- The R&D tax credit will not automatically be applied to existing liabilities under the Inland Revenue Acts where the taxpayer is complying with an existing instalment arrangement. This is consistent with the policy intent of the instalment rules.
- Where the R&D tax credit is used to offset liabilities under other Inland Revenue Acts, the effective date of transfer will be the same date as is currently used for excess resident withholding tax credits. For most taxpayers this will be an earlier date than the current effective date.
- The legislation will expressly state that the R&D tax credit is not itself taxable income, and that any amount of overpaid R&D tax credit is recoverable as if it were an income tax liability.

**Application of the non-disclosure right to discovery**

The non-disclosure right was introduced in 2005. It gives tax advisors the ability to not disclose tax advice documents which the Commissioner has sought under his statutory powers to obtain information. The bill proposes that the right of non-disclosure apply to discovery and similar processes that occur during litigation.

The proposed amendment will apply to challenges commenced on or after the date the bill received the Royal assent.

**Emissions trading scheme—some tax consequences**

The Climate Change (Emissions Trading and Renewable Preference) Bill will, if enacted in substantially its current form, create:

- an obligation on certain businesses, which are treated as creating greenhouse gas emitters, to surrender emission units to the government;
- a structure under which certain businesses may be awarded emission units, as assistance for their increased expenses;
- a mechanism for the issue of New Zealand Units (NZUs) by the government.

*GST treatment of emission units*

The Government proposes to zero-rate supplies of emission units. This addresses the issues arising from participation in international markets, as all supplies are zero-rated, whether to purchasers inside or outside New Zealand. The claiming of input tax credits is also straightforward, as all input tax credits can be claimed when supplies are zero-rated.

While the emission units issued by the government will be NZUs, emission obligations under the Climate Change Response Act 2002 may also be satisfied using certain Kyoto units or approved overseas units. As New Zealand businesses will potentially be trading in all of these different types of units (and potentially, other Kyoto units which may be determined not to be eligible for surrender) it is recommended that the zero-rating treatment be extended to all of these classes of units.

Any actual supply of services in exchange for emission units, such as the supply of the service of carbon capture in forests, will also be zero-rated.

*Income tax treatment of emission units for the non-forestry sector*

Income tax issues to be addressed are:

- Does the allocation of emission units by the government give rise to income, and if so, when?
- Does the requirement to surrender emission units when carbon is treated as being emitted give rise to a tax deduction, and if so, when?

- How are purchases, sales, and emission units carried forward from 1 tax year to the next to be dealt with?

The policy intention is that the allocation of emission units to businesses outside the forestry sector is to assist them in relation to the increased costs they will face following the introduction of the emissions trading scheme. As these costs will generally be on revenue account, and therefore deductible, it is appropriate that the allocation of emission units generally be on revenue account. Allocation of emission units will therefore give rise to taxable income.

Income arising from the allocation of units by the government will ordinarily be treated as arising on a basis which matches the underlying obligation to surrender the units, or pay the increased costs, which the awarded emission units are intended to provide compensation for. Where such matching is not possible, income from the receipt of units be evenly spread over the time period to which the allocation relates.

An exception to this rule is provided where any emission units allocated by government are disposed of by the recipient. To the extent their value has not already been recognised as income, it will be recognised as arising on the date of sale.

The liability to surrender emission units is in principle another cost of operating a business. This event will be treated as a revenue account matter, and a tax deduction will arise for these costs. This tax deduction will be treated as arising by reference to the liability emerging over the relevant period, multiplied by the relevant price of emission units. Under existing law, the relevant price of emission units will be the cost of any emission units held, and where insufficient units are held, the market value of units at balance date. It will be straightforward to ascertain market value once markets exist, and there are a number of proposals to establish markets in New Zealand, in addition to markets which already operate internationally.

Purchases and sales of emission units are to be treated as being on revenue account. They are ordinary costs of doing business. The financial arrangement rules will not apply, and FIFO or weighted average cost must be used to value any units on hand at balance date, in following the normal rules for excluded financial arrangements.

**Minor depreciation matters**

The bill contains a number of minor amendments to the tax depreciation rules, mostly dealing with remedial matters. The other amendments add 2 categories to the list of depreciable land improvements. The amendments clarify current tax depreciation policy settings.

**Rewriting of the portfolio investment entity rules**

In the second half of 2007, while the Income Tax Bill 2006 (now the Income Tax Act 2007) was in its final Parliamentary stages, the “PIE Rules” (then known as Subpart HL of the 2004 Act) were in the course of extensive further development. To assist users of those rules and generally to avoid confusion, it was decided not to rewrite the rules for inclusion in the Income Tax Act 2007 at that time. Undertakings were however given to re-enact these rules in “rewrite” style and to consult with representatives of the tax professions to ensure that the rewritten rules correctly reflect the law as it was to stand at the end of 2007. The rules have now been rewritten and limited consultations have taken place and the comments and suggestions of the various reviewers have been taken into account. The rewritten portfolio investment entity rules appear in this bill as an amendment to insert new Subpart HM of the Income Tax Act 2007.

**Amendments to correct drafting and printing errors**

An unfortunate but inevitable consequence of the enactment of nearly 3500 pages of tax legislation in 2007 is the need for remedial legislation to address drafting and printing issues that occurred in the last 3 months of the year. This bill contains over 100 amendments of this type. The amendments are to correct cross-references, replace incorrect formulae with correct formulae, replace incorrect terminology with correct terminology, and correct commencement dates. These amendments affect the Income Tax Act 2007, the Tax Administration Act 1994, and the KiwiSaver Act 2006. Pending enactment of this bill, the effect of section ZA 3 of the Income Tax Act 2007 (the transitional provision) is generally considered to be that the meanings of the comparable provisions of the Income Tax Act 2004 apply to the currently deficient successor provisions of the 2007 Act.

### Clause by clause analysis

*Clause 1* gives the title of the Act.

*Clause 2* gives the commencement dates for provisions in the Act.

## Part 1

### Amendments to Income Tax Act 2007

*Clauses 4 to 431* amend the *Income Tax Act 2007*.

*Clause 4* amends *section BC 7*, consequential to the rewriting of the portfolio investment entity rules.

*Clause 5* amends *section BE 1*, and removes references to FDP and FDP rules on the repeal of the FDP rules as part of international taxation reform.

*Clause 6* amends *section BF 1*, and removes a reference to further FDP on the repeal of the FDP rules as part of international taxation reform.

*Clause 7* amends *section CB 8*, consequentially on the changes to the definition of *associated person*.

*Clause 8* replaces *section CB 26*, consequential to the rewriting of the portfolio investment entity rules.

*Clause 9* inserts a new *heading* and a new *section CB 36*, to provide for the tax treatment of emissions units that arise under the *Climate Change Response Act 2002* as income other than in certain circumstances.

*Clause 10* amends *section CD 4*, consequentially on the changes to the definition of *associated person*.

*Clause 11* amends *section CD 6*, consequentially on the changes to the definition of *associated person*.

*Clause 12* amends *section CD 22*, to amend the definition of *counted associate* consequentially on the changes to the definition of *associated person*.

*Clause 13* amends *section CD 27*, to remove a reference to FDP on the repeal of the FDP rules as part of international taxation reform, and consequentially on the changes to the definition of *associated person*.

*Clause 14* amends *section CD 32*, to update a cross-reference.



*Clause 15* amends *section CD 36*, to clarify the application of the rule to certain managed funds, and consequentially on the rewriting of the portfolio investment entity rules.

*Clause 16* inserts a new *section CD 36B*, to implement the international taxation reform in relation to certain foreign distributions.

*Clause 17* amends *section CD 43*, to implement the international taxation reform in relation to the calculation of subscription amounts under the ASC rules for dividends.

*Clause 18* amends *section CD 44*, consequentially on the changes to the definition of *associated person*.

*Clause 19* amends *section CD 53*, and removes references to FDP and FDP credit, consequential to the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 20* amends *section CE 1*, inserts a definition of *accommodation* as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 21* amends *section CE 5*, consequentially on the clarification of certain exempt payments for employees for relocation expenses and overtime meals.

*Clause 22* amends *section CF 1*, to ensure personal services rehabilitation payments are included in accident compensation payments.

*Clause 23* inserts a new *subpart CO*, to provide tax rules for the reimbursement of volunteers.

*Clause 24* replaces *section CP 1*, consequential to the rewriting of the portfolio investment entity rules.

*Clause 25* amends *section CQ 2*, to implement the international taxation reform relating to CFCs.

*Clause 26* amends *section CQ 5*, to implement the international taxation reform relating to FIFs owned by CFCs.

*Clause 27* replaces the heading to *subpart CR*, as part of the reforms to life insurance taxation.

*Clause 28* replaces *sections CR 1 and CR 2*, as part of reforming life insurance taxation, by providing income related to policyholder and shareholder bases.

*Clause 29* adds a new *section CR 4*, to give income on account of outstanding claims reserves for general insurance.

*Clause 30* repeals *section CV 10*, consequential to the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 31* inserts a new *section CW 3B*, to provide for the tax treatment of emissions units that arise under the *Climate Change Response Act 2002* as exempt income in certain circumstances.

*Clause 32* replaces *section CW 9*, to implement the international taxation reform in relation to certain foreign dividends.

*Clause 33* amends *section CW 12*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 34* amends *section CW 17*, consequentially to clarify the relationship between expenditure on account of employees and certain payments for employees for relocation and overtime meals.

*Clause 35* inserts new *sections CW 17B and CW 17C*, to clarify the tax treatment of relocation payments for employees and payments for employees' overtime meals.

*Clause 36* repeals *section CW 37*, to remove an exemption for large budget screen production grants.

*Clause 37* amends *section CW 40*, and changes references to associated persons as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 38* amends *section CW 42*, to correct a cross-reference.

*Clause 39* inserts a new *section CW 62B*, to provide tax rules for the reimbursement of volunteers.

*Clause 40* amends *section CX 2*, consequentially on the changes to the definition of *associated person*.

*Clause 41* replaces *section CX 18*, consequential to changes to the definition of *associated person*, and to clarify the nature of employment and shareholding relationships.

*Clause 42* amends *section CX 19*, to exclude relocation payments for employees from the FBT rules.

*Clause 43* replaces *section CX 28*, to clarify the treatment of accommodation for the FBT rules as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 44* repeals *section CX 39*, as part of the reform of the life insurance rules.

*Clause 45* amends *section CX 47*, to remove an exemption for large budget screen production grants.

*Clause 46* inserts a new heading and a new section CX 48B, to exclude certain additional screen production payments from income.

*Clause 47* inserts a new heading and a new section CX 48C, to provide for research and development tax credits as excluded income.

*Clause 48* inserts a new heading and a new section CX 51B, to provide for the tax treatment of emissions units that arise under the *Climate Change Response Act 2002* as excluded income.

*Clause 49* amends section CX 55, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 50* replaces section CX 55, consequential to the rewriting of the portfolio investment entity rules.

*Clause 51* replaces section CX 56, and inserts new sections CX 56B and CX 56C consequential to the rewriting of the portfolio investment entity rules.

*Clause 52* replaces section CX 57, consequential to the rewriting of the portfolio investment entity rules.

*Clause 53* repeals section DB 6(3), consequential to the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 54* repeals section DB 7(7), consequential to the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 55* repeals section DB 8(7), consequential to the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 56* amends section DB 23, consequential to the rewriting of the portfolio investment entity rules, and as a remedial matter.

*Clause 57* amends section DB 42, as part of the changes to the definition of *associated person*.

*Clause 58* replaces section DB 53, consequential to the rewriting of the portfolio investment entity rules.

*Clause 59* replaces section DB 54, consequential to the rewriting of the portfolio investment entity rules.

*Clause 60* amends section DB 55, consequential to the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 61* inserts a new heading and a new section DB 60, to provide for the tax treatment of emissions units that arise under the *Climate Change Response Act 2002* for amounts allowed as deductions.

*Clause 62* amends the heading to *subpart DF*, to insert a reference to government funding.

*Clause 63* repeals *section DF 1(6)*, to remove the exclusion for large budget screen production grants.

*Clause 64* amends *section DF 4*, to correct a cross-reference.

*Clause 65* inserts a new *section DF 5*, to provide for the tax treatment of certain additional funding for screen productions.

*Clause 66* amends *section DN 2*, consequential to the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 67* amends *section DN 6*, consequential to the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 68* replaces *sections DR 1 to DR 3*, as part of reforming life insurance taxation, by providing for deductions related to policyholder and shareholder bases.

*Clause 69* amends *section DS 2*, to provide for the allocation of deductions for government screen production payments.

*Clause 70* amends *section DS 4*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 71* inserts a new *section DT 1A*, to clarify the treatment of deductions for petroleum mining expenditure.

*Clause 72* amends *section DT 2*, as a remedial matter arising from the process of rewriting the Income Tax Act, and to clarify material excluded from petroleum mining arrangements.

*Clause 73* amends *section DT 5*, to clarify the timing of certain petroleum mining deductions.

*Clause 74* amends *section DT 9*, to clarify the timing of certain petroleum mining deductions.

*Clause 75* amends *section DU 12*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 76* amends *section DV 2*, to provide for transfers of expenditure to certain portfolio investment entities, and consequentially on the rewriting of the portfolio investment entity rules.

*Clause 77* amends *section DV 4*, to provide for transfers of expenditure to certain portfolio investment entities, and consequentially on the rewriting of the portfolio investment entity rules.

*Clause 78* amends *section DV 5*, to provide for transfers of expenditure to certain portfolio investment entities, and consequentially on the rewriting of the portfolio investment entity rules.

*Clause 79* inserts a new *section DW 4*, as part of the reforms to life insurance taxation, to provide for deductions for outstanding claims reserves.

*Clause 80* repeals *section DX 2*, consequential to the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 81* amends *section EB 2*, consequentially on the rewriting of the portfolio investment entity rules, and to provide for the tax treatment of emissions units that arise under the *Climate Change Response Act 2002* as an exclusion from trading stock.

*Clause 82* amends *section EB 13*, consequentially on the changes to the definition of *associated person*.

*Clause 83* amends *section EB 23*, to increase the threshold for low value trading stock.

*Clause 84* amends *section ED 1*, to provide for the tax treatment of emissions units that arise under the *Climate Change Response Act 2002* to prevent pooling with excepted financial arrangements.

*Clause 85* inserts a new *section ED 1B*, to provide for the valuation of certain emissions units that arise under the *Climate Change Response Act 2002*.

*Clause 86* amends *section EE 30*, to clarify the basis on which the percentage is based.

*Clause 87* amends *section EE 31*, to provide for the setting of economic depreciation rates, special rates, and provisional rates.

*Clause 88* repeals *section EG 3*, consequentially on the rewriting of the portfolio investment entity rules.

*Clause 89* amends *section EJ 4*, replacing the reference to large budget screen production grants with government screen production payments.

*Clause 90* amends *section EJ 5*, replacing the reference to large budget screen production grants with government screen production payments.

*Clause 91* amends *section EJ 7*, replacing the reference to large budget screen production grants with government screen production payments.

*Clause 92* amends *section EJ 8*, replacing the reference to large budget screen production grants with government screen production payments.

*Clause 93* repeals *section EJ 12* and inserts new *sections EJ 12 and EJ 12B*, to clarify the timing of certain petroleum mining deductions.

*Clause 94* amends *section EJ 13*, consequentially on the clarification of the calculation and allocation of certain petroleum mining deductions.

*Clause 95* inserts new *sections EJ 13B and EJ 13C*, to clarify the tax treatment of deductions relating to dry and non-producing wells.

*Clause 96* amends *section EJ 15*, consequentially on the clarification of the calculation and allocation of certain petroleum mining deductions.

*Clause 97* replaces *sections EJ 19 and EJ 20*, to remove the distinction between onshore and offshore development for petroleum mining.

*Clause 98* amends *section EW 5*, to provide for the tax treatment of certain emissions units that arise under the *Climate Change Response Act 2002* as excepted financial arrangements, and consequentially as part of the reforms to international taxation and life insurance.

*Clause 99* amends *section EW 13*, consequentially on the changes to the definition of *cash-basis person*.

*Clause 100* amends *section EW 15D*, as part of the remedial amendments to the use of the IFRS financial reporting method.

*Clause 101* amends *section EW 15E*, as part of the remedial amendments to the use of the IFRS financial reporting method.

*Clause 102* amends *section EW 15F*, as part of the remedial amendments to the use of the IFRS financial reporting method.

*Clause 103* amends *section EW 15G*, as part of the remedial amendments to the use of the IFRS financial reporting method.

*Clause 104* amends *section EW 15I*, as part of the remedial amendments to the use of the IFRS financial reporting method.

*Clause 105* amends *section EW 17*, to increase the threshold for using the straight-line method to value financial arrangements.

*Clause 106* amends *section EW 25*, to increase the threshold for using the straight-line method to value financial arrangements.

*Clause 107* amends *section EW 26*, as part of the remedial amendments to the use of the IFRS financial reporting method.

*Clause 108* amends *section EW 29*, as part of the remedial amendments to the use of the IFRS financial reporting method.

*Clause 109* replaces *section EW 54*, to redefine a cash-basis person, removing the reference to natural persons.

*Clause 110* repeals *section EW 56*, consequentially on the amendment to the definition of *cash-basis person*.

*Clause 111* amends *section EW 57*, to change cross-references consequential to the amendment to the definition of *cash-basis person*, and to provide for increases by Order in Council.

*Clause 112* amends *section EW 58*, consequentially on the amendment to the definition of *cash-basis person*.

*Clause 113* replaces *section EW 59*, to provide for associated persons.

*Clause 114* amends *section EW 60*, to change cross-references consequential to the amendment to the definition of *cash-basis person*.

*Clause 115* amends *section EX 1*, consequentially on the rewriting of the portfolio investment entity rules.

*Clause 116* amends *section EX 15*, to correct cross-references.

*Clause 117* amends *section EX 18*, consequential to the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 118* amends *section EX 19*, consequential to the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 119* inserts a new heading and new sections *EX 20B*, *EX 20C*, and *EX 20D*, as part of international taxation reform, to provide definitions of *attributable CFC amount*, *net attributable CFC income*, and *net attributable CFC loss*. The sections also provide for the calculations of the amounts and adjustments to them if the CFC is excessively debt funded.

*Clause 120* amends *section EX 20B*, consequentially as part of the changes to the definition of *associated person*.

*Clause 121* repeals the heading before *section EX 21*, consequentially to the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 122* amends *section EX 21*, as part of international taxation reform, to provide calculation rules for attributable CFC income and net attributable CFC income or loss, and some consequential changes related to the currency to be used. The section also contains a change to the reference to associated persons as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 123* inserts a new heading and new sections EX 21B to EX 21E, to provide a definition of *non-attributing CFC* and the tests for determining whether a CFC is a non-attributing active CFC as part of international taxation reform.

*Clause 124* replaces a heading and section EX 22, to provide for non-attributing Australian CFCs as part of international taxation reform.

*Clause 125* repeals section EX 23, removing tax concession grey list CFCs as part of international taxation reform.

*Clause 126* amends section EX 25, consequentially to the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 127* amends section EX 29, to correct a cross-reference.

*Clause 128* amends section EX 31, to include a requirement related to the cancellation of shares.

*Clause 129* amends section EX 34, to correct a cross-reference.

*Clause 130* amends section EX 37, to clarify the company in which voting interests are held.

*Clause 131* amends section EX 38, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 132* amends section EX 46, to remove the references to a share treated as equivalent to debt and replace them with the concept of a non-ordinary share, to exclude a trustee that is a superannuation scheme, and to include consequential changes on the rewriting of the portfolio investment entity rules.

*Clause 133* replaces section EX 47, to remove the reference to a share treated as equivalent to debt and replace them with the concept of a non-ordinary share.

*Clause 134* amends section EX 51, to replace the item *opening value*, and to remove the reference to a share treated as equivalent to debt and replace them with the concept of a non-ordinary share.

*Clause 135* amends section EX 52, to provide for FDR interests, to exclude certain managed funds from the operation of the rule, and to provide for returning share transfers.

*Clause 136* amends section EX 53, to provide for FDR interests, to exclude certain managed funds from the operation of the rule, and to provide for returning share transfers, and to include consequential changes on the rewriting of the portfolio investment entity rules.



*Clause 137* amends *section EX 56*, to correct a formula and to provide a limit for the attributing interest taken into account.

*Clause 138* amends *section EX 58*, to correct a cross-reference and to provide for non-attributing Australian CFCs as part of international taxation reform.

*Clause 139* amends *section EX 59*, to exclude grey list companies, override the exclusion for certain managed funds, and to include consequential changes on the rewriting of the portfolio investment entity rules.

*Clause 140* repeals *sections EY 1 to EY 5*, and inserts new *sections EY 1 to EY 4*, as part of reforming life insurance taxation. *Section EY 1* describes the structure of *subpart EY* and other provisions around 2 bases, namely shareholder base and policyholder base. *Section EY 2* describes income and expenditure or loss for the policyholder base. *Section EY 3* describes income and expenditure or loss for the shareholder base. *Section EY 4* provides for apportionment using the 2 bases.

*Clause 141* replaces *section EY 6*, as part of reforming life insurance taxation, by providing for actuarial advice for the Commissioner.

*Clause 142* amends *section EY 12*, as part of reforming life insurance taxation, by providing for the redefining of life reinsurance and for the correct taxation of life financial reinsurance.

*Clause 143* repeals *sections EY 15 to EY 47*, and inserts new *sections EY 15 to EY 30*, as part of reforming life insurance taxation. *Section EY 15* describes income for the policyholder base, for certain policies. *Section EY 16* describes expenditure or loss for the policyholder base, for certain policies. *Section EY 17* describes income for the policyholder base, for profit participation policies. *Section EY 18* describes expenditure or loss for the policyholder base, for certain profit participation policies. *Section EY 19* describes income for the shareholder base, for certain policies. *Section EY 20* describes expenditure or loss for the shareholder base, for certain policies. *Section EY 21* describes income for the shareholder base, for profit participation policies. *Section EY 22* describes expenditure or loss for the shareholder base, for profit participation policies. *Section EY 23* provides the structure for reserving amounts for the shareholder base. *Section EY 24* provides for the outstanding claims reserving amount. *Section EY 25* provides for the premium smoothing reserving amount.

*Section EY 26* provides for the unearned premium reserving amount. *Section EY 27* provides for the capital guarantee reserving amount. *Section EY 28* describes income for certain profits from profit participation policies. *Section EY 29* provides for effective full grandparenting or 5 years of concessionary deductions, for certain life risk policies, as transitional matters. *Section EY 30* provides for annuities.

*Clause 144* amends *section EY 43B*, consequentially on the rewriting of the portfolio investment entity rules.

*Clause 145* amends *section EY 43C*, consequentially on the rewriting of the portfolio investment entity rules.

*Clause 146* amends *section EY 48*, as part of the reform of life insurance taxation, to include reference to policyholder base and shareholder base.

*Clause 147* repeals *section EZ 31*, consequentially to the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 148* repeals *section EZ 32B*, as part of the remedial amendments to the use of the IFRS financial reporting method.

*Clause 149* adds a new heading and new *sections EZ 53 to EZ 60*, as part of reforming life insurance taxation. *Section EZ 53* describes how expected death strain is calculated, for the transitional matters provided in *section EY 29*. *Section EZ 54* provides expected death strain formulas, for the transitional matters provided in *section EY 29*. *Section EZ 55* modifies the expected death strain formulas. *Section EZ 56* modifies the expected death strain formulas. *Section EZ 57* modifies the expected death strain formulas. *Section EZ 58* modifies the expected death strain formulas. *Section EZ 59* defines *actuarial reserves* for the purposes of the expected death strain formulas. *Section EZ 60* calculates actuarial reserves for the purposes of the expected death strain formulas.

*Clause 150* adds a new heading and new *sections EZ 61 to EZ 63*, as part of reforming life insurance taxation. *Section EZ 61* provides for a clearing disposal and re-acquisition upon entry into the new life insurance rules. *Section EZ 62* allows a ringfenced deduction in relation to certain amounts cancelled upon entry into the new life insurance rules. *Section EZ 63* allows limited grandparenting for life financial reinsurance.

*Clause 151* amends *section FA 2*, as a remedial matter arising from the process of rewriting the Income Tax Act, and to provide new definitions of *profit-related debenture* and *substituting debenture*.

*Clause 152* amends *section FC 1*, to remove the reference to *section CD 6* as part of the changes to the definition of *associated person*.

*Clause 153* amends *section FC 2*, to correct a cross-reference.

*Clause 154* amends *section FE 1*, as part of international taxation reform.

*Clause 155* amends *section FE 2*, as part of international taxation reform.

*Clause 156* replaces *section FE 3*, as part of international taxation reform.

*Clause 157* amends *section FE 4*, to insert a definition of *excess debt outbound company*, as part of international taxation reform.

*Clause 158* amends *section FE 5*, as part of international taxation reform, to provide an exception to the thresholds for the interest apportionment rules for excess debt outbound companies.

*Clause 159* amends *section FE 6*, as part of international taxation reform, to apportion interest deductions for outbound investments.

*Clause 160* amends *section FE 12*, as part of international taxation reform, to provide for excess debt outbound companies.

*Clause 161* amends *section FE 13*, as a remedial matter arising from the process of rewriting the Income Tax Act, and consequentially as part of international taxation reform.

*Clause 162* amends *section FE 14*, consequentially as part of international taxation reform.

*Clause 163* amends *section FE 15*, as part of international taxation reform, to provide a new definition of *total group debt*.

*Clause 164* amends *section FE 16*, as part of international taxation reform, to exclude certain CFC investments and the treatment of assets when the member is not resident.

*Clause 165* amends *section FE 18*, as a remedial matter arising from the process of rewriting the Income Tax Act, and consequentially as part of international taxation reform.

*Clause 166* amends *section FE 21*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 167* amends *section FE 25*, consequentially as part of international taxation reform.

*Clause 168* amends *section FE 26*, as part of international taxation reform to provide for excess debt outbound companies, certain source and residence requirements, and for associated persons.

*Clause 169* replaces *section FE 28*, as part of international taxation reform, to provide for excess debt outbound companies and for certain special rules.

*Clause 170* replaces *section FE 29*, as part of international taxation reform, to replace rules about holding companies with a rule for combining groups owned by natural persons and trustees.

*Clause 171* amends *section FE 30*, as part of international taxation reform, to provide for excess debt outbound companies.

*Clause 172* amends *section FE 31*, as part of international taxation reform, to provide for excess debt outbound companies.

*Clause 173* inserts new *sections FE 31B and FE 31C*, as part of international taxation reform, to provide for worldwide groups for excess debt outbound companies.

*Clause 174* replaces *section FE 32*, as part of international taxation reform, to provide for joint venture parties.

*Clause 175* repeals *subpart FF*, on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 176* amends *section FM 2*, to correct a cross-reference arising from the international taxation reform.

*Clause 177* amends *section FM 6*, to correct cross-references arising from the international taxation reform and as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 178* repeals *sections FM 24 to FM 26*, on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 179* amends *section FN 2*, to correct a cross-reference.

*Clause 180* amends *section FZ 1*, consequentially to remove a cross-reference.

*Clause 181* amends *section GB 27*, to increase the \$60,000 income threshold in the personal services attribution rule, consequential to the new personal tax rate structure enacted as part of Budget 2008 legislation.

*Clause 182* amends *section GB 28*, as a remedial matter arising from the process of rewriting the Income Tax Act, and as part of the changes to the definition of *associated person*.

*Clause 183* amends *section GB 32*, as part of the changes to the definition of *associated person* to replace the reference to employee's associates with the concept of an employment relationship.

*Clause 184* repeals *section GB 39*, on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 185* amends *section GB 45*, consequentially to change a cross-reference.

*Clause 186* amends *section GB 48*, as a remedial matter arising from the process of rewriting the Income Tax Act, and as part of the changes to the definition of *associated person*.

*Clause 187* inserts *section GC 4B*, to provide for the tax treatment of emissions units that arise under the *Climate Change Response Act 2002* and are disposed of at below market value.

*Clause 188* amends *section GC 5*, to replace the definition of *related company* as part of the changes to the definition of *associated person*.

*Clause 189* amends *section GC 8*, consequentially on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 190* amends *section GC 10*, consequentially on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 191* amends *section GC 11*, consequentially on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 192* replaces *section GC 12*, consequentially on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 193* inserts a new *section GZ 2*, on the repeal of the FDP and conduit rules as part of international taxation reform, to include a terminating provision for arrangements involving the cancellation of conduit tax relief credits.

*Clause 194* amends *section HA 7*, to insert a reference to shareholder continuity requirements in *section OA 8*.

*Clause 195* inserts a new *section HA 8B*, as part of international taxation reform, to add a further requirement to qualifying company status.

*Clause 196* amends *section HA 15*, as a remedial matter arising from the process of rewriting the Income Tax Act, and to clarify the relationship with other sections in the subpart.

*Clause 197* replaces *section HA 16*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 198* amends *section HA 19*, consequentially as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 199* amends *section HA 41*, consequentially on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 200* amends *section HC 4*, consequentially on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 201* amends *section HC 15*, as a remedial matter arising from the process of rewriting the Income Tax Act, and as part of the changes to the definition of *associated person*.

*Clause 202* amends *section HC 27*, consequentially to correct a cross-reference as part of the changes to the definition of *associated person*.

*Clause 203* amends *section HC 36*, to replace the definition of *associated person* or *person associated* as part of the changes to the definition of *associated person*.

*Clause 204* amends *section HG 11*, to remove a cross-reference.

*Clause 205* amends *section HL 3*, as a remedial matter arising from the process of rewriting the Income Tax Act and as part of the reform of life insurance taxation.

*Clause 206* amends *section HL 4*, as a remedial matter for the portfolio investment entity rules to correct a cross-reference, and to clarify the timing on failure to meet a requirement.

*Clause 207* amends *section HL 6*, as a remedial matter for the portfolio investment entity rules to insert a reference to Auckland Regional Holdings, and consequentially to change cross-references, and as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 208* amends *section HL 9*, as a remedial matter for the portfolio investment entity rules to insert a reference to Auckland Regional Holdings, and consequentially to change cross-references.

*Clause 209* amends *section HL 10*, as a remedial matter for the portfolio investment entity rules to insert a reference to associated persons.

*Clause 210* amends *section HL 12*, as a remedial matter for the portfolio investment entity rules to provide a minimum number of shareholders.

*Clause 211* amends *section HL 13*, as a remedial matter for the portfolio investment entity rules to clarify the timing on failure to meet a requirement.

*Clause 212* amends *section HL 20*, as a remedial matter arising from the process of rewriting the Income Tax Act to replace the formula.

*Clause 213* amends *section HL 29*, to correct a cross-reference, and as a remedial matter for the portfolio investment entity rules to add a reference to an exiting investor.

*Clause 214* repeals *subpart HL* and inserts *subpart HM*, as the rewritten portfolio investment entity (PIE) rules. *Section HM 1* provides an outline of the subpart. *Section HM 2* defines a portfolio investment entity. *Section HM 3* defines a foreign PIE equivalent. *Section HM 4* sets out who is an investor. *Section HM 5* defines a portfolio class. *Section HM 6* sets out the intended effects for multi-rate PIEs and investors in them. *Sections HM 7 to HM 20* set out the entry rules for PIEs and multi-rate PIEs in particular, and *sections HM 21 to HM 23* set out the exceptions to those rules. The exit rules are set out in *sections HM 24 to HM 30*. *Sections HM 31 to HM 60* are the rules for multi-rate PIEs, requiring the attribution of income to investors and payment of tax on their behalf, providing the methods for calculating tax liabilities, requiring the adjustment of investors' interests, the ways in which tax credits are treated, and the prescribed and notified tax rates for investors. *Sections HM 61 and HM 62* provide for exit levels and exit periods for investors in multi-rate PIEs. *Sections HM 63 to HM 69* deal with losses and their treatment. Elections to become, and to stop being, a PIE are contained in *section HM 70*. Certain transitional provisions are set out in *sections HL 72 to HM 75*.

*Clause 215* amends *section IA 2*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 216* amends *section IA 7*, as part of the reform of life insurance taxation, and as a remedial matter for the portfolio investment entity rules.

*Clause 217* amends *section IA 8*, as part of the reform of life insurance taxation, to insert a reference to schedular policyholder base income.

*Clause 218* amends *section IC 3*, on the rewriting of the portfolio investment entity rules.

*Clause 219* inserts a new *section IC 13*, to provide a variation of the requirements of the subpart for development companies in Niue.

*Clause 220* amends *section IQ 2*, to provide transitional provisions for attributed CFC net losses, as part of the international taxation reform.

*Clause 221* amends *section IQ 4*, to limit the amount of tax loss that may be made available.

*Clause 222* replaces *subpart IT*, as part of the reform of life insurance taxation, to provide for the cancellation of a life insurer's losses. *Section IT 1* cancels policyholder net losses. *Section IT 2* cancels losses when policyholder base expenditure or loss is taken, as a transitional matter for the reform of life insurance taxation.

*Clause 223* amends *section LA 6*, as a remedial matter for the portfolio investment entity rules to provide for certain refundable credits, and consequentially on the rewriting of the portfolio investment entity rules.

*Clause 224* amends *section LA 7*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 225* inserts a new *section LA 8B*, as part of the reform of life insurance taxation, to provide general rules for life insurers' tax credits.

*Clause 226* amends *section LA 9*, to remove a cross-reference.

*Clause 227* replaces *section LB 1*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 228* amends *section LB 3*, consequentially on the rewriting of the portfolio investment entity rules.

*Clause 229* amends *section LB 7*, to correct a cross-reference.

*Clause 230* amends *section LB 8*, to correct a cross-reference.

*Clause 231* amends *section LC 6*, consequentially to change a cross-reference.

*Clause 232* amends the heading to *subpart LD*, consequentially to provide for payroll donations.

*Clause 233* inserts a cross heading before *section LD 1*, consequentially to provide for payroll donations.



*Clause 234* amends *section LD 1*, consequentially to change a cross-reference.

*Clause 235* amends *section LD 2*, consequentially to provide for payroll donations.

*Clause 236* inserts a new *heading* and new *sections LD 4 to LD 7*, to provide for tax credits for payroll donations.

*Clause 237* amends *section LE 1*, to remove a cross-reference, and as a remedial matter for the portfolio investment entity rules to clarify the treatment of imputation credits allocated to investors, and consequentially on the rewriting of the portfolio investment entity rules.

*Clause 238* amends *section LE 2*, as part of the reform of life insurance taxation, to provide for the application of the section to life insurers in relation to the shareholder base, and consequentially to correct a cross-reference.

*Clause 239* inserts a new *section LE 2B*, as part of the reform of life insurance taxation, to provide for the use of remaining credit by life insurers in relation to the policyholder base.

*Clause 240* amends *section LE 3*, consequentially to correct a cross-reference as part of the reform of life insurance taxation.

*Clause 241* amends *section LF 1*, consequentially on the rewriting of the portfolio investment entity rules.

*Clause 242* repeals the compare notes in *subpart LH*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 243* amends *section LH 1*, to clarify the status of a tax credit under the subpart.

*Clause 244* amends *section LH 2*, to clarify how a tax credit is treated once used, and to require certain statements to be provided before a tax credit arises.

*Clause 245* amends *section LH 3*, to signal the modification of the requirements of the section in relation to certain activities and items of expenditure.

*Clause 246* inserts new *sections LH 5B and LH 5C*, to modify the rules relating to the timing of research and development activities and allocation of expenditure in relation to which a person has a tax credit.

*Clause 247* inserts a new *section LH 14B*, to enable the Commissioner to recover overpaid tax credits.

*Clause 248* amends *section LJ 1*, to set out the relationship with *section YD 5*.

*Clause 249* amends *section LJ 2*, consequentially on the rewriting of the portfolio investment entity rules.

*Clause 250* amends *section LJ 7*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 251* amends *section LK 1*, as a remedial matter arising from the process of rewriting the Income Tax Act and consequentially on the repeal of the conduit rules as part of international tax reform.

*Clause 252* amends *section LK 2*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 253* inserts a new *section LK 5B*, to provide carry-forward rules for foreign tax credits, as part of the transition for the international taxation reform.

*Clause 254* repeals *subpart LL*, on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 255* repeals *sections LQ 1 to LQ 4*, on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 256* replaces *subpart LS*, consequentially on the rewriting of the portfolio investment entity rules.

*Clause 257* amends *section MB 1*, consequentially on the rewriting of the portfolio investment entity rules.

*Clause 258* amends *section MK 1*, to provide an annual recalculation of a tax credit for an employer when certain conditions are met.

*Clause 259* amends *section MK 2*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 260* inserts new *sections MK 12B to MK 12D*, to provide the eligibility requirements for an annual recalculation of a tax credit for an employer and calculation and use of the amount of the tax credit.

*Clause 261* amends *section MK 14*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 262* amends *section ML 1*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 263* replaces *section ML 2*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 264* amends *section OA 2*, consequentially as part of the reform of life insurance taxation.

*Clause 265* amends *section OA 5*, consequentially as part of the reform of life insurance taxation.

*Clause 266* amends *section OA 6*, consequentially as part of the reform of life insurance taxation.

*Clause 267* amends *section OA 7*, consequentially as part of the reform of life insurance taxation.

*Clause 268* amends *section OA 8*, to correct a cross-reference, and to insert an exclusion for qualifying companies as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 269* repeals *section OA 12*, on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 270* amends *section OA 18*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 271* amends *section OB 1*, consequentially on the rewriting of the portfolio investment entity rules.

*Clause 272* inserts a new *section OB 3B*, as part of the reform of life insurance taxation to provide a general rule for the treatment of imputation credits arising to the policyholder base.

*Clause 273* amends *section OB 4*, as part of the reform of life insurance taxation to provide for a life insurer's schedular policyholder base income, as a remedial matter arising from the process of rewriting the Income Tax Act, and consequentially on the repeal of BETA rules as part of international tax reform.

*Clause 274* amends *section OB 8*, as part of the reform of life insurance taxation to provide an exclusion for policyholder base gross income.

*Clause 275* inserts a new *section OB 9B*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 276* replaces *section OB 9B*, consequentially on the rewriting of the portfolio investment entity rules.

*Clause 277* repeals *section OB 11*, consequentially on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 278* repeals *section OB 17*, consequentially as part of the reform of life insurance taxation.

*Clause 279* amends *section OB 32*, consequentially as part of the reform of life insurance taxation to provide for a life insurer's schedular

income tax liability, and to clarify the relationship with section OB 37.

*Clause 280* amends *section OB 33*, as a remedial matter arising from the process of rewriting the Income Tax Act, and to clarify the relationship with section OB 37.

*Clause 281* amends *section OB 34*, as a remedial matter arising from the process of rewriting the Income Tax Act, to provide debit dates for companies other than qualifying companies, and for qualifying companies.

*Clause 282* amends *section OB 35*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 283* inserts a new *section OB 35B*, as part of the reform of life insurance taxation to provide for a life insurer's imputation credit related to its schedular policyholder base income or as a portfolio investment entity.

*Clause 284* amends *section OB 37*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 285* replaces *section OB 47*, as part of the reform of life insurance taxation to provide for a life insurer's imputation debit related to its policyholder base.

*Clause 286* amends *table O1*, to insert appropriate cross-references.

*Clause 287* amends *table O2*, to insert appropriate cross-references.

*Clause 288* amends *section OC 1*, consequentially on the rewriting of the portfolio investment entity rules and consequentially on the repeal of the FDP rules as part of international taxation reform.

*Clause 289* inserts a new *section OC 2B*, as part of the reform of life insurance taxation, to provide a general rule for FDP credits for a life insurer's policyholder base.

*Clause 290* amends *section OC 4*, as a remedial matter arising from the process of rewriting the Income Tax Act and consequentially on the repeal of the FDP rules as part of international taxation reform.

*Clause 291* amends *section OC 5*, as a remedial matter arising from the process of rewriting the Income Tax Act and consequentially on the repeal of the FDP rules as part of international taxation reform.

*Clause 292* repeals *section OC 6*, on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 293* repeals *section OC 8*, on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 294* repeals *section OC 9*, on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 295* repeals *section OC 10*, on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 296* amends *section OC 16*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 297* replaces *section OC 20*, as part of the reform of life insurance taxation, to provide an FDP debit related to a life insurer's policyholder base.

*Clause 298* repeals *section OC 23*, as part of the reform of life insurance taxation.

*Clause 299* amends the *heading before section OC 30*, to remove a reference to FDP consequentially on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 300* amends *section OC 30*, to remove references to FDP consequentially on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 301* amends *section OC 31*, to remove references to FDP consequentially on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 302* amends *section OC 32*, to remove references to FDP consequentially on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 303* replaces *section OC 33*, to remove references to FDP consequentially on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 304* replaces *section OC 34*, to remove references to FDP consequentially on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 305* repeals a *heading and sections OC 35 to OC 39*, removing certain definitions as part of the reform of life insurance taxation.

*Clause 306* amends *table O3*, to repeal *rows 2, 3, 5, 6, and 7*, on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 307* amends *table O4*, to replace *rows 5 and 9*, as part of the reform of life insurance taxation.

*Clause 308* amends *section OD 1*, consequentially on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 309* repeals *section OD 5*, on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 310* repeals *section OD 8*, on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 311* repeals *section OD 11*, on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 312* repeals *section OD 23*, on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 313* repeals *section OD 24*, on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 314* amends *table O5*, to repeal *rows 2 and 5*, consequentially on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 315* amends *table O6*, to repeal *row 3*, consequentially on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 316* amends *section OE 2*, consequentially on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 317* repeals *section OE 6*, on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 318* amends *section OE 7*, on the repeal of the FDP and conduit rules as part of international taxation reform to specify the amount of debit balance that must be recorded.

*Clause 319* repeals a *heading and sections OE 12 to OE 16*, on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 320* inserts a new *heading* and a new *section OE 16B*, as a transitional measure on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 321* amends *table O7*, to repeal *row 2*, consequentially on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 322* repeals *table O8*, consequentially on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 323* amends *section OF 1*, consequentially on the rewriting of the portfolio investment entity rules.

*Clause 324* repeals *subpart OJ*, as part of the reform of life insurance taxation.

*Clause 325* amends *section OK 2*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 326* amends *section OK 12*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 327* amends *section OK 13*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 328* inserts a new *section OK 14B*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 329* amends *table O18*, to insert a reference to *section OK 14B* consequentially as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 330* amends *section OP 5*, consequentially on the repeal of the FDP and conduit rules as part of international taxation reform, and as part of the reform of life insurance taxation.

*Clause 331* amends *section OP 7*, consequentially as part of the reform of life insurance taxation, and as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 332* repeals *section OP 14*, on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 333* amends *section OP 17*, consequentially as part of the reform of life insurance taxation.

*Clause 334* repeals *section OP 20*, as part of the reform of life insurance taxation.

*Clause 335* repeals *section OP 21*, as part of the reform of life insurance taxation.

*Clause 336* amends *section OP 30*, as part of the reform of life insurance taxation to provide for schedular policyholder base income, and as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 337* amends *section OP 31*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 338* inserts a new *section OP 33B*, as part of the reform of life insurance taxation, to provide for a transfer from a tax pooling account for policyholder base liability.

*Clause 339* amends *section OP 35*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 340* repeals *section OP 38*, on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 341* replaces *section OP 44*, as part of the reform of life insurance taxation, to provide for policyholder base imputation credits for consolidated imputation groups.

*Clause 342* amends *table O19*, to repeal *rows 9, 15, and 16*, consequentially as part of international taxation reform, and as part of the reform of life insurance taxation.

*Clause 343* amends *table O20*, to insert appropriate cross-references, repeal *row 12*, and replace *row 18*, consequentially as part of the reform of life insurance taxation, and as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 344* amends *section OP 54*, removing references to FDP consequentially as part of international taxation reform, and inserting a certain debit as part of the reform of life insurance taxation.

*Clause 345* repeals *section OP 56*, on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 346* repeals *section OP 57*, on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 347* repeals *section OP 61*, on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 348* repeals *section OP 62*, on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 349* amends *section OP 68*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 350* repeals *section OP 70*, on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 351* replaces *section OP 74*, as part of the reform of life insurance taxation to provide for FDP debits for a life insurer's policyholder base for consolidated FDP groups.



*Clause 352 amends table O21, to repeal rows 2, 3, 7, and 8, consequentially on the repeal of the FDP and conduit rules as part of international taxation reform.*

*Clause 353 amends table O22, to repeal row 8 and replace row 12, consequentially as part of the reform of life insurance taxation.*

*Clause 354 amends section OP 79, removing references to FDP consequentially as part of international taxation reform.*

*Clause 355 repeals section OP 81, on the repeal of the FDP and conduit rules as part of international taxation reform.*

*Clause 356 repeals section OP 82, on the repeal of the FDP and conduit rules as part of international taxation reform.*

*Clause 357 repeals section OP 88, on the repeal of the FDP and conduit rules as part of international taxation reform.*

*Clause 358 repeals section OP 95, on the repeal of the FDP and conduit rules as part of international taxation reform.*

*Clause 359 amends table O23, to repeal rows 2 and 3, consequentially on the repeal of the FDP and conduit rules as part of international taxation reform.*

*Clause 360 amends table O24, to repeal row 3, on the repeal of the FDP and conduit rules as part of international taxation reform.*

*Clause 361 repeals section OP 99, on the repeal of the FDP and conduit rules as part of international taxation reform.*

*Clause 362 repeals section OP 100, on the repeal of the FDP and conduit rules as part of international taxation reform.*

*Clause 363 amends section OP 101, consequentially on the repeal of the FDP and conduit rules as part of international taxation reform, to specify the amount of debit balance that must be recorded.*

*Clause 364 repeals a heading and sections OP 105 to OP 108, on the repeal of the FDP and conduit rules as part of international taxation reform.*

*Clause 365 inserts a new heading and a new section OP 108B, as a transitional measure on the repeal of the FDP and conduit rules as part of international taxation reform.*

*Clause 366 amends table O25, to repeal row 2, consequentially on the repeal of the FDP and conduit rules as part of international taxation reform.*

*Clause 367* repeals *table O26*, consequentially on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 368* repeals a *heading* and *sections OP 109 to OP 116*, as part of the reform of life insurance taxation.

*Clause 369* repeals *tables O27 and O28*, consequentially as part of the reform of life insurance taxation.

*Clause 370* amends *section OZ 5*, consequentially on the repeal of the FDP and conduit rules as part of international taxation reform, to remove references to foreign dividends and FDP.

*Clause 371* amends *section OZ 10*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 372* inserts a new *section OZ 18*, as part of the reform of life insurance taxation to provide for a credit for a PCA balance.

*Clause 373* amends *section RA 1*, consequentially on the repeal of the FDP and conduit rules as part of international taxation reform, to remove a reference to FDP.

*Clause 374* amends *section RA 6*, consequentially on the repeal of the FDP and conduit rules as part of international taxation reform to remove a reference to foreign dividends and FDP.

*Clause 375* amends *section RA 10*, consequentially on the repeal of the FDP and conduit rules as part of international taxation reform to remove a reference to FDP.

*Clause 376* amends *section RA 15*, as a remedial matter arising from the process of rewriting the Income Tax Act and consequentially on the repeal of the FDP rules as part of international taxation reform.

*Clause 377* amends *section RA 23*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 378* amends *section RC 3*, consequentially on the rewriting of the portfolio investment entity rules.

*Clause 379* amends *section RD 2*, to insert a cross-reference for the payroll donations provisions.

*Clause 380* amends *section RD 5*, to insert a reference to the tax treatment of accommodation benefits, and to update a cross-reference.

*Clause 381* amends *section RD 6*, to insert a reference to the tax treatment of accommodation benefits, and to update a cross-reference.

*Clause 382* amends *section RD 8*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 383* amends *section RD 12*, to insert a reference to non-resident seasonal workers.

*Clause 384* inserts a new *section RD 13B*, as part of the payroll donations provisions to provide for adjustments for tax credits.

*Clause 385* amends *section RD 18*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 386* amends *section RD 19*, as a remedial matter.

*Clause 387* amends *section RD 22*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 388* amends *section RD 51*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 389* amends *section RD 60*, to increase the threshold applying to close companies for the calculation and payment of FBT.

*Clause 390* amends *section RD 61*, to increase the threshold applying to small businesses for the calculation and payment of FBT.

*Clause 391* amends *section RE 4*, consequentially on the repeal of the FDP and conduit rules as part of international taxation reform, to remove a reference to FDP.

*Clause 392* amends *section RE 9*, consequentially on the repeal of the FDP and conduit rules as part of international taxation reform, to remove a reference to the FDP rules.

*Clause 393* amends *section RF 2*, to correct a cross-reference consequentially on the rewriting of the portfolio investment entity rules.

*Clause 394* amends *section RF 10*, to replace the formula as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 395* amends *section RF 11*, as part of the changes to the definition of *associated person*.

*Clause 396* repeals *subpart RG*, on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 397* amends *section RH 4*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 398* amends *section RM 1*, consequentially on the repeal of the FDP and conduit rules as part of international taxation reform, to remove a reference to a foreign dividend.

*Clause 399* amends *section RM 2*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 400* amends *section RM 5*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 401* amends *section RM 10*, to update a cross-reference, and as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 402* amends *section RP 8*, to provide for information on payroll donations to be provided by employers.

*Clause 403* amends *section RP 14*, to provide for the transfer of payroll donations by employers.

*Clause 404* amends *section RP 17*, to extend the responsibilities of tax pooling intermediaries to tax other than provisional tax.

*Clause 405* inserts a new *section RP 17B*, to extend the tax pooling provisions to tax other than provisional tax, and to define *tax pooling account*.

*Clause 406* amends *section RP 18*, consequentially as part of the extension of tax pooling.

*Clause 407* amends *section RP 19*, as part of the extension of tax pooling to provide for the treatment of transferred amounts.

*Clause 408* amends *section YA 1*, to provide, amend, or repeal definitions relating to the substantive provisions amending the Income Tax Act 2007.

*Clause 409* amends *section YA 2*, consequentially on the repeal of the FDP and conduit rules as part of international taxation reform.

*Clause 410* repeals *section YA 3*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 411* amends *section YB 2*, to correct a cross-reference as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 412* amends *section YB 3*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 413* amends *section YB 20*, to correct a cross-reference.

*Clause 414* repeals *table Y1*, a *heading*, and *sections YB 1 to YB 20*, and inserts a new *heading* and new *sections YB 1 to YB 15*, to provide a new definition of *associated person*. *Section YB 1* provides an outline of the subpart. *Section YB 2* provides the test for the association of 2 companies. *Section YB 3* provides the test for a company and a person other than a company. *Section YB 4* provides the test for 2

relatives. *Section YB 5* provides the test for a person and a trustee for a relative. *Section YB 6* provides the test for a trustee and a beneficiary. *Section YB 7* provides the test for trustees with a common settlor. *Section YB 8* provides the test for a trustee and a settlor. *Section YB 9* provides the test for a settlor and a beneficiary. *Section YB 10* defines settlor for association purposes. *Section YB 11* provides the test for a trustee and a person with a power of appointment or removal. *Section YB 12* provides the test for a partnership and a partner. *Section YB 13* provides the test for a partnership and an associate of a partner. *Section YB 14* provides the test for a tripartite relationship. *Section YB 15* provides exceptions for employee trusts.

*Clause 415* repeals *section YC 1*, to remove the definition of *control* as part of the changes to the definition of *associated person*.

*Clause 416* inserts a new *section YC 18B*, as part of international taxation reform to provide for the tax treatment of economic ownership on corporate reorganisations.

*Clause 417* amends *section YD 1*, to remove concessions for transitional residents and to insert a provision for the treatment of non-resident seasonal workers.

*Clause 418* amends *section YD 4*, to correct a compare note.

*Clause 419* amends *section YD 5*, to set out the relationship of the section with the source rules.

*Clause 420* amends *section YF 1*, to correct a cross-reference.

*Clause 421* amends *schedule 1*, to provide for schedular policyholder base income as part of the reform of life insurance taxation, and to correct shoulder references.

*Clause 422* amends *schedule 2*, to insert a provision for the tax treatment of non-resident seasonal workers.

*Clause 423* amends *schedule 13*, to insert 2 items.

*Clause 424* amends *schedule 21*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 425* amends *schedule 24*, to correct shoulder references.

*Clause 426* amends *schedule 27*, to correct shoulder references.

*Clause 427* amends *schedule 32*, to omit 1 recipient and insert certain new recipients.

*Clause 428* amends *schedule 49*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 429* amends *schedule 50*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 430* amends *schedule 52*, to correct cross-references.

*Clause 431* inserts *schedule 1*, for consequential amendments to lists of defined terms as part of the changes to the definition of *associated person* and the removal of the definition of *control*.

## **Part 2**

### **Amendments to Tax Administration Act 1994**

*Clauses 433 to 517* amend the *Tax Administration Act 1994*.

*Clause 433* amends *section 3*, to provide, amend, and repeal certain definitions relating to substantive provisions amending the Tax Administration Act 1994.

*Clause 434* amends *section 4A*, as a remedial matter arising from the process of rewriting the Income Tax Act, and consequentially to update some cross-references as a result of changes made on the reform of international taxation.

*Clause 435* inserts a new *Part 2B*, relating to intermediaries for PAYE, provisional tax, and resident passive income, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 436* amends *section 17*, to correct a cross-reference, and remedy references to associated persons.

*Clause 437* amends *section 20B*, as part of changes allowing the right of non-disclosure to apply to discovery and similar processes that occur during litigation.

*Clause 438* amends *section 20C*, as part of changes allowing the right of non-disclosure to apply to discovery and similar processes that occur during litigation.

*Clause 439* amends *section 20D*, as part of changes allowing the right of non-disclosure to apply to discovery and similar processes that occur during litigation.

*Clause 440* amends *section 20F*, as part of changes allowing the right of non-disclosure to apply to discovery and similar processes that occur during litigation.

*Clause 441* amends *section 20G*, extending the right of the Commissioner or a taxpayer to apply for a court order relating to the status of a book or document in relation to disclosure.

*Clause 442* amends *section 22*, to provide for records for payroll donations and consequential changes as a result of changes made on the reform of international taxation.

*Clause 443* amends *section 24*, to provide for records for payroll donations.

*Clause 444* amends *section 24B*, to provide a code for non-resident seasonal workers.

*Clause 445* amends *section 24F*, to exclude special codes for non-resident seasonal workers.

*Clause 446* amends *section 24P*, to correct a cross-reference.

*Clause 447* inserts a new heading and a new *section 24Q*, to require transfers of payroll donations by employers.

*Clause 448* replaces *section 28B*, consequentially on the rewriting of the portfolio investment entity rules.

*Clause 449* amends *section 31B*, as a remedial matter for the portfolio entity rules, and to correct a cross-reference.

*Clause 450* repeals *section 31B*, and inserts new *sections 31B and 31C*, consequentially on the rewriting of the portfolio investment entity rules.

*Clause 451* amends *section 32E*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 452* repeals *section 32N*, as a result of changes made on the reform of international taxation.

*Clause 453* amends *section 33*, consequentially on the rewriting of the portfolio investment entity rules.

*Clause 454* amends *section 33A*, to provide for non-resident seasonal workers.

*Clause 455* amends *section 36A*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 456* replaces *section 36AB*, consequentially on the rewriting of the portfolio investment entity rules.

*Clause 457* amends *section 38*, consequentially on the rewriting of the portfolio investment entity rules.

*Clause 458* amends *section 41A*, to update cross-references.

*Clause 459* amends *section 41B*, to correct a cross-reference, and to update terminology as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 460* amends *section 57B*, as a remedial matter for the portfolio entity rules.

*Clause 461* replaces *section 57B*, consequentially on the rewriting of the portfolio investment entity rules.

*Clause 462* amends *section 59*, to correct a cross-reference.

*Clause 463* amends *section 61*, as a remedial matter arising from the process of rewriting the Income Tax Act, providing a time limit for providing a return, as a remedial matter for the portfolio entity rules, and consequentially on the rewriting of the portfolio investment entity rules.

*Clause 464* repeals *section 66*, as part of the reform of life insurance taxation.

*Clause 465* amends *section 68C*, to remove the requirement for filing a claim form by a member of a KiwiSaver or complying superannuation fund.

*Clause 466* amends *section 68D*, as a remedial matter related to research and development tax credits.

*Clause 467* replaces *section 68E*, as a remedial matter related to research and development tax credits.

*Clause 468* repeals *section 78E*, as part of the reform of international taxation.

*Clause 469* repeals *section 78F*, as part of the reform of international taxation.

*Clause 470* amends *section 81*, to incorporate requirements related to film schemes and research and development tax credits.

*Clause 471* amends *section 85F*, to remove references to large budget screen production grants and replace them with government screen production payments, and to clarify the ambit of the disclosure requirement.

*Clause 472* amends *section 85G*, to correct cross-references.

*Clause 473* amends *section 87*, to incorporate requirements related to film schemes.

*Clause 474* inserts a new *section 89AB*, to rationalise and update the definition of *response period*.



*Clause 475* amends *section 89D*, to provide for statements related to research and development tax credits.

*Clause 476* amends *section 89DA*, to provide for statements related to research and development tax credits before notices may be issued.

*Clause 477* amends *section 89N*, as part of the changes to the definition of *associated person*.

*Clause 478* amends *section 9IAAF*, to provide for default rates for depreciable property, and the revocation of determinations setting economic rates.

*Clause 479* amends *section 9IAG*, to extend the application of provisional rates, and to clarify the Commissioner's power to issue determinations setting a special rate, and to provide for revocation of provisional determinations.

*Clause 480* amends *section 9IAAH*, to allow for the use of default rates.

*Clause 481* amends *section 9IAAK*, consequentially on the power to revoke determinations.

*Clause 482* amends *section 9IAAM*, consequentially on the power to revoke determinations.

*Clause 483* amends *section 9IAAO*, to correct and update cross-references.

*Clause 484* inserts a new *heading* and a new *section 9IAAQ*, as part of the reform of international taxation to provide for a determination in relation to non-attributing active CFCs.

*Clause 485* inserts a new *heading* and a new *section 9IAAR*, to provide for a determination in relation to eligible expenses for work-related relocations of employees.

*Clause 486* repeals *section 102*, as part of the reform of international taxation.

*Clause 487* repeals *section 103*, as part of the reform of international taxation.

*Clause 488* repeals *section 103A*, as part of the reform of international taxation.

*Clause 489* repeals *section 104*, as part of the reform of international taxation.

*Clause 490* amends *section 108*, to provide limits for returns for research and development tax credits, with a temporary extension.

*Clause 491* amends *section 113D*, to provide limits for amended assessments for research and development tax credits.

*Clause 492* amends *section 120C*, to replace the definition of *tax paid*, to take account of the extension of tax pooling.

*Clause 493* repeals *section 120EA*, as part of the reform of life insurance taxation.

*Clause 494* amends *section 120KE*, to increase the threshold for a provisional taxpayer's residual income tax.

*Clause 495* amends *section 120M*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 496* amends *section 120O*, as part of the reform of international taxation.

*Clause 497* repeals *section 120R*, consequentially on the repeal of the FDP rules as part of the reform of international taxation.

*Clause 498* amends *section 125*, to correct a cross-reference.

*Clause 499* amends *section 139BA*, to correct a cross-reference.

*Clause 500* repeals *section 140C*, as part of the reform of international taxation.

*Clause 501* repeals *section 140CA*, as part of the reform of international taxation.

*Clause 502* amends *section 141*, as part of the changes to the definition of *associated person*.

*Clause 503* amends *section 141D*, correcting a cross reference and as part of the changes to the definition of *associated person*.

*Clause 504* amends *section 141E*, to provide for payroll donations.

*Clause 505* repeals *section 142E(2)* and amends the section heading, as part of the reform of international taxation.

*Clause 506* amends *section 143A*, as part of the reform of international taxation.

*Clause 507* amends *section 143B*, as part of the reform of international taxation.

*Clause 508* amends *section 173D*, to clarify that recovery of taxes includes the charges associated with the recovery.

*Clause 509* amends *section 173L*, as remedial matters for research and development tax credits.

*Clause 510* amends *section 173M*, to provide for the extension of the tax pooling rules.

*Clause 511* amends *section 177B*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 512* repeals *section 181*, as part of the reform of international taxation.

*Clause 513* repeals *section 183*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 514* amends *section 183A*, as part of the reform of international taxation.

*Clause 515* amends *section 183H*, as part of the reform of international taxation.

*Clause 516* amends *section 185D*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 517* amends *section 225A*, to correct a cross-reference.

### **Part 3**

#### **Amendments to Goods and Services Tax Act 1985**

*Clauses 519 to 528* amend the *Goods and Services Tax Act 1985*.

*Clause 519* amends *section 2*, to provide definitions of *emissions unit* and *loyalty programme* for the purposes of substantive provisions amending the Goods and Services Tax Act, and to amend the definition of *public authority*.

*Clause 520* amends *section 5*, to update a cross-reference.

*Clause 521* amends *section 9*, to provide a time of supply for a supply of services by operators of loyalty programmes.

*Clause 522* amends *section 10*, to update a cross-reference.

*Clause 523* amends *section 11*, to provide zero-rating for certain supplies of reimported goods.

*Clause 524* amends *section 11A*, to provide for zero-rating of certain services related to emissions units.

*Clause 525* inserts a new *section 11C*, to provide for the tax treatment of supplies by operators of loyalty programmes who meet certain requirements.

*Clause 526* amends *section 15*, to increase the threshold for taxable periods of 6 months.

*Clause 527* amends *section 51*, to increase the threshold for registration.

*Clause 528* amends *section 55B*, consequentially on the rewriting of the portfolio investment entity rules.

## **Part 4**

### **Amendments to KiwiSaver Act 2006**

*Clauses 530 to 541* amend the *KiwiSaver Act 2006*.

*Clause 530* amends *section 4*, to amend the definition of *PAYE period*.

*Clause 531* repeals *section 13*, to change the enrolment requirements for teachers.

*Clause 532* amends *section 25*, to modify a timing requirement for eligibility to be an exempt employer.

*Clause 533* amends *section 59D*, to correct a cross-reference.

*Clause 534* amends *section 89*, to remove the de minimis interest payment threshold for refunds.

*Clause 535* amends *section 100*, to correct drafting, and make mandatory certain refunds.

*Clause 536* amends *section 101A*, to provide a limitation on employers' liability for compulsory employer contributions.

*Clause 537* amends *section 101D*, to correct a cross-reference.

*Clause 538* inserts new *sections 101FB and 101FC*, to provide a limitation on employers' liability for compulsory employer contributions.

*Clause 539* amends *section 101G*, to provide for the administration of compulsory employer contributions.

*Clause 540* amends *section 226*, to provide for the payment of Crown contribution to a person joining a KiwiSaver scheme for a second time when they were not paid the contribution as a member of the earlier scheme.

*Clause 541* amends *section 229*, to change the requirements for mortgage diversion facilities.

## **Part 5**

### **Amendments to Income Tax Act 2004**

*Clauses 543 to 614* amend the *Income Tax Act 2004*.

*Clause 543* amends *section CD 26*, to exclude grey list companies and to clarify the application of the rule to certain managed funds.

*Clause 544* amends *section CE 1*, inserts a definition of *accommodation*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 545* amends *section CE 5*, consequentially on the clarification of certain exempt payments for employees for relocation expenses and overtime meals.

*Clause 546* inserts a new *section CR 3*, to provide the calculation of income in relation to general insurers' outstanding claims reserves.

*Clause 547* amends *section CW 13*, consequentially to clarify the relationship between expenditure on account of employees and certain payments for employees for relocation and overtime meals.

*Clause 548* inserts new *sections CW 13B and CW 13C*, to clarify the tax treatment of relocation payments for employees and payments to employees for overtime meals.

*Clause 549* amends *section CX 17*, to exclude relocation payments for employees from the FBT rules.

*Clause 550* amends *section DB 32*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 551* inserts a new *section DT 1A*, to clarify the treatment of deductions for petroleum mining expenditure.

*Clause 552* amends *section DT 2*, as a remedial matter arising from the process of rewriting the Income Tax Act, and to clarify material excluded from petroleum mining arrangements.

*Clause 553* amends *section DT 5*, to clarify the timing of certain petroleum mining deductions.

*Clause 554* amends *section DT 9*, to clarify the timing of certain petroleum mining deductions.

*Clause 555* inserts a new *section DW 3*, to provide for the calculation of deductions in relation to outstanding claims reserves for insurers using IFRS 4.

*Clause 556* amends *section EE 25E*, to clarify the basis on which the percentage is based.

*Clause 557* amends *section EE 26*, to provide for the setting of economic depreciation rates, special rates, and provisional rates.

*Clause 558* repeals *section EJ 11* and inserts new *sections EJ 11 and EJ 11B*, to clarify the timing of certain petroleum mining deductions.

*Clause 559* amends *section EJ 12*, to update a cross-reference.

*Clause 560* inserts new *sections EJ 12B and EJ 12C*, to clarify the tax treatment of deductions relating to dry and non-producing wells.

*Clause 561* amends *section EJ 13*, to update a cross-reference.

*Clause 562* replaces *sections EJ 17 and EJ 18*, to remove the distinction between onshore and offshore development for petroleum mining.

*Clause 563* amends *section EW 15B*, as part of the remedial amendments to the use of the IFRS financial reporting method.

*Clause 564* amends *section EW 15C*, as part of the remedial amendments to the use of the IFRS financial reporting method.

*Clause 565* amends *section EW 15D*, as part of the remedial amendments to the use of the IFRS financial reporting method.

*Clause 566* amends *section EW 15E*, as part of the remedial amendments to the use of the IFRS financial reporting method.

*Clause 567* amends *section EW 26*, as part of the remedial amendments to the use of the IFRS financial reporting method.

*Clause 568* amends *section EW 29*, as part of the remedial amendments to the use of the IFRS financial reporting method.

*Clause 569* amends *section EX 33*, to clarify the company in which voting interests are held.

*Clause 570* amends *section EX 40B*, to clarify the time at which the market value is determined.

*Clause 571* amends *section EX 44*, to replace the item *opening value*.

*Clause 572* amends *section EX 44C*, to exclude certain managed funds from the operation of the rule.

*Clause 573* amends *section EX 44D*, to exclude certain managed funds from the operation of the rule.

*Clause 574* amends *section EX 45B*, as a remedial matter to provide a limit for the attributing interest taken into account in calculating FIF income or loss.

*Clause 575* amends *section EX 47*, to exclude interests in grey list companies and override the exclusion for certain managed funds.

*Clause 576* amends *section EX 56*, to remove items defined in a repealed formula.

*Clause 577* amends *section EZ 50*, to correct a cross-reference.

*Clause 578* inserts new *sections EZ 51 and EZ 52*, as a transitional measure for financial reporting requirements.

*Clause 579* repeals *section GC 14EB*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 580* amends *section HG 13*, to correct cross-references.

*Clause 581* amends *section HL 4*, as a remedial matter for the portfolio investment entity rules to correct a cross-reference, and to clarify the timing on failure to meet a requirement.

*Clause 582* amends *section HL 6*, as a remedial matter for the portfolio investment entity rules to insert a reference to Auckland Regional Holdings, and consequentially to change cross-references.

*Clause 583* amends *section HL 9*, as a remedial matter for the portfolio investment entity rules to insert a reference to Auckland Regional Holdings, and consequentially to change cross-references.

*Clause 584* amends *section HL 10*, as a remedial matter for the portfolio investment entity rules to insert a reference to associated persons.

*Clause 585* amends *section HL 11B*, as a remedial matter for the portfolio investment entity rules to provide a minimum number of shareholders.

*Clause 586* amends *section HL 12*, as a remedial matter for the portfolio investment entity rules to clarify the timing on failure to meet a requirement.

*Clause 587* amends *section HL 27*, as a remedial matter for the portfolio investment entity rules to add a reference to an exiting investor.

*Clause 588* amends *section LB 1*, to remove cross-references.

*Clause 589* amends *section LB 2*, as a remedial matter.

*Clause 590* amends *section LD 8*, as a remedial matter.

*Clause 591* amends *section LE 2*, to remove a cross-reference.

*Clause 592* amends *section LE 3*, to update a cross-reference in an item.

*Clause 593* amends *section ME 8*, to remove a cross-reference.

*Clause 594* amends *section ME 31*, to remove a cross-reference.

*Clause 595* amends *section ME 33*, to remove a cross-reference.

*Clause 596* amends *section ME 36*, to remove a cross-reference.

*Clause 597* amends *section ME 38*, to remove a cross-reference.

*Clause 598* amends *section MF 3*, to remove a cross-reference.

*Clause 599* amends *section MF 4*, to remove a cross-reference.

*Clause 600* amends *section MF 8*, to remove a cross-reference.

*Clause 601* amends *section MF 10*, to ensure that the right amount of BETA credit is used in a consolidated group.

*Clause 602* amends *section MG 8*, to remove a cross-reference.

*Clause 603* amends *section MG 10*, to remove a cross-reference.

*Clause 604* amends *section MI 3*, to remove a cross-reference.

*Clause 605* amends *section MI 4*, to remove a cross-reference.

*Clause 606* amends *section MI 5*, to remove a cross-reference.

*Clause 607* amends *section MI 15*, to remove a cross-reference.

*Clause 608* amends *section MI 17*, to remove a cross-reference.

*Clause 609* amends *section MI 18*, to remove a cross-reference.

*Clause 610* amends *section NEB 6*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 611* amends *section NF 1*, as a remedial matter.

*Clause 612* amends *section NF 8*, as a remedial matter arising from the process of rewriting the Income Tax Act.

*Clause 613* amends *section OB 1*, to provide, amend, or repeal definitions relating to the substantive provisions amending the *Income Tax Act 2004*.

*Clause 614* amends *schedule 16*, to insert pipes and conduits.

## **Part 6**

### **Amendments to other Acts and regulations**

*Clauses 616 to 626* amend the *Income Tax Act 1994*, *Income Tax Act 1976*, *Taxation (Business Taxation and Remedial Matters) Act 2007*, and miscellaneous other Acts and regulations.

*Clause 616* amends *section CB 12 of the Income Tax Act 1994*, to clarify the tax treatment of certain employee allowances for work-related relocations and overtime meals.

*Clause 617* amends *section CI 1 of the Income Tax Act 1994*, to clarify the relationship between fringe benefits and certain employee allowances for work-related relocations and overtime meals.



*Clause 618 amends section EG 10 of the Income Tax Act 1994, to extend the application of provisional rates for depreciation.*

*Clause 619 amends section OB 1 of the Income Tax Act 1994, to provide and amend definitions relating to the provisions amending the Income Tax Act 1994.*

*Clause 620 amends schedule 16 of the Income Tax Act 1994, to insert pipes and conduits.*

*Clause 621 amends section 108I of the Income Tax Act 1976, to extend the application of provisional rates for depreciation.*

*Clause 622 amends schedule 21 of the Income Tax Act 1976, to insert pipes and conduits.*

*Clause 623 amends section 287 of the Taxation (Business Taxation and Remedial Matters) Act 2007, to correct a date.*

*Clause 624 makes consequential amendments to enactments listed in schedule 2 as a result of the changes to the definition of *associated person*.*

*Clause 625 amends the Income Tax (Depreciation Determinations) Regulations 1993, to correct cross-references.*

*Clause 626 amends the Goods and Services Tax (Grants and Subsidies) Order 1992, to correct cross-references.*

*Schedule 1 provides for consequential amendments to lists of defined terms in provisions of the Income Tax Act 2007, as part of the changes to the definition of *associated person*.*

*Schedule 2 provides for consequential amendments to other Acts, as part of the changes to the definition of *associated person*.*

### **Regulatory impact statement**

An objective in developing tax laws is to ensure that costs associated with the functioning of the tax system are minimised. This objective must necessarily be balanced by the need to protect the tax base, to treat taxpayers fairly, and to ensure an efficient system.

#### *International tax review: introducing an active income exemption*

### **Executive summary**

We propose to reform the taxation of international investments by New Zealanders, to remove impediments to offshore expansion of

New Zealand businesses. This will involve a move away from the current system of comprehensive accrual taxation of controlled foreign companies (CFCs) and foreign dividends, to an exemption from accrual taxation for active income of CFCs and an exemption from income tax of foreign dividends. This will allow CFCs engaged in active businesses to compete on a similar footing to other businesses in the same jurisdiction. Measures will be necessary to protect the tax base.

The proposed policy is preferred to the status quo because it removes impediments to overseas expansion by New Zealand businesses. Compliance costs are reduced or maintained in many cases, and the policy has been designed to limit increases in other cases. There should be an overall simplification of the tax legislation because some complex mechanisms will be removed.

We have consulted extensively on the proposed policy and the final policy incorporates a number of important changes suggested by submitters.

#### **Adequacy statement**

The Regulatory Impact Analysis Unit (RIAU) in the Ministry of Economic Development (MED), has reviewed this Regulatory Impact Statement, and considers that the statement is adequate according to the Regulatory Impact Analysis adequacy criteria.

#### **Status quo and problem**

International equity investments by New Zealanders are currently taxed comprehensively on an accrual basis. The income of controlled foreign companies (CFCs) is attributed back to New Zealand shareholders who pay tax on that income (unless the CFC is resident in one of eight “grey list” countries). Dividends received from overseas are also taxed, with an effective credit for tax previously paid on an accrual basis.

This system of taxation, which involves a number of complex mechanisms (such as attribution rules, credits for foreign tax paid, dividend withholding payments, branch equivalent tax accounts, underlying foreign tax credits, conduit relief tax credits) promotes so-called capital export neutrality (CEN). CEN means that a New Zealander should be indifferent, after accounting for tax, between

investing in a New Zealand business or a foreign business if they have the same pre-tax rate of return.

Unfortunately, other countries do not tax most income of CFCs in such a comprehensive manner, so that New Zealander businesses face additional tax costs relative to their competitors in overseas markets. Other countries exempt the income of CFCs that are active businesses—businesses engaged in activities such as manufacturing or selling goods or providing services—from accrual taxation. This, in contrast to CEN, promotes Capital Import Neutrality (CIN). CIN means that a CFC faces the same effective tax rate as its competitors in the same jurisdiction. New Zealand's current preference for CEN and other countries' preference for CIN are a barrier to the offshore expansion of New Zealand businesses and can create an incentive for New Zealand businesses to migrate to other countries as an alternative to expanding from a New Zealand base.

### **Objective**

The aim is to remove a barrier to offshore expansion by New Zealand businesses by reforming the taxation of international investments by New Zealanders, while minimising compliance costs and preserving the tax base.

### **Alternative options**

A single overall option has been considered (see the preferred option below) involving an exemption from accrual taxation for active income of CFCs and an exemption from income tax for foreign dividends. This is preferred to the status quo because it puts New Zealand businesses expanding into foreign jurisdictions on a similar footing, in relation to tax, to their competitors in those countries, reduces compliance costs for active businesses in many jurisdictions, and substantially limits increases in others. It also does not involve excessive fiscal cost (foregone tax revenue).

At a more detailed level, there are a number of design options.

*Transaction vs. entity approach*

The government could adopt 1 of 2 approaches to attributing the income of a CFC to its resident shareholders:

- The transactional approach examines each item of income derived by a CFC to determine whether it produces passive income or active income. Accordingly, different income streams of the CFC attract different treatment depending upon their category.
- The entity approach looks at whether the company is active or passive. Once categorised, then all of the income of the company is taxed in the corresponding manner, regardless of the nature of the income derived.

The transactional approach is more accurate in taxing only passive income. In contrast, under an entity approach the entity is either taxed on all its income or none, with the former being disadvantageous to firms with a mix of active and passive business and the latter allowing some deferral of tax. The transactional approach potentially involves higher compliance costs. For example, if the CFC has paid tax in the foreign jurisdiction on all its income, those foreign taxes would need to be allocated between the active and passive income under the transactional approach. The compliance costs of transaction-based approach may be reduced significantly without sacrificing a great deal of accuracy by providing an exemption at an entity level where passive income is a small proportion of gross income (this is essentially a hybrid approach). The preferred approach (see below) allows businesses that derive less than 5% of their income from passive sources, which we expect to be most active businesses, to be entirely exempt.

*Active business test design*

An active business test is included in the policy. CFCs that satisfy the active business test (less than 5% of their gross income is derived from passive transactions) will effectively not be taxed on accrual in New Zealand.

Having the 5% threshold will lower compliance and administrative costs as long as it is easy to apply, since firms that meet it do not need to calculate tax on an accrual basis. We have allowed the use of existing financial accounts to calculate the ratio, to make the test

easy to apply. There are some adjustments required but these are kept to a minimum. Firms have the option of using audited financial accounts that comply with International Financial Reporting Standards (IFRS) or New Zealand equivalents to those standards. Nearly all New Zealand companies, with the exception of small entities, will be required to comply with these standards anyway for financial reporting purposes, and where they own CFCs they will need to consolidate those CFCs into their accounts. This means the necessary data should be available at low cost. Some smaller companies will also be able use existing New Zealand Financial Reporting Standards until a government review of reporting requirements for these entities is complete. Companies who are not required to comply with IFRS, or who cannot derive the required information from them, can use tax rules to calculate the ratio. This will be relatively costly if the businesses involve complex transactions, but we expect a only small minority of (mostly) larger firms to be in the situation where they have complex transactions and cannot use the other methods based on accounting standards.

Choosing the level of the threshold involves a trade-off of compliance costs against ability to defer tax. A higher threshold means a lower compliance cost, since more businesses will qualify for the active business exemption, but it also allows firms to defer significant amounts of tax (a higher amount of passive income is not taxed on accrual).

#### *Distinguishing active and passive income*

The general approach of many countries is to define passive income positively, with active income defined by default as any income falling outside the passive income definition.

The challenge of using a positive definition of passive income is that any item which is inherently passive but is omitted from the list will not be passive income for the purposes of the CFC rules, and will therefore be exempt from attribution.

The alternative, a positive definition of active income, may provide legislators with less control and certainty over the scope of the active income exemption than would occur under a positive definition of passive income. That is because even a small amount of “activity” associated with an inherently passive transaction would bring the transaction within the active income net.

On balance, the government considers it preferable to define passive income positively.

The definition of passive income can be either narrow or broad. A narrower definition lessens the likelihood that genuinely active business will be misclassified as passive, but also allows more scope for tax on passive income to be deferred.

“Base company income”, which classifies certain sales or service income as passive income, is included in passive income in other jurisdictions. This is to prevent the interposition of CFCs in transactions to avoid domestic tax. This does involve a compliance cost, since certain sales need to be identified and tracked.

#### *Interest allocation*

If active CFC income is not taxed on an accrual, there may be incentives for New Zealand owners to move debt held by CFCs into New Zealand entities. Depending on the tax status of the CFC in its own jurisdiction, this could allow tax on New Zealand income to be temporarily or permanently deferred.

Interest allocation rules deny interest deductions where an unusually high proportion of a New Zealand entity is funded by debt. This limits the extent to which New Zealanders can exploit tax deferral by moving debt from CFCs into a New Zealand entity.

Interest allocation rules have a cost for firms in that the ratio of debt to assets may need to be calculated, and interest deductions may be denied. However, de minimis thresholds can be used to make this cost apply only in unusual circumstances.

It is argued that interest allocation rules are unnecessary because of New Zealand’s imputation framework, which encourages New Zealand companies to pay tax in New Zealand. However, there is still scope for domestic income tax to be deferred. Australia also has both interest allocation rules and an imputation framework.

#### *Grey list exemption*

CFCs in 8 “grey list” countries are exempt from tax on accrual under current rules. It is proposed to abolish the grey list with the exception of Australia.

The abolition of the grey list, and its effective replacement with an active business exemption, will mean that active CFCs will not be

taxed on accrual in any jurisdiction. This is a significant advantage for those outside the current grey list countries (see costs and benefits below for an estimate of the number of such firms). The abolition of the list will reduce the scope for deferral of passive income.

The abolition of the list has a cost for firms currently in grey list countries (again, see costs and benefits below). For the majority of these businesses, that cost is just the cost of applying the active business test, which is small, but for some it will involve attribution. Balanced against this, the Australian exemption is likely to prevent cost for most smaller entities (Australia is anecdotally the first port of call for most smaller businesses) and most businesses not in grey list countries will now qualify for the active business exemption.

#### *Dividend exemption*

Under the current rules, dividends from CFCs and non-portfolio foreign investment funds are taxed, but a credit is provided where the income has already been taxed on accrual. Under the preferred approach, such dividends will be exempt from taxation.

Exemption of dividends will prevent double-taxation of income without the need for complex apportionment accounts for companies, currently known as branch equivalent tax accounts and dividend withholding payment accounts.

However, there will be continued taxation where the dividend is from a fixed rate share or is deductible to the CFC. This extends the current treatment and is required to prevent the loss of domestic tax revenue. In practice, the dividend will be treated as an interest payment with a deduction provided to the CFC for its payment, to prevent double-taxation. The proposed taxation of the dividend will impose compliance costs. Companies will need to check that, if a dividend has been paid, it is deductible to the CFC or paid on a fixed rate share. Given the low frequency of dividend payments (typically once a year or less), the relative simplicity of checking deductibility or the form of the underlying equity instrument, and the rarity of fixed rate shares and deductible dividend payments, these costs are not expected to be significant.

As an alternative to exempting most dividends and treating others as if they were taxable payments of interest, it would be possible to continue to tax the portion of dividends that is derived from passive

income, and to provide credit for any passive income taxed on accrual. This is not the favoured approach because it would require complex mechanisms to track tax paid on passive income and to apportion dividends between active and passive income.

### **Preferred option**

The preferred option is to exempt from tax the income derived from active business of a CFC, and to exempt ordinary foreign dividends received by New Zealand companies from income tax.

Passive income of a CFC, being certain interest, rent, royalty, or dividend income, and income from services performed in New Zealand, will continue to be taxable to the New Zealand owner of the CFC on an accrual basis.

Passive income has been narrowly defined. For example, there are exclusions from the definition of passive income for transactions between CFCs in the same jurisdiction, for rental income from property situated in the same jurisdiction, and for certain royalty income, even though these are typically passive sources of income. The preferred option also limits “base company income” to only services performed in New Zealand. In our view this targets schemes that would defer tax with minimal impact genuine transactions. It would be unusual for a CFC of a New Zealand resident to perform services in New Zealand. The narrow definition of passive income increases the likelihood that businesses will qualify for the active business exemption and the consequent reduction in compliance costs.

To reduce compliance costs, companies with a small amount of passive income in relation to their active income will be treated as having wholly active income. This is achieved by an “active business test”, which calculates passive income as a percentage of gross income. The calculation may be undertaken using audited financial accounts that comply with international financial reporting standards or existing New Zealand financial reporting standards, or by using tax rules. Where the ratio of passive income to gross income is less than 5%, the business will be treated as active.

The 5% ratio allows a significant proportion of firms’ assets to be generating passive income (we estimate 25–30% for a typical business, which is likely to be well above the actual ratio for most active businesses); 5% is also the value used in Australia and US. Choos-



ing a value of more than 5% risks undermining the accuracy of the transactional approach.

With the change in the tax system and the active business exemption, the need for the existing “grey list” exemption (which exempts CFCs in 8 countries from the need to attribute income) is much reduced and the list is effectively removed. However, the “grey list” exemption is retained for CFCs in Australia because many smaller entities have CFCs in Australia and even the relatively small burden of the “active business test” might be challenging for them.

A number of other mechanisms are also being removed. There is no further need for branch equivalent tax accounts for companies, for dividend withholding payments or for underlying foreign tax credits, and a much reduced need for conduit tax relief account. All will be removed.

Some anti-avoidance rules are required as part of the proposed reforms, to ensure the level of tax revenue is broadly maintained, although there is a fiscal cost of the active business exemption.

Interest allocation rules will be introduced, which prevent a New Zealand company shifting debt from CFCs that are exempt from tax, to New Zealand where they can obtain deductions for interest payments. Interest allocation rules will only apply where the debt to assets ratio exceeds 75% (a commercially unwise ratio in many circumstances) and where there are significant interest deductions. In practice, we expect relatively few genuine arrangements will be anywhere near these thresholds. An “on-lending” concession, in which a New Zealand company can borrow and on-lend to a CFC and not have this counted as debt for the purposes of the interest allocation rules, is also provided to help New Zealand entities remain within the threshold.

A further anti-avoidance measure is that the exemption from tax of foreign dividends will be restricted to dividends on ordinary shares and will not apply to dividends that are a deductible expense of the CFC or payable on fixed rate shares.

## Benefits

### *Tax burden: benefit for some companies and benefit overall*

The active business exemption puts New Zealand businesses expanding into foreign jurisdictions on a similar footing, in relation to tax, to their competitors in those countries. There will be no accrual taxation of CFCs that are active businesses. The fiscal cost of the active business exemption, excluding administrative costs (\$12.5 million in 2008–09, \$50 million in subsequent years) is indicative of the expected reduction in tax payable by New Zealand CFCs and their parent companies.

### *Compliance burden*

Compliance costs for New Zealand residents with CFCs outside the 8 “grey list” countries will be significantly reduced, provided those CFCs are mainly engaged in active business. These residents currently need to pay tax on CFC income on an accrual basis, which requires calculating the CFC income under New Zealand tax principles. Under the proposed rules, there is no requirement to pay tax on the income of active CFCs, and so the only compliance cost is verifying that the CFC qualifies for the active business exemption. The test for an active business has been designed so that existing financial accounts can be used for this purpose in most circumstances, with only a small number of adjustments required. We estimate that approximately 50% of the 846 CFCs for which tax records were submitted in the 2005 year were in jurisdictions not on the grey list.

Some complex mechanisms, such as branch equivalent tax accounts for companies and dividend withholding payments, will be removed from the legislation. This will reduce the costs of understanding the rules for taxpayers, particularly for those taxpayers who do not employ tax agents.

## Costs

### *Tax burden (cost for some companies)*

A minority of CFCs—those currently in “grey list” countries other than Australia and not engaged primarily in active business—will be taxed on passive income on an accrual basis under the preferred

policy, whereas this is not required at present. Of 846 CFCs known to exist in 2005, approximately 20% were in “grey list” countries other than Australia, although the number is likely to be under-reported. There is no information available about the proportion of these firms that were not engaged primarily in an active business, or the amount of tax that would have been paid if accrual taxation of passive income had been required.

New Zealand residents with high levels of debt may be denied some interest deductions under the preferred policy, leading to an increased domestic tax liability. If the New Zealand group (combined New Zealand entities) has a debt to asset ratio of more than 75%, deductions for interest paid on debt above 75% of assets may be denied. In most cases, a 75% debt to asset ratio is not a prudent level and it is expected to be rare in practice for active businesses to exceed this. The proportion of New Zealand residents with CFCs who have a debt to asset ratio exceeding 75% is not currently available, but is expected to be small. Where debt is on-lent by the New Zealand group to a CFC, this does not count towards the total, which further reduces the numbers affected, as do exclusions where total interest deductions are less than \$250,000 or where the New Zealand company holds 90% or more of its assets in New Zealand.

#### *Compliance burden*

All companies with CFCs or who receive foreign dividends will need to understand the new rules, update their internal practices, and understand new tax forms and tax reporting requirements. This is a “one-off” cost rather than an ongoing cost. In many cases, the direct cost to firms will be reduced because they will employ tax agents, who continuously monitor changing tax laws and can efficiently apply their knowledge to the affairs of many taxpayers.

New Zealand residents with CFCs in “grey list” countries other than Australia will experience a limited increase in compliance costs, because they will have to check that those CFCs meet the active business test and, in the minority of cases where they do not, calculate the amount of income tax to pay on attributed CFC income. As noted above, we estimate that approximately 20% of the 846 CFCs that reported in 2005 are in this category. As noted previously, existing financial accounts can be used for this purpose in most circumstances, reducing the time required to make the calculation. New Zealand

residents with Australian CFCs (approximately 30% of CFCs, although again likely to be under-reported) will experience no change in compliance costs because a “grey list” exemption is being retained for that country.

A minority of New Zealand residents will experience some increase in compliance costs as a result of the interest allocation rules (see the comments on interest allocation in the section on the tax burden above). The ratio of debt to assets will need to be calculated. The interest allocation rules have a parallel in the thin capitalisation rules for non-resident controlled New Zealand taxpayers so that the calculations required are not a novel concept—some taxpayers (and/or advisors) will already have experience in complying with the rules and doing the calculations.

### **Stock of regulation**

The proposed policy will require legislation. This will be added to the Income Tax Act 2007 (amendments to related legislation may also be required). Some complex legislation will be redundant as a result of the policy and will be repealed and a consequent simplification of the Act is expected. However, an overall increase in the volume of legislation is expected.

### **Consultation**

A series of discussion documents were published (December 2006, October 2007, December 2007) inviting submissions on the international tax review process. 50 submissions were received on the December 2006 document, 24 on the October 2007 document and 9 on the December 2007 document.

The submissions were received from a range of accounting and legal firms, larger companies, professional bodies, and other businesses.

Numerous meetings with submitters were also conducted to discuss concerns raised and potential options for reducing those concerns.

The Government announced a series of in-principle decisions on the core policy framework in May 2007. The central proposals were:

- an exemption for owners of controlled foreign companies (CFCs) from the requirement to pay tax on income of the CFCs on an accrual basis, provided the CFCs are engaged in earning mainly active income from operations as opposed to

- passive income such as interest, rents or royalties (to reduce compliance costs there is a test for an “active business”); and
- an exemption from income tax of ordinary foreign dividends received by New Zealand companies.

Related to this were a number of other key proposals, including:

- removal of the “grey list” (owners of CFCs in “grey list” countries are not required to pay tax on income of the CFCs on an accrual basis);
- the application of interest allocation rules to outbound investment (limiting the interest deductions available to a New Zealand company when the New Zealand company carries a significantly greater percentage of debt than the CFCs it owns do); and
- the repeal of mechanisms which will no longer be as necessary because of the active business income and foreign dividend exemptions, including branch equivalent tax accounts, dividend withholding payments, underlying foreign tax credits and conduit tax relief credits.

Consultation responses welcomed the proposed exemptions for active income and foreign dividends. Submitters also seemed comfortable with the design of the active business test and the proposed boundary between active and passive income, albeit that a number of detailed issues were raised.

There was criticism of the aspects of the package designed to prevent erosion of tax revenue, particularly the limitation of the dividend exemption to ordinary (as opposed to fixed-rate) dividends, repeal of the grey list and the extension of interest allocation rules. We consider these measures to be essential for the protection of the domestic tax base, particularly given that neither offshore active income nor most foreign dividends will be subject to New Zealand tax under the new rules. However, and in response to submissions, we have changed the policy so that the existing grey list exemption for CFCs in Australia will continue to apply. This will help substantially in limiting the impact of the reforms on small and medium-sized enterprises (SMEs), for which Australia is usually the first point of offshore expansion.

There was also criticism of the decision to remove conduit tax relief credits. Conduit relief is designed to relieve taxation of income derived by a CFC and paid by the New Zealand owner of the CFC to

a foreign shareholder. With the active income and foreign dividend exemptions, conduit relief is only necessary in relation to passive income, and in that case there are significant risks to the tax base (in the past the use of conduit tax relief has led to significant erosion of the New Zealand tax base), so we consider the removal of conduit relief to be justifiable.

Other changes made in response to submissions included:

- Allowing the active business test to be calculated using existing financial reporting requirements rather than New Zealand International Financial Reporting Standards, for those small and medium sized firms that are temporarily exempt from complying with New Zealand IFRS while the government reviews reporting requirements for smaller entities.
- Excluding related-party royalties from passive income of a CFC where the property to which the royalty applies is substantially developed by the CFC (this relaxes the original proposal that all royalties received by a CFC from related parties in other jurisdictions be treated as passive income).
- Narrowing proposed “base company rules”, which classify certain income that appears active in character as passive income. These rules now apply only where a CFC performs services in New Zealand, rather than to any service performed outside the CFC’s jurisdiction.
- Introducing temporary rules for insurance companies to ensure they can take advantage of the active business test until a more comprehensive solution is found.

As part of a second phase of the international tax review, the government has also announced that it will consider other matters raised in submissions:

- the extension of the active income exemption to financial institutions (including insurance companies);
- a relieving mechanism for NRWT on dividends paid to non-residents if those dividends represent a distribution of foreign income.

## *Life insurance*

### **Executive summary**

The current taxation rules applying to life insurance business no longer reflect the market for which they were designed resulting in life insurance companies unintentionally being tax preferred compared to other companies because their tax liabilities do not adequately reflect their profitability.

Some life insurance products have also been excluded from the recent tax changes to the taxation of portfolio investment entities (PIEs). Under these rules, collective investment vehicles that satisfy certain legislative criteria are not taxed on realised gains made on New Zealand and listed Australian equity investments. Qualifying PIE entities pay tax on investment income based on the tax rates of their investors (capped to 30%).

Changes in the bill will ensure that life insurance business is taxed on a basis that is close to actual profits. Life insurers will also be able to use the PIE rules to ensure that life products are taxed in a manner similar to other savings products.

### **Adequacy statement**

The Regulatory Impact Analysis Unit has reviewed the RIS and considers the RIS is adequate according to the adequacy criteria. The RIAU notes that it was not possible to obtain quantitative estimates of the level of costs (including impact on overall premium prices and compliance costs) and impact on the demand for life insurance as part of a formal quantitative cost-benefit analysis. It understands, however, that such quantitative estimates were not able to be produced because of industry and market structure issues and the impact of the transitional rules.

### **Status quo and problem**

The current rules, which were enacted in 1990, tax life insurers on a two-tier basis. The life office base (LOB), taxes the income earned for the benefit of both shareholders and policyholders of the life insurer as a whole and consists of investment income less expenses, and underwriting income. Underwriting income comprises mortality profit, discontinuance profit, and premium loading, determined by

a formula set out in tax legislation, which is intended to reflect the income from the provision of risk services.

Income accruing to policyholders is taxed to the life insurer on a proxy basis under the policyholder base (PHB). Income is calculated by a formula to arrive at the before-tax amount necessary to provide the after-tax benefit implicit in the policy. Tax paid on the LOB generates imputation credits that can then be used to meet the PHB liability.

Problems presented by the current rules include:

- Individuals who save through life insurance products face a higher tax burden than other savers who invest directly or through managed funds that become portfolio investment entities (PIEs). In connection with the tax exemption under the PIE rules for investment gains in Australasian equities, it is estimated that policyholders are in aggregate over taxed by about \$21 million each year. This effect may distort consumer decisions about the type of saving vehicle they use and place participating life policies at a competitive disadvantage.
- Term insurance, which is now a major part of life insurance business but which was a minor part when the 1990 rules were enacted, is undertaxed. The premium loading formula (which was not designed with term insurance products in mind) anomalously results in profitable term insurance business generating artificial tax losses with, in many cases, a higher accounting profit resulting in a larger tax loss. Accounting profit is measured using generally accepted accounting principles and involves matching income from premiums against claims and expenses for the relevant income year. It has been estimated by some in the life insurance industry that the level of undertaxation is about \$75 million each year. These tax benefits were unintended and cannot be justified on tax policy grounds.

To the extent that tax preferences are received by life insurers, this can distort the decisions by consumers and investors in terms of their choice of saving product or investment compared to other businesses and entities that are required to pay tax on their profits. Similar concerns exist in relation to the overtaxation of policyholder investment gains in Australasian equities.



## Objectives

Life insurance companies should be subject to tax under the same general framework that all other businesses in New Zealand are subject to tax. The life tax rules therefore need to ensure that tax paid by life insurers corresponds to their profitability and, in the case of savings products, incorporate them, where relevant and feasible, into the PIE rules. Unit-linked life policies can currently benefit from some of the reliefs provided under the PIE rules and the objective is to ensure that non-unit linked life policies are not tax disadvantaged relative to other equivalent investment vehicles that are subject to the PIE rules. Any reform of the taxation rules applying to life insurance must therefore encompass both the shareholder and policyholder bases in an integrated and coherent manner.

## Alternative options

The review of the taxation of life insurance analysed a range of options, including the status quo, for their consistency with New Zealand's tax policy environment—for example, whether the option could be fully integrated within the dividend imputation system, loss carry forward rules and the measurement of taxable income under the Income Tax Act generally.

The options were also measured, where practical, for their consistency with generally accepted accounting practice and actuarial standards.

### *Option 1: technical changes*

Isolated technical changes to current legislation were considered, such as increasing the premium loading to better approximate the profits made by life insurers. These changes were considered too arbitrary and would create winners and losers on an artificial basis. There is no accurate, objective basis on which to determine an appropriate premium loading that covers all life products and all life insurers.

Incorporating savings products in the PIE rules without addressing the term insurance issue is inappropriate as it would exacerbate the undertaxation of life insurance income. It would also mean that life insurance tax would develop in an ad hoc and arbitrary fashion and would further add to the complexity of the tax rules.

These ad hoc measures were considered to be inconsistent with New Zealand's tax policy environment as they could not provide a coherent or integrated platform and would not meet the desired objectives.

*Option 2: adopt the practices and tax treatment used in other jurisdictions*

The taxation rules for life insurance that are applicable in other jurisdictions were examined, and while certain features from various countries were influential in the design of the preferred option (particularly, some aspects of the Australian rules), New Zealand's unique tax policy and commercial environment precluded a wholesale adoption of a foreign model.

*Option 3: "premium taxation"*

Under a typical structure, the tax is applied to the total of the insurer's premium revenue with certain alterations. In this way it is similar to a levy, as opposed to income tax. Usually, but not always, the life insurer is responsible for tax payments.

While premium taxation would be simple to administer for Inland Revenue and compliance by insurers would be relatively straightforward, there are less desirable features:

- It is regressive in that it burdens lower-income purchasers of life insurance more than higher income persons, as unit costs for small policies (which are typically bought by the former) are higher than for larger policies.
- Higher premium forms of life insurance will be subject to a greater level of tax, irrespective of the profitability associated with that product.
- It discriminates against those who must pay higher insurance premiums owing to their age, health or other difficulties and again imposes a tax burden that does not necessarily correspond to the profit earned by the life insurer in connection with the life product sold.
- As the tax must be paid irrespective of life insurer profitability, it does not adequately take into account costs incurred.
- It is a direct tax on life savings products that is not applicable to other savings products and would therefore distort consumer choice.

This alternative was not considered appropriate for tax policy reasons and would not achieve the desired objectives.

*Option 4: “economic basis”*

One life insurer suggested life insurance should be taxed on an “economic” equivalence basis incorporating taxation of the policyholder. This would entail taxing insurance claims paid to policyholders while making premiums paid tax deductible. This is not consistent with New Zealand’s tax policy that, except for certain income protection insurance, life insurance claims are not income to the policyholder. Further, the insurer has suggested that a life insurer would deduct the premiums and recognise the claims as a “proxy” of the policyholders. Effectively, its tax loss would be greater than that produced under the current rules as there would be no taxation of underwriting income. It therefore would perpetuate the anomalous tax treatment of term insurance.

For these reasons, this option is not considered appropriate and would not achieve the desired objectives. The option is likely to retain or increase the tax preferences for life insurers. It is difficult to estimate to what extent the option would affect premiums.

**Preferred option**

Under the preferred option, life insurer income will be allocated on the basis of actuarial principles between income earned on behalf of shareholders (the shareholder base) and income earned on behalf of policyholders (policyholder income).

The shareholder base will comprise risk profits, fees, share of participating profits, and investment income on shareholder funds, and other income accruing to the life company. It will be taxed at the company rate, and be generally subject to ordinary rules for companies, including those for losses and memorandum account balances.

The policyholder base will comprise investment income less expenses, including the policyholders’ share of net investment income from participating policies, allocated between shareholder and policyholder incomes according to the life insurer’s rules.

The PIE exclusion of realised New Zealand and listed Australian equity gains will be extended to policyholders in all life insurance savings products, which will then be taxed at the 30% tax rate. How-

ever, life insurers can elect to attribute income in investment-linked products to policyholders at their individual PIE rates (19.5% or 30%). While policyholders will need to maintain certain memorandum accounts and carry forward unutilised tax losses, these will not be subject to member continuity rules.

The new rules will apply from the insurer's first income year beginning on or after 1 April 2009. Policies sold before 1 April 2009 will be grandfathered for up to 5 years. However, if a policy is single premium, level premium, or guaranteed premium, it could be grandfathered for the life of the policy or for the period for which the premium is guaranteed.

The preferred option corrects the underwriting anomaly in the current rules, by taxing the life insurer on its actual profits and extends certain PIE tax base benefits to all policyholder income. It also ensures that life insurers are progressively taxed, as determined by the natural expiry of life products sold before 1 April 2009, on the basis of earned profits as required by any other business taxpayer.

The correct taxation of underwriting income will be fiscally positive, but the impact will be gradual due to the transition rules. The PIE benefits, which are not subject to any transition, will incur an offsetting fiscal cost. The initial annual net fiscal position on application of the new rules will be a loss, followed by a close to break even result. There is an estimated small fiscal benefit in the third year, increasing as more term insurance policies become subject to the new rules.

The overall fiscal effect is eventually expected to be positive, taking into account the proposed transition, and the net effect will depend on the extent to which life insurers adapt products that respond to the new taxation rules.

#### *Impact on premiums*

It is not possible to determine how premiums may change as a result of the reforms. This is because it is not known where the incidence of the tax benefit of the current under taxation of life insurance rests. In particular, different life insurance businesses operate under different structures, many within wider financial service provider groups, and cross-subsidisation of products and business lines could occur.

Premiums payable for life insurance vary between insurers and are influenced by many factors, not the least being the type of life prod-

uct purchased, the health of the policyholder and the insurers costs (including commissions and tax). The degree to which tax influences increases in the premiums paid by policyholders cannot be measured with certainty as this will depend on a wide range of risk variables including the insured's income, lifestyle, and age.

Any change from the status quo may result in an increase in life premiums to the extent that the tax cost is directly passed on to policyholders. The industry has asserted that any change from the status quo could result in premiums increasing, on an all things being equal basis, by 1 % to 30%. The calculations supporting the industry's analysis were not provided, and given the competitive market for life products such increases would seem to be at the extreme end of the scale.

The demand for life insurance, like any other product, is sensitive to price and the industry is concerned that any change to the current tax preferences will have a corresponding effect on life insurance premiums and could result in a reduction in the demand for life policies. It is, however, impossible to estimate the extent, if any, that the tax preference allowed under the status quo has influenced the pricing and take up of life insurance in New Zealand. International research suggests that while life insurance premium prices are a factor in demand, other important factors such as income, age, education, and dependants are more influential. There is no compelling evidence to suggest that tax preferences alone influence demand.

The transition rules provided for under the preferred option are designed to reduce the impact of the new rules on premium prices. It is expected that the changes to the taxation rules under the preferred option will mean that there should be minimal reason, taxation effects alone, to increase premiums on most existing term life insurance policies until at least 2014–15.

The transition should apply to almost all existing term life insurance policies sold before 1 April 2009 whose premiums are determined annually. Premiums for these policies, which represent the majority of term products sold, are typically calculated by taking into account the age of the policyholder and general economic and health factors. These policies will be grandparented until the insurer's 2014–15 income year. Restrictions will apply, however, to prevent new policies from being attached to current policies that are subject to the transitional provisions.

The transition will also apply to premiums paid for certain term insurance sold before 1 April 2009 which provide that the premium amount is fixed. These policies are grandfathered and will not be subject to the preferred option.

If a life insurer, considers that the costs of grandparenting policies under the current old rules exceeds the benefits to policyholders, the life insurer can elect to have the new rules apply to those policies. Elections are irreversible.

The preferred option will immediately apply to policies taken out on and after 1 April 2009.

#### *Impact on savings*

To the extent that the tax treatment of policyholders under the status quo is a disincentive to saving using life insurance products compared to other savings products taxed under the PIE rules, the proposed changes should remove this disincentive. Subject to the life insurer electing into the PIE rules, participating policies will be treated on an equivalent basis as unit-linked life savings products and managed fund covered by the PIE rules.

#### *Compliance costs*

The preferred option, to the greatest extent possible, uses the current procedures and actuarial standards used by life insurers for financial reporting purposes when calculating income tax on risk-based life products. In the long-run this is expected to reduce tax compliance costs, by removing the requirements to make tax specific calculations in addition to accounting and actuarial calculations. Tax specific calculations for grandfathered participating products will be required, but these will be the same as those currently undertaken (albeit for fewer policies).

Therefore many of the calculations required under the new rules, unlike those in the current rules, will already be required to be performed for financial accounting purposes using generally accepted accounting practice and actuarial standards, so the changes should not create additional tax compliance costs in this regard.

The proposed reform will, however, require life insurers to:

- understand the new rules;
- update their work programmes and spreadsheets;

- understand new tax forms and tax reporting requirements.

New products will also have to be priced on the basis of the rules.

The compliance costs associated with the preferred option were not identified as a particular concern by submissions, aside from those connected with re-pricing premiums for new life products sold on and after 1 April 2009 and implementing changes to ensure compliance with the PIE rules, such as paying tax on behalf of policyholders on the basis of their marginal tax rates. Submissions did not provide any estimates of levels compliance costs.

It has not been possible to quantify the level of compliance costs resulting solely from the proposed changes, as many of the proposed changes are similar to processes currently required for financial accounting purposes. However, the proposed changes are highly specialised and apply to a relatively small number of large businesses which are already expert in life insurance taxation and actuarial practice. Systems and processes set up at the start of the new rules may result in high initial costs for some insurers, but have low ongoing costs.

It is likely that the transitional rules for policies sold before 1 April 2009 will create on-going compliance costs arising from the need to have systems and procedures in place that identify that different taxation rules will apply. This cost is considered a necessary trade-off in order to reduce the impact of the preferred option on premiums paid for policies taken out before 1 April 2009. Life insurers will have the option of electing out of the transitional rules if they feel the benefit is not worth the cost of compliance.

As the PIE rules are elective, life insurers should only elect into the rules if they consider that the benefits to policyholders outweigh the costs.

There are no tax compliance requirements for policyholders.

#### *Administration costs*

The preferred option is not anticipated to create any new additional administration costs (besides those associated with the transition in terms of staff training, developing new forms and reporting systems) from those currently incurred by Inland Revenue. A specialist group with Inland Revenue's audit and assurance function already exists that deals with taxation matters affecting life insurers.

### Consultation

An officials' paper, *Life insurance tax reform: Officials' paper No 1 – scope of the reform*, released in September 2006 outlined the current taxation rules and their apparent inadequacies. The paper did not call for submissions but provided a framework for discussion with interested parties.

The product of these meetings helped form the content of a second officials' paper, *Life insurance tax reform: Suggestions for reform*, in February 2007. Twenty-four submissions were received on this paper from a wide range of industry members, professionals, and industry associations. Submitters were subsequently met.

A working group with the Investment, Savings and Insurance Association (ISI) was formed to work on details of the new rules based on the model proposed. Officials also consulted with other professionals and insurers.

In December 2007 the government released discussion document, *Taxation of the life insurance business: proposed new rules*. Earlier drafts of the document were reviewed by a senior actuary from PricewaterhouseCoopers for technical accuracy and commercial practicality. Eighteen submissions were received. The preferred solution is based on the proposals in the discussion document modified, where considered appropriate, by the submissions and subsequent consultation.

The main concerns raised by submissions were about the proposed transitional rules, in particular the duration of the transitional period and the application date for the changes, and the treatment of annuities. Where relevant, concerns about the specific details associated with transition from the status quo to the proposed new rules have been addressed. An example is in the carry-forward of losses and recognition of reserves. The taxation treatment of annuities has been included in the tax policy work programme for further consideration.

### *Loyalty programmes and GST*

#### **Executive summary**

Goods and Services Tax (GST) is charged on goods and services consumed in New Zealand. Since exported goods and services are consumed outside of New Zealand, as a general rule, exports of goods and services are zero-rated. Zero-rating allows supplier of goods and



services not to charge GST, but still be able to claim input tax deductions.

There may be situations when supplies of what are normally considered zero-rated goods or services are essentially subject to GST at the normal rate. This could happen when a person, for example, redeems loyalty points obtained through certain arrangements subject to GST at the usual rate for a supply that should be zero-rated. This has led to GST being imposed on, for example, supplies of international travel, which is normally are zero-rated.

The proposed option is to amend the Goods and Services Tax Act 1985 (the GST Act) to allow certain loyalty programme operators to defer the imposition of GST until the redemption of the loyalty points to ensure that no GST is being paid on the provision of such supplies.

#### **Adequacy statement**

Inland Revenue has reviewed this Regulatory Impact Statement (RIS) and considers the disclosure of information is adequate and the level of analysis is appropriate given the likely impacts of the proposal. The Regulatory Impact Analysis Unit has not reviewed this RIS as the proposal under consideration does not significantly impact on economic growth.

#### **Status quo and problem**

As GST is based on the destination principle, in general, exported goods and services, including international travel, are zero-rated. The destination principle is a design feature of the GST system which seeks to prevent double taxation. International travel takes a consumer from New Zealand to an overseas destination. Since the service in question is ultimately consumed outside of New Zealand, it is treated as an export.

The zero-rating of exported supplies might not be achieved when the supplies are not acquired directly for a monetary consideration but are acquired in exchange for certain loyalty points. For example, an arrangement can be entered into by 2 parties, a loyalty programme operator and a loyalty points purchaser, whereby the loyalty point purchaser would pay consideration to the loyalty programme operator for crediting loyalty points to a customer. Since GST is a tax on transactions, such an arrangement should be taxed at the normal rate,

when the loyalty programme operator issues the points to the customer. This is because the supply from the loyalty programme operator to a loyalty points purchaser is not of a supply of exported goods or services, but a supply of a service within New Zealand. Therefore, if the customer later redeems the loyalty points so acquired for what would normally be treated as a zero-rated supply, the first supply would still be subject to GST.

### **Objectives**

The objective is to ensure that the GST liability on goods and services that should be zero-rated will not depend on whether the goods and services were acquired for a monetary consideration or by using loyalty points. There is no policy rationale in the same ultimate supply attracting a different GST treatment depending on the method by which it was acquired.

### **Alternative options**

#### *Status quo*

Although the status quo could be retained by continuing to impose GST on loyalty points at the time they are issued, this is not the ideal option.

The purpose of loyalty points is to provide a method by which a customer can acquire a future reward from a loyalty programme operator. Loyalty points have no use unless they are redeemed for a reward. The fact that the customer might not know whether he or she will redeem airpoints and for what, does not change the reality that what the customer acquires is the promise of future goods or services. Imposing GST on such supplies even though they might be redeemed for zero-rated supplies, may distort prices charged for supplies and is inconsistent with tax policy objectives.

Where rights are acquired for the future provision of goods and services, the GST Act provides for a variety of outcomes for determining the basis and timing of taxation. For example, vouchers may be taxed on either issue or redemption based on practical considerations. In situations such as that under consideration, where it is not known whether and for what purpose redemption will occur, determining the

tax treatment at the time of redemption, and not at the time of issue, would be appropriate.

#### *Targeted zero-rating*

One option proposed during consultation is to zero-rate the supply of points under an arrangement between a loyalty programme operator and a loyalty points purchaser, where and to the extent that those rights are redeemed for zero-rated goods and services.

Since this option requires the zero-rating to occur when points are being issued, the loyalty programme operator would have to use speculative estimations in order to apportion between loyalty points to be zero-rated and points to which the standard rate GST should apply. This is inconsistent with the accuracy required of a tax on transaction. Moreover, the GST Act does not apportion output tax in transactions where there is a single consideration and doing so would be inconsistent with policy. This option would also create additional compliance costs and administrative costs arising from the need to re-evaluate the GST apportioned on the issue of points in order to ensure that the ultimate GST liability was correct.

#### *Voucher rules*

The GST Act contains special voucher rules that may allow a taxpayer to impose GST on redemption in certain circumstances. Under the voucher rules the supply of a voucher can be recognised for GST purposes at the time the voucher is issued, or where it is not practical, GST may be recognised when the voucher is redeemed for goods and services.

The voucher rules have wide application. Therefore, making any amendments to the voucher rules to extend their application could have uncertain effects and costs, and thus should not be done without extensive consultation.

#### **Preferred option**

To ensure that the same ultimate supply does not attract a different GST treatment depending on whether the customer buys goods or services directly or acquires them by using loyalty points, it is proposed that GST on loyalty points sold under certain arrangements be deferred until the points are redeemed.

It is proposed that new rules are introduced for loyalty programme operators to apply where:

- 25% or more of the loyalty programme operator's or its associated person's business involves the provision of zero-rated goods or services.
- The operator or its associated person has a business activity outside the activity of operating a loyalty programme (the main business activity) and the loyalty points are able to be redeemed for rewards supplied by the operator or its associated person as part of the main business activity.
- The loyalty programme operator is able to identify, at the time of the redemption of loyalty points, whether or not GST has already been imposed on the points in question when they were issued or whether the GST liability was deferred until the redemption of points under proposed section.

If these conditions are satisfied, the loyalty programme operator will be able to choose to defer the GST liability in respect of transactions that would normally be subject to GST until the redemption of the loyalty points. The standard rate of GST would therefore only be imposed on redemption if the points were being exchanged for goods or services that would not normally be zero-rated.

If the loyalty programme operator decides against utilising the proposed rules, GST will be imposed as under the current rules.

### **Consultation**

Air New Zealand was consulted, supports the proposed changes, and has no significant concerns with the preferred option.

### *Exported second-hand goods*

#### **Executive summary**

Goods that are exported from New Zealand are generally not subject to GST. This treatment reflects the policy that exported goods are zero-rated, subject to the supply meeting certain statutory requirements.

An exception applies to the export of second-hand goods if the exporter has claimed an input tax deduction (sometimes referred to as an input tax credit) when the goods were acquired. This exception is

an anti-avoidance measure that is designed to prevent arrangements that could create revenue leakage.

Exporters who deal with second-hand goods, such as scrap metal dealers, have commented that the current anti-avoidance rule is inconsistent with the wider objectives of GST, in that it imposes GST on exported goods.

The proposed change to the Goods and Services Tax Act 1985 (the GST Act) deals with this concern in a way that allows certain exported second-hand goods to be zero-rated but does not put the GST base at risk.

### **Adequacy statement**

Inland Revenue has reviewed this Regulatory Impact Statement (RIS) and considers the disclosure of information is adequate and the level of analysis is appropriate given the likely impacts of the proposal. The Regulatory Impact Analysis Unit has not reviewed this RIS as the proposal under consideration does not significantly impact on economic growth.

### **Status quo and problem**

In general, exported goods are zero-rated and this reflects the policy that goods and services consumed outside New Zealand should not be subject to GST. The general zero-rating rules that are applicable to exported goods require that:

- the goods are entered for export under the Customs and Excise Act 1996; and
- leave New Zealand within 28 days of the goods being supplied, as determined by the earlier event of the recipient paying for the goods or the supplier issuing an invoice.

An exception applies in connection with exported second-hand goods. If the exporter, or an associate of the exporter, has deducted input tax when acquiring the second-hand goods from an unregistered person, GST must be charged on the basis of the value of the second-hand goods when they were acquired. This rule is an anti-avoidance measure.

The purpose of imposing GST on the export is to reverse the original input tax deduction claimed. Any “added-value” that the supplier provides in connection with the second-hand goods may still be

zero-rated. In other words, zero-rating is denied to the extent of the second-hand goods input tax deduction claimed by the exporter.

In the absence of GST applying at a standard rate to exported second-hand goods, it is possible that no GST would be collected but the government could suffer a revenue loss equal to the amount of the second-hand goods input tax deduction. In situations where GST does not apply to certain imported goods, such as artwork, antiques, and heirlooms, it is possible that the goods could be repeatedly imported to and exported from New Zealand to take advantage of the resulting input tax deductions.

The scrap metal industry is concerned that the current legislation forces them into a less competitive position than other New Zealand exporters and has a direct impact on their profitability.

### **Objectives**

The objective is to ensure that the GST Act does not distort the export opportunities for second-hand goods that are consumed outside New Zealand but at the same time does not expose the GST base to leakage arising from transactions that repeatedly seek to exploit the deduction available on the purchase of second-hand goods.

Provided that GST has been paid at some stage during the lifecycle of the second-hand goods concerned, zero-rating should be allowed when they are exported.

### **Alternative options**

#### *Status quo*

Other options have been considered, including the status quo. One reason for maintaining the status quo is the administrative and compliance cost concerns associated with tracing the exported goods once they leave New Zealand. However, in terms of the decision to proceed with legislative change following the approach from the scrap metal industry, the economic cost of not zero-rating exported goods is considered to exceed these concerns.

The economic costs identified with not zero-rating exported second-hand goods include the different tax treatment between exports of new goods compared to second-hand goods and the impact this could have on business decisions about whether or not to export scrap or

similar waste products. The benefit received by the government in terms of protecting the GST base imposes economic costs on exporters of second-hand goods.

Because the problem affecting exporters of second-hand goods arises as a direct result of the GST Act, legislation is the only effective means for achieving the desired objective.

During consultation, 2 other legislative options were advanced by affected taxpayers for consideration. The following describes why these 2 options were not considered suitable.

#### *Commissioner discretion*

This option would give the Commissioner of Inland Revenue the power to identify specific second-hand goods which could be zero-rated.

The concern with this option is that it is inconsistent with taxpayer self assessment in that a taxpayer's determination of their tax position would depend on the exercise of the Commissioner's judgement. Consistency of application would also be a concern. This option was not considered suitable.

#### *Change for scrap metal only*

An alternative solution proposed that scrap metal, as defined in the Secondhand Dealers and Pawnbrokers Act 2004, be specifically zero-rated.

This option directly addressed the problem faced by scrap metal dealers and did not allow the type of goods that would be of concern from being zero-rated. However, its targeted application is problematic and there is little policy rationale for distinguishing between second-hand goods that are scrap metal and second-hand goods that are not scrap metal. For this reason, this option was not considered suitable.

Of the legislative options considered, including the preferred option, the identified costs and benefits were largely the same in terms of the systems necessary to support the decision to zero-rate the export.

**Preferred option**

Under the preferred option, GST-registered persons will be able to zero-rate exported second-hand goods if the following requirements are met:

- Consistent with the existing rules for zero-rating exported goods, the second-hand goods are entered for export, or will be entered for export as a condition of the supply, under the Customs and Excise Act 1996, and the supplier exports the goods within 28 days.
- The overseas recipient does not anticipate that the goods will be exported back to New Zealand by the recipient, or a person associated with the recipient, in substantially the same form in they were received. A written statement to this effect would be required at the time of supply. Affected taxpayers consider this requirement can be easily achieved as part of the purchase agreement.

To ensure that the change does not create a base maintenance risk, the current anti-avoidance rule will continue to have application if the exported goods are sold back to the exporter in substantially the same condition in which they were originally supplied.

To prevent the possibility of double taxation, the amended anti-avoidance provision would not apply if GST is collected by the New Zealand Customs Service should the goods return to New Zealand.

The benefit of the proposal is that the anti-avoidance provision is better directed at those arrangements that are of concern to the government and it also allows exported second-hand goods to be zero-rated. The export requirements imposed by the proposal to support the decision to zero-rate are a cost, but one that is generally borne by most exporters. The additional documentation requirements created by the proposal are considered necessary to balance the government's need to protect the GST base against the benefit of zero-rating exported second-hand goods.

**Consultation**

KPMG, Macaulay Metals and the Scrap Metal Dealers Association were consulted. Those consulted support the proposed change and no significant concerns were identified with the preferred option.



*Reducing tax compliance costs for  
SMEs—changes in certain tax thresholds*

**Executive summary**

In Budget 2007, the government announced plans to look at measures aimed at reducing tax compliance costs for small and medium sized enterprises (SMEs). This included the release of a discussion document for public consultation.

The discussion document, entitled *Reducing tax compliance costs for small and medium-sized enterprises* set out the scope of the review and explained that the Government retains a continued interest in ensuring tax compliance costs are minimised as SMEs represent a large portion of the economy and they tend to bear a disproportionate tax compliance cost burden.

While the focus of the potential initiatives contained within the discussion document was on SMEs, where appropriate, measures applying to businesses more widely have also been considered. Submissions were sought on the discussion document to ensure that meaningful reductions in tax compliance costs are achieved.

The main recommendations and issues considered in the discussion document were in 2 parts. The first part, and the issues to which this particular regulatory impact statement relates, discussed increases to tax thresholds. The second part related to issues that would represent more fundamental departures from the standard tax rules, and which will require a longer consultation period.

Views were therefore initially sought on certain tax thresholds. After receiving submissions and undergoing some further consultation, changes to the following tax thresholds are proposed:

- pay as you earn (PAYE) once-a-month filing and payment;
- fringe benefit tax (FBT) annual return filing;
- provisional tax use of money interest safe harbour;
- goods and services tax (GST) registration;
- GST six-monthly return filing;
- those relating to accounting for financial arrangements; and
- low-value trading stock.

**Adequacy statement**

Inland Revenue and the Treasury have reviewed this Regulatory Impact Statement (RIS), and consider that it is adequate according to the Regulatory Impact Analysis adequacy criteria.

**Status quo and problem**

Compliance with tax laws can entail significant time and costs for many businesses. Compliance costs can arise because of the variety of tax compliance activities involved (for example, performing tax calculations, seeking advice, record-keeping, filing returns, and making tax payments) and the complexity of tax law and administrative procedures. These costs often have a disproportionate impact on SMEs, which make up approximately 96% of total businesses in our economy.

Minimising tax compliance costs is an important matter for all businesses. However, research suggests that while SMEs do not bear higher compliance costs than larger businesses in absolute terms, they do bear higher relative costs. Consequently, SMEs may bear a disproportionate burden of tax compliance costs. Higher relative costs can be a barrier to economic growth for a group that constitutes the majority of New Zealand businesses. By making it easier for business to comply with their tax obligations, valuable economic resources are freed up and re-directed towards more productive activities. This should also improve voluntary compliance in the sector.

**Objectives**

The purpose of the SME discussion document and associated review is to reduce tax compliance costs for businesses operating under New Zealand tax laws in order to assist productivity and competitiveness. The emphasis is on measures that may reduce these costs for SMEs. However, where appropriate and/or feasible, measures that might apply to businesses generally are also considered.

Officials sought submissions on a number of possible measures aimed at reducing or eliminating, where possible, the activities that give rise to significant tax compliance costs for SMEs. It also looks at streamlining certain other tax compliance activities, having regard to issues such as the security of tax revenues, fiscal costs, and administrative feasibility.

The first part of this review, and the initiatives to which this particular RIS relates, deal with the variety of monetary thresholds used in defining certain tax obligations faced by taxpayers. These thresholds set limits for certain rules, generally with the aim of reducing tax compliance costs for taxpayers that fall below those limits.

Thresholds can be changed by increasing the level at which they are set and by extending the types of taxpayers that may elect to use them. From a taxpayer's perspective, changing a threshold may reduce compliance costs by reducing the number of tax returns that must be completed, by reducing the amount of information or the number of calculations required to complete each return, or by reducing the number of payments the taxpayer must make to Inland Revenue. The measures being proposed would reduce the number of interactions taxpayers have with Inland Revenue, and the amount of time taxpayers must spend on complying with tax rules.

Reducing the complexity of the tax rules means that taxpayers are less likely to require expert assistance, and are less likely to make errors. As well as reducing tangible costs, such as hours spent and expenditure on accounting fees, reducing the complexity of the tax rules can reduce the stress associated with completing tax requirements.

### **Alternative options**

A range of threshold related options were considered, taking into account the number of businesses that fall within applicable thresholds, together with the need, where appropriate, to ensure that thresholds are kept in line with inflation.

Changes to the threshold for the change in use adjustment for GST were considered but, after taking into account the costs involved, submissions made, and the relative benefits likely to arise, these were not considered appropriate at this time. A GST registration threshold of \$60,000 was also considered, but it was felt that a lower threshold was more appropriate to the maintenance of a GST system that applies at a low rate to a very broad range of goods and services.

Other non-threshold related options for reducing compliance costs for SMEs are also still being considered. These include:

- consideration of a single threshold for certain concessions;

- introducing a de minimis threshold under which legal expenses are fully deductible;
- introducing a de minimis threshold under which deductions for entertainment expenses are allowed in full;
- introducing a category of restricted private-use motor vehicles for SMEs for FBT purposes by setting the basis for valuing private use at 10% of cost (rather than the current 20%) and phasing out the exemption for work-related vehicles;
- simplifying record-keeping requirements for recording private use of motor vehicles for FBT purposes;
- simplifying GST invoice disclosure and other requirements; and
- introducing various tax administration initiatives, such as changing certain processes including correcting minor errors in subsequent returns, using the GST ratio to pay provisional tax, and reviewing the PAYE intermediary subsidy.

**Preferred option**

The preferred option is to as the following changes:

- the threshold for PAYE once-a-month filing and payment to increase from \$100,000 to \$250,000 (based on annual PAYE deductions);
- the threshold for FBT annual return filing to increase from \$100,000 to \$250,000 (based on annual PAYE deductions);
- owner-employees of closely held businesses to file FBT returns annually, regardless of their annual PAYE deductions, when their FBT liability is for no more than 2 vehicles;
- the safe harbour threshold for provisional tax use of money interest (UOMI) to increase from \$35,000 to \$50,000 (based on annual residual income tax);
- the GST registration threshold to increase from \$40,000 to \$50,000 (based on annual GST turnover);
- the GST six-monthly return filing threshold to increase from \$250,000 to \$500,000 (based on annual turnover);
- non-individuals to be allowed to return income tax for financial arrangements on a cash accounting basis, and the threshold for straight line accounting to increase from \$1.5 million

to \$1.85 million (based on the total level of financial arrangements); and

- the threshold for the exemption from adjustments for low value trading stock to increase from \$5,000 to \$10,000 (based on the value of trading stock).

The application date for these measures is 1 April 2009.

### Consultation

Officials from Inland Revenue, the Treasury and the Ministry of Economic Development undertook preliminary consultation on the various options included in the discussion document. Those consulted included the Small Business Advisory Group, New Zealand Institute of Chartered Accountants, Business New Zealand, New Zealand Chambers of Commerce and Industry, and Tax Agents' Institute of New Zealand. Various submissions on the issues in the discussion document were also received from interested parties.

### *Tax treatment of reimbursements and honoraria paid to volunteers*

#### Executive summary

In the absence of explicit rules on the tax treatment of reimbursements paid to volunteers, a range of practices has developed, with the result that volunteers and organisations are confused about their tax obligations and are incurring unnecessary compliance costs. To address these problems the following key changes are proposed:

- Reimbursements that are based on actual costs incurred by a volunteer should be treated as exempt income with no limits. This would include reimbursements based on a reasonable estimate of expenses likely to be incurred by the volunteer; reimbursements in non-cash form such as petrol vouchers, and reimbursement of transport costs incurred in the course of volunteering, as well as transport costs incurred in getting to and from the place of volunteering.
- Honoraria will continue to be taxable but if an organisation pays honoraria including reimbursements to a volunteer, that organisation would be required to pay the reimbursements separately from honoraria if the volunteer is to gain the advantage of the exempt income treatment of the reimbursements.

**Adequacy statement**

Inland Revenue and the Treasury confirm that the Code of Good Regulatory Practice and the regulatory analysis requirements, including the consultation RIA requirements, have been complied with.

**Status Quo and problem**

New Zealand income tax law does not explicitly address the issue of the taxation of reimbursement payments to volunteers. However, under a strict interpretation, such payments are considered income and the relevant expenses deductible. That means the income should be stated and expenses claimed in the person's income tax return.

A number of pragmatic approaches have, however, developed in respect of such payments when made to volunteers; from treating them as withholding payments and deducting tax at source, to ignoring them as if they were exempt income. The latter treatment assumes that the costs incurred equal the reimbursement received so that the net effect is no tax to pay. As a result of the lack of clarity and varied practices, volunteers and the organisations that use their services are confused and often anxious about their tax obligations, and are incurring unnecessary compliance costs.

Honoraria are withholding payments from which the payer, under current law, must deduct tax at the rate of 33 cents in the dollar. However, a practice has developed over time of payments that are characterised as honoraria sometimes including reimbursements along with a fee for service, or they may even be wholly reimbursement payments.

Since the tax deducted from honoraria is not a final tax, recipients must still file a tax return and claim any expenses incurred as a deduction before their tax position can be finalised.

**Objectives**

The objectives for reform of this area of tax law were to:

- determine the appropriate tax treatment of reimbursement payments made to volunteers;
- ensure that the law is clear and simple to apply;

- minimise, as much as possible, the compliance costs associated with return filing for volunteers and for the organisations for which they carry out their voluntary activities; and
- propose a basis on which payments to volunteers characterised as honoraria, which are actually reimbursements for costs incurred, can be removed from the withholding payments regime.

### Alternative options

#### *Setting a threshold up to which reimbursements would be treated as exempt income*

Under this option, a threshold would be set that represents a “reasonable” amount for the reimbursement of any actual costs incurred. Reimbursement payments up to that level would be treated as exempt income and volunteers would not be required to include those payments in their income tax returns. Payments in excess of the threshold would have to be included in the volunteer’s income tax return and claimed expenses would have to be supported by documentary evidence of costs incurred before they would be allowed as a deduction.

This option would clarify the tax treatment. However, while a threshold would achieve the objective of minimising compliance costs for some individuals and organisations, it would not be effective for others. This was the view of almost three quarters of the submitters on the officials’ issues paper *The tax treatment of honoraria and reimbursements paid to volunteers*. It would also be difficult to justify a different tax treatment of payments that have similar features purely on the basis of their cumulative monetary value over a tax year.

#### *Treating reimbursements not based on actual costs as exempt income up to a threshold*

To mitigate the risks associated with reimbursements based on an estimation of costs that had been or would be incurred by volunteers the issues paper proposed that a cap could be imposed on that type of payment. However, this was not widely supported and would have

been inequitable for volunteers when compared with the treatment of reimbursements paid to employees.

*Claiming costs incurred as donations for the purposes of the donations rebate*

Under this option, volunteers would be able to claim costs incurred in the course of volunteering, which have not been reimbursed, as donations for the purposes of the donations rebate. This option was suggested in some submissions on an earlier discussion document and is the approach taken in the USA. However, it was not supported by officials and not canvassed further in the issues paper because:

- it would increase compliance costs for both volunteers and their organisations;
- there would be an incentive for organisations not to reimburse their volunteers so the volunteers would continue to be “out of pocket” until they could claim their rebate after the end of the tax year; and
- volunteers who were reimbursed would not be relieved of tax filing obligations.

*Honoraria to be tax-free up to a threshold of \$1,000 per annum*

Under this option, volunteers and organisations would be relieved of the compliance costs associated with return filing for honoraria payments until the total paid reached a threshold, which was proposed to be \$1,000 per annum. A partial tax exemption for honoraria would have to be implemented on a per volunteer per organisation basis as an organisation would not know what withholding tax was being deducted by another organisation. This could have the effect of increasing the exemption available to individual volunteers to above \$1,000 if they were receiving honoraria from more than 1 organisation and was regarded as an unacceptable revenue risk.

In addition, as for the option of a threshold for reimbursements, it would also be difficult to justify a different tax treatment of payments that have similar features purely on the basis of their cumulative monetary value over a tax year.



*Withholding tax deducted from net honoraria paid to volunteers*

Under this option the payer of an honorarium would be required, on an individual basis, to calculate the portion of an honorarium that represents expenses that have been, or will be, incurred. The payer would be required to deduct withholding tax only from the net amount.

This option would require payers to know in advance what expenses are likely to be incurred so they can correctly calculate the taxable portion of the honorarium, and the amount of withholding tax. This would significantly increase up-front compliance costs for payers of honoraria to volunteers. On the other hand, this option would be likely to eliminate compliance costs for some volunteer recipients of honoraria because they would no longer need to file an income tax return solely to claim a deduction for their expenses.

All except 1 of the submissions on the issues paper that commented on this option were opposed to the option, with most citing compliance costs as their main concern.

**Preferred options***Reimbursements paid to volunteers*

Our preferred option for the treatment of reimbursements paid to volunteers is that:

- Reimbursement payments that are based on actual costs incurred by volunteers should be treated as exempt income with no limits.
- If a paying organisation puts in place a process for making a reasonable estimate of the costs likely to be incurred by a volunteer in a given period, then payments made to the volunteer based on that estimate would also be treated as exempt income. This would include reimbursements in non-cash form such as petrol vouchers. The proposed treatment would also include reimbursement of transport costs incurred in the course of volunteering, as well as transport costs incurred in getting to and from the place of volunteering.

The proposed treatment would put volunteers in a no less advantageous position than employees.

Some concern was expressed about the risk that flat-rate reimbursements could be used to re-characterise payments that should be treated as income. The indications are that few, if any, organisations pay a regular flat rate reimbursement amount based on an estimation of actual or expected costs. It is to mitigate that risk that the payer of such reimbursements would be required to make, for a relevant period, a reasonable estimate of expenditure likely to be incurred by the volunteer for which reimbursement is payable. The estimated amount, when paid, would then be treated as exempt income similar to reimbursements based on actual costs.

It should also be a matter for the paying organisation to have in place adequate controls and records on which to base reimbursement payments that will satisfy audit requirements.

There is no evidence of what, if any, tax is currently collected in respect of pure reimbursement payments and the information gained through an independent survey is that almost invariably the costs incurred by volunteers far exceeded any reimbursement that they received. The estimated loss of future tax revenue would be outside the range of significant fiscal impacts.

The proposed treatment will almost entirely eliminate compliance costs in relation to reimbursement for volunteers and minimise compliance costs for the paying organisations.

Implementing the proposed changes will require amendments to the Income Tax Act 2007 and the Tax Administration Act 1994.

#### *Honoraria paid to volunteers*

We propose that honoraria should continue to be treated as taxable income and subject to withholding tax at source.

However, if an organisation pays honoraria including reimbursements to volunteers, that organisation would be required to pay the reimbursements separately from honoraria if the volunteers are to gain the advantage of the exempt income treatment of the reimbursements.

Under this option, volunteers would be able to receive the full value of the reimbursement of the costs they have incurred, rather than wait until they file a tax return at the end of the year.

The total revenue cost of the proposals relating to volunteer reimbursements and honoraria is estimated to be in the range of \$2.3 mil-

lion to \$3.3 million. This is based on an estimation of the portion of the tax currently withheld from honoraria that represents tax on reimbursements and that would not be collected in future under these proposals. The total level of tax revenue collected through honoraria payments is estimated at \$7 million per annum so this is the maximum exposure to the revenue base.

### Consultation

The following agencies were consulted in the development of the issues paper and presentation of policy proposals to Ministers: The State Services Commission, the Office of the Community and Voluntary Sector, the Department of Internal Affairs, the Ministry of Education, Sport and Recreation New Zealand, Te Puni Kokiri, the Ministry of Social Development, and the Department of Labour.

The officials' issues paper was published on the Inland Revenue Policy Advice Division's website and widely promoted through key sector organisations.

The policy proposals were also informed by the findings of researchers from Victoria University of Wellington, School of Accounting and Commercial Law published in their report *Tax and volunteering: empirical evidence to support recommendations to solve the current problems surrounding the tax treatment of volunteers' reimbursements and honoraria in New Zealand*.

### *Payroll giving scheme*

#### Executive summary

In Budget 2007, the government announced plans to look at several measures aimed at laying the foundation for a stronger culture of charitable giving in New Zealand. Among those measures was the release of a discussion document on the implications of introducing a before-tax payroll giving scheme in New Zealand, for public consultation.

The discussion document entitled *Payroll giving: providing a real-time benefit for charitable giving*, considers 2 options for implementing a before-tax payroll giving in New Zealand, as well as possible measures for supporting employers to choose to offer payroll giving to their employees.

The preferred option (PAYE credit mechanism) would deliver an immediate tax benefit to the employee consistent with the current charitable rebate. This option has the added advantage in that it does not alter the level of an employee's taxable income and therefore does not impact on the employee's social policy entitlements and obligations that use taxable income as the basis of their calculations.

### **Adequacy statement**

Inland Revenue and the Treasury have reviewed this Regulatory Impact Statement (RIS), and consider that the Statement is adequate according to the Regulatory Impact Analysis adequacy criteria.

### **Status quo and problem**

In New Zealand, payroll giving is neither well known nor widely practised. Even so, a small number of employers have established payroll-giving relationships with individual donee organisations and with United Way. Donations are made from the after-tax pay of the employee. Many employers that currently offer a post-tax payroll-giving scheme are trans-Tasman employers. Individual donee organisations are also running, investigating, or developing payroll-giving programmes. A donee organisation is an entity or trust whose activities are not carried out for the private pecuniary profit of any individual and whose funds are applied principally for charitable, benevolent, philanthropic, or cultural purposes in New Zealand. For donee organisations, payroll giving is an efficient, low-cost way to raise funds and delivers the regular income support they need.

Under the current law, as long as they keep records, employees can claim the tax benefit of payroll donations at the end of the year through the current rebate process, like any other charitable donation.

The government is interested in exploring the merits of a before-tax payroll giving system. A before-tax payroll giving system enables employees to make regular financial contributions from their gross pay to philanthropic and charitable causes and receive an immediate tax benefit on their donations at each payday. Such a system would remove the need for employees to retain receipts and file end of year rebate claim forms. This type of scheme operates in the United Kingdom and Australia.

### **Objectives**

The objective is to implement a before-tax payroll giving system that enables employees to make regular financial contributions from their gross pay to philanthropic and charitable causes and receive an immediate tax benefit on their donations at each payday. Such a system should not raise undue costs and should be easy to administer for employers who choose to offer payroll giving to their employees. Any system of payroll giving should be equitable.

It is envisaged that any before-tax payroll giving system would be voluntary for employers and employees and would operate alongside the current rebate process. Therefore, for employees who do not or are notable to give through payroll giving they can still claim tax relief on their charitable donations through the current rebate claim process.

### **Alternative options**

The alternative option is the tax deduction mechanism. Under this option, payroll donations would be deducted from an employee's gross pay each payday before the imposition of PAYE. This would essentially reduce the amount of the employee's taxable income by the amount of the donation, and the employee would receive an immediate tax benefit as no tax would be paid on the donation amount. This would mean that the tax value of charitable donations to donors would be determined by the employee's marginal tax rate. For example, if the employee is on a 19.5% tax rate, then the tax benefit they would receive from the deduction would be 19.5% for every dollar donated to a donee organisation through payroll giving. A person on a 39% tax rate would receive a tax benefit of 39% for every dollar donated to a donee organisation. This delivers a different tax benefit to the current rebate system which is a flat rate of 33 $\frac{1}{3}$ % for all donors. An employee's social policy entitlements and obligations that use taxable income as the basis of their calculations would be affected by this option. Deducting the donation amount from the employee's gross pay would, in effect, reduce his or her taxable income. For example, a reduction in an employee's taxable income could result in a decrease in their child support liabilities and student loan repayments, and an increase in their Working for Families tax credit entitlements.

In addition, the employee's ACC earner premium would be reduced and the low income rebate would increase.

KiwiSaver employee contributions would also decrease as a result of donations made through payroll giving under this option. KiwiSaver employer contributions would likewise decrease.

The compliance costs associated with this option for employers would be minimal as they would only be required to deduct the donation amount from the employee's gross pay. No extra information would be required to be collected through the employer monthly schedule, instead relevant information would be collected at the end of the year through an additional form. The extra form would contain information on the total amount of donations collected during the year through payroll giving.

Employees would not be required to retain donation receipts or file end of year rebate claim forms in order to claim the benefit of their charitable donations. Employees would also be able to receive the tax benefit of their payroll donations each payday.

### **Preferred option**

The preferred option would require employers to calculate a PAYE credit of 33 $\frac{1}{3}$ % on the amount of the donation and would offset this amount against the PAYE calculated on the employee's gross pay each payday.

Under this option, it is intended that all employees would receive a tax benefit of 33 $\frac{1}{3}$ % for every dollar donated to a donee organisation through payroll giving, irrespective of their marginal tax rate. This option would deliver an immediate tax benefit to the employee consistent with the current charitable rebate, without altering the level of their taxable income.

This option would have no impact on an employee's current social policy entitlements and obligations that use taxable income as the basis of their calculation. Similarly, as the employee's PAYE is still calculated on their pre-donation gross pay amount there would be no impact on the PAYE calculation, the ACC earner premium, and the low-income rebate would not be affected.

The compliance costs for employers would be greater under this option, compared with the tax deduction mechanism, as employers would have extra calculations to perform at each pay period and

would need to supply the donation and/or PAYE credit amounts through the employer monthly schedule. Anecdotal evidence suggests that this would be relatively easy for employers with computerised payroll systems.

The compliance costs for employees under option 2 would depend on their level of giving. For most employees they would not be required to retain donation receipts or file end of year rebate claim forms in order to claim the benefit of their charitable donations. They would receive the tax benefit of their payroll donations each payday. However, under this option, it is possible that an employee might not receive the full benefit of their payroll donations on each payday. This would occur when the PAYE credit exceeds the PAYE amount calculated on the donor's gross pay each pay day. For example, a donor earns \$400 each payday and gives more than 50% of their pay to charity. In this instance, the PAYE credit would exceed the actual PAYE calculated. Similarly, for a donor earning \$1,100 each payday, this problem would occur if the donor gave 76% of their pay to charity each payday. In order to address this problem, the donor could be permitted to make a claim for any unused portion of the PAYE credit at the end of the year. While this would ensure that the employee receives the full tax benefit of their charitable donations made through payroll giving, it would increase the compliance costs for the affected employees.

### Consultation

The proposed system of payroll giving arose from the discussion document *Payroll giving: providing a real-time benefit for charitable giving*, which was issued for public comment in November 2007.

A total of 36 submissions were received from a wide range of people and organisations. These included individual donors, charities and other non-profit organisations, sector advisors, tax specialists, Crown entities, and overseas organisations involved in the non-profit sector. Most of the submissions were from umbrella organisations from the non-profit sector. ANZ National Bank Ltd, Business NZ, and the New Zealand Manufacturers and Exporters Association provided the "employer perspective" in submissions.

Feedback from consultation on the discussion document confirmed that there is strong support for the concept of a voluntary before-

tax payroll giving system for New Zealand. Submissions considered that payroll giving would make it much easier for employees to make regular, voluntary contributions to their favourite charities, and would also provide charities with a low cost, on-going source of funding. Some businesses see the introduction of payroll giving as part of their corporate social responsibility work. However, there was serious concern for the potential compliance cost burden on employers.

In preparing the Cabinet submission the following departments were consulted: Department of Internal Affairs, the Ministry of Culture and Heritage, the Ministry of Economic Development, the Ministry of Maori Development, the Office of the Community and Voluntary Sector, Sport and Recreation New Zealand, and the Charities Commission.

Those consulted were generally supportive of the concept of payroll giving. Most of them preferred the alternative option for its simplicity and its potential ability to encourage higher income earners to give more.

### *Removal of section 13 of the KiwiSaver Act 2006*

#### **Executive summary**

It is proposed that section 13 of the KiwiSaver Act be removed in order to:

- avoid repeated automatic enrolment of individuals transferring between schools in the state and state integrated schools sector;
- alleviate KiwiSaver administration issues faced by state and state-integrated schools and the Ministry of Education.

This change to the Act results in minor reconfiguration of business processes and reduces administrative processes and costs.

#### **Adequacy statement**

The Ministry of Education confirms that the principles of the Code of Good Regulatory Practice and the regulatory impact analysis requirements, including the consultation requirements, have been complied with. Formal review by the Regulatory Impact Assessment Unit of the Ministry of Economic Development has not been sought as the



regulatory impact is considered to be of a minor nature and does not substantially alter existing arrangements. The changes deal with administrative procedures between departments, and do not impact on business, consumers, or the public.

### **Status quo and problem**

The KiwiSaver Act 2006 (Act) section 13, currently establishes the Boards of Trustees for some 2500 state and state-integrated schools (schools) as the employer in terms of the Act. This results in repeated automatic enrolment of staff transferring between schools and consequential KiwiSaver administration workload.

Amendments to the Act that establish a single employer for staff in the state and state-integrated schools sector would avoid the repeated automatic enrolment of staff transferring between schools and reduce KiwiSaver administration workloads.

### **Objectives**

The objective of the proposed changes is to remove the necessity to automatically enrol staff transferring between schools.

### **Alternative options**

#### *Option 1*

Automatically enrol staff once as they enter the education sector for the first time. Automatic enrolment would not apply in the case of movement between schools. This can be achieved by removing section 13 from the Act and establishing the Ministry of Education as the designated single employer for KiwiSaver purposes.

#### *Option 2*

Split the employer status between Boards of Trustees and the Ministry of Education. This can be achieved by amending section 13 of the Act to provide for Boards of Trustees to be deemed the employer for auto-enrolment purposes, and the Ministry of Education deemed to be the employer for all other purposes of the Act.

**Preferred option**

Option 1, removal of section 13 from the Act, is the preferred option as it provides the least ambiguous and is most easily administered.

Removal of section 13 allows automatic enrolment within the state and state-integrated schools sector to function as it does in the wider employment community.

Implementation of the changes would be achieved in 3 stages:

1. Securing Cabinet approval to remove section 13 from the Act.
2. Make needed legislative changes in this bill.
3. Undertake targeted communications to ensure schools understand the purpose, nature, and extent of the changes.

**Consultation**

Officials from the Treasury, Inland Revenue, and Ministry of Education have jointly developed advice to Ministers.

*Reforming the definitions of associated persons***Executive summary**

The income tax associated persons definitions are mainly used in an anti-avoidance capacity to counter non-arm's length transactions that could undermine the intent of our tax laws. There are a number of major weaknesses in the general associated persons definition and, in particular, the definition which applies for land sales. The legislative intent of the land sale tax rules is that property developers and their associates are generally taxed on all gains on property sold within 10 years of acquisition, and that they cannot claim to hold non-taxable investment portfolios. However, the definition of associated persons which applies to land sales contains some major loopholes which allow property developers to escape tax while still operating through closely connected entities.

The preferred option would involve changes to the income tax legislation to address these weaknesses in the associated persons definitions. The main changes would be:

- Addressing the weaknesses in the current definitions in relation to trusts. In particular, there would be new tests focussing on a trust's settlor, that is, the person who provides the trust property.

- Having more robust rules aggregating the interests of associates, to prevent the tests for associating 2 companies and a company and an individual being circumvented by the fragmentation of interests among close associates.
- Having a tripartite test associating 2 persons if they are each associated with the same third person, thereby making the associated persons tests as a whole more difficult to circumvent.

The preferred option would also rationalise the current 4 income tax definitions of associated persons and other income tax definitions employing a similar concept.

#### **Adequacy statement**

Inland Revenue has reviewed this Regulatory Impact Statement (RIS), and considers that the statement is adequate according to the Regulatory Impact Analysis adequacy criteria.

#### **Status quo and problem**

New Zealand tax law often subjects transactions between associated persons to special scrutiny because these transactions can pose a substantial risk to the tax base. Transactions between associated persons may involve tax practices that undermine the intent of our tax laws because such transactions are more likely to be non-arm's length than other transactions.

There are 4 separate definitions of "associated persons" which are used extensively in the Income Tax Act 2007 (the Act), often in an anti-avoidance capacity. There are also a number of other definitions, such as the "related persons" definition in the dividends rules, which employ a similar concept. To date, there has been no comprehensive review of the associated persons definitions to ensure that the Act has a coherent overall approach to defining "associated persons".

The most important application of the associated persons definition in the Act is in the area of land sales. Parliament decided in 1973, when it enacted the current land sale tax rules, that land dealers, developers, and builders cannot generally hold land on capital account. This means that gains on land sold by these taxpayers within 10 years of acquisition are generally taxed. This legislative intent is clear from the parliamentary debates.

The land sale tax rules are buttressed by associated persons rules to prevent developers escaping tax by structuring ownership of their property through close associates.

There are major weaknesses in the current general associated persons definition and, in particular, the definition which applies for land sales. For example, a property developer may arrange for the trust, settled by the developer and under which the developer is a beneficiary, to acquire land. Under the current associated persons rules, the property developer is not associated with the trust so the trust is not automatically caught by the land sale provisions on the subsequent sale of the land. The policy intent would be that such arrangements are caught. However, due to weaknesses in the rules, they are not.

These weaknesses in the associated persons definitions affect the integrity of the tax system. Taxpayer confidence in the system is undermined if there is a perception that others are not paying their fair share of tax by taking advantage of such loopholes. This perception, in turn, may adversely affect taxpayer behaviour.

### **Objectives**

The main objective is to close the loopholes in the Act's definitions of associated persons and thereby promote key themes of the Government's tax policy work programme, which are ensuring that the income tax system is robust and that it does not unduly distort investment behaviour. Another objective is to rationalise the various income tax definitions of associated persons and thereby make the tax law more coherent.

### **Alternative options**

There are no alternative options to the preferred legislative option. Because the current income tax associated persons definitions are in legislation, legislative change is the only option available to achieve the desired policy objectives.

### **Preferred option**

The preferred option involves a number of legislative changes to address the current weaknesses in the associated persons definitions. The main changes involve:

- Addressing the current weaknesses in the current definitions in relation to trusts. The new tests would focus on a trust's settlor, that is, the person who provides the trust property.
- Having more robust rules aggregating the interests of associates to prevent the tests for associating 2 companies and a company and an individual being circumvented by the fragmentation of interests among close associates.
- Having a tripartite test associating 2 persons if they are each associated with the same person, thereby making the new associated persons tests more difficult to circumvent.

The preferred option would also involve rationalising the current 4 income tax definitions of associated persons and other income tax definitions employing a similar concept, such as the definition of "related persons" that is used in the dividend rules.

### **Consultation**

Inland Revenue and Treasury officials released an issues paper on suggested changes to the definitions of associated persons in the Act in March this year. A total of 812 submissions were received on the issues paper – 657 of these were template letters. The focus of nearly all the submissions was on the impact of the proposals on land sales. Further discussions have been held with a range of submitters. The legislative changes under the preferred option include modifications arising from the consultation process which are designed, in particular, to prevent the changes applying more widely than intended.

#### *Minor, remedial, or consequential matters*

### **Compliance cost implications**

#### *Tax pooling*

There are currently 4 tax pooling intermediaries. Some intermediaries may have to incur compliance costs in changing their processes to ensure they comply with the original intent of the tax pooling rules.

They will also have to incur compliance costs in providing for the transfer of funds from a tax pooling intermediary to another intermediary. However, this change will facilitate competition amongst intermediaries, so the benefits of the change will be considered by most to outweigh the compliance costs.

All tax pooling intermediaries will have to change their systems to enable taxpayers to access and use tax pooling funds for reassessments, voluntary disclosures, or resolution of disputes for all tax types. This change is supported by tax pooling intermediaries and that taxpayers will benefit from the changes. It is considered that the compliance costs faced by taxpayers will be outweighed by the benefits of the change.

Taxpayers who previously could not access tax pooling funds to pay tax outstanding as a result of a reassessment will now benefit from being able to do so for future assessments.

#### *Migrant workers*

There are not expected to be any additional compliance costs faced by employers who are currently complying with their PAYE obligations. Migrant workers will benefit from having the correct tax deducted during the year and not having to file a tax return. Inland Revenue administrative systems will also be amended to make it easier for migrant workers to obtain an IRD number and to complete a tax code declaration.

#### *General insurance*

The proposed reform will require general insurers to understand the new rules and update work programmes and spreadsheets. However, these changes and their associated compliance costs are expected to be minor and apply to a relatively small number of large businesses which are already expert in general insurance taxation.

#### *Banking continuity*

There is not expected to be any additional compliance costs as a result of the recommended amendments.

*Depreciation remedials and petroleum mining*

The amendments ring-fencing petroleum mining expenditure incurred through a foreign branch may impact on New Zealand petroleum miners undertaking operations in other countries. Given the base maintenance concerns, the measure is warranted given the potential revenue risk.

The changes to the tax depreciation rules and to the remaining changes to the petroleum mining rules are considered to be of a minor or machinery nature. There is not expected to be any additional compliance costs as a result of the recommended amendments.

*Emission trading scheme*

Business' compliance costs will increase as a result of the introduction of the emission trading scheme and the consequent need to acquire and surrender emission units. However, the tax proposals have been developed with a view to minimising compliance costs.

*GST zero-rating*

Zero-rating the supply of emission units has the lowest compliance costs of any of the alternatives considered, as it will be relatively straightforward for businesses to implement and does not require any attribution of GST input tax.

*Income tax treatment*

The additional compliance costs of the income tax proposals are not expected to be significant, particularly once markets develop and information on the market value of units becomes readily available. Two issues do arise. First, the tax treatment of the award of "free" units, which is that the income is recognised over time, is likely to be different from the accounting treatment. Unfortunately, the accounting standards bodies have not yet finally determined what the correct accounting treatment should be and a variety of approaches are being used internationally. Secondly, the very small number of taxpayers who have both forestry and non-forestry activities will need to apply 2 different sets of tax rules.

## **Administrative cost implications**

### *Tax pooling*

The administrative costs of changing and extending the provisional tax pooling regime are estimated to be: \$510,000 in the 2008–09 financial year, with associated depreciation costs of \$69,120 per annum in future years. All administrative costs associated with this initiative were considered by joint Ministers at the Budget bilateral on 13 February. A level of funding was approved for all Revenue initiatives including tax pooling. Funding for this initiative will be applied through Inland Revenue’s internal funding process.

### *Migrant workers*

The administrative costs of implementing the changes in the 2008–09 financial year are estimated to be \$310,000. There will be associated depreciation costs of \$29,160 per annum in future years. The administrative costs for the 2008–09 financial year and future depreciation were considered by joint Ministers at the Budget bilateral on 13 February. A level of funding was approved for all Revenue initiatives including migrant workers. Funding for this initiative will be applied through Inland Revenue’s internal funding process. From the 2009–10 financial year onwards the non-depreciating costs will be met from within Inland Revenue’s baseline funding.

### *General insurance, banking continuity, petroleum mining, and depreciable land improvements*

There is not expected to be any additional administrative costs associated with these proposals.

### *R&D remedial matters*

Some minor reductions in administrative costs for Inland Revenue should result from these amendments.

### *Emission trading scheme*

There will be some inevitable marginal increases in administrative costs as a result of the introduction of the emissions trading scheme. Administrative costs associated with this initiative will be funded through Inland Revenue’s internal funding process.



## Consultation

### *Tax pooling*

In relation to the proposed changes to the provisional tax pooling regime, the Treasury, the New Zealand Institute of Chartered Accountants, Tax Management New Zealand, Electronic Tax Exchange Ltd, and Provisional Tax Finance Ltd have been consulted.

### *Migrant workers*

The Department of Labour, the Treasury, and Horticulture New Zealand were consulted on this proposal.

### *General insurance*

The Treasury and the body that represents the majority of the general insurance industry, the Insurance Council of New Zealand, were consulted on this proposal.

### *Banking continuity*

The Treasury was consulted on this proposal.

### *Petroleum mining*

The Treasury, the Ministry of Economic Development, and Crown Minerals were consulted on the proposed changes.

### *Depreciation remedials*

The Treasury and the New Zealand Institute of Chartered Accountants have been consulted on these proposals.

### *KiwiSaver*

Inland Revenue, the Treasury and the Ministry of Economic Development have been consulted on these proposals. Officials will consult with the superannuation industry in the development of the legislation.

*Nuie joint ventures*

Inland Revenue, the Treasury, the Ministry of Foreign Affairs and Trade, and the Department of the Prime Minister and Cabinet have been consulted on this proposal.

*Amendments to the PIE rules for land-owning companies*

Inland Revenue and the Treasury have been consulted on this proposal.

*Research and development remedial matters*

Inland Revenue, the Treasury, the Ministry of Science, Research and Technology, and the Corporate Taxpayers Group have been consulted on these proposals.

*Emission trading scheme*

Tax policy officials issued a paper titled *Emissions Trading – Tax Issues* in September 2007 which discussed both the potential GST and income tax treatment of emission units. A number of submissions on the proposals in that paper were received. Those submissions were considered in developing the proposals set out above.

Specific discussions have been held with the Institute of Chartered Accountants and some of the submitters.

The Treasury, Inland Revenue, and the Emissions Trading Group were consulted on the emissions trading proposals.

*Application of the non-disclosure right to discovery*

The Crown Law Office, the Ministry of Justice, the New Zealand Institute of Chartered Accountants, the New Zealand Law Society, Inland Revenue, and the Treasury were consulted on this proposal.

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*Hon Peter Dunne*

# **Taxation (International Taxation, Life Insurance, and Remedial Matters) Bill**

Government Bill

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

**1 Title**

This Act is the **Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2008**.

**2 Commencement**

5

- (1) This Act comes into force on the day on which it receives the Royal assent, except as provided in this section.
- (2) **Section 519(4)** is treated as coming into force—
  - (a) in relation to the Parliamentary Service, on 1 October 1986: 10
  - (b) in relation to the Office of the Clerk of the House of Representatives, on 1 August 1988.
- (3) **Sections 621 and 622** are treated as coming into force on 1 April 1993.
- (4) **Sections 618 and 620** are treated as coming into force on 1 April 1995. 15
- (5) **Section 623** is treated as coming into force on 1 April 1997.
- (6) **Sections 485, 616, 617, 619** are treated as coming into force on 1 October 2001.
- (7) **Sections 436(1), 463(1), 478(1), 479(1) and (3), 544, 545, 547, 548, 549, 556, 557, 613(2), (11), and (14), 614, and 625** are treated as coming into force on 1 April 2005. 20
- (8) **Section 479(2)** is treated as coming into force on 1 October 2005.
- (9) **Sections 546, 555, 613(3), (5), (6), and (10)** are treated as coming into force on 1 April 2006. 25

- (10) **Sections 478(2) and 479(4)** are treated as coming into force on 3 April 2006.
- (11) **Sections 543, 563, 564, 565(1), (3), and (4), 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 589(2), 610, and 613(9)** are treated as coming into force on 5  
1 April 2007.
- (12) **Sections 533, 540, and 613(4)** are treated as coming into force on 1 July 2007.
- (13) **Sections 449, 460, 463(3), 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589(1), 590, 591, 592, 593, 594, 595, 596, 597, 598, 602, 603, 604, 605, 606, 607, 608, 609, 611, 612, and 613(13)** are treated as coming into force on 1  
10 October 2007.
- (14) **Section 552** is treated as coming into force on 1 December 2007. 15
- (15) **Sections 470(2), 502(2), 550, 599, and 600** are treated as coming into force on 19 December 2007.
- (16) **Section 551** is treated as coming into force on 4 March 2008.
- (17) **Sections 14, 15(1) to (3) and (5), 20, 21, 27, 29, 33, 34, 35, 37, 38, 42, 43, 47, 49, 70, 71, 72, 73, 74, 75, 76(1), (3), and (5), 77(1) and (3), 78(1) and (3), 79, 86, 87, 93, 94, 95, 96, 97, 100, 101, 102(1), 103, 104, 107, 108, 116(1), 122(9) and (16), 127, 128, 129, 130, 131, 132(1) to (3), (5) to (7), and (9), 133, 134, 135(1) to (3) and (5) to (9), 136(1) to (3) and (5) to (9), 137, 138(1), 139(1), (2), and (4), 148, 151, 153, 159(3), 161(1) and (2), 166(1), (3), and (4), 177(4), 179, 180, 181(1), 182(1), 185, 186(1), 194, 196, 197, 198, 201(1), 204, 205(3), 206, 207, 208, 209, 210, 211, 212, 213, 215, 216(2), 219, 223(1), 224, 226, 227, 231, 234, 237(1), (2), and (4), 242, 243, 244, 245, 246, 247, 248, 250, 251(1), (3), and (4), 252, 258(1), 259, 262, 263, 268(1) and (2), 270, 273(2), 275, 279(2), 280(2), 281, 282, 284, 286(1), 287(2), 296, 307(1), 325, 326, 327, 328, 329, 331(2), 336(3), 337, 339, 343(2), 349, 371, 377, 380, 381, 382, 385, 386, 387(1) to (4) and 35  
(6), 388, 394, 397, 399, 400, 401, 408(5), (7), (28), (32), (37), (40), (42), (57), (59), (63), (67), (78), (88), (93), (94), (95), (96), (97), (98), (100), (107), (111), (115), (117),**

**(118), (128), (133), (134), (136), (138), (141), (142), and (152), 410, 411, 412, 413, 416, 417(1) and (3), 418, 419, 420, 423, 424, 428, 429, 430, 433(3), 434(4), 435, 446, 451, 455, 459, 462, 463(2), 466, 467, 472, 474, 475, 476, 478(3), 479(5), 480, 481, 482, 483(1), 490, 491, 495, 498, 499, 508, 509, 511, 516, 517, 530, 535, 536, 537, 538, 553, 554, 558, 559, 560, 561, 562, 565(2), 613(7), (8), and (12), and 626** are treated as coming into force on 1 April 2008.

- (18) **Sections 22, 46, 62, 64, 65, 69, 89, 90, 91, 92, 229, 230, 408(58), 470(1), 471, 473, and 541** are treated as coming into force on 1 July 2008.
- (19) **Sections 5, 6, 13(2) and (3), 16, 17, 19, 25, 26, 30, 32, 53, 54, 55, 60, 66, 67, 80, 98(3) and (4), 102(2), 116(2), 117, 118, 119, 121, 122(1) to (8), (11) to (15), and (17), 123, 124, 125, 126, 132(8) and (11), 138(2) and (3), 147, 154(1) and (2), 155(1) and (2), 156, 157, 158, 159(1), (2), (4), and (5), 160, 161(3) and (4), 162, 163, 164, 165, 166(2), 167(1) and (2), 168(1) to (10), 169(1), 170, 171(1) to (3), 172, 173, 174, 175, 176, 177(1) to (3), (5), and (6), 178, 184, 189, 190, 191, 192, 193, 195, 199, 200, 220, 221, 251(2) and (5), 253, 254, 255, 269, 273(3) and (4), 277, 286(3), 287(3), 288(2), 290, 291, 292, 293, 294, 295, 299, 300, 301, 302, 303, 304, 306, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 330(1), 332, 340, 342(1), 343(3), 344(1), 345, 346, 347, 348, 350, 352, 353(1), 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 370, 373, 374, 375, 376(2) and (3), 391, 392, 396, 398, 408(8), (9), (10), (13), (15), (20), (21), (24), (27), (29), (30), (31), (33), (39), (43), (44), (47), (48), (49), (50), (51), (52), (53), (60), (64), (80), (83), (86), (87), (123), (124), (132), (137), (143), (144), (145), (146), and (147), 409, 421(2), 425, 426, 433(4), 434(1) to (3) and (5), 442(2), 452, 468, 469, 483(2), 484, 486, 487, 488, 489, 496, 497, 500, 501, 505, 506, 507, 512, 514, 515, and 531** are treated as coming into force on 1 October 2008.
- (20) **Sections 9, 31, 48, 61, 81(2) and (3), 84, 85, 98(1) and (5), 187, 408(26), (36), (55), (71), (85), (108), (109),**

- (122), (125), and (139), 519(2), and 524** are treated as coming into force on 1 January 2009.
- (21) **Sections 150, 222, and 372** come into force on 31 March 2009.
- (22) **Sections 4, 7, 8, 10, 11, 12, 13(1), 15(4) and (6), 18, 23, 24, 28, 36, 39, 40, 41, 44, 45, 50, 51, 52, 56, 57, 58, 59, 63, 68, 76(2), (4), and (6), 77(2) and (4), 78(2) and (4), 81(1), 82, 83, 88, 98(2) and (6), 99, 105, 106, 109, 110, 111, 112, 113, 114, 115, 120, 122(10), 132(4) and (10), 135(4) and (10), 136(4) and (10), 139(3) and (5), 140, 141, 142, 143, 144, 145, 146, 149, 152, 154(3), 155(3), 167(3), 168(11), 169(2), 171(4), 182(2), 183, 186(2) and (3), 188, 201(2), 202, 203, 205(1) and (2), 214, 216(1) and (3) to (5), 217, 218, 223(2), 225, 228, 232, 233, 235, 236, 237(3) and (5), 238, 239, 240, 241, 249, 256, 257, 258(2), 260, 261, 264, 265, 266, 267, 268(3), 271, 272, 273(1) and (5), 274, 276, 278, 279(1) and (3), 280(1), 283, 285, 286(2) and (4), 287(1) and (4), 288(1) and (3), 289, 297, 298, 305, 307(2), 323, 324, 330(2) and (3), 331(1) and (3), 333, 334, 335, 336(1), (2), and (4), 338, 341, 342(2), 343(1) and (4), 344(2), 351, 353(2), 368, 369, 376(1), 378, 379, 383, 384, 387(5), 389, 390, 393, 395, 402, 403, 404, 405, 407, 408(2), (3), (4), (6), (11), (12), (14), (16), (17), (18), (19), (22), (23), (25), (34), (35), (38), (41), (45), (46), (54), (56), (61), (62), (65), (66), (68), (69), (70), (72), (73), (74), (75), (76), (77), (79), (81), (82), (84), (89), (90), (92), (99), (101), (102), (103), (104), (105), (106), (110), (112), (113), (114), (119), (120), (121), (126), (127), (129), (130), (131), (135), (140), (148), (149), (150), (151), and (153), 414, 415, 417(2) and (4), 421(1), 422, 431, 436(2), 442(1) and (3), 443, 444, 445, 447, 448, 450, 453, 454, 456, 457, 458, 461, 463(4), 464, 477, 492, 493, 494, 502(1), 503, 504, 510, 526, 527, 528, and 624** come into force on 1 April 2009.
- (23) **Section 181(2)** comes into force on 1 April 2010.
- (24) **Section 181(3)** comes into force on 1 April 2011.

**Part 1**  
**Amendments to Income Tax Act 2007**

- 3 Income Tax Act 2007**  
This Part amends the Income Tax Act 2007.
- 4 Income tax liability of person with schedular income** 5  
(1) After section BC 7(3), the following is added:  
*“Income tax liability of multi-rate PIEs*  
*“*(4) The income tax liability for a tax year of a multi-rate PIE is determined under **subpart HM** (Portfolio investment entities).”  
(2) In section BC 7, in the list of defined terms, “multi-rate PIE,” 10  
is inserted.  
(3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.
- 5 Withholding liabilities**  
(1) Section BE 1(6) is repealed. 15  
(2) In section BE 1, in the list of defined terms, “FDP” and “FDP rules” are omitted.  
(3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.
- 6 Other obligations** 20  
(1) Section BF 1(d) is repealed.  
(2) In section BF 1, in the list of defined terms, “further FDP” is omitted.  
(3) **Subsections (1) and (2)** apply for the 2009–10 and later income years. 25
- 7 Disposal: land used for landfill, if notice of election**  
(1) Section CB 8(c) is replaced by the following:  
*“(c) the person acquiring the land is not an associated person; and”*.  
(2) **Subsection (1)** applies for the 2009–10 and later income 30  
years.

**8 Section CB 26 replaced**

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

**“CB 26 Disposal of certain shares by portfolio investment entities**

*“When this section applies* 5

“(1) This section applies when—

“(a) the income from the disposal by a person (the **entity**) of the share is excluded income under **section CX 55** (Proceeds from disposal of investment shares); and

“(b) a dividend from the share is— 10

“(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 of income calculated using the formula— 15

(shares at declaration – shares on distribution) × dividend.

*“Definition of items in formula*

“(3) In the formula,—

“(a) **shares at declaration** is the number of shares held by the entity when the dividend is declared: 20

“(b) **shares on distribution** is the number of shares for which the entity derives a dividend:

“(c) **dividend** is the amount of the dividend or, for a share issued by an ICA company, the amount of the dividend that is not fully imputed as described in section RF 9(2) (When dividends fully imputed or fully credited). 25

*“Positive result*

“(4) The result of the formula must be a positive amount.

“Defined in this Act: amount, company, dividend, excluded income, ICA company, income, pay, portfolio investment entity, share 30

“Compare: 2007 No 97 s CB 26”.

(2) **Subsection (1)** applies for the 2009–10 and later income years.

**9 New heading and section CB 36 added** 35

After section CB 35, the following is added:

*“Emissions units under Climate Change  
Response Act 2002*

**“CB 36 Disposal of emissions units**

*“When this section applies*

“(1) This section applies when a person disposes of an emissions unit. 5

*“Income*

“(2) The amount that the person derives on the disposal is income.

*“Surrender of unit: generally no income*

“(3) If the disposal is by surrender under the Climate Change Re- 10  
sponse Act 2002, the person is treated as having sold the unit,  
at the time of the surrender, to an unrelated person for an  
amount equal to the unit’s cost, except if 1 of **subsections  
(4) and (5)** applies.

*“Surrender of unit: post-1989 forest land deforestation 15*

“(4) Despite **subsection (3)**, the person is treated as deriving in-  
come of zero if the person surrenders the emissions unit in  
relation to the deforestation of post-1989 forest land.

*“Surrender of unit: deforestation of some pre-1990 forest  
land 20*

“(5) Despite **subsection (3)**, the person is treated as deriving in-  
come of zero if—

“(a) the person surrenders the emissions unit in relation to  
the deforestation of pre-1990 forest land; and

“(b) the person would derive income, other than exempt in- 25  
come or excluded income, from a disposal of the land  
without timber at the time of the surrender.

*“Converted unit treated as sold*

“(6) If a person converts a New Zealand emissions unit, other than 30  
a forest land emissions unit, into a Kyoto emissions unit under  
the Climate Change Response Act 2002, the person is treated  
as having sold the converted unit for an amount equal to the  
unit’s cost.

*“Exempt income: pre-1990 forest land unit*

- “(7) **Section CW 3B** (Pre-1990 forest land emissions units) applies to the disposal to another person of a pre-1990 forest land emissions unit.

*“Disposal at below market value*

5

- “(8) **Section GC 4B** (Disposals of emissions units at below market value) may apply to treat a disposal, other than a surrender, as being for market value.

“Defined in this Act: amount, convert, emissions unit, forest land emissions unit, income, Kyoto emissions unit, New Zealand emissions unit, pre-1990 forest land emissions unit, post-1989 forest land emissions unit, surrender”.

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## 10 Transfers of value generally

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

“(a) the cause of the transfer is a shareholding in the company, whether or not the person holds shares in the company; and”.

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- (2) **Subsection (1)** applies for the 2009–10 and later income years.

## 11 When is a transfer caused by a shareholding relationship?

- (1) The section heading to section CD 6 is replaced by “**Certain shareholding relationships**”.

20

- (2) Section CD 6(1) is repealed.

- (3) The heading to section CD 6(2) is replaced by “*Indication that transfer caused by shareholding relationship*”.

- (4) In section CD 6(3), the words before paragraph (a) are replaced by the following:

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- “(3) A transfer of value by a statutory producer board to a member is not caused by a shareholding if—”.

- (5) In section CD 6(4), the words before paragraph (a) are replaced by the following:

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- “(4) A transfer of value by a co-operative company to a shareholder is not caused by a shareholding if—”.

- (6) **Subsections (1) to (5)** apply for the 2009–10 and later income years.



**12 Returns of capital: off-market share cancellations**

- (1) In section CD 22(9), in the definition of **counted associate**, paragraph (b), “is a beneficiary” is replaced by “has benefited or is eligible to benefit”.
- (2) **Subsection (1)** applies for the 2009–10 and later income 5 years.

**13 Property made available intra-group**

- (1) Section CD 27(1)(b) is replaced by the following:
  - “(b) the associated company is associated with a shareholder in the first company.” 10
- (2) Section CD 27(3)(a)(ii) is replaced by the following:
  - “(ii) the first company is associated with a company (the **parent company**) that has a voting interest in the associated company and that could have received the transfer of value without the transfer being assessable income or non-resident passive income; and” 15
- (3) In section CD 27, in the list of defined terms, “FDP” is omitted.
- (4) **Subsections (1) to (3)** apply for the 2009–10 and later income years. 20

**14 Employee benefits**

In section CD 32(2), “CE 1(c)” is replaced by “CE 1(1)(c)”.

**15 Foreign investment fund income**

- (1) In section CD 36, after the heading, “*Amount not dividend*” is inserted as a subsection heading. 25
- (2) In section CD 36(b)(iv), “method; and” is replaced by “method.”, and paragraph (c) is repealed.
- (3) After section CD 36(b), the following are inserted as subsections (2) and (3):
  - “*Exclusion for interests in grey list companies*” 30
- “(2) Subsection (1)(b)(iv) does not apply if—
  - “(a) the FIF is a grey list company; and
  - “(b) the person holds a direct income interest of 10% or more in the FIF at the beginning of the income year in which the period falls. 35

*“Application of rule for certain managed funds*

- “(3) **Subsection (2)** does not apply if—
- “(a) the person is a portfolio investment entity, an entity eligible to be a portfolio investment entity, or a life insurance company; and 5
- “(b) the FIF is a foreign investment vehicle.”
- (4) **Section CD 36(3)(b)**, is replaced by the following:  
“(b) the FIF is a foreign PIE equivalent.”
- (5) In section CD 36, in the list of defined terms, “direct income interest”, “foreign investment vehicle”, “life insurance”, and “portfolio investment entity” are inserted. 10
- (6) In section CD 36, in the list of defined terms, “foreign investment vehicle ” is omitted and “foreign PIE equivalent” is inserted.
- (7) **Subsections (4) and (6)** apply for the 2009–10 and later income years. 15

**16 New section CD 36B inserted**

- (1) After section CD 36, the following is inserted:
- “CD 36B Distributions to resident company for deductible foreign equity and fixed-rate foreign equity 20**
- “Certain distributions not dividends*
- “(1) A distribution by a foreign company in relation to an interest in the company of a company resident in New Zealand (the **resident**) is not a dividend if, at the time of the distribution,—
- “(a) the distribution is a deductible foreign equity distribution: 25
- “(b) the resident’s interest in the company is a fixed-rate foreign equity.
- “Distributions treated as payments of interest*
- “(2) An amount that is not a dividend as a result of **subsection (1)** is treated as a payment of interest for money lent to the company by the resident. 30
- “Defined in this Act: amount, company, deductible foreign equity distribution, dividend, fixed-rate foreign equity, interest, money lent”.
- (2) **Subsection (1)** applies for the 2009–10 and later income years. 35

**17 Available subscribed capital (ASC) amount**

- (1) Section CD 43(8)(b) is replaced by the following:
- “(b) an amount received by the company if the amount is mainly attributable, directly or indirectly, to the payment by the company of a dividend to a controlled foreign company at a time when the company is also a controlled foreign company, regardless of whether either company is a grey list company or non-attributing Australian CFC.” 5
- (2) In section CD 43, in the list of defined terms, “non-attributing Australian CFC” is added. 10
- (3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.

**18 Available capital distribution amount**

- (1) Section CD 44(11) and (12) are replaced by the following: 15
- “*Associated person transactions*
- “(11) No capital gain amount is derived or capital loss amount is incurred by a company after 31 March 1988 on disposing of property under an arrangement with an associated person. This subsection is overridden by **subsection (12)**. 20
- “*Close company liquidations*
- “(12) **Subsection (11)** does not apply if—
- “(a) the company is a close company; and
- “(b) the associated person is not a company; and
- “(c) the disposal is on the liquidation of the company.” 25
- (2) Section CD 44(15) to (17) are repealed.
- (3) In section CD 44, in the list of defined terms, “related person” and “relative” are omitted.
- (4) **Subsections (1) to (3)** apply for the 2009–10 and later income years. 30

**19 Prevention of double taxation of share cancellation dividends**

- (1) Section CD 53(3), is replaced by the following:

- “Non-taxable dividends*
- “(3) Subsection (2) does not apply to the extent to which the dividend is exempt income of the person under sections CW 9 and CW 10 (which relate to income from equity).”
- (2) Section CD 53(4) and (5) are repealed. 5
- (3) In section CD 53, in the list of defined terms, “FDP” and “FDP credit” are omitted.
- (4) **Subsections (1) to (3)** apply for the 2009–10 and later income years.
- 20 Amounts derived in connection with employment** 10
- (1) After the heading to section CE 1, “*Income*” is inserted as a subsection heading.
- (2) Section CE 1(c) is replaced by the following:
- “(c) the market value of accommodation that the person receives in connection with their employment or service.” 15
- (3) After section CE 1(g), the following is inserted as subsection (2):
- “Meaning of accommodation*
- “(2) For the purposes of this section, **accommodation** means board or lodging, or the use of a house or part of a house.” 20
- (4) In section CE 1, in the list of defined terms, “accommodation” is inserted.
- 21 Meaning of expenditure on account of an employee**
- After section CE 5(3)(b), the following is inserted: 25
- “(bb) an amount paid under **section CW 17B** (Relocation payments) or **section CW 17C** (Payments for overtime meals):”.
- 22 Benefits, pensions, compensation, and government grants**
- Section CF 1(2)(g) is replaced by the following: 30
- “(g) a payment under section 81(1)(b) of the Injury Prevention, Rehabilitation, and Compensation Act 2001 paid by the Corporation as defined in that Act, for attendant care as defined in schedule 1, clause 12 of that Act:

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

**23 New subpart CO inserted**

After section CH 10, the following is inserted: 5

“Subpart CO—Income from voluntary activities

“**CO 1 Income from voluntary activities**

An amount that a person derives under **section CW 62B** (Voluntary activities) as a reimbursement payment for expenditure that they incur in undertaking a voluntary activity is income of the person. 10

“Defined in this Act: amount, income”.

**24 Section CP 1 replaced**

(1) Section CP 1 is replaced by the following: 15

“**CP 1 Attributed income of investors in multi-rate PIEs**

“*When this section applies*

“(1) This section applies when a multi-rate PIE attributes an amount of income for an income year calculated under **section HM 36** (Calculating amounts attributed to investors) to a person who is an investor in the PIE. 20

“*Income*

“(2) The amount is income of the person in the income year of the person in which the PIE’s income year ends.

“Defined in this Act: amount, income, income year, investor, multi-rate PIE, PIE 25

“Compare: 2007 No 97 s CP 1”.

(2) **Subsection (1)** applies for the 2009–10 and later income years.

**25 When attributed CFC income arises**

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(1) Section CQ 2(1)(f)(i) is replaced by the following:

- “(i) the CFC has net attributable CFC income for the accounting period under **section EX 20C** (Net attributable CFC income or loss); or”.
- (2) Section CQ 2(1)(g) is replaced by the following:
- “(fb) the CFC is not a non-attributing active CFC for the accounting period, under **section EX 21B** (Non-attributing active CFCs); and
- “(g) the CFC is not a non-attributing Australian CFC for the accounting period, under **section EX 22** (Non-attributing Australian CFCs); and”.
- (3) In section CQ 2, in the list of defined terms,—
- (a) “branch equivalent income” is omitted;
- (b) “net attributable CFC income”, “non-attributing active CFC”, and “non-attributing Australian CFC” are inserted.
- (4) **Subsections (1) to (3)** apply for the 2009–10 and later income years.
- 26 When FIF income arises**
- (1) Section CQ 5(3) is replaced by the following:
- “*FIF income from CFC with FIF interest*”
- “(3) **FIF income** also includes an additional amount that a person with an income interest of 10% or more in a CFC has in an income year under section EX 58 (Additional FIF income or loss if CFC owns FIF), whether or not the CFC is a non-attributing Australian CFC under **section EX 22** (Non-attributing Australian CFCs).”
- (2) In section CQ 5, in the list of defined terms, “non-attributing Australian CFC” is inserted.
- (3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.
- 27 Heading to subpart CR replaced**
- In subpart CR, the heading is replaced by “**Income from insurance**”.
- 28 Section CR 1 and CR 2 replaced**
- (1) Section CR1 and CR 2 are replaced by the following:

**“CR 1 Policyholder base income of life insurer**

*“Policyholder base gross income*

- “(1) The amount of policyholder base gross income that a life insurer has for an income year is income of the life insurer for that year, to the extent to which it is not used to calculate their schedular policyholder base income under **section EY 2(3) to (6)** (Policyholder base). 5

*“Schedular income*

- “(2) The amount of schedular policyholder base income that a life insurer has for an income year is schedular income of the life insurer for the year. 10

“Defined in this Act: amount, income, income year, life insurer, policyholder base gross income, schedular policyholder base income

**“CR 2 Shareholder base gross income of life insurer**

The amount of shareholder base gross income that a life insurer has for an income year is income of the life insurer for that year. 15

“Defined in this Act: amount, income, income year, life insurer, shareholder base gross income”.

- (2) **Subsection (1)** applies for income years beginning on and after 1 April 2009. 20

**29 New section CR 4 added**

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

**“CR 4 Income for general insurance outstanding claims reserve**

*“When this section applies* 25

- “(1) This section applies for—
- “(a) an insurer who uses IFRS 4, Appendix D for general insurance contracts; and
  - “(b) general insurance contracts, excluding contracts having premiums to which section CR 3 applies. 30

*“Formula for insurer’s income*

- “(2) For an income year (the **current year**), an insurer has income of the amount by which the amount calculated using the following formula is more than zero:

opening outstanding claims reserve – closing out-  
standing claims reserve.

*“Definition of items in formula*

“(3) In the formula,—

“(a) **opening outstanding claims reserve** is—

“(i) the amount of the insurer’s **closing outstanding claims reserve** for the income year before the 5  
current year; or

“(ii) the amount of the insurer’s outstanding claims re-  
serve for general insurance contracts, calculated  
at the beginning of the current year, if the insurer  
has no closing outstanding claims reserve for the 10  
income year before the current year:

“(b) **closing outstanding claims reserve** is the amount of  
the insurer’s outstanding claims reserve for general in-  
surance contracts, calculated at the end of the current  
year. 15

“Defined in this Act: amount, general insurance contract, IFRS 4, income, in-  
come year, insurer”.

(2) **Subsection (1)** applies for—

(a) the 2009–10 and later income years, unless **paragraph (b)** applies: 20

(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 2009–10  
income year.

**30 Section CV 10 repealed** 25

(1) Section CV 10 is repealed.

(2) **Subsection (1)** applies for the 2009–10 and later income  
years.

**31 New section CW 3B inserted**

After section CW 3, the following is inserted: 30



**“CW 3B Pre-1990 forest land emissions units**

*“Who this section applies to*

- “(1) This section applies to a person and a pre-1990 forest land emissions unit of the person.

*“Exempt income: disposal* 5

- “(2) An amount of income that the person derives from the disposal of the pre-1990 forest land emissions unit is exempt income if—

“(a) the disposal is not by surrender under the Climate Change Response Act 2002; and 10

“(b) at the time of the disposal, the person would not derive income, other than exempt income or excluded income, from a disposal of the pre-1990 forest land without timber to which the emissions unit relates.

“Defined in this Act: amount, emissions unit, exempt income, income, pre-1990 forest land, pre-1990 forest land emissions unit, surrender”. 15

**32 Section CW 9 replaced**

- (1) Section CW 9 is replaced by the following:

**“CW 9 Dividend derived from foreign company**

*“Exempt income* 20

- “(1) A dividend from a foreign company is exempt income if derived by a company that is resident in New Zealand.

*“Exclusions*

- “(2) **Subsection (1)** does not apply to a dividend if the dividend is paid in relation to rights that are a direct income interest of less than 10% in a foreign company and are described in— 25

“(a) section EX 31 (Exemption for ASX-listed Australian companies):

“(b) section EX 32 (Exemption for Australian unit trusts with adequate turnover or distributions): 30

“(c) section EX 36 (Venture capital company emigrating to grey list country: 10-year exemption):

“(d) section EX 37 (Grey list company owning New Zealand venture capital company: 10-year exemption):

“(e) section EX 37B (Share in grey list company acquired under venture investment agreement): 35

“(f) section EX 39 (Terminating exemption for grey list company with numerous New Zealand shareholders.

“Defined in this Act: company, dividend, exempt income, resident in New Zealand”.

(2) **Subsection (1)** applies for the 2009–10 and later income 5  
years.

### 33 Proceeds of share disposal by qualifying foreign equity investor

(1) Section CW 12(4), other than the heading, is replaced by the following: 10

“(4) In this section,—

“**foreign exempt entity** means a person who—

“(a) is established as a legal entity under the laws of a territory that is approved for the purposes of this section by the Governor-General by an Order in Council or under the laws of a part of such a territory; and 15

“(b) has persons (the **members**) who hold interests in the capital of the legal entity and who are entitled to shares of the income of the legal entity; and

“(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 20

“(d) is resident in no territory that has laws that treat the legal entity as being subject to a tax on income other than as a body that handles income of the members; and 25

“(e) does not have a member who—

“(i) has, when treated as holding the interests of any person who is associated with the member, an interest of 10% or more in the capital of the legal entity; and 30

“(ii) is resident in no territory that is approved for the purpose of this section by the Governor-General by an Order in Council; and

“(f) does not have a member who, when treated as holding the interests of any person who is associated with the member, has an interest of 10% or more in the capital of the legal entity and who would— 35

- “(i) be entitled to receive an amount derived from a disposal to which this section would apply; and
  - “(ii) receive an amount referred to in **subparagraph (i)** that, in the absence of this section, would have been reduced by a tax imposed by the Act on the amount or on the proceeds of the disposal in the hands of the legal entity; and 5
  - “(iii) in any circumstances under the laws of the territory in which the member is resident or under the laws of part of the territory be entitled to receive from the government of the territory or part of the territory a financial benefit in the form of a payment, credit, rebate, forgiveness, or other compensation for the reduction referred to in **subparagraph (ii)**; and 10 15
  - “(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 interests of a person associated with the resident, holds a total direct or indirect interest of 10% or more 20
- “**foreign exempt partnership** means an unincorporated body that—
- “(a) is established under the laws of a territory that is approved for the purposes of this section by the Governor-General by an Order in Council or under the laws of a part of such a territory; and 25
  - “(b) consists of persons (the **partners**); and
  - “(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 partners; and 30
  - “(d) has at least 1 partner (the **general partner**) who is liable for all debts of the unincorporated body and who has significant involvement in, and control of, the business activities of the unincorporated body; and 35
  - “(e) has at least 1 partner (the **special partner**) whose liability for debts of the unincorporated body is limited and who has limited involvement in, and control of, the business activities of the unincorporated body; and

- “(f) does not have a general partner who is resident in no territory that is approved for the purposes of this section by the Governor-General by an Order in Council; and
- “(g) does not have a partner who—
- “(i) has, when treated as holding the interests of any person who is associated with the partner, an interest of 10% or more in the capital of the unincorporated body; and 5
- “(ii) is resident in no territory that is approved for the purpose of this section by the Governor-General by an Order in Council; and 10
- “(h) does not have a partner who, when treated as holding the interests of any person who is associated with the partner, has an interest of 10% or more in the capital of the unincorporated body and who— 15
- “(i) would under the Act in the absence of this section, be subject to tax on an amount derived from a disposal to which this section would apply; and
- “(ii) would in any circumstances under the laws of the territory in which the partner is resident or under the laws of part of the territory be entitled to receive from the government of the territory or part of the territory a financial benefit in the form of a payment, credit, rebate, forgiveness, or other compensation for a payment of the tax referred to in **subparagraph (i)**; and 25
- “(i) does not have a holder of a direct or indirect interest in the capital of the unincorporated body who,—
- “(i) is resident in New Zealand:
- “(ii) when treated as holding the interests of a person associated with the resident, holds a total direct or indirect interest of 10% or more 30
- “**foreign exempt person** means a person who—
- “(a) is resident in a territory that is approved for the purposes of this section by the Governor-General by an Order in Council; and 35
- “(b) is not a legal entity that meets the requirements of **paragraphs (a) to (c)** of the definition of **foreign exempt entity**; and

- “(c) is not part of an unincorporated body that meets the requirements of **paragraphs (a) to (c)** of the definition of **foreign exempt partnership**; and
- “(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 5
- “(e) is not a person who—
- “(i) would under the Act in the absence of this section, be subject to tax on an amount derived from a disposal to which this section would apply; and 10
- “(ii) would in any circumstances under the laws of the territory in which the person is resident or under the laws of part of the territory be entitled to receive from the government of the territory or part of the territory a financial benefit in the form of a payment, credit, rebate, forgiveness, or other compensation for a payment of the tax referred to in **subparagraph (i)**; and 15
- “(f) does not have a holder of a direct or indirect interest in the capital of the legal entity who,— 20
- “(i) is resident in New Zealand:
- “(ii) when treated as holding the interests of a person associated with the resident, holds a total direct or indirect interest of 10% or more”.
- (2) In section CW 12, in the list of defined terms, “1990 version provisions” is omitted. 25
- 34 Expenditure on account, and reimbursement, of employees**
- After section CW 17(3), the following is added:
- “*Relationship with sections CW 17B and CW 17C* 30
- “(4) This section does not apply to an amount referred to in **section CW 17B** (Relocation payments) or **CW 17C** (Payments for overtime meals).”
- 35 New sections CW 17B and CW 17C inserted**
- After section CW 17, the following are inserted: 35

**“CW 17B Relocation payments***“Exempt income*

- “(1) An amount that an employer pays to or on behalf of an employee in connection with the expenses of the employee in a work-related relocation is exempt income of the employee. 5

*“Actual expenditure*

- “(2) The amount paid must be no more than the actual cost incurred by or on behalf of the employee on an expense that the Commissioner lists as an eligible relocation expense in a determination made under **subsection (6)**. 10

*“Time limit*

- “(3) **Subsection (1)** applies only to expenditure incurred for the period from the start of the income year in which the employee relocates or undertakes work at the new location to the end of the next income year. However, this subsection does not apply 15  
in the case of a temporary move when—

“(a) an employee moves temporarily to a new location and then relocates permanently to that place; and

“(b) the temporary move was not treated as a work-related relocation under this section. 20

*“Meaning of work-related relocation*

- “(4) **Work-related relocation** means a relocation of the place where an employee lives that is required—

“(a) because the employee’s workplace is not within reasonable daily travelling distance of their residence; and 25

“(b) as a result of the employee—

“(i) taking up new employment with a new employer; or

“(ii) taking up new duties at a new location with their existing employer; or 30

“(iii) continuing in their current position but at a new location.

*“Exemption from distance test*

- “(5) The requirement in **subsection (4)(a)** for a person’s workplace to be beyond reasonable travelling distance of their residence does not apply to a person whose accommodation forms an integral part of their work. 35

*“Determinations*

“(6) The Commissioner may issue a determination for the purposes of this section under **section 91AAR** of the Tax Administration Act 1994 to provide a list of eligible relocation expenses, and may extend or modify the list from time to time as required. The Commissioner must give at least 30 days notice of the implementation date of any alteration. 5

“Defined in this Act: amount, Commissioner, employee, employer, exempt income, income year, work-related relocation

“**CW 17C Payments for overtime meals** 10

*“Exempt income*

“(1) An amount that an employer pays to or on behalf of an employee for a meal for the employee when the employee is working overtime is exempt income of the employee.

*“Eligibility: agreement or established practice* 15

“(2) **Subsection (1)** applies only if—  
 “(a) the employee’s employment agreement provides for pay for overtime hours worked; or  
 “(b) the employer has an established policy or practice of paying for overtime meals. 20

*“Actual cost or reasonable estimate*

“(3) The amount paid must be—  
 “(a) the actual cost to the employee, with documentation required for amounts over \$20 per meal; or  
 “(b) a reasonable estimate of the expenditure likely to be incurred by the employee or a group of employees for whom an amount is payable. 25

*“Meaning of overtime*

“(4) For the purposes of this section, **overtime**, for a person and a day, means time worked for an employer on the day beyond the person’s ordinary hours of work as set out in their employment agreement when the employee has worked more than 2 hours beyond their ordinary hours on that day. 30

“Defined in this Act: amount, employee, employer, exempt income, overtime, pay”. 35

- 36 Section CW 37 repealed**  
Section CW 37 is repealed.
- 37 Local and regional promotion bodies**  
In section CW 40, in the list of defined terms, “associated person” is omitted. 5
- 38 Charities: business income**  
In section CW 42(5), (7), (8), and (9), “subsection (1)(b)” is replaced by “subsection (1)(c)”.
- 39 New section CW 62B inserted**  
After section CW 62, the following is inserted: 10  
**“CW 62B Voluntary activities**  
*“Exempt income*  
“(1) When a volunteer, in undertaking a voluntary activity, derives an amount that is a reimbursement payment to cover actual expenses incurred by them, the amount is exempt income of the volunteer. 15  
*“Estimated expenditure*  
“(2) For the purposes of **subsection (1)**—  
“(a) a person may make a reasonable estimate of the amount of expenditure likely to be incurred by the volunteer for which reimbursement is payable; and 20  
“(b) the amount estimated is treated as if it were the amount incurred.  
*“Payments partly honorarium and partly reimbursement*  
“(3) **Subsection (1)** does not apply to an amount that is partly a reimbursement and partly an honorarium that is treated as a schedular payment to which the PAYE rules apply. 25  
*“Who is a volunteer?*  
“(4) For the purposes of this section, a **volunteer** means a person who— 30  
“(a) is resident in New Zealand under subpart YD (Residence and source in New Zealand); and  
“(b) freely undertakes an activity in New Zealand—



- “(i) chosen either by themselves or a group of which they are a member; and
- “(ii) that provides a benefit to another person; and
- “(iii) for which there is no purpose or intention of private pecuniary profit.

5

“*Honoraria*

“(5) For the purposes of this section, and schedule 4, part B (Rates of tax for schedular payments), an **honorarium** means an amount that a person receives for providing services that—

- “(a) is paid at a rate that is less than the market rate for providing the services; and
- “(b) is an amount for which, in the normal course, no payment is fixed for the services provided.

10

“*Nature of reimbursement payment*

“(6) For the purposes of this section it does not matter whether—

15

- “(a) an amount of a reimbursement payment is paid in 1 sum or not;
- “(b) the amount is paid during an income year or at the end of an income year.

“Defined in this Act: amount, exempt income, honorarium, income year, New Zealand, pay, PAYE rules, resident in New Zealand, schedular payment, volunteer”.

20

**40 Meaning of fringe benefit**

(1) In section CX 2(5), the words before paragraph (a) are replaced by the following:

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“(5) A benefit may be treated for the purposes of the FBT rules as being provided by an employer to an employee under—”.

(2) In section CX 2, in the list of defined terms, “FBT rules” is inserted.

(3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.

30

**41 Section CX 18 replaced**

(1) Section CX 18 is replaced by the following:

**“CX 18 Benefits provided when both employment and  
shareholding relationships exist***“When this section applies***“(1)** This section applies when—**“(a)** a benefit provided to a person would, in the absence of section CX 4, be treated as a fringe benefit under section GB 32 (Benefits provided through employment relationships) because of the existence of an employment relationship; and 5**“(b)** the employer is a company; and 10**“(c)** the benefit is also provided to the person because of the existence of a shareholding relationship; and**“(d)** the person is not a company; and**“(e)** the person is not a shareholder in the company; and**“(f)** the benefit would be a dividend if provided to a shareholder in the company. 15*“FBT rules apply, not dividend rules***“(2)** The benefit is treated as—**“(a)** being provided through the employment relationship:**“(b)** being subject to the FBT rules: 20**“(c)** not being a dividend.*“Defined in this Act: company, dividend, employer, FBT rules, fringe benefit, shareholder”.***(2) Subsection (1)** applies for the 2009–10 and later income years. 25**42 Benefits provided instead of allowances**

In section CX 19(1)(b), “transport costs.” is replaced by “transport costs); or” and the following is added:

**“(c)** an amount that, if it had been paid, would have been exempt income under **section CW 17B** (Relocation payments).” 30**43 Section CX 28 replaced**

Section CX 28 is replaced by the following:

**“CX 28 Accommodation**

The value of accommodation that an employer provides to an employee in connection with the employment or services is a fringe benefit.

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

**44 Section CX 39 repealed**

- (1) Section CX 39 is repealed.
- (2) **Subsection (1)** applies for income years beginning on and after 1 April 2009. 10

**45 Government grants to businesses**

- (1) Section CX 47(3) is replaced by the following:

*“Exclusion*

- “(3) This section does not apply to a grant made under the Agriculture Recovery Programme for the Lower North Island and Eastern Bay of Plenty, to the extent to which the grant relates to expenditure—

- “(a) incurred by the recipient before the grant; and
- “(b) for which the recipient would be allowed a deduction in the absence of section DF 1 (Government grants to businesses).” 20

- (2) In section CX 47, in the list of defined terms, “large budget screen production grant” is omitted.

**46 New heading and section CX 48B inserted**

After section CX 48, the following is inserted: 25

*“Government funding of film and television*

**“CX 48B Government funding additional to government screen production payments**

*“When this section applies*

- “(1) This section applies when a public authority makes a payment to a person for a project if—
- “(a) the payment is not in the nature of a grant or subsidy; and
- “(b) the payment is not a grant-related suspensory loan; and

- “(c) the person receives a government screen production payment for the project in addition to the payment.
- “*Excluded income*
- “(2) The payment is excluded income of the person.
- “Defined in this Act: excluded income, government screen production payment, grant-related suspensory loan, pay, public authority” 5
- 47 New heading and section CX 48C inserted**
- (1) After **section CX 48B**, the following is inserted:
- “*Research and development*
- “**CX 48C Tax credits for expenditure on research and development** 10
- The amount of a tax credit that a person has under subpart LH (Tax credits for expenditure on research and development) is excluded income of the person.
- “Defined in this Act: amount, excluded income, tax credit” 15
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 48 New heading and section CX 51B inserted**
- After section CX 51, the following is inserted:
- “*Emissions units under Climate Change Response Act 2002* 20
- “**CX 51B Issue of emissions units**
- “*When this section applies*
- “(1) This section applies when a person is issued an emissions unit.
- “*Excluded income: issue* 25
- “(2) An amount of income that the person is treated as deriving from the issue is excluded income.
- “Defined in this Act: amount, emissions unit, excluded income, income, pre-1990 forest land emissions unit”.
- 49 Proceeds from certain disposals by portfolio investment entities or New Zealand Superannuation Fund** 30
- Section CX 55(1)(b) is replaced by the following:
- “(b) resident in Australia and—

- “(i) not 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 the other country; and 5
- “(ii) included in an index that is an approved index under the ASX Market Rules, made under Chapter 7 of the Corporations Act 2001 (Aust); and
- “(iii) required under the Income Tax Assessment Act 1997 (Aust) and Income Tax Assessment Act 1936 (Aust) to maintain a franking account.” 10

**50 Section CX 55 replaced**

(1) Section CX 55 is replaced by the following:

**“CX 55 Proceeds from disposal of investment shares**

*“What this section applies to* 15

“(1) This section applies in an income year to the following entities unless the entity is assured, under an arrangement with another person, of having a gain on the disposal:

- “(a) a portfolio investment entity other than a life fund PIE: 20
- “(b) the New Zealand Superannuation Fund: 20
- “(c) a life insurer. 20

*“Excluded income*

“(2) An amount that the entity derives from the disposal in the income year of a share issued by a company referred to in **subsection (3)** is— 25

- “(a) excluded income of the entity for the income year, if the entity is described in **subsection (1)(a) or (b)**; or
- “(b) excluded income of the entity for the income year to the extent to which the amount is actuarially determined to be policyholder base gross income, if the entity is a life insurer. 30

*“Particular company*

“(3) The company referred to in **subsection (2)** is,—

- “(a) at all times in the income year, a company resident in New Zealand and not treated under and for the purposes of a double tax agreement as not resident in New Zealand; or 35

- “(b) a company that meets the following requirements:
- “(i) a company that, at all times in the income year, is resident in Australia and not 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 the other country; and 5
- “(ii) a company that, at the start of the income year or at the time the shares are first acquired in the income year, is included in an approved index under the ASX Market Rules made under Chapter 7 of the Corporations Act 2001 (Aust); and 10
- “(iii) a company that, at all times in the income year, is required under the Income Tax Assessment Act 1997 (Aust) and the Income Tax Assessment Act 1936 (Aust) to maintain a franking account. 15
- “*Non-participating redeemable shares*
- “(4) This section does not apply to a non-participating redeemable share. 20
- “Defined in this Act: actuarially determined, amount, arrangement, company, double tax agreement, excluded income, income year, life fund PIE, life insurer, non-participating redeemable share, policyholder base gross income, portfolio investment entity, resident in Australia, resident in New Zealand, share”.
- (2) **Subsection (1)** applies— 25
- (a) for a portfolio investment entity, including a life fund PIE, and the New Zealand Superannuation Fund, for the 2009–10 and later income years:
- (b) for a life insurer, other than in relation to a life fund PIE, for income years beginning on or after 1 April 2009. 30
- 51 Section CX 56 replaced**
- (1) Section CX 56 is replaced by the following:

**“CX 56 Attributed income of certain investors in multi-rate PIEs**

*“When this section applies*

- “(1) This section applies when an investor in a multi-rate PIE derives income attributed under **section CP 1** (Attributed income of investors in multi-rate PIEs) in an income year, and—
- “(a) the prescribed investor rate for the investor in the relevant calculation period is more than zero; and
  - “(b) that rate is not more than the tax rate notified under **section HM 59** (Notified rates) in relation to the investor when the PIE calculates—
    - “(i) its income tax liability under **section HM 47** (Calculation of tax liability or tax credit of multi-rate PIEs) in relation to the income; or
    - “(ii) a voluntary payment under **section HM 45** (Voluntary payments) that is intended to be a final payment of its income tax liability in relation to the income.

*“When this section does not apply*

- “(2) This section does not apply if the PIE calculates its income tax liability using the quarterly calculation option under **section HM 43** (Quarterly calculation option) and the amount is attributed to an investor who is treated under **section HM 60** (Certain exiting investors zero-rated) as zero-rated.

*“Excluded income*

- “(3) The amount is excluded income of the investor.

“Defined in this Act: amount, attribution period, calculation period, excluded income, income, income tax liability, income year, investor, multi-rate PIE, pay, PIE, prescribed investor rate, quarter

**“CX 56B Distributions to investors in multi-rate PIEs**

An amount of income derived by an investor in a multi-rate PIE as a distribution of or dividend of the PIE is excluded income of the investor.

“Defined in this Act: amount, dividend, excluded income, income, investor, multi-rate PIE

“**CX 56C Distributions to investors by listed PIEs**

“*Resident investors*

- “(1) If an investor in a listed PIE derives an amount in an income year as a distribution by or dividend of the PIE, the amount is excluded income of the investor if they— 5
- “(a) are resident; and
  - “(b) are a natural person or a trustee; and
  - “(c) do not include the amount as income in a return of income for the income year.

“*Imputed dividends* 10

- “(2) If **subsection (1)(a) to (c)** does not apply to the investor, the amount is excluded income to the extent to which the amount of the distribution or dividend is more than the amount that is fully credited as described in section CD 43(26) (Available subscribed capital amount). 15

“Defined in this Act: amount, dividend, excluded income, income year, investor, listed PIE, PIE, resident, return of income, trustee”.

- (2) **Subsection (1)** applies for the 2009–10 and later income years.

**52 Section CX 57 replaced** 20

- (1) Section CX 57 is replaced by the following:

“**CX 57 Credits for investment fees**

“*When this section applies*

- “(1) This section applies when— 25
- “(a) a multi-rate PIE includes a credit for fees in the calculation of its tax liability under **section HM 47** (Calculation of tax liability or tax credit of multi-rate PIEs) in relation to an investor in an investor class of the PIE; and 25
  - “(b) an amount of the credit is attributed to the investor as a member of the class. 30

“*Excluded income*

- “(2) The amount allocated is excluded income of the investor.

“Defined in this Act: amount, excluded income, investor, investor class, multi-rate PIE, PIE”.

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- (2) **Subsection (1)** applies for the 2009–10 and later income years.

**53 Interest: not capital expenditure**

- (1) Section DB 6(3) is repealed.  
 (2) **Subsection (1)** applies for the 2009–10 and later income years. 5

**54 Interest: most companies need no nexus with income**

- (1) Section DB 7(7) is repealed.  
 (2) **Subsection (1)** applies for the 2009–10 and later income years. 10

**55 Interest: money borrowed to acquire shares in group companies**

- (1) Section DB 8(7) is repealed.  
 (2) **Subsection (1)** applies for the 2009–10 and later income years. 15

**56 Cost of revenue account property**

- (1) Section DB 23(2)(a) is repealed.  
 (2) In section DB 23(2)(b), “Proceeds from certain disposals by portfolio investment entities or New Zealand Superannuation Fund” is replaced by “Proceeds from disposal of investment shares”. 20  
 (3) In section DB 23, in the list of defined terms, “portfolio investment-linked life fund” is omitted and “life fund PIE”, “life insurer”, and “PIE” are inserted.  
 (4) **Subsections (1) to (3)** apply for the 2009–10 and later income years. 25

**57 Property misappropriated by employees or service providers**

- (1) Section DB 42(2), other than the heading, is replaced by the following: 30  
 “(2) This section does not apply when a person who misappropriates property is associated with the person who carries on the business.”

- (2) **Subsection (1)** applies for the 2009–10 and later income years.

**58 Section DB 53 replaced**

- (1) Section DB 53 is replaced by the following:

**“DB 53 Attributed PIE losses of certain investors”** 5

*“When this section applies*

- “(1) This section applies to an investor in a multi-rate PIE when—

- “(a) an amount of attributed PIE loss is attributed under **section HM 36** (Calculating amounts attributed to investors) to an investor for an attribution period in a tax year; and

- “(b) either the investor is—

- “(i) a zero-rated investor; or

- “(ii) treated under **section HM 60** (Certain exiting investors zero-rated) as zero-rated.

15

*“Deduction*

- “(2) The investor is allowed a deduction for the amount allocated to the investor’s income year in which the PIE’s tax year ends.

*“Link with subpart DA*

- “(3) This section supplements the general permission. The general limitations still apply. 20

“Defined in this Act: amount, attributed PIE loss, attribution period, deduction, exit period, general limitation, general permission, income tax liability, income year, investor, multi-rate PIE, PIE, quarter, tax year, zero-rated investor

“Compare: 2007 No 97 s DB 53”.

25

- (2) **Subsection (1)** applies for the 2009–10 and later income years.

**59 Section DB 54 replaced**

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

**“DB 54 Treatment of credits for investment fees”** 30

*“When this section applies*

- “(1) This section applies when an investor in an investor class of a multi-rate PIE incurs expenses in relation to their investor interest, and the entity includes the amount in the calculation of its tax liability under **section HM 47** (Calculation of tax 35

liability or tax credit of multi-rate PIEs) in relation to the investor.

*“No deduction*

“(2) The investor is denied a deduction for the amount.

*“Link with subpart DA*

5

“(3) This section overrides the general permission.

“Defined in this Act: amount, deduction, general permission, investor, investor class, investor interest, multi-rate PIE

“Compare: 2007 No 97 s DB 54”.

(2) **Subsection (1)** applies for the 2009–10 and later income years. 10

**60 Expenditure incurred in deriving exempt dividend**

(1) Section DB 55(1) and (2) are replaced by the following:

*“Deduction*

“(1) A company that derives a dividend that is exempt income of the company under section CW 9 (Dividend derived by company from overseas) is allowed a deduction of the amount of the expenditure incurred by the company in deriving the dividend.” 15

(2) In section DB 55, in the list of defined terms, “CTR company” is omitted. 20

(3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.

**61 New heading and section DB 60 added**

After section DB 59, the following is added:

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*“Emissions units under Climate Change Response Act 2002*

**“DB 60 Acquisition of emissions units**

*“When this section applies*

“(1) This section applies when a person is issued an emissions unit. 30

*“No expenditure or loss on issue of emissions unit*

“(2) The person is treated as incurring no expenditure or loss in the acquisition of the emissions unit.

- “Link with subpart DA*
- “(3) **Subsection (2)** overrides the general permission.  
*“Defined in this Act: amount, capital limitation, convert, deduction, emissions unit, general limitation, general permission, Kyoto emissions unit, New Zealand emissions unit”.* 5
- 62 Heading to subpart DF**  
 In the heading to subpart DF, “, **funding,**” is inserted after “**grants**”.
- 63 Government grants to businesses**
- (1) Section DF 1(6) is repealed. 10
- (2) In section DF 1, in the list of defined terms, “large budget screen production grant” is omitted.
- 64 Payments for social rehabilitation**  
 In section DF 4(3)(b), “part H,” is replaced by “part I.”
- 65 New section DF 5 added** 15  
 After section DF 4, the following is added:  
**“DF 5 Government funding additional to government screen production payments**  
*“When this section applies*
- “(1) This section applies when a public authority makes a payment 20  
 (the **funding payment**) to a person for expenditure incurred in a project if—
- “(a) the funding payment is not in the nature of a grant or subsidy; and
- “(b) the funding payment is not a grant-related suspensory 25  
 loan; and
- “(c) the person receives a government screen production payment for the project in addition to the funding payment; and
- “(d) the person would be allowed a deduction for the ex- 30  
 penditure in the absence of this section; and

“(e) the payment is excluded income under **section CX 48B** (Government funding additional to government screen production payments).

*“No deduction for expenditure*

“(2) The person is denied, to the extent of the amount of the funding payment, the deduction for the expenditure that would be allowed in the absence of this section. 5

*“Deduction for payments to public authority*

“(3) The person is allowed a deduction for the amount of a payment (the **return payment**) made to the public authority to the extent to which the return payment is required by the arrangement under which the funding payment is made. 10

*“Links with subpart DA*

“(4) In this section—

“(a) **subsection (2)** overrides the general permission; and 15

“(b) **subsection (3)** supplements the general permission and overrides the capital limitation; the other general limitations still apply.

“Defined in this Act: capital limitation, deduction, excluded income, general limitation, general permission, government screen production payment, grant-related suspensory loan, pay, public authority”. 20

## 66 When attributed CFC loss arises

(1) Section DN 2(f) and (g) are replaced by the following:

“(f) the CFC has net attributable CFC loss for the accounting period under **section EX 20C** (Net attributable CFC income or loss); and 25

“(fb) the CFC is not a non-attributing active CFC for the accounting period, under **section EX 21B** (Non-attributing active CFCs); and

“(g) the CFC is not a non-attributing Australian CFC for the accounting period, under **section EX 22** (Non-attributing Australian CFCs).” 30

(2) In section DN 2, in the list of defined terms,—

(a) “branch equivalent loss” is omitted:

- (b) “net attributable CFC loss”, “non-attributing active CFC”, and “non-attributing Australian CFC” are inserted.
- (3) **Subsections (1) and (2)** apply for the 2009–10 and later income years. 5
- 67 When FIF loss arises**
- (1) Section DN 6(3) is replaced by the following:  
*“FIF loss from CFC with FIF interest*
- “(3) **FIF loss** also includes an amount of additional FIF loss that a person with an income interest of 10% or more in a CFC has in an income year under section EX 58 (Additional FIF income or loss if CFC owns FIF), whether or not the CFC is a non-attributing Australian CFC under **section EX 22** (Non-attributing Australian CFCs).” 10
- (2) In section DN 6, in the list of defined terms, “non-attributing Australian CFC” is inserted. 15
- (3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.
- 68 Sections DR 1 to DR 3 replaced**
- (1) Sections DR 1 to DR 3 are replaced by the following: 20  
**“DR 1 Policyholder base gross expenditure or loss of life insurer**  
*“Deduction*
- “(1) A life insurer is allowed a deduction for an income year for their policyholder base gross expenditure or loss for that year, to the extent to which it is not used to calculate their schedular policyholder base income under **section EY 2(3) to (6)** (Policyholder base). The deduction is allowed against the life insurer’s policyholder base gross income described in **section CR 1(1)** (Policyholder base income of life insurer) for the income year. 25 30
- “Prohibition on deduction against schedular policyholder base income and shareholder base gross income*
- “(2) The deduction in **subsection (1)** is not allowed against schedular policyholder base income or shareholder base gross income. 35

*“Code for deductions*

- “(3) A life insurer is denied a deduction for any expenditure or loss in relation to their life insurance business that is not their policyholder base gross expenditure or loss, or their shareholder base gross expenditure or loss. 5

*“Link with subpart DA*

- “(4) **Subsections (2) and (3)** override the general permission.

“Defined in this Act: deduction, general permission, income year, life insurance, life insurer, policyholder base gross expenditure or loss, policyholder base gross income, schedular policyholder base income, shareholder base gross expenditure or loss, shareholder base gross income 10

**“DR 2 Shareholder base gross expenditure or loss of life insurer**

*“Deduction*

- “(1) Subject to **subsection (3)**, a life insurer is allowed a deduction for an income year for their shareholder base gross expenditure or loss. The deduction is allowed against the life insurer’s shareholder base gross income described in **section CR 2** (Shareholder base gross income of life insurer) for the income year. 15

*“Prohibition on deduction against schedular policyholder base income and policyholder base gross income 20*

- “(2) The deduction in **subsection (1)** is not allowed against schedular policyholder base income or policyholder base gross income.

*“No deduction for non-New Zealand life reinsurance 25*

- “(3) A life insurer is denied a deduction for life reinsurance policy premiums if, for the relevant policy, the life insurer—

“(a) did not offer the policy in New Zealand:

“(b) was not offered the policy in New Zealand:

“(c) did not enter into the policy in New Zealand. 30

*“Code for deductions*

- “(4) A life insurer is denied a deduction for any expenditure or loss in relation to their life insurance business that is not their shareholder base gross expenditure or loss, or their policyholder base gross expenditure or loss. 35

*“Link with subpart DA*

“(5) **Subsections (2) to (4)** override the general permission.

“Defined in this Act: deduction, general permission, income year, life insurance, life insurer, life reinsurance, life reinsurance policy, policyholder base gross expenditure or loss, policyholder base gross income, schedular policyholder base income, shareholder base gross expenditure or loss, shareholder base gross income”.

5

(2) **Subsection (1)** applies for income years beginning on or after 1 April 2009.

## **69 Film production expenditure**

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(1) Section DS 2(4) is replaced by the following:

*“Timing of deduction*

“(4) The deduction is allocated under—

“(a) section EJ 4 or EJ 5 (which relate to expenditure incurred in acquiring film rights) if the film is one for which a government screen production payment is made; or

15

“(b) section EJ 7 or EJ 8 (which relate to film production expenditure) if the film is not one for which a government screen production payment is made.”

20

(2) In section DS 2, in the list of defined terms—

(a) “large budget screen production grant” is omitted:

(b) “government screen production payment” is inserted.

## **70 Meaning of film reimbursement scheme**

(1) Section DS 4(5), other than the heading, is replaced by the following:

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“(5) For the purposes of subsection (3), a shareholder in a loss-attributing qualifying company and the company are associated persons, in addition to the associated persons described in the parts of subpart YB (Associated persons and nominees) that apply for the purposes of the whole Act (excluding the 1973, 1988, and 1990 version provisions) or in the 1988 version provisions.”

30

(2) In section DS 4, in the list of defined terms, “1973 version provisions”, “1988 version provisions”, and “1990 version provisions” are inserted.

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**71 New section DT 1A inserted**

(1) Before section DT 1, the following is inserted:

**“DT 1A Ring-fenced allocations**

*“When this section applies*

“(1) This section applies to an amount of a person’s deductions for expenditure and loss for an income year to the extent to which it is— 5

“(a) petroleum exploration expenditure:

“(b) petroleum development expenditure:

“(c) residual expenditure. 10

*“Basis for allocation of deductions*

“(2) If, but for this subsection, an amount that relates to petroleum mining operations undertaken outside New Zealand is allocated to an income year (the **current year**), including an amount carried forward and allocated to the current year, the amount that is allocated to the current year is no more than the amount of the person’s income derived from those operations for the current year. 15

*“Excess allocations: carried forward and re-instated next year 20*

“(3) Any excess not allocated to the current year because of **subsection (2)** is carried forward and treated as—

“(a) relating to petroleum mining operations outside New Zealand for the next income year; and

“(b) allocated to that next income year. 25

*“Restriction on reinstating excess allocations*

“(4) Despite **subsection (3)**, the excess is not allocated to the next income year, and no deduction is allowed or allocated to any income year for the excess, if sections IA 5 and IP 3 (which relate to the carrying forward of tax losses for companies) would not have allowed the excess to be carried forward to that next income year in a loss balance, treating the excess as a tax loss component arising on the last day of the current year. 30

*“Defined in this Act: deduction, income year, loss balance, New Zealand, petroleum development expenditure, petroleum exploration expenditure, petroleum mining operation, residual expenditure, tax loss component” 35*

- (2) **Subsection (1)** applies for expenditure incurred on or after 4 March 2008.

## 72 Arrangement for petroleum exploration expenditure and sale of property

- (1) In section DT 2(1)(b), the words before subparagraph (i) are replaced by the following: 5  
 “(b) the person or a person associated with them under the parts of subpart YB that apply for the purposes of the whole Act (excluding the 1973, 1988, and 1990 version provisions) or under the 1988 version provisions may dispose of property—”. 10
- (2) In section DT 2(1)(c), subparagraphs (ii) and (iii) are replaced by the following:  
 “(ii) a petroleum permit; or  
 “(iii) material or a permit that relates to petroleum mining operations undertaken outside New Zealand, and that material or permit are substantially the same as those described in subparagraphs (i) or (ii), with necessary modifications made to this subpart and the Crown Minerals Act 1991.” 15 20
- (3) In section DT 2, in the list of defined terms, “1973 version provisions”, “1988 version provisions”, and “1990 version provisions” are inserted.
- (4) **Subsections (1) and (3)** are treated as coming into force on 1 April 2008. 25

## 73 Petroleum development expenditure

- (1) Section DT 5(1) and (2) is replaced by the following:  
*“Deduction*  
 “(1) A petroleum miner is allowed a deduction for petroleum development expenditure incurred by them. 30  
*“Timing of deduction*  
 “(2) For an income year, an amount of the deduction is allocated to that year, as provided by—  
 “(a) **section EJ 12** (Petroleum development expenditure: default allocation rule); or 35

- “(b) **section EJ 12B** (Petroleum development expenditure: reserve depletion method).”
- (2) **Subsection (1)** applies for expenditure incurred on or after 1 April 2008.
- 74 Disposal of petroleum mining asset to associate** 5
- (1) In section DT 9(1)(b), “section EJ 12 (Petroleum development expenditure)” is replaced by “**section EJ 12 or EJ 12B** (which relate to petroleum development expenditure)”.
- (2) Section DT 9(2)(b) is replaced by the following:  
 “(b) the amount of the deduction allocated under **section EJ 12 or EJ 12B** to the income years after the income year in which the miner disposes of the asset.” 10
- (3) **Subsections (1) and (2)** apply for expenditure incurred on or after 1 April 2008.
- 75 Amount written off by holding company** 15
- In section DU 12(3)(a), “tax year” is replaced by “income year”.
- 76 Transfer of expenditure to master fund**
- (1) Section DV 2(6), other than the heading, is replaced by the following: 20  
 “(6) The expenditure is treated as being incurred by the master superannuation fund as follows:  
 “(a) for a master fund that is a portfolio tax rate entity, in the income year in which the expenditure is transferred by the member superannuation fund; or 25  
 “(b) for other master funds, in the same income year as that in which it was incurred by the member superannuation fund.”
- (2) **Section DV 2(6)**, other than the heading, is replaced by the following: 30  
 “(6) The expenditure is treated as being incurred by the master superannuation fund as follows:  
 “(a) for a master fund that is a multi-rate PIE, in the income year in which the expenditure is transferred by the member superannuation fund; or 35

- “(b) for other master funds, in the same income year as that in which it was incurred by the member superannuation fund.”
- (3) After section DV 2(8), the following is inserted:  
*“Amount of deduction when master fund is portfolio tax rate entity”* 5
- “(8B) Despite subsection (8), a master superannuation fund that is a portfolio tax rate entity is allowed a deduction only for expenditure transferred to it by a member superannuation fund—  
 “(a) that is expenditure incurred by the member fund when it has a portfolio investor interest in the portfolio tax rate entity; and 10  
 “(b) to the extent to which the member fund incurred the expenditure in relation to its portfolio investor interest in the portfolio tax rate entity.” 15
- (4) **Section DV 2(8B)**, other than the heading, is replaced by the following:  
 “(8B) Despite subsection (8), a master superannuation fund that is a multi-rate PIE is allowed a deduction only for expenditure transferred to it by a member superannuation fund— 20  
 “(a) that is expenditure incurred by the member fund when it has an investor interest in the PIE; and  
 “(b) to the extent to which the member fund incurred the expenditure in relation to its investor interest in the PIE.”
- (5) In section DV 2, in the list of defined terms, “portfolio investor interest” and “portfolio tax rate entity” are inserted. 25
- (6) In section DV 2, in the list of defined terms, “portfolio investor interest” and “portfolio tax rate entity” are omitted and “investor interest” and “multi-rate PIE” are inserted.
- (7) **Subsections (1), (3), and (5)** apply for the 2008–09 income year. 30
- (8) **Subsections (2), (4), and (6)** apply for the 2009–10 and later income years.

## 77 Carry forward of expenditure

- (1) After section DV 4(1), the following is inserted: 35

- “What this section does not apply to*
- “(1B) This section does not apply to a transfer of expenditure to a master superannuation fund that is a portfolio tax rate entity.”
- (2) **Section DV 4(1B)** is replaced by the following:
- “What this section does not apply to* 5
- “(1B) This section does not apply to a transfer of expenditure to a master superannuation fund that is a multi-rate PIE.”
- (3) In section DV 4, in the list of defined terms, “portfolio tax rate entity” is inserted.
- (4) In section DV 4, in the list of defined terms, “portfolio tax rate entity” is omitted and “multi-rate PIE” is inserted. 10
- (5) **Subsections (1) and (3)** apply for the 2008–09 income year.
- (6) **Subsections (2) and (4)** apply for the 2009–10 and later income years.
- 78 Investment funds: transfer of expenditure to master funds** 15
- (1) After section DV 5(7), the following is inserted:
- “Amount of deduction when master fund is portfolio tax rate entity*
- “(7B) Despite subsection (7), a master superannuation fund that is a portfolio tax rate entity is allowed a deduction only for expenditure transferred to it by a member superannuation fund— 20
- “(a) that is expenditure incurred by the member fund when it has a portfolio investor interest in the portfolio tax rate entity; and
- “(b) to the extent to which the member fund incurred the expenditure in relation to its portfolio investor interest in the portfolio tax rate entity.” 25
- (2) **Section DV 5(7B)** is replaced by the following:
- “Amount of deduction when master fund is multi-rate PIE*
- “(7B) Despite subsection (7), a master superannuation fund that is a multi-rate PIE is allowed a deduction only for expenditure transferred to it by a member superannuation fund— 30
- “(a) that is expenditure incurred by the member fund when it has an investor interest in the PIE; and
- “(b) to the extent to which the member fund incurred the expenditure in relation to its investor interest in the PIE.” 35

- (3) In section DV 5, in the list of defined terms, “portfolio investor interest” and “portfolio tax rate entity” are inserted.
- (4) In section DV 5, in the list of defined terms, “portfolio investor interest” and “portfolio tax rate entity” are omitted, and “investor interest” and “multi-rate PIE” are inserted. 5
- (5) **Subsections (1) and (3)** apply for the 2008–09 income year.
- (6) **Subsections (2) and (4)** apply for the 2009–10 and later income years.
- 79 New section DW 4 added** 10
- (1) After section DW 3, the following is added: 10
- “DW 4 Deduction for general insurance outstanding claims reserve**
- “When this section applies*
- “(1) This section applies for— 15
- “(a) an insurer who uses IFRS 4, Appendix D for general insurance contracts; and
- “(b) general insurance contracts, excluding contracts having premiums to which section CR 3 (Income of non-resident general insurer) applies.
- “Formula for insurer’s deduction* 20
- “(2) For an income year, an insurer is allowed a deduction for the amount by which the amount calculated using the following formula is less than zero:
- opening outstanding claims reserve – closing outstanding claims reserve.
- “Definition of items in formula*
- “(3) In the formula,— 25
- “(a) **opening outstanding claims reserve** is—
- “(i) the amount of the insurer’s **closing outstanding claims reserve** for the income year before the current year; or
- “(ii) the amount of the insurer’s outstanding claims reserve for general insurance contracts, calculated at the beginning of the current year, if the insurer 30

- has no closing outstanding claims reserve for the income year before the current year:
- “(b) **closing outstanding claims reserve** is the amount of the insurer’s outstanding claims reserve for general insurance contracts, calculated at the end of the current year. 5
- “*Link with subpart DA*
- “(4) This section supplements the general permission. The general limitations still apply. 10
- “Defined in this Act: amount, deduction, general insurance contract, general limitation, general permission, IFRS 4, income year, insurer”.
- (2) **Subsection (1)** applies for—
- (a) the 2009–10 and later income years, unless **paragraph (b)** applies:
- (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 2009–10 income year. 15
- 80 Section DX 2 repealed**
- (1) Section DX 2 is repealed. 20
- (2) **Subsection (1)** applies for the 2009–10 and later income years.
- 81 Meaning of trading stock**
- (1) In section EB 2(3)(e), “Proceeds from certain disposals by portfolio investment entities or New Zealand Superannuation Fund” is replaced by “Proceeds from disposal of investment shares”. 25
- (2) In section EB 2(3)(h), “exchange.” is replaced by “exchange:” and the following is added:
- “(i) an emissions unit.” 30
- (3) In section EB 2, in the list of defined terms, “emissions unit” is inserted.
- 82 Low-turnover valuation**
- (1) In section EB 13(2), “YB 8” is replaced by “**YB 3**”.

- (2) **Subsection (1)** applies for the 2009–10 and later income years.

**83 Valuing closing stock under \$5000**

- (1) In the heading to section EB 23, “**\$5,000**” is replaced by “**\$10,000**”. 5
- (2) In section EB 23(1)(b), “\$5,000” is replaced by “\$10,000”.

**84 Valuation of excepted financial arrangements**

- (1) After subsection ED 1(5), the following is inserted:
  - “*Certain emissions units not pooled with other types of excepted financial arrangement*” 10
  - “(5B) No emissions unit described in 1 of the following paragraphs may be pooled for the purposes of subsection (5) with another emissions unit except if both emissions units are described in the same paragraph of the following:
    - “(a) emissions units that are— 15
      - “(i) pre-1990 forest land emissions units relating to pre-1990 forest land, if the holder of the units would derive income other than exempt income and excluded income from a disposal of the land without timber: 20
      - “(ii) post-1989 forest land emissions units: 20
      - “(iii) replacement forest land emissions units: 20
    - “(b) pre-1990 forest land emissions units relating to pre-1990 forest land, if the holder of the units would derive no income other than exempt income and excluded income from a disposal of the land without timber: 25
    - “(c) emissions units issued for no consideration—
      - “(i) to which **section ED 1B** applies; and
      - “(ii) that have not been assigned a cost under **section ED 1B(3)(a)**.” 30
- (2) After section ED 1(7), the following is inserted:
  - “*Valuation of emissions units issued for no consideration*”
  - “(7B) For the purposes of subsection (1),—
    - “(a) a forest land emissions unit has a cost of zero at the end of each income year: 35



- “(b) a replacement forest land emissions unit has a cost of zero at the end of each income year:
- “(c) an emissions unit to which **section ED 1B** applies has the cost at the end of each income year that is given by that section.” 5
- (3) In section ED 1, in the list of defined terms, “emissions unit” is inserted.

**85 New section ED 1B inserted**

After section ED 1, the following is inserted:

**“ED 1B Valuation of emissions units issued for no consideration 10**

*“What this section applies to*

- “(1) This section applies to emissions units, held by a person at the end of an income year, that—
- “(a) are issued to the person for no consideration; and
- “(b) are held continuously by the person to the end of the income year; and 15
- “(c) relate to a quantity (the **unit-related quantity**) of emissions, or emissions-related costs, of the person in a period (the **emissions unit period**) that ends in or after the income year; and 20
- “(d) are not forest land emissions units; and
- “(e) are not replacement forest land emissions units; and
- “(f) are not assigned a cost under **subsection (3)(a)** for an earlier income year.

*“Cost at end of income year 25*

- “(2) The cost under section ED 1 of the emissions units at the end of the income year is—
- “(a) zero, if the emissions unit period begins after the end of the income year; or
- “(b) the amount determined under **subsection (3)**, if **paragraph (a)** does not apply and the emissions unit period ends after the end of the income year; or 30
- “(c) the amount that a willing purchaser would pay for an emissions unit in an arm’s length transaction at the end of the income year, if the emissions unit period ends in 35 or at the end of the income year.

*“Cost if emissions unit period ends after end of income year*

- “(3) The cost under section ED 1 of the emissions units at the end of an income year referred to in **subsection (2)(b)** is,—
- “(a) for the number of the emissions units given by **subsection (4)**, the amount that a willing purchaser would pay 5  
for an emissions unit in an arm’s length transaction at the end of the income year; or
- “(b) for the balance of the units, zero.

*“Formula based on emissions*

- “(4) The number of units referred to in **subsection (3)(a)** is the 10  
number, treating negative numbers as equal to zero and ignoring fractions, calculated using the formula—

$$\text{held units} - \left( \text{issued units} \times \frac{\text{remaining quantity}}{\text{total quantity}} \right).$$

*“Definition of items in formula*

- “(5) The items in the formula are defined in **subsections (6) to (9)**. 15

*“Held units*

- “(6) **Held units** is the number of the issued units that have not been assigned a value under **subsection (3)(a)** for an earlier income year.

*“Issued units*

- “(7) **Issued units** is the number of emissions units issued in relation to the unit-related quantity for the unit-related period. 20

*“Remaining quantity*

- “(8) **Remaining quantity** is—
- “(a) if the total unit-related quantity for the person can be 25  
determined for each part of the emissions unit period included in an income year, the greater of the following amounts:
- “(i) the part of the total expected unit-related quantity 30  
for the emissions unit period that was not emitted or incurred before the end of the income year:
- “(ii) zero; or

- “(b) if **paragraph (a)** does not apply, the number of days in the emissions unit period after the end of the income year.
- “*Total quantity*
- “(9) **Total quantity** is,— 5
- “(a) if the total unit-related quantity for the person can be determined for each part of the emissions unit period included in an income year, the total unit-related quantity that was expected to be emitted or incurred for the emissions unit period; or 10
- “(b) if **paragraph (a)** does not apply, the number of days in the emissions unit period.
- “Defined in this Act: emissions unit, income year”.
- 86 Economic rate for plant, equipment, or building, with high residual value** 15  
In section EE 30(1)(b), “of cost” is inserted after “13.5%”.
- 87 Annual rate for item acquired in person’s 1995–96 or later income year**
- (1) Section EE 31(2)(a) is replaced by the following: 20
- “(a) the item’s economic rate, special rate, or provisional rate, for an item not described in either paragraph (b) or (c):”.
- (2) In section EE 31(2)(b), the words before subparagraph (i) are replaced by the following: 25
- “(b) the item’s economic rate, special rate, or provisional rate, multiplied by 1.2, for an item that—”.
- 88 Section EG 3 repealed**
- (1) Section EG 3 is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years. 30
- 89 Expenditure incurred in acquiring film rights in feature films**
- (1) Section EJ 4(1)(b) is replaced by the following:

- “(b) the deduction is allowed under section DS 2 (Film production expenditure) and the film is one for which a government screen production payment is made.”
- (2) In section EJ 4, in the list of defined terms, “government screen production payment” is inserted. 5
- 90 Expenditure incurred in acquiring film rights in films other than feature films**
- (1) Section EJ 5(1)(b) is replaced by the following:  
“(b) the deduction is allowed under section DS 2 (Film production expenditure) and the film is one for which a government screen production payment is made.” 10
- (2) In section EJ 5, in the list of defined terms, “government screen production payment” is inserted.
- 91 Film production expenditure for New Zealand films having no large budget screen production grant** 15
- (1) In the heading to section EJ 7, “**large budget screen production grant**” is replaced by “**government screen production payment**”.
- (2) Section EJ 7(1)(a) is replaced by the following:  
“(a) the film is not one for which a government screen production payment is made; and” 20
- (3) In section EJ 7, in the list of defined terms, “government screen production payment” is inserted.
- 92 Film production expenditure for other films having no large budget screen production grant** 25
- (1) In the heading to section EJ 8, “**large budget screen production grant**” is replaced by “**government screen production payment**”.
- (2) Section EJ 8(1)(a) is replaced by the following:  
“(a) the film is not one for which a government screen production payment is made; and” 30
- (3) In section EJ 8, in the list of defined terms, “government screen production payment” is inserted.

**93 Section EJ 12 replaced**

(1) Section EJ 12 is replaced by the following:

**“EJ 12 Petroleum development expenditure: default allocation rule**

*“What this section applies to* 5

“(1) This section applies to petroleum development expenditure that relates to a petroleum mining development and that is incurred after 1 April 2008 when, for that development, the petroleum miner has not chosen to apply **section EJ 12B** to any petroleum development expenditure for the development. 10

*“Default allocation rule*

“(2) For the purposes of **section DT 5(2)(a)** (Petroleum development expenditure), a deduction for the petroleum development expenditure is allocated in equal amounts over a period of 7 income years. The period of 7 years starts with the income year in which the expenditure is incurred. 15

*“Relationship with other petroleum mining provisions*

“(3) Sections EJ 13 to EJ 16 override **subsection (2)**. Sections DT 7, DT 8, DT 10, DT 11, DT 16, and IS 5 (which relate to petroleum miners) override this section. 20

*“Defined in this Act: amount, deduction, income year, petroleum development expenditure, petroleum mining development*

**“EJ 12B Petroleum development expenditure: reserve depletion method**

*“What this section applies to* 25

“(1) This section applies to petroleum development expenditure that relates to a petroleum mining development and that is incurred after 1 April 2008, if the petroleum miner has chosen to apply this section for the first income year in which the petroleum mining development first produces petroleum in commercial quantities. 30

*“Choice*

“(2) The choice described in **subsection (1)** is made in a return of income, and applies this section to petroleum development expenditure that relates to a petroleum mining development 35

for the income year of the return and for all subsequent income years.

*“Reserve depletion method expense allocation rule*

- “(3) For the purposes of **section DT 5(2)(b)** (Petroleum development expenditure), the deduction allocated to an income year for the petroleum development expenditure is calculated using the formula— 5

$$(\text{reserve expenditure} - \text{previous deductions}) \times \frac{\text{reserve depletion for the year}}{\text{probable reserves.}}$$

*“Definition of items in formula*

- “(4) The items in the formula are defined in **subsections (5) to (8)**. 10

*“Reserve expenditure*

- “(5) **Reserve expenditure** is the total of petroleum development expenditure to which this section applies for the income year or an earlier income year.

*“Previous deductions* 15

- “(6) **Previous deductions** is the total amount of petroleum development expenditure that relates to the relevant petroleum mining development and that has been allocated to an earlier income year.

*“Reserve depletion for the year* 20

- “(7) **Reserve depletion for the year** is the amount, expressed in barrels of oil equivalent, of petroleum produced from the relevant petroleum mining development for the income year.

*“Probable reserves*

- “(8) **Probable reserves** is the amount, expressed in barrels of oil equivalent, of the reserves of petroleum for the petroleum mining development that are not yet proven but are estimated, at the beginning of the income year, to have a better than 50% chance of being technically and commercially producible. 25

*“Relationship with other petroleum mining provisions*

“(9) Sections EJ 13 to EJ 16 override **subsection (3)**. Sections DT 7, DT 8, DT 10, DT 11, DT 16, and IS 5 (which relate to petroleum miners) override this section.

“Defined in this Act: amount, deduction, income year, petroleum development expenditure, petroleum mining development”.

(2) **Subsection (1)** applies for expenditure incurred on or after 1 April 2008.

**94 Relinquishing petroleum mining permit**

(1) In section EJ 13(2)(b), “section EJ 12(1)” is replaced by “**section EJ 12(2) or EJ 12B(3)**”.

(2) **Subsection (1)** applies for expenditure incurred on or after 1 April 2008.

**95 New sections EJ 13B and EJ 13C inserted**

(1) After section EJ 13, the following is inserted: 15

**“EJ 13B Dry well drilled**

*“When this section applies*

“(1) This section applies when—

“(a) the petroleum miner has petroleum development expenditure for a well, the drilling of which is completed in an income year, and, from the time of completion, the well— 20

“(i) will never produce petroleum in commercial quantities; and

“(ii) is abandoned; and 25

“(b) part of a deduction under **section DT 5** (Petroleum development expenditure) for the petroleum development expenditure described in **paragraph (a)** has not been allocated under **section EJ 12 or EJ 12B**.

*“Allocation 30*

“(2) The part of the deduction described in **subsection (1)** is allocated to the income year.

“Defined in this Act: amount, deduction, income year, petroleum development expenditure

**“EJ 13C Well not producing***“When this section applies***“(1)** This section applies when—**“(a)** the petroleum miner has petroleum development expenditure for a well that, in an income year— 5**“(i)** stops producing petroleum in commercial quantities; and**“(ii)** is abandoned; and**“(b)** the petroleum miner has elected to apply **section EJ 12B** for the petroleum development expenditure described in **paragraph (a)** before the start of the income year; and 10**“(c)** part of a deduction under **section DT 5** (Petroleum development expenditure) for the petroleum development expenditure described in **paragraphs (a) and (b)** has not been allocated under **section EJ 12B**. 15*“Allocation***“(2)** The part of the deduction described in **subsection (1)** is allocated to the income year.*“Defined in this Act: amount, deduction, income year, petroleum development expenditure”.* 20**(2)** **Subsection (1)** applies for expenditure incurred on or after 1 April 2008.**96 Disposal of petroleum mining asset****(1)** Section EJ 15(2)(b) is replaced by the following: 25**“(b)** it has not been allocated under **section EJ 12 or EJ 12B** to the income year in which the miner disposes of the asset or to an earlier income year.”**(2)** **Subsection (1)** applies for expenditure incurred on or after 1 April 2008. 30**97 Sections EJ 19 and EJ 20 replaced****(1)** Sections EJ 19 and EJ 20 are replaced by the following:



**“EJ 20 Meaning of petroleum mining development**

*“Meaning*

“(1) In **sections EJ 12 and EJ 12B**, **petroleum mining development** means a place where 1 or more of the activities described in **subsection (2)** is carried out. 5

*“Activities: inclusions*

“(2) The activities are those carried out in connection with—  
 “(a) developing a permit area for producing petroleum:  
 “(b) producing petroleum:  
 “(c) processing, storing, or transmitting petroleum before its dispatch to a buyer, consumer, processor, refinery, or user: 10  
 “(d) removal or restoration operations.

*“Activities: exclusions*

“(3) The activities do not include further treatment to which all the following apply: 15  
 “(a) it occurs after the well stream has been separated and stabilized into crude oil, condensate, or natural gas; and  
 “(b) it is done—  
 “(i) by liquefaction or compression; or 20  
 “(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”. 25

(2) **Subsection (1)** applies for expenditure incurred on or after 1 April 2008.

**98 What is an excepted financial arrangement?**

(1) After section EW 5(3), the following is inserted:

*“Emissions unit* 30

“(3B) An emissions unit is an excepted financial arrangement.”

(2) In section EW 5(8), “insurance contract” is replaced by “insurance contract that is not life financial reinsurance”.

(3) In section EW 5(13), the second sentence is replaced by “This subsection does not apply to a withdrawable share, to an option 35

to acquire or dispose of withdrawable shares, or to a fixed-rate foreign equity.”

- (4) In section EW 5, in the list of defined terms, “fixed-rate foreign equity” is inserted.
- (5) In section EW 5, in the list of defined terms, “emissions unit” is inserted. 5
- (6) In section EW 5, in the list of defined terms, “life financial reinsurance” is inserted.
- (7) **Subsections (3) and (4)** apply for the 2009–10 and later income years. 10
- (8) **Subsections (2) and (6)** apply for income years beginning on or after 1 April 2009.

**99 When use of spreading method not required**

Section EW 13(2), other than the heading, is replaced by the following: 15

- “(2) A trustee who holds a financial arrangement in trust to manage compensation paid for personal injury under the Injury Prevention, Rehabilitation, and Compensation Act 2001, the Accident Insurance Act 1988, any of the former Acts as defined in section 13 of the Accident Insurance Act 1998, the Workers’ Compensation Act 1956, or a court order does not use any of the spreading methods for the financial arrangement if the trustee is a cash basis person.” 20

**100 IFRS financial reporting method**

After section EW 15D(2)(a), the following is inserted: 25

- “(ab) even if another currency may be used as the functional currency under IFRSs, the IFRS financial reporting method must be applied using New Zealand dollars, except as required by section EX 21 (Attributable CFC income and net attributable CFC income or loss) for calculations under section EX 21D (Non-attributing active CFC: default test):” 30

**101 Determination alternatives**

- (1) In section EW 15E(1)(c), the words before subparagraph (i) are replaced by the following: 35

- “(c) the financial arrangement is not treated under IFRSs as a hedge of a financial arrangement, or is treated as a hedge of a financial arrangement (**financial arrangement A**) and—”.
- (2) In section EW 15E(1)(c)(ii), “fair value method” is replaced by “modified fair value method”. 5
- (3) In section EW 15E(2), the words before paragraph (a) are replaced by the following:
- “(2) The person must use 1 of the following methods modified, as applicable, under subsection (3) or **(3B)**.”. 10
- (4) After section EW 15E(3), the following is added:  
*“Modifications*
- “(3B) For a determination alternative that is *Determination G27*, the allocation is modified as follows:
- “(a) *method C* must be used, and not *methods A, B, or D*: 15
- “(b) for *method C*, if relevant, *Determination G9C* and not *Determination 9A* must be used.”
- 102 Expected value method**
- (1) In section EW 15F(1)(c), the words before subparagraph (i) are replaced by the following: 20
- “(c) the financial arrangement is not treated under IFRSs as a hedge of a financial arrangement, or is treated as a hedge of a financial arrangement (**financial arrangement A**) and—”.
- (2) Section EW 15F(3) is repealed. 25
- (3) **Subsection (2)** applies for the 2009–10 and later income years.
- 103 Modified fair value method**
- (1) In section EW 15G(1)(c), the words before subparagraph (i) are replaced by the following: 30
- “(c) the financial arrangement is not treated under IFRSs as a hedge of a financial arrangement, or is treated as a hedge of a financial arrangement (**financial arrangement A**) and—”.
- (2) In section EW 15G(1)(d), “fair value method” is replaced by “modified fair value method”. 35

- (3) In section EW 15G(2), the first sentence is replaced by “The person must use a method that is the fair value method under section EW 15D.”

**104 Mandatory use of yield to maturity method for some arrangements**

5

- (1) After section EW 15I(1)(b)(ii), the following is inserted:  
“(iib) is a lease that is a finance lease, and under NZIAS 17 and in the person’s financial statements, the lease is classified as an operating lease.”

- (2) In section EW 15I, in the list of defined terms, “finance lease” and “NZIAS 17” are inserted. 10

**105 Straight-line method**

In section EW 17(1)(a), “\$1,500,000” is replaced by “\$1,850,000”.

**106 Consistency of use of straight-line method and market valuation method**

15

- (1) In the heading to section EW 25(3), “\$1,500,000” is replaced by “\$1,850,000”.

- (2) In section EW 25(3), “\$1,500,000” is replaced by “\$1,850,000”. 20

**107 Change of spreading method**

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

*“Requirements for change from straight-line and market value method*

- “(1) A person may change from the straight-line method or the market value method if they change to a method that is not a method for IFRS under section EW 15B, and the Commissioner has given written authorisation for the change.” 25

- (2) In section EW 26(2), the first sentence is replaced by “A person may change from any spreading method to any other method if the Commissioner’s written authorisation under **subsection (1)** is not required for the change, and they have a sound commercial reason for the change”. 30

(3) Section EW 26(6), other than the heading, is replaced by the following:

“(6) Subsections (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 or a change from the market value method to a method for IFRS under section EW 15B, in which case section EW 29(13) applies.”

(4) Section EW 26(7)(a) is replaced by the following:

“(a) starting or stopping the use of IFRSs to prepare financial statements at the same time as starting or stopping the use of a method for IFRS under section EW 15B:”.

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

Section EW 29(13), other than the heading, is replaced by the following:

“(13) A party to the financial arrangement who changes from the fair value method to another method or from the market value method to a method for IFRS under section EW 15B must calculate a base price adjustment at the date of the change.”

**109 Section EW 54 replaced**

Section EW 54 is replaced by the following:

**“EW 54 Meaning of cash basis person**

*“Who is cash basis person*

“(1) A person is a **cash basis person** for an income year if—

“(a) 1 of the following applies in the person’s case for the income year:

“(i) section EW 57(1); or

“(ii) section EW 57(2); and

“(b) section EW 57(3) applies in the person’s case for the income year.

*“Persons excluded by Commissioner*

“(2) A person may be excluded under section EW 59 from being a cash basis person for a class of financial arrangements.

“Defined in this Act: cash-basis person, financial arrangement, income year”.

- 110 Section EW 56 repealed**  
Section EW 56 is repealed.
- 111 Thresholds**
- (1) In section EW 57(1), “section EW 56(1)(a)(i)” is replaced by section “EW 54(1)(a)(i)”. 5
- (2) In section EW 57(2), “section EW 56(1)(a)(ii)” is replaced by “section EW 54(1)(a)(ii)”.
- (3) In section EW 57(3), “section EW 56(1)(b)” is replaced by “section EW 54(1)(b)”.
- (4) After section EW 57(9), the following is added: 10  
“*Increase in specified sums*  
“(10) The Governor-General may make an Order in Council increasing a sum specified in any of subsections (1) to (3).”
- 112 Financial arrangements, income, and expenditure relevant to criteria** 15
- (1) In section EW 58(1), “the natural person” is replaced by “the person”.
- (2) In section EW 58(2),—  
(a) the subsection heading is replaced by “*Partner*”:  
(b) “A natural person” is replaced by “A person”. 20
- (3) In section EW 58(3),—  
(a) the subsection heading is replaced by “*Beneficiary of bare trust*”:  
(b) “A natural person” is replaced by “A person”.
- (4) In section EW 58(4),— 25  
(a) the subsection heading is replaced by “*Beneficiary of trust other than bare trust*”:  
(b) “a natural person” is replaced by “a person”.
- (5) In section EW 58(5),—  
(a) the subsection heading is replaced by “*Trustee*”:  
(b) “a natural person” is replaced by “a person”. 30
- 113 Section EW 59 replaced**  
Section EW 59 is replaced by the following:

**“EW 59 Exclusion by Commissioner**

The Commissioner may treat a person who would otherwise be a cash basis person for a class of financial arrangements as not being a cash basis person for the class if—

- “(a) the person, or any other person, has structured and promoted the class to defer an income tax liability: 5
- “(b) the parties to a financial arrangement are associated, and the person’s calculation of income and expenditure under the financial arrangement differs from that used by the associated person. 10

“Defined in this Act: associated person, cash-basis person, Commissioner, financial arrangement, income, income tax liability”.

**114 Trustee of deceased’s estate**

- (1) In section EW 60(2) and (3), “section EW 56(1)(a) and (b)” is replaced by “section EW 54(1)(a) and (b)”. 15
- (2) In section EW 60(4), “to EW 56” are replaced by “and EW 55”.

**115 Meaning of controlled foreign company**

- (1) Section EX 1(2)(b)(ii) is replaced by the following: 20
  - “(ii) an entity that qualifies for PIE status:”.
- (2) **Subsection (1)** applies for the 2009–10 and later income years.

**116 Associates and 10% threshold**

- (1) In section EX 15(1), “section EX 14” is replaced by “sections CD 45, CQ 2, EX 14, EX 21, EX 34, EX 58, and LL 9.” 25
- (2) In section EX 15(1), “EX 34, EX 58, and LL 9.” is replaced by “EX 34, and EX 58.”
- (3) **Subsection (2)** applies for the 2009–10 and later income years.

**117 Formula for calculating attributed CFC income or loss 30**

- (1) In the formula in section EX 18, “branch equivalent income” is replaced by “net attributable CFC income”.
- (2) In section EX 18, in the list of defined terms,—
  - (a) “branch equivalent income” is omitted:

- (b) “net attributable CFC income” is inserted.
- (3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.
- 118 Taxable distribution from non-complying trust**
- (1) In section EX 19(1)(b), “branch equivalent income” is replaced by “net attributable CFC income”. 5
- (2) In section EX 19(2), “branch equivalent income” is replaced by “net attributable CFC income”.
- (3) Section EX 19(5) is repealed.
- (4) In section EX 19, in the list of defined terms,— 10
- (a) “branch equivalent income” is omitted:
- (b) “net attributable CFC income” is inserted.
- (5) **Subsections (1) to (4)** apply for the 2009–10 and later income years.
- 119 New heading and sections EX 20B to EX 20D inserted** 15
- (1) After section EX 20, the following is inserted:
- “Attributable CFC amount and net attributable CFC income or loss*
- “EX 20B Attributable CFC amount**
- “Attributable CFC amount* 20
- “(1) Attributable CFC amount**, for an accounting period and a CFC, means the amount calculated under the rules in **section EX 21** using the formula—
- gross income + arrangement income.
- “Definition of items in formula*
- “(2) The items in the formula in subsection (1) are defined in subsections (3) and (4).** 25
- “Gross income*
- “(3) Gross income** is the total amount of income derived in the accounting period by the CFC that is 1 or more of the following:
- “(a) a dividend that is paid in relation to rights that are a direct income interest of less than 10% in a foreign company and are described in—** 30



- “(i) section EX 31:
- “(ii) section EX 32:
- “(iii) section EX 36:
- “(iv) section EX 37:
- “(v) in section EX 37B: 5
- “(vi) section EX 39:
- “(b) a dividend that is paid by a company resident in New Zealand to the extent to which the dividend is not fully imputed under section RF 9(2) (When dividends fully imputed or fully credited): 10
- “(c) an amount that is treated as a payment of interest under **section CD 36B** (Distributions to resident company for deductible foreign equity and fixed-rate foreign equity):
- “(d) a royalty, other than a royalty referred to in **subsection (5)**: 15
- “(e) rent, other than rent referred to in **subsection (6)**, from—
  - “(i) a lease or sublease of land:
  - “(ii) a lease or sublease of personal property:
  - “(iii) a licence to use intangible property: 20
  - “(iv) a hire or bailment:
- “(f) income from a business of general insurance or life insurance that is—
  - “(i) a premium under an insurance contract or reinsurance contract: 25
  - “(ii) income from a change in value of revenue account property used in the business:
- “(g) income from a life insurance policy that is not included in a calculation of FIF income or loss and is—
  - “(i) a distribution under the life insurance policy: 30
  - “(ii) income from an alienation of the life insurance policy, if the policy is revenue account property:
- “(h) income from the supply of personal services performed by another person (the **working person**) if—
  - “(i) the personal services are not essential support for a product supplied by the CFC; and 35
  - “(ii) the working person is associated with the CFC under section YB 5 (Company and non-corporate 25% interest holder) at the time the services are

- performed or is a relative, at the beginning of the accounting period, of a person associated with the CFC under section YB 5; and
- “(iii) 80% or more of the CFC’s total income in the accounting period from supplying personal services is derived through personal services meeting the requirements of **subparagraph (i)** performed by working persons meeting the requirements of **subparagraph (ii)**; and 5
- “(iv) to derive the income, the CFC uses a business structure that requires depreciable property having, at the end of the accounting period, a total cost under section GB 28(7) (Interpretation of terms used in section GB 27) less than or equal to the greater of \$75,000 and 25% of the CFC’s total income from personal services performed in the accounting period: 15
- “(i) income from the alienation of shares that are revenue account property, other than shares referred to in **subsection (7)**: 20
- “(j) income from the alienation of revenue account property if the property is—
- “(i) not a share, financial arrangement, or life insurance policy; and
- “(ii) capable of giving rise to income of the CFC referred to in another paragraph of this subsection: 25
- “(k) income from a service physically performed wholly or partly in New Zealand, other than a telecommunications service:
- “(l) income from a service relating to the use of equipment to provide a telecommunications service, to the extent to which the equipment is at the time— 30
- “(i) physically located outside any country or territory; and
- “(ii) owned by the CFC or by another CFC that is associated with the CFC; and 35
- “(iii) not a mobile telephone handset or a radio receiver and transmitter for a ship or aircraft:

- “(m) income from a telecommunications service to the extent to which the service is physically performed in New Zealand, except if—
  - “(i) the service is the transmission, emission, or reception of information between New Zealand and the country or territory in which the CFC is liable to income tax on its income because of its domicile, residence, place of incorporation, or centre of management; and 5
  - “(ii) the CFC is a network operator under the Telecommunications (Interception Capability) Act 2004 or a person who is such a network operator owns an income interest of 50% or more in the CFC; and 10
  - “(iii) the service is not performed using equipment that at the time is physically located in New Zealand and is in the possession of the CFC or of another CFC that is associated with the CFC; and 15
  - “(iv) the service is not performed by a person who at the time is physically located in New Zealand and is an employee or contractor of the CFC or of another CFC that is associated with the CFC. 20

“*Arrangement income*

- “(4) **Arrangement income** is the total for the CFC and the accounting period of amounts of income under section CC 3 (Financial arrangements) for— 25
  - “(a) an arrangement that—
    - “(i) is a financial arrangement, or a short-term agreement for sale and purchase for which the CFC has made an election under section EW 8 (Election to treat certain excepted financial arrangements as financial arrangements); and 30
    - “(ii) is not a derivative instrument; and
    - “(iii) is not referred to in **subsection (8)**;
  - “(b) a derivative instrument that— 35
    - “(i) is held in the course of a business of the CFC for the purpose of dealing with the derivative instrument:

- “(ii) is not entered in the ordinary course of a business of the CFC:
- “(iii) is in a hedging relationship, of a type referred to in IFRS 39, with income of the CFC referred to in **subsection (3) or paragraph (a)** or with a transaction producing such income of the CFC. 5
- “*Exclusions from attributable CFC amount: royalties*
- “(5) A royalty derived by a CFC is not included in an attributable CFC amount under **subsection (3)(d)** if—
- “(a) the CFC has a pattern of activity involving creating, developing, or adding value to property that produces royalties and the royalty is— 10
- “(i) paid by a person who is not associated with the CFC under section YB 2 (Two companies with common control); and 15
- “(ii) from property that is not linked to New Zealand under **subsection (9)**; and
- “(iii) from property that the CFC has created or developed or to which the CFC has added substantial value: 20
- “(b) the CFC has a pattern of activity involving creating, developing, or adding value to property that produces royalties and the royalty is—
- “(i) paid by a person who is associated with the CFC under section YB 2 and would not be an associated non-attributing active CFC if such royalties were attributable CFC amounts; and 25
- “(ii) from property that is not linked to New Zealand under **subsection (9)**; and
- “(iii) from property that the CFC has created or developed or to which the CFC has added substantial value; and 30
- “(iv) an arm’s length amount determined under section GC 13 (Calculation of arm’s length amounts) for the arrangement between the CFC and the associated person: 35
- “(c) the royalty is—
- “(i) paid by a person who would be an associated non-attributing active CFC in the absence of this

- paragraph and **subsections (6)(c) and (8)(a)**;  
and
- “(ii) from property that is not linked to New Zealand under **subsection (9)**;
- “(d) the royalty is paid by a person who is not associated with the CFC under section YB 2 and is from property that is— 5
- “(i) owned by a New Zealand resident who is not treated as a non-resident under a double tax agreement; and 10
- “(ii) licensed to the CFC by the New Zealand resident for an arm’s length amount determined under section GC 13 for the arrangement between the CFC and the New Zealand resident.
- “*Exclusions from attributable CFC amount: rent* 15
- “(6) Rent derived by a CFC is not included in an attributable CFC amount under **subsection (3)(e)** if the rent is—
- “(a) from land in a country or territory under the laws of which—
- “(i) the CFC is liable to income tax on the CFC’s income because of its domicile, residence, place of incorporation, or centre of management: 20
- “(ii) persons holding income interests in the CFC are liable for the income tax on the CFC’s income and the country or territory is the source of 80% or more of the CFC’s income: 25
- “(b) from property other than land, to the extent to which the rent relates to the use of the property in a country or territory referred to in **paragraph (a)**;
- “(c) paid by a person who would be an associated non-attributing active CFC in the absence of this paragraph and **subsections (5)(c) and (8)(a)**: 30
- “(d) a payment under a hire purchase agreement:
- “(e) a payment under a finance lease:
- “(f) a royalty. 35
- “*Exclusions from attributable CFC amount: shares*
- “(7) Income derived by a CFC from the alienation of a share that is revenue account property is not included in an attributable

- CFC amount under **subsection (3)(i)** if the CFC's FIF income or loss from the share in the period ending with the alienation is calculated using—
- “(a) the comparative value method:
  - “(b) the deemed rate of return method: 5
  - “(c) the fair dividend rate method:
  - “(d) the cost method.
- “*Exclusions from attributable CFC amount: income from financial arrangements other than derivative instruments*
- “(8) Income of a CFC from a financial arrangement or excepted financial arrangement that is referred to in **subsection (4)(a)(i)** is not included in an attributable CFC amount under **subsection (4)(a)** if the financial arrangement or agreement is—
- “(a) an agreement by the CFC to lend money to a person who would be an associated non-attributing active CFC in the absence of this paragraph and **subsections (5)(c) and (6)(c)**: 15
  - “(b) an agreement for the sale or purchase of property or services or a hire purchase agreement—
    - “(i) entered in the ordinary course of business by the CFC: 20
    - “(ii) for property or services produced or used by the CFC in business.
- “*Royalties: property linked to New Zealand*
- “(9) Property giving rise to a royalty is linked to New Zealand for the purposes of **subsection (5)** if the property— 25
- “(a) has been owned by a New Zealand resident:
  - “(b) has been owned by a non-resident for the purposes of a business carried on in New Zealand through a fixed establishment in New Zealand: 30
  - “(c) was created or developed in New Zealand:
  - “(d) has had substantial value added in New Zealand:
  - “(e) has been acquired by a person who had a deduction for expenditure or loss incurred in the acquisition:
  - “(f) is based on knowledge acquired by a person who— 35
    - “(i) acquired the knowledge with a purpose or intention of creating the property; and

- “(ii) had a deduction for expenditure or loss incurred in the acquisition:
- “(g) is created or developed from activities, or from the extension, continuation, development, or completion of activities, if the activities produced knowledge acquired by a person who had a deduction for expenditure or loss incurred in the acquisition. 5

“Defined in this Act: accounting period, agreement for the sale or purchase of property or services, associated, associated non-attributing active CFC, attributable CFC amount, business, CFC, comparative value method, deduction, deemed rate of return method, depreciable property, derivative instrument, dividend, exempt income, fair dividend rate method, finance lease, financial arrangement, general insurance, hire purchase agreement, income, insurance contract, interest, land, life insurance, life insurance policy, loan, loss, money lent, New Zealand, New Zealand resident, non-attributing active CFC, non-resident, reinsurance contract, relative, resident in New Zealand, revenue account property, royalty, share, short-term agreement for sale and purchase, telecommunications service 10 15

“EX 20C Net attributable CFC income or loss

“CFC’s net attributable CFC income or loss 20

- “(1) For the purpose of calculating the attributed CFC income or loss for an accounting period of a person with an income interest in a CFC,—
- “(a) the CFC’s **net attributable CFC income** for the accounting period is— 25
  - “(i) the amount calculated using the formula in **subsection (2)** and the rules in **section EX 21**, if that amount is more than zero:
  - “(ii) zero, if **subparagraph (i)** does not apply:
- “(b) the CFC’s **net attributable CFC loss** for the accounting period is— 30
  - “(i) the absolute value of the amount calculated using the formula in **subsection (2)** and the rules in **section EX 21**, if that amount is less than zero:
  - “(ii) zero, if **subparagraph (i)** does not apply. 35

- “Formula for net attributable CFC income or loss*
- “(2) The amount of a CFC’s net attributable CFC income or loss for an accounting period is calculated using the formula—  
attributable CFC – (interest × fraction) – other deductions.
- “Definition of items in formula in subsection (2)* 5
- “(3) The items in the formula are defined in **subsections (4) to (7)**.
- “Attributable CFC*
- “(4) **Attributable CFC** is the CFC’s attributable CFC amount for the accounting period. 10
- “Interest*
- “(5) **Interest** is the total of amounts for which the CFC would have a deduction in the accounting period that—
- “(a) relate to financial arrangements providing funds to the CFC: 15
- “(b) are a payment treated as a payment of interest under **section CD 36B** (Distributions to resident company for deductible foreign equity and fixed-rate foreign equity).
- “Fraction*
- “(6) **Fraction** is the amount calculated under— 20
- “(a) **subsection (8)**, if the CFC is not excessively debt funded under **section EX 20D**; or
- “(b) **section EX 20D**, if the CFC is excessively debt funded under that section.
- “Other deductions* 25
- “(7) **Other deductions** is the amount of expenditure and loss incurred in the accounting period by the CFC to the extent to which the expenditure and loss,—
- “(a) if not a deduction relating to a financial arrangement, is— 30
- “(i) incurred for the purpose of deriving an attributable CFC amount; and
- “(ii) not incurred for the purpose of deriving an amount that is not an attributable CFC amount; and 35
- “(iii) a deduction of the CFC:
- “(b) if a deduction relating to a financial arrangement, is—



- “(i) not included in the calculation of the item ‘interest’ referred to in **subsection (5)**; and
- “(ii) from a financial arrangement meeting the requirements of **section EX 20B(4)**.

“*Proportion by value of assets producing attributable CFC amount* 5

- “(8) If the CFC is not excessively debt funded under **section EX 20D**, the item **fraction** referred to in **subsection (6)** is calculated using the formula—

$$\frac{\text{attributable CFC assets}}{\text{total CFC assets.}}$$

“*Definition of items in formula in subsection (8)* 10

- “(9) In the formula,—
- “(a) **attributable CFC assets** is the total value of the CFC’s assets determined under generally accepted accounting practice, to the extent to which each asset is used for the purpose of deriving an attributable CFC amount and not used for the purpose of deriving an amount that is not an attributable CFC amount: 15
- “(b) **total CFC assets** is the total value of the CFC’s assets determined under generally accepted accounting practice. 20

“Defined in this Act: accounting period, attributable CFC amount, CFC, deduction, income interest, interest, loss, net attributable CFC income, net attributable CFC loss

“**EX 20D Adjustment of fraction for excessively debt funded CFC** 25

“*When this section applies*

- “(1) This section applies for the purposes of **section EX 20C(3)** to a CFC that is excessively debt funded under **subsection (2)** in relation to a person (the **interest holder**) with an income interest in the CFC. 30

“*Excessive debt funding*

- “(2) A CFC is excessively debt funded under this section if—

“(a) the amount (the CFC’s **debt-asset ratio**) calculated using the formula in **subsection (4)** is more than 0.75; and

“(b) the amount (the CFC’s **relative debt-asset ratio**) calculated from the CFC’s group debt-asset ratio given by **subsection (9)** and using the formula in **subsection (13)** is more than 1.10. 5

*“Calculations for CFC*

“(3) For the purposes of **subsections (4) to (7)**, the debts and assets of the CFC are determined under sections FE 8 to FE 11 (which contain rules for determining the apportionment of interest) as if the CFC were an excess debt outbound company. 10

*“Formula for debt-asset ratio of CFC*

“(4) The formula for the CFC’s debt-asset ratio referred to in **subsection (2)(a)** is— 15

$$\frac{\text{total CFC debts}}{\text{total CFC assets.}}$$

*“Definition of items in formula in subsection (4)*

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

*“Total CFC debts*

“(6) **Total CFC debts** is the total amount for the CFC and the accounting period, determined under generally accepted accounting practice, of the outstanding balances of— 20

“(a) financial arrangements entered by the CFC, each of which—

“(i) provides funds to the CFC; and 25

“(ii) gives rise to an amount for which the CFC would have a deduction:

“(b) fixed-rate foreign equity issued by the CFC and held by a New Zealand resident.

*“Total CFC assets 30*

“(7) **Total CFC assets** is the total value of the CFC’s assets determined under generally accepted accounting practice.

*“Members of CFC’s group and calculations for group*

- “(8) For the purposes of **subsections (9) to (14)**,—
- “(a) the members of a CFC’s group are determined under sections FE 31 and **FE 32** (which relate to the determination of groups) as if the interest holder were an excess debt outbound company; and 5
- “(b) the debts and assets of the CFC’s group are determined under sections FE 8 to FE 11 and FE 18 (Measurement of debts and assets of worldwide group) as if the interest holder were an excess debt outbound company. 10

*“Formula for CFC’s group debt-asset ratio*

- “(9) The formula for the CFC’s group debt-asset ratio referred to in **subsection (2)(b)** is—

$$\frac{\text{total group debts}}{\text{total group assets.}}$$

*“Definition of items in formula in subsection (9)*

- “(10) The items in the formula are defined in **subsections (11) and (12)**. 15

*“Total group debts*

- “(11) **Total group debts** is the total amount, consolidated for the CFC’s group and the accounting period, of the outstanding balances of— 20
- “(a) financial arrangements entered by the group’s members, each of which—
- “(i) provides funds to a group member; and
- “(ii) gives rise to an amount for which a group member would have a deduction: 25
- “(b) fixed-rate foreign equity issued by a member of the group and held by a New Zealand resident.

*“Total group assets*

- “(12) **Total group assets** is the total consolidated value for the accounting period of the assets of the CFC’s group. 30

*“Formula for CFC’s relative debt-asset ratio*

- “(13) The formula for the CFC’s relative debt-asset ratio referred to in **subsection (2)(b)** is—

$$\frac{\text{CFC debt-asset ratio}}{\text{group debt-asset ratio.}}$$

*“Definition of items in formula in subsection (13)*

“(14) In the formula,—

“(a) **CFC debt-asset ratio** is the CFC’s debt-asset ratio under **subsection (4)**:

“(b) **group debt-asset ratio** is the CFC’s group debt-asset ratio under **subsection (9)**. 5

*“Fraction for excessively funded CFC*

“(15) For a CFC that is excessively funded, the item **fraction** for the purposes of **section EX 20C(6)** is the amount calculated using the formula in **subsection (16)**. 10

*“Formula for fraction deduction*

“(16) The formula for the CFC’s fraction deduction is—

$$\frac{\text{CFCs’ debts}}{\text{CFCs’ assets.}}$$

*“Definition of items in formula in subsection (16)*

“(17) The items in the formula are defined in **subsections (18) and (19)**. 15

*“CFCs’ debts*

“(18) **CFCs’ debts** is the total amount, for all the interest holder’s CFCs and the accounting period, of the outstanding balances of—

“(a) financial arrangements entered by the CFCs, each of which— 20

“(i) provides funds to a CFC; and

“(ii) gives rise to an amount for which a CFC would have a deduction:

“(b) fixed-rate foreign equity issued by a CFC and held by a New Zealand resident. 25

“CFCs’ assets

“(19) **CFCs’ assets** is the total for the accounting period of the assets of the interest holder’s CFCs determined under generally accepted accounting practice.

“Defined in this Act: accounting period, CFC, deduction, excess debt outbound company, financial arrangement, fixed-rate foreign equity, New Zealand resident”.

(2) **Subsection (1)** applies for the 2009–10 and later income years.

**120 Attributable CFC amount** 10

(1) **Section EX 20B(3)(h)(ii)** is replaced by the following:

“(ii) the working person is associated with the CFC under **section YB 3** (Company and person other than company) at the time the services are performed or is a relative, at the beginning of the accounting period, of a person associated with the CFC under **section YB 3**; and”.

(2) Section EX 20B(5)(a)(i) is replaced by the following:

“(i) paid by a person who is not associated with the CFC under **section YB 2** (Two companies); and”.

**121 Heading repealed**

(1) The heading before section EX 21 is repealed.

(2) **Subsection (1)** applies for the 2009–10 and later income years. 25

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

(1) In the heading to section EX 21, “**Branch equivalent income or loss**” is replaced by “**Attributable CFC amount and net attributable CFC income or loss**”.

(2) Section EX 21(1) is replaced by the following: 30  
“*Calculation rules for CFC*

“(1) For the purposes of calculating an attributable CFC amount and attributed CFC income for a CFC and of determining under **section EX 21D** whether a CFC is a non-attributing

active CFC, the CFC's attributable CFC amount and net attributable CFC income or loss are calculated under the rules in this section.

*“Calculation rules for test group of CFCs*

“(1B) For the purpose of determining under **section EX 21D** 5  
whether a member of a group of CFCs is a non-attributing  
active CFC,—

“(a) the consolidated annual gross income of the group is  
calculated under the rules in this section; and

“(b) the consolidated attributable CFC amount of the group 10  
is calculated under the rules in this section.”

(3) Section EX 21(2), except for the heading, is replaced by the  
following:

“(2) The rules in this Act are applied as if the CFC were always a  
New Zealand resident.” 15

(4) After section EX 21(3), the following is inserted:

*“Determining currency of calculations*

“(3B) The currency used for calculations relating to a CFC is given  
by—

“(a) subsection (4), except for calculations under **section** 20  
**EX 21D**; or

“(b) **subsection (8B)**, for calculations under **section EX**  
**21D**.”

(5) In section EX 21(5), “branch equivalent income or loss for”  
is replaced by “attributable CFC amount and net attributable 25  
CFC income or loss attributable to”.

(6) In section EX 21(7), “branch equivalent income or loss at-  
tributable to” is replaced by “attributable CFC amount and net  
attributable CFC income or loss arising from”.

(7) After section EX 21(8), the following is inserted: 30

*“Currency for calculations under section EX 21D*

“(8B) For determining under section EX 21D whether a CFC is a  
non-attributing active CFC for the taxpayer, the taxpayer must  
use the currency (the **functional currency**) of the primary eco-  
nomic environment in which the CFC operates. 35

*“Factors in determining primary economic environment*

“(8C) The functional currency for the CFC is determined by—

- “(a) the following factors (the **primary factors**), if they are sufficient to identify the functional currency:
    - “(i) the currency that mainly influences sales prices of goods and services for the CFC:
    - “(ii) the currency of the country or territory whose competitive forces and regulations mainly determine the sales prices of goods and services for the CFC: 5
    - “(iii) the currency that mainly influences the costs for the CFC of providing goods and services, including labour and material costs; or 10
  - “(b) the following factors (the **additional factors**) in addition to the primary factors, if the primary factors are insufficient to identify the currency:
    - “(i) the currency in which funds from financing activities are generated: 15
    - “(ii) the currency in which receipts from operating activities are usually retained:
    - “(iii) whether or not the CFC is acting merely as an extension of a parent company, or operating with substantial autonomy; or 20
  - “(c) the Commissioner, if the primary factors and additional factors are insufficient to identify the currency.
- “*Change of currency*
- “(8D) The taxpayer must notify the Commissioner of a change in the currency used for calculations under **section EX 21D** for a CFC.” 25
  - (8) Section EX 21(13)(a) is replaced by the following:
    - “(a) the consolidation rules:”.
  - (9) In section EX 21(15), the sentence after paragraph (d) is replaced by “Also, when sections GC 6 to GC 14 are applied, the associated persons include persons associated under the parts of subpart YB (Associated persons and nominees) that apply for the purposes of the whole Act (excluding the 1973, 1988, and 1990 version provisions) or under the 1988 version provisions.” 30 35
  - (10) In section EX 21(15), the sentence following paragraph (d) is omitted.

- (11) Section EX 21(16) and (17) are replaced by the following:  
*“Dividends*  
 “(16) Dividends that are not part of the CFC’s attributable CFC amount are exempt income of the CFC.”
- (12) In section EX 21(26),— 5  
 (a) “branch equivalent income or loss” is replaced by “net attributable CFC income or loss”;  
 (b) “net income or loss” is replaced by “net attributable CFC income or loss”.
- (13) In section EX 21(32)(b), “branch equivalent income or loss” 10  
 is replaced by “net attributable CFC income or loss”.
- (14) In section EX 21(33)(b), “branch equivalent income” is replaced by “net attributable CFC income”.
- (15) Section EX 21(35) is repealed.
- (16) In section EX 21, in the list of defined terms, “1973 version 15  
 provisions”, “1988 version provisions”, and “1990 version provisions” are inserted.
- (17) In section EX 21, in the list of defined terms,—  
 (a) “branch equivalent income” is omitted:  
 (b) “annual gross income”, “attributable CFC amount”, 20  
 “net attributable CFC income”, “net attributable CFC loss”, and “non-attributing active CFC” are inserted.
- (18) **Subsections (1) to (8), (11) to (15), and (17)** apply for the 2009–10 and later income years.
- (19) **Subsection (10)** applies, for the purposes of— 25  
 (a) provisions other than the land provisions, for the 2009–10 and later income years:  
 (b) the land provisions other than section CB 11, for land acquired on or after 1 April 2009:  
 (c) section CB 11, for land on which improvements are be- 30  
 gun on or after 1 April 2009.

**123 New heading and sections EX 21B to EX 21E inserted**

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



*“Non-attributing active CFCs*

**“EX 21B Non-attributing active CFCs**

*“Non-attributing active CFC*

“(1) **Non-attributing active CFC**, for an accounting period and a person, means a CFC that meets the requirements, or is a member of a group of companies that meets the requirements, of **subsection (2) or (3)**. 5

*“CFC meeting test in section EX 21D or EX 21E*

“(2) A CFC is a non-attributing active CFC if it meets the requirements of— 10

“(a) **section EX 21E**, if—

“(i) the CFC meets the requirements of **section EX 21C** for the use of an applicable accounting standard in the application of **section EX 21E**; and

“(ii) the person chooses to use the applicable accounting standard in applying **section EX 21E**; or 15

“(b) **section EX 21D**, if **paragraph (a)** does not apply.

*“Insurer meeting requirements of determination*

“(3) A CFC that is an insurer meeting the requirements of a determination made by the Commissioner under section 91AAQ of the Tax Administration Act 1994 is a non-attributing active CFC. 20

“Defined in this Act: accounting period, CFC, group of companies, non-attributing active CFC

*“Tests for non-attributing active CFCs* 25

**“EX 21C Applicable accounting standards for section EX 21E**

*“Applicable accounting standards*

“(1) In applying **section EX 21E** to determine whether a CFC is a non-attributing active CFC for a person, the person may use as an accounting standard (the **applicable accounting standard**) 1 of the standards given by **subsections (2) to (7)**. 30

*“Generally accepted accounting practice with IFRS for CFC*

“(2) The person may use generally accepted accounting practice in New Zealand including IFRSs and the framework for differential reporting for entities applying the New Zealand equiva- 35

- lents to international financial standards reporting regime (the **generally accepted accounting practice with IFRS**) for the CFC, if the person or another person has accounts that—
- “(a) include the accounts of the CFC; and
  - “(b) comply with generally accepted accounting practice with IFRS; and 5
  - “(c) are audited by a chartered accountant or by an accountant of equivalent professional standard in the country in which the accounts are prepared; and
  - “(d) are given an unqualified opinion, a qualified opinion other than an adverse opinion or disclaimer of opinion, or an opinion of equivalent standard in the country in which the accounts are prepared. 10
- “*Generally accepted accounting practice with IFRS for test group* 15
- “(3) The person may use generally accepted accounting practice with IFRS for the CFC’s test group, if the person or another person has accounts that—
- “(a) include the accounts of the members of the test group; and 20
  - “(b) comply with generally accepted accounting practice with IFRS; and
  - “(c) are audited by a chartered accountant or by an accountant of equivalent professional standard in the country in which the accounts are prepared; and 25
  - “(d) are given an unqualified opinion, a qualified opinion other than an adverse opinion or disclaimer of opinion, or an opinion of equivalent standard in the country in which the accounts are prepared.
- “*IFRSEs for CFC* 30
- “(4) The person may use IFRSEs for the CFC, if the person or another person has accounts that—
- “(a) include the accounts of the CFC; and
  - “(b) comply with the relevant IFRSEs; and
  - “(c) are audited by a chartered accountant or by an accountant of equivalent professional standard in the country in which the accounts are prepared; and 35

- “(d) are given an unqualified opinion, a qualified opinion other than an adverse opinion or disclaimer of opinion, or an opinion of equivalent standard in the country in which the accounts are prepared.
- “*IFRSEs for test group* 5
- “(5) The person may use IFRSEs for the CFC’s test group, if the person or another person has accounts that—
- “(a) include the accounts of the members of the test group; and
- “(b) comply with the relevant IFRSEs; and 10
- “(c) are audited by a chartered accountant or by an accountant of equivalent professional standard in the country in which the accounts are prepared; and
- “(d) are given an unqualified opinion, a qualified opinion other than an adverse opinion or disclaimer of opinion, or an opinion of equivalent standard in the country in which the accounts are prepared. 15
- “*Generally accepted accounting practice without IFRS for CFC*
- “(6) The person may use generally accepted accounting practice 20  
in New Zealand for persons not required to use IFRS but required to apply with standards, other than IFRSs, approved by the Accounting Standards Review Board under the Financial Reporting Act 1993 (the **generally accepted accounting practice without IFRS**) for the CFC, if the person or another 25  
person is a company resident in New Zealand that—
- “(a) has no revenue under Financial Reporting Standard 34 and Financial Reporting Standard 35; and
- “(b) is an issuer under section 4 of the Financial Reporting Act 1993 in neither of the current and preceding accounting periods; and 30
- “(c) is not required by section 19 of the Financial Reporting Act 1993 to file its accounts with the Registrar of Companies; and
- “(d) is not a large company under section 19A(1)(b) of the 35  
Financial Reporting Act 1993; and

- “(e) does not have accounts that are prepared and audited under generally accepted accounting practice in New Zealand with IFRS; and
- “(f) is not required to have accounts prepared under generally accepted accounting practice in New Zealand with IFRS; and 5
- “(g) is not a subsidiary of a company having accounts that—
- “(i) include the accounts of the subsidiary; and
- “(ii) are prepared and audited, or required to be prepared, under generally accepted accounting practice in New Zealand with IFRS; and 10
- “(h) has accounts that include the accounts of the CFC, comply with generally accepted accounting practice without IFRS, and are given by a chartered accountant an unqualified audit opinion or a qualified audit opinion other than an adverse opinion or disclaimer of opinion. 15
- “Generally accepted accounting practice without IFRS for CFC’s test group*
- “(7) The person may use generally accepted accounting practice without IFRS for the CFC’s test group, if the person or another person is a company resident in New Zealand that— 20
- “(a) has no revenue under Financial Reporting Standard 34 and Financial Reporting Standard 35; and
- “(b) is an issuer under section 4 of the Financial Reporting Act 1993 in neither of the current and preceding accounting periods; and 25
- “(c) is not required by section 19 of the Financial Reporting Act 1993 to file its accounts with the Registrar of Companies; and
- “(d) is not a large company under section 19A(1)(b) of the Financial Reporting Act 1993; and 30
- “(e) does not have accounts that are prepared and audited under generally accepted accounting practice in New Zealand with IFRS; and
- “(f) is not required to have accounts prepared under generally accepted accounting practice in New Zealand with IFRS; and 35
- “(g) is not a subsidiary of a company having accounts that—
- “(i) include the accounts of the subsidiary; and

- “(ii) are prepared and audited, or required to be prepared, under generally accepted accounting practice in New Zealand with IFRS; and
  - “(h) has accounts that include the accounts of the members of the CFC’s test group, comply with generally accepted accounting practice without IFRS, and are given by a chartered accountant an unqualified audit opinion or a qualified audit opinion other than an adverse opinion or disclaimer of opinion. 5
- “Defined in this Act: accounting period, annual gross income, associated, attributable CFC amount, CFC, generally accepted accounting practice, IFRS, IFRSE, insurer, New Zealand resident, non-attributing active CFC, rent, royalty 10

**“EX 21D Non-attributing active CFC: default test**

- “*CFC as part of test group* 15
- “(1) A person may choose to apply this section for a CFC as a member of a group (a **test group**) if the group consists of companies—
- “(a) each subject to the laws of the same country or territory under which— 20
  - “(i) the company is liable to income tax on its income because of its domicile, residence, place of incorporation, or centre of management:
  - “(ii) persons holding income interests in the company are liable for the income tax on its income and the country or territory is the source of 80% or more of that income; and 25
- “(b) in each of which the person holds voting interests, measured under section IC 3 (Common ownership: group of companies), of more than 50%; and 30
- “(c) that are consolidated—
  - “(i) using uniform accounting policies for like transactions and for other events in similar circumstances; and
  - “(ii) eliminating in full all balances, transactions, income, and expenses arising between members of the test group. 35

*“Threshold ratio*

- “(2) A CFC is a non-attributing active CFC under **section EX 21B(2)(b)** for an accounting period and a person if the amount calculated under **subsection (3)** using the formula in **subsection (4)**— 5
- “(a) is less than 0.05; and
- “(b) is not zero under **subsection (3)(f)**.
- “Application of formula to test group*
- “(3) In using the formula in **subsection (4)**— 10
- “(a) each item in the formula is determined— 10
- “(i) for the CFC’s consolidated test group, if the person chooses to apply the formula to the test group; or
- “(ii) for the CFC, if **subparagraph (i)** does not apply; 15
- and 15
- “(b) each item in the formula is determined after amounts included in the item are adjusted to remove amounts corresponding to minority interests not held by the person; and
- “(c) a reference to a company that is associated is treated as being a reference to a company that is— 20
- “(i) associated with a member of the CFC’s test group, although not a member of the CFC’s test group, if the person chooses to apply the formula to the test group; or 25
- “(ii) associated with the CFC, if **subparagraph (i)** does not apply; and
- “(d) a reference to a company that is in the same group of companies is treated as being a reference to a company that is— 30
- “(i) in the same group of companies as a member of the CFC’s test group, although not a member of the CFC’s test group, if the person chooses to apply the formula to the test group; or
- “(ii) in the same group of companies as the CFC, if **subparagraph (i)** does not apply; and 35
- “(e) a numerator or denominator that is a negative number is treated as being zero; and

“(f) the amount calculated using the formula is zero if the denominator is zero.

“*Formula*

“(4) The amount that determines whether the CFC is a non-attributing active CFC is calculated using the formula— 5

$$\frac{\text{attributable}}{\text{annual gross} - \text{adjustments.}}$$

“*Definition of items in formula*

“(5) In the formula,—

“(a) **attributable** is the attributable CFC amount for the accounting period:

“(b) **annual gross** is the annual gross income for the accounting period in the absence of income under subpart CQ (Attributed income from foreign equity): 10

“(c) **adjustments** is the total of the following amounts for the accounting period:

“(i) expenditure or loss that is included in the calculation of the attributable CFC amount under **section EX 20B:** 15

“(ii) interest, rent, or royalties derived from a company that is not an attributable CFC amount but would be an attributable CFC amount in the absence of **section EX 20B(5)(c), (6)(c), and (8)(a):** 20

“(iii) income derived from a company that would meet the requirements of **subsection (1)(a) and (b)** for a member of a test group with the CFC: 25

“(iv) income from a supply, made for the purposes of increasing the amount given by **paragraph (b)**, to a company that would not meet the requirements of **subsection (1)(a) and (b)** for a member of a test group with the CFC. 30

“Defined in this Act: accounting period, annual gross income, associated non-attributing active CFC, attributable CFC amount, CFC, company, group of companies, income, interest, non-attributing active CFC, resident in New Zealand, royalty

**“EX 21E Non-attributing active CFC: test based on accounting standard***“Applicable accounting standard*

“(1) A person who chooses to determine under this section whether a CFC is a non-attributing active CFC for the person for an accounting period must use an accounting standard (the **applicable accounting standard**) permitted by **section EX 21C**. 5

*“CFC as part of test group*

“(2) A person may choose to apply this section for a CFC as a member of a group (a **test group**) if the group consists of companies— 10

“(a) required to consolidate under the applicable accounting standard; and

“(b) each subject to the laws of the same country or territory under which— 15

“(i) the company is liable to income tax on its income because of its domicile, residence, place of incorporation, or centre of management:

“(ii) persons holding income interests in the company are liable for the income tax on its income and the country or territory is the source of 80% or more of that income; and 20

“(c) in each of which the person holds voting interests, measured under section IC 3 (Common ownership: group of companies), of more than 50%; and 25

“(d) for which audited and consolidated financial statements are prepared complying with the applicable accounting standard.

*“Threshold ratio*

“(3) A CFC is a non-attributing active CFC under **section EX 21B(2)(a)** for an accounting period and a person if the amount calculated under **subsection (4)** using the formula in **subsection (5)** is less than 0.05. 30

*“Application of formula to test group*

“(4) In using the formula in **subsection (5)**— 35

“(a) each item in the formula is—

“(i) determined under the applicable accounting standard; and



- “(ii) adjusted so that no amount is included in the item more than once; and
- “(b) each item in the formula is determined—
  - “(i) from amounts consolidated for the CFC’s test group under the applicable accounting standard, 5  
if the person chooses to apply the formula to the test group; or
  - “(ii) from amounts for the CFC, if **subparagraph (i)** does not apply; and
- “(c) each item in the formula is determined after adjustment 10  
of amounts included in the item by removing amounts corresponding to minority interests not held by the person; and
- “(d) a reference to a company that is associated is treated as being a reference to a company that is— 15
  - “(i) associated with a member of the CFC’s test group, although not a member of the CFC’s test group, if the person chooses to apply the formula to the test group; or
  - “(ii) associated with the CFC, if **subparagraph (i)** 20  
does not apply; and
- “(e) a reference to a company that is in the same group of companies is treated as being a reference to a company that is—
  - “(i) in the same group of companies as a member of 25  
the CFC’s test group, although not a member of the CFC’s test group, if the person chooses to apply the formula to the test group; or
  - “(ii) in the same group of companies as the CFC, if **subparagraph (i)** does not apply; and 30
- “(f) amounts determined for a CFC other than as part of a test group are—
  - “(i) determined in the functional currency of the CFC; and
  - “(ii) converted between currencies under the applic- 35  
able accounting standard, but ignoring exchange differences arising on a monetary item that forms part of a net investment of the CFC in a foreign operation; and

- “(g) amounts determined for a test group are—
    - “(i) converted from the functional currency of the CFC to the presentation currency of the consolidated accounts for the test group using the average conversion rate for the accounting period; 5  
and
    - “(ii) otherwise converted between currencies under the applicable accounting standard; and
  - “(h) the amount calculated using the formula is zero if the denominator equals zero. 10
- “*Formula*
- “(5) The amount that determines whether the CFC is a non-attributing active CFC is calculated using the formula—
- $$\frac{\text{reported passive} + \text{added passive} - \text{removed passive}}{\text{reported revenue} + \text{added revenue} - \text{removed revenue}}$$
- “*Definition of items in formula*
- “(6) The items in the formula are defined in **subsections (7) to (12)**. 15
- “*Reported passive*
- “(7) **Reported passive** is the total amount that is—
    - “(a) a dividend:
    - “(b) interest: 20
    - “(c) a royalty:
    - “(d) rent:
    - “(e) income, other than rent or interest, from a finance lease or operating lease:
    - “(f) gains from a financial asset that is not a derivative, as defined in NZIAS 39, in the form of— 25
      - “(i) an increase in the fair value of the asset:
      - “(ii) a gain on the derecognition, as defined in NZIAS 39, of the asset:
      - “(iii) a foreign exchange gain on the asset: 30
    - “(g) gains from a business of insurance, including gains from property used to back insurance assets.

*“Added passive*

- “(8) **Added passive** is the total of amounts not included in the item reported passive for the accounting period that are 1 or more of the following:
- “(a) income from a life insurance policy that is included in the attributable CFC amount for the accounting period under **section EX 20B(3)(g)**: 5
  - “(b) income from a supply of personal services that is included in the attributable CFC amount for the accounting period under **section EX 20B(3)(h)**: 10
  - “(c) income from the alienation of revenue account property that is included in the attributable CFC amount for the accounting period under **section EX 20B(3)(j)**:
  - “(d) income from a supply of services performed in New Zealand that is included in the attributable CFC amount for the accounting period under **section EX 20B(3)(k)**: 15
  - “(e) income from a supply of telecommunications services that is included in the attributable CFC amount for the accounting period under **section EX 20B(3)(l) or (m)**:
  - “(f) income from a derivative instrument that is included in the attributable CFC amount for the accounting period under **section EX 20B(4)(b)**. 20

*“Removed passive*

- “(9) **Removed passive** is the total of amounts included in the item reported passive or added passive for the accounting period that are 1 or more of the following: 25
- “(a) in a category included in categories chosen by the person from the following:
    - “(i) a dividend that is not included in the attributable CFC amount for the accounting period under **section EX 20B(3)(a) or (b)**: 30
    - “(ii) a royalty that would be included in the attributable CFC amount for the accounting period but for **section EX 20B(5)(a) to (d)**:
    - “(iii) rent that would be included in the attributable CFC amount for the accounting period but for **section EX 20B(6)(a) to (c)**: 35
    - “(iv) income from a financial arrangement that would be included in the attributable CFC amount

- for the accounting period but for **section EX 20B(8)(a) and (b)**:
- “(b) gains on a share that is not revenue account property under the Act in the form of—
- “(i) an increase in the fair value of the share: 5
- “(ii) a gain on the derecognition, as defined in NZIAS 39, of the share:
- “(iii) a foreign exchange gain on the share.
- “*Reported revenue*
- “(10) **Reported revenue** is the total amount that is— 10
- “(a) included under the applicable accounting standard in—
- “(i) operating revenue, if the applicable accounting standard is generally accepted accounting practice without IFRS; or
- “(ii) revenue, if **subparagraph (i)** does not apply: 15
- “(b) income, other than rent, from a finance lease or operating lease:
- “(c) gains on a financial asset that is not a derivative, as defined in NZIAS 39, in the form of—
- “(i) an increase in the fair value of the asset: 20
- “(ii) a gain on the derecognition, as defined in NZIAS 39, of the asset:
- “(iii) a foreign exchange gain on the asset:
- “(d) gains from a business of insurance, including gains from property used to back insurance assets, if the applicable 25  
accounting standard is not generally accepted accounting practice without IFRS.
- “*Added revenue*
- “(11) **Added revenue** is the total of amounts not included under the applicable accounting standard in the item reported revenue 30  
for the accounting period that are 1 or more of the following:
- “(a) income from a life insurance policy that is included in the attributable CFC amount for the accounting period under **section EX 20B(3)(g)**:
- “(b) income from the alienation of revenue account property 35  
that is included in the CFC’s attributable CFC amount for the accounting period under **section EX 20B(3)(j)**:

“(c) income from a derivative instrument that is included in the attributable CFC amount for the accounting period under **section EX 20B(4)(b)**.

“*Removed revenue*

“(12) **Removed revenue** is the total of amounts that are included under the applicable accounting standard in the item reported revenue or added revenue for the accounting period and are 1 or more of the following:

“(a) gains on a derivative instrument that is—

“(i) not referred to in **section EX 20B(4)(b)**; and 10

“(ii) not part of a hedging relationship of a type referred to in IFRS 39:

“(b) gains on the ineffective portion of a derivative instrument that is—

“(i) not referred to in **section EX 20B(4)(b)**; and 15

“(ii) part of a hedging relationship of a type referred to in IFRS 39:

“(c) income from a derivative instrument referred to in **section EX 20B(4)(b)**, to the extent to which the income under the applicable standard exceeds the amount of income under section CC 3 (Financial arrangements): 20

“(d) a dividend to the extent to which it is included in the item removed passive under **subsection (9)(a)(i)**:

“(e) a royalty that—

“(i) would be included in the attributable CFC amount for the accounting period but for **section EX 20B(5)(b) and (c)**; and 25

“(ii) is included in the item removed passive under **subsection (9)(a)(ii)**:

“(f) rent that— 30

“(i) is derived from a CFC that could be consolidated with the CFC for the purposes of this section; and

“(ii) would be included in the attributable CFC amount for the accounting period but for **section EX 20B(6)(c)**; and 35

“(iii) is included in the item removed passive under **subsection (9)(a)(iii)**:

“(g) income from a financial arrangement that—

- “(i) would be included in the attributable CFC amount for the accounting period but for **section EX 20B(8)(a)**; and
- “(ii) is included in the item removed passive under **subsection (9)(a)(iv)**: 5
- “(h) gains on a share that is not revenue account property under this Act in the form of—
- “(i) an increase in the fair value of the share:
- “(ii) a gain on the derecognition, as defined in NZIAS 39, of the share: 10
- “(iii) a foreign exchange gain on the share:
- “(i) income derived from another CFC that, if appropriate audited accounts were prepared, could be consolidated with the CFC for the purposes of this section, if both companies are subject to the laws of the same country or territory under which— 15
- “(i) the company is liable to income tax on its income because of its domicile, residence, place of incorporation, or centre of management:
- “(ii) persons holding income interests in the company are liable for the income tax on its income and the country or territory is the source of 80% or more of that income: 20
- “(j) income of the CFC from a supply, made for the purposes of increasing the amount given by **subsection (10) or (11)**, to another CFC that— 25
- “(i) could not be consolidated with the CFC for the purposes of this section:
- “(ii) is not subject with the CFC to laws of the same country or territory meeting the requirements of **paragraph (i)(i) and (ii)**: 30
- “(k) if the applicable standard is generally accepted accounting practice without IFRS, income from a liability, other than income derived in the normal course of business from a sale or supply of services, in the form of— 35
- “(i) a reduction in the liability:
- “(ii) a gain on the disposal or other derecognition of the liability:
- “(iii) a foreign exchange gain on the liability:

- “(1) if the applicable standard is generally accepted accounting practice without IFRS, income from an asset that is not a financial asset under NZIAS 32 and not revenue account property as defined in section YA 1 (Definitions) in the form of— 5
- “(i) an increase in the fair value of the asset:
- “(ii) a gain on the disposal of the asset:
- “(iii) a foreign exchange gain on the asset.
- “Defined in this Act: accounting period, associated non-attributing active CFC, attributable CFC amount, CFC, company, dividend, financial arrangement, finance lease, group of companies, IFRS, income, life insurance policy, non-attributing active CFC, operating lease, premium, revenue account property, royalty”. 10
- (2) **Subsection (1)** applies for the 2009–10 and later income years. 15
- 124 Heading and section EX 22 replaced**
- (1) The heading before section EX 22 and section EX 22 are replaced by the following:
- “*Non-attributing Australian CFCs*
- “EX 22 Non-attributing Australian CFCs** 20
- “*Criteria*
- “(1) A CFC is a **non-attributing Australian CFC** for an accounting period if—
- “(a) at all times in the accounting period the CFC is—
- “(i) resident in Australia; and 25
- “(ii) subject under Australian law to income tax on its income; and
- “(iii) treated as being resident in a country other than Australia under no agreement between the government of Australia and the government of another country or territory that would be a double tax agreement if between the government of New Zealand and the government of the other country or territory; and 30
- “(b) the CFC’s liability for income tax has not been reduced by— 35

- “(i) an exemption from income tax for income derived from business activities carried on outside Australia:
  - “(ii) a special allowance, relief, or exemption with respect to offshore banking units. 5
- “*No attributed CFC income or loss*”

“(2) Sections CQ 2(1)(g) (When attributed CFC income arises) and DN 2(g) (When attributed CFC loss arises) provide that no attributed CFC income or attributed CFC loss arises from a non-attributing Australian CFC. 10

“*CFCs with interest in FIF: look-through approach*”

“(3) This section does not prevent FIF income or FIF loss arising under section EX 58 from an interest of a non-attributing Australian CFC in a FIF.

“Defined in this Act: accounting period, attributed CFC income, attributed CFC loss, CFC, double tax agreement, FIF, FIF income, FIF loss, income tax, non-attributing Australian CFC, resident in Australia”.

(2) **Subsection (1)** applies for the 2009–10 and later income years.
- 125 Section EX 23 repealed** 20

(1) Section EX 23 is repealed.

(2) **Subsection (1)** applies for the 2009–10 and later income years.
- 126 Change of CFC’s balance date**

(1) Section EX 25(3)(d) is replaced by the following: 25

“(d) whether the change would postpone liability to income tax on attributed CFC income or on attributed repatriation.”

(2) In section EX 25, in the list of defined terms, “FDP” is omitted.

(3) **Subsections (1) and (2)** apply for the 2009–10 and later income years. 30
- 127 Attributing interests in FIFs**

In section EX 29(1)(b), “EX 32 to EX 37” is replaced by “EX 31 to EX 43”.



**128 Exemption for ASX-listed Australian companies**

- (1) In section EX 31(2)(c)(i), “if subparagraph (ii) does not apply” is replaced by “if subparagraphs (ii) and (iii) do not apply”.
- (2) In section EX 31(2)(c)(ii), “earlier in the year; and” is replaced by “earlier in the year; or” and the following is added: 5
  - “(iii) at the beginning of the final month of the preceding income year if, in the first month of an income year, the shares are cancelled under a scheme of arrangement entered into under Part 5.1 of the Corporations Act 2001 (Aust); and” 10
- (3) In section EX 31, in the list of defined terms, “cancellation” is inserted.

**129 CFC rules exemption**

In section EX 34(b), “the person has” is replaced by “the person has, under sections EX 14 to EX 17,”. 15

**130 Grey list company owning New Zealand venture capital company: 10-year exemption**

- (1) In section EX 37(e), the words before subparagraph (i) are replaced by the following: 20
  - “(e) at all times in the year, the grey list company holds more than 50% of the voting interests in a company resident in New Zealand (the **resident company**) that, for 12 months or more, has—”.
- (2) Section EX 37(f) is replaced by the following: 25
  - “(f) the year begins less than 10 years after the grey list company first held more than 50% of the voting interests in the resident company; and”.
- (3) In section EX 37, in the list of defined terms, “voting interest” is inserted.

**131 Exemption for employee share purchase scheme of grey list company** 30

Section EX 38(g) is replaced by the following:

- “(g) the share purchase agreement includes a restriction on the disposal of the shares; and”.

**132 Limits on choice of calculation methods**

- (1) In section EX 46(6)(b)(iii), “charities:” is replaced by “charities); and” and the following is inserted:  
 “(iv) is not a superannuation scheme:”.
- (2) Section EX 46(6)(d) is replaced by the following: 5  
 “(d) the share is a non-ordinary share described in subsection (10).”
- (3) Section EX 46(7)(b) is replaced by the following:  
 “(b) the FIF is a foreign investment vehicle and the person is— 10  
 “(i) a portfolio investment entity or an entity eligible to be a portfolio investment entity:  
 “(ii) a life insurance company.”
- (4) **Section EX 46(7)(b)** is replaced by the following:  
 “(b) the FIF is a foreign PIE equivalent and the person is— 15  
 “(i) a portfolio investment entity or an entity that qualifies for PIE status:  
 “(ii) a life insurance company.”
- (5) Section EX 46(8)(a) is replaced by the following:  
 “(a) the share is a non-ordinary share described in subsection 20  
 (10):”.
- (6) The heading to section EX 46(10) is replaced by “*Certain non-ordinary shares*”.
- (7) In section EX 46(10), the words before paragraph (a) are replaced by the following: 25  
 “(10) For the purposes of **subsections (6)(d) and (8)(a)**, a non-ordinary share in a foreign company is—”.
- (8) Section EX 46(10)(a) is replaced by the following:  
 “(a) a fixed-rate foreign equity:”.
- (9) In section EX 46, in the list of defined terms, “foreign PIE” is omitted and “foreign investment vehicle” is inserted. 30
- (10) In section EX 46, in the list of defined terms, “foreign investment vehicle” is omitted and “foreign PIE equivalent” and “PIE” are inserted.
- (11) In section EX 46, in the list of defined terms, “fixed-rate foreign equity” is inserted. 35
- (12) **Subsections (4), (8), (10), and (11)** apply for the 2009–10 and later income years.

**133 Section EX 47 replaced**

Section EX 47 is replaced by the following:

**“EX 47 Method required for certain non-ordinary shares**

A person must calculate FIF income or loss for an income year from an attributing interest that is a non-ordinary share described in section EX 46(10) using—

- “(a) the comparative value method; or
- “(b) the deemed rate of return method, if use of the comparative value method is not practical because the person cannot determine the market value of the attributing interest at the end of the income year.

“Defined in this Act: attributing interest, comparative value method, deemed rate of return method, fair dividend rate method, FIF income, FIF loss, income year, market value, share”.

**134 Comparative value method**

(1) Section EX 51(5), other than the heading, is replaced by the following:

“(5) **Opening value** is the market value of the person’s interest in the FIF at the end of the previous income year, calculated using the exchange rate applying under section EX 57 for that previous year. The value is zero if the person did not hold the interest then or was then applying another calculation method to it.”

(2) Section EX 51(7)(b) is replaced by the following:

“(b) is not a non-ordinary share described in section EX 46(10):”.

**135 Fair dividend rate method: usual method**

(1) Section EX 52(2), other than the heading, is replaced by the following:

“(2) The person’s total FIF income for the income year from the attributing interests in FIFs (the **FDR interests**) for which the person uses the fair dividend rate method is calculated using the formula in subsection (3).”

(2) In section EX 52(5), the words before paragraph (a) are replaced by the following:

- “(5) **Opening value** is the total of the market values of the FDR interests that—”.
- (3) After section EX 52(5), the following is inserted:  
*“Exclusion for certain managed funds*
- “(5B) Subsection (5)(b) does not apply if— 5
- “(a) the person is a portfolio investment entity, an entity eligible to be a portfolio investment entity, or a life insurance company; and
- “(b) the FIF is a foreign investment vehicle.”
- (4) **Section EX 52(5B)(b)** is replaced by the following: 10
- “(b) the FIF is a foreign PIE equivalent.”
- (5) Section EX 52(6), other than the heading is replaced by the following:
- “(6) The quick sale adjustment is required only if, in the income year, the person disposes of or reduces an FDR interest to 15  
 which this section applies after acquiring it or increasing it. The quick sale adjustment is zero in any other case.”
- (6) Section EX 52(7)(a) and (b) are replaced by the following:
- “(a) the total of the amounts (the **peak holding method amount**) calculated for each FDR interest using the formula in subsection (8): 20
- “(b) the total of the amounts (the **quick sale gain amount**) calculated for each FDR interest using the formula in subsection (12), treating a negative total as being zero.”
- (7) In section EX 52(13),— 25
- (a) in paragraph (a), “during the income year” is omitted;
- (b) in paragraph (c), “during the year” is omitted.
- (8) After section EX 52(14B), the following is inserted:  
*“Treatment of attributing interests subject to returning share transfer* 30
- “(14C) 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.”
- (9) In section EX 52, in the list of defined terms, “FIF loss”, “foreign investment vehicle”, “life insurance”, “original share”, “portfolio investment entity”, “returning share transfer”, “share”, and “share supplier” are inserted. 35

- (10) In section EX 52, in the list of defined terms, “foreign investment vehicle” is omitted and “foreign PIE equivalent” is inserted.
- (11) **Subsections (4) and (10)** apply for the 2009–10 and later income years. 5

**136 Fair dividend rate method for unit-valuing funds and others by choice**

- (1) Section EX 53(2), other than the heading, is replaced by the following:
  - “(2) The total FIF income for the income year of the fund or person (the **interest holder**) from the attributing interests in FIFs (the **FDR interests**) for which the fund or person uses the fair dividend rate method is the total of the amounts calculated using the formula in subsection (3) for each unit valuation period.” 10
- (2) In section EX 53(5), the words before paragraph (a) are replaced by the following: 15
  - “(5) **Opening value** is the total of the market values of the FDR interests that—”.
- (3) After section EX 53(5), the following is inserted: 20
  - “*Exclusion for certain managed funds*”
- “(5B) Subsection (5)(b) does not apply if— 20
  - “(a) the person is a portfolio investment entity, an entity eligible to be a portfolio investment entity, or a life insurance company; and
  - “(b) the FIF is a foreign investment vehicle.” 25
- (4) In **section EX 53(5B)(b)**, “foreign investment vehicle” is replaced by “foreign PIE equivalent”.
- (5) Section EX 53(8), other than the heading, is replaced by the following:
  - “(8) The quick sale adjustment is required only if, in the income year, the person disposes of or reduces an FDR interest to which this section applies after acquiring it or increasing it. The quick sale adjustment is zero in any other case.” 30
- (6) Section EX 53(9)(a) and (b) are replaced by the following: 35
  - “(a) the total of the amounts (the **peak holding method amount**) calculated for each FDR interest using the formula in subsection (10):

- “(b) the total of the amounts (the **quick sale gain amount**) calculated for each FDR interest using the formula in subsection (14), treating a negative total as being zero.”
- (7) In section EX 53(15),—
- (a) in paragraph (a), “during the unit valuation period” is omitted: 5
- (b) in paragraph (c), “during the period” is omitted.
- (8) After section EX 53(16B), the following is inserted:
- “*Treatment of attributing interests subject to returning share transfer* 10
- “(16C) 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.”
- (9) In section EX 53, in the list of defined terms, “FIF loss”, “foreign investment vehicle”, “life insurance”, “original share”, “portfolio investment entity”, “returning share transfer”, “share”, and “share supplier” are inserted. 15
- (10) In section EX 53, in the list of defined terms, “foreign investment vehicle” is omitted and “foreign PIE equivalent” is inserted. 20
- (11) **Subsections (4) and (10)** apply for the 2009–10 and later income years.
- 137 Cost method**
- (1) In section EX 56(3)(ac)(ii), “income year; or” is replaced by “income year; and” and the following is added: 25
- “(iii) the interest was not an attributing interest for the income year before the relevant income year; or”.
- (2) In section EX 56(15), the formula is replaced by the following:
- $0.05 \times \text{peak holding differential} \times \text{average cost}$ .
- (3) In section EX 56, in the list of defined terms, “close of trading spot exchange rate” is omitted. 30
- 138 Additional FIF income or loss if CFC owns FIF**
- (1) In section EX 58(1)(a), “EX 8” is replaced by “EX 14”.
- (2) Section EX 58(6) is replaced by the following:

*“Non-attributing Australian CFCs*

- “(6) This section applies whether or not the CFC is a non-attributing Australian CFC under **section EX 22** for the period.”
- (3) Section EX 58(7) is repealed.
- (4) **Subsections (2) and (3)** apply for the 2009–10 and later income years. 5

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

- (1) Section EX 59(1)(c) is replaced by the following: 10
  - “(c) the fair dividend rate method:”.
- (2) After section EX 59(1), the following is inserted:
  - “*Exclusion for interests in grey list companies*
  - “(1B) **Subsection (1)(c)** does not apply if—
    - “(a) the FIF is a grey list company; and
    - “(b) the person holds a direct income interest of 10% or more in the FIF at the beginning of the income year in which the period falls. 15
  - “*Application of rule for certain managed funds*
  - “(1C) **Subsection (1B)** does not apply if—
    - “(a) the person is a portfolio investment entity, an entity eligible to be a portfolio investment entity, or a life insurance company; and 20
    - “(b) the FIF is a foreign investment vehicle.”
- (3) **Section EX 59(1C)(b)** is replaced by the following: 25
  - “(b) the FIF is a foreign PIE equivalent.”
- (4) In section EX 59, in the list of defined terms, “company”, “direct income interest”, “foreign investment vehicle”, “grey list company”, “life insurance”, and “portfolio investment entity” are inserted.
- (5) In section EX 59, in the list of defined terms, “foreign investment vehicle” is omitted and “foreign PIE equivalent” is inserted. 30
- (6) **Subsections (3) and (5)** apply for the 2009–10 and later income years.

**140 Sections EY 1 to EY 5 replaced**

(1) Sections EY 1 to EY 5 are replaced by the following:

**“EY 1 What this subpart does**

*“Two bases*

“(1) This subpart provides for the taxation of life insurers on 2 separate bases, the policyholder base and the shareholder base. **Sections EY 2 and EY 3** describe the apportionment of income, expenditure, or loss to the 2 bases. **Section LA 8B** (General rules particular to life insurers) provides some general rules for tax credits relating to the 2 bases. Also, Parts L and O include tax credit rules and memorandum account rules specific to the 2 bases.

*“Counting once*

“(2) Income, expenditure, or loss must be apportioned to either the policyholder base or the shareholder base. There is no double-counting.

“Defined in this Act: income, life insurer, memorandum account, tax credit

**“EY 2 Policyholder base**

*“Policyholder base gross income*

“(1) A life insurer derives policyholder base gross income,—

“(a) for savings product policies that are not profit participation policies, under **section EY 15**;

“(b) for profit participation policies, under **section EY 17**;

“(c) under **section EY 27(4)**.

*“Policyholder base gross expenditure or loss* 25

“(2) A life insurer incurs policyholder base gross expenditure or loss,—

“(a) for savings product policies that are not profit participation policies, under **section EY 16**;

“(b) for profit participation policies, under **section EY 18**;

“(c) under **section EY 27(4)**;

“(d) under **section EZ 62** (Allowance of cancelled amount: spreading);

“(e) under **section LE 2B** (Use of remaining credits by life insurer on policyholder base). 35



*“Schedular policyholder base income*

“(3) A life insurer’s **schedular policyholder base income** is the amount given by subtracting their policyholder base gross expenditure or loss for an income year, and any amount carried forward to the income year under **subsection (5)**, from their policyholder base gross income for the income year. 5

*“Cap on subtracting: ring fencing policyholder base gross expenditure or loss*

“(4) Despite **subsection (3)**, the total amount that is subtracted under **subsection (3)**, including an amount carried forward to the current year under **subsection (5)**, is no more than the amount of the life insurer’s policyholder base gross income for the income year. 10

*“Excess allocations: carrying forward and re-instating next year*

“(5) Any excess not able to be subtracted in the current year because of **subsection (4)** is treated as—

“(a) policyholder base gross expenditure or loss for the next income year; and

“(b) carried forward to the next income year. 20

*“Exception*

“(6) **Subsections (3) to (5)** do not apply to a life insurer’s policyholder base gross income, or expenditure or loss to the extent to which the income, or expenditure or loss relates to a life fund PIE that is a multi-rate PIE. 25

“Defined in this Act: income year, life fund PIE, life insurance, life insurer, multi-rate PIE, policyholder base gross expenditure or loss, policyholder base gross income, savings product policy, schedular policyholder base income

**“EY 3 Shareholder base**

*“Shareholder base gross income 30*

“(1) A life insurer derives shareholder base gross income,—

“(a) for policies that are not profit participation policies, under **section EY 19**: *see also* **subsection (3)**, for reserves:

“(b) for profit participation policies, under **sections EY 21 and EY 28**: 35

- “(c) for annuities, under **section EY 30**.
- “*Shareholder base gross expenditure or loss*
- “(2) A life insurer incurs shareholder base gross expenditure or loss,—
  - “(a) for policies that are not profit participation policies, under **section EY 20**: *see also subsection (3)*, for reserves: 5
  - “(b) for profit participation policies, under **section EY 22**:
  - “(c) for the period and policies described in **section EY 29**, under that section: 10
  - “(d) for annuities, under **section EY 30**.
- “*Reserves*
- “(3) Under **sections EY 23 to EY 27**, a life insurer calculates reserving amounts for life insurance policies, other than annuities, that have a life risk component and are not profit participation policies. The reserving amounts may be shareholder base gross income derived, or expenditure or loss incurred, as provided by the relevant section. 15
- “Defined in this Act: life insurance, life insurer, profit participation policy, shareholder base, shareholder base gross expenditure or loss, shareholder base gross income 20
- “**EY 4 Apportionment of income of particular source or nature, and of tax credits**
- “*Default basis*
- “(1) For each class of life insurance policies, income of a particular source or nature, and tax credits received, are apportioned between the policyholder base and shareholder base— 25
  - “(a) in the same proportion as the policyholder base gross income relating to the particular source, nature or credits bears to the life insurer’s total gross gains relating to the particular source, nature, or credits, in the case of the policyholder base: 30
  - “(b) in the same proportion as the shareholder base gross income relating to the particular source, nature, or credits bears to the life insurer’s total gross gains relating to the particular source, nature, or credits, in the case of the shareholder base. 35

*“More equitable or reasonable basis*

- “(2) For a class of life insurance policies, the life insurer may use a basis of apportionment that is different from the one described in **subsection (1)**, if that basis is actuarially determined and is more equitable and reasonable than the basis described in **subsection (1)**. 5

“Defined in this Act: actuarially determined, life insurance policy, policyholder base, shareholder base, shareholder base gross income, tax credit”.

- (2) **Subsection (1)** applies for income years beginning on and after 1 April 2009. 10

**141 Section EY 6 replaced**

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

**“EY 6 Actuarial advice and guidance**

The Commissioner may seek the advice of the Government Actuary or any other actuary on any matter that is required to be actuarially determined, or any related matter. 15

“Defined in this Act: actuarially determined, actuary, Commissioner”.

- (2) **Subsection (1)** applies for income years beginning on and after 1 April 2009.

**142 Meaning of life reinsurance** 20

- (1) Section EY 12(1) is replaced by the following:

*“Meaning*

- “(1) **Life reinsurance**—

“(a) means a contract of insurance between a life insurer and another person (**person C**) under which the life insurer is secured, fully or partially, against a risk by person C: 25

“(b) does not include a contract that—

“(i) secures against financial risk unless, in the contract, it is incidental to securing against life risk:

“(ii) is, or is part of, a tax avoidance arrangement. 30

*“‘Fully’ and ‘partially’*

- “(1B) The words ‘fully’ and ‘partially’ describe the extent to which the life insurer is secured against life risk; they do not describe the term for which the reinsurance is provided.”

- (2) Section EY 12(4) is replaced by the following: 35

*“Other definitions*

- “(4) In this Act, —
- “**life financial reinsurance** is a contract that may be life reinsurance under **section EY 12(1)(a)**, but is not included under **section EY 12(1)(b)** 5
  - “**financial risk**—
  - “(a) means risk, whether or not specific to a party to the relevant arrangement relating to risk, that is contingent on a valuation or disposal of financial arrangements, or contingent on profitability or creditworthiness, or contingent on a variable such as future expenditure: 10
  - “(b) does not include life risk
  - “**life reinsurer** means a person in the position of person C.

*“Relationship with subject matter*

- “(5) **Section EZ 63** (Reinsurance transition: life financial reinsurance may be life reinsurance) overrides this section.” 15
- (3) In section EY 12, in the list of defined terms, “life financial reinsurance” and “financial risk” are inserted.
- (4) **Subsections (1) to (3)** apply for income years beginning on and after 1 April 2009. 20

**143 Section EY 15 to EY 47 replaced**

- (1) Sections EY 15 to EY 47 are replaced by the following:  
*“Policyholder base*

*“Non-participation policies*

- “**EY 15 Policyholder base income: non-participation policies** 25
- “What is included*
- “(1) For an income year, subject to **subsection (2)**, a life insurer has **policyholder base gross income** equal to income they derive that,—
- “(a) does not relate to life risk; and 30
  - “(b) does not relate to policies that are profit participation policies; and
  - “(c) is accounted for by the life insurer, in accordance with generally accepted accounting practice, as investment

income relating to a savings product policy that is not an annuity.

*“Certain income: basis of apportionment*

- “(2) Despite **subsection (1)**, if an amount of investment income meets the requirements of **subsection (1)(a) to (c)**, but may also be shareholder base gross income under **section EY 19**, ignoring **section EY 19(2)(e)**, then the investment income is only accounted for as **policyholder base gross income** to the extent provided by the formula—

$$\text{income} \times \frac{\text{average surrender value}}{\text{average savings assets.}}$$

*“Definition of items in formula*

- “(3) In the formula,—
- “(a) **income** is the income described in **subsection (2)**;
  - “(b) **average surrender value** is, for the savings product policies to which the income relates, the average surrender value of the policies for the income year;
  - “(c) **average savings assets** is, for the savings product policies to which the income relates, the average market value of assets held by the life insurer for the policies for the income year.

*“More equitable or reasonable basis*

- “(4) For income described in **subsection (2)**, the life insurer may use a basis of apportionment that is different from the one described in **subsections (2) and (3)**, if that basis is actuarially determined and is more equitable and reasonable than the basis described in **subsections (2) and (3)**.

“Defined in this Act: generally accepted accounting practice, income year, life insurer, policyholder base gross income, profit participation policy, savings product policy, shareholder base gross income, surrender value

**“EY 16 Policyholder base gross expenditure or loss: non-participation policies**

For an income year, a life insurer has **policyholder base gross expenditure or loss** to the extent to which they incur expend-

iture or loss in deriving their policyholder base gross income under **section EY 15**.

“Defined in this Act: policyholder base gross expenditure or loss, policyholder base gross income

“*Profit participation policies* 5

“**EY 17 Policyholder base gross income: profit participation policies**

“*What is included*

- “(1) For an income year, a life insurer has **policyholder base gross income** to the extent to which they have an amount for profit participation policies calculated using the formula— 10

$$\text{asset base gross income} \times \frac{(1 + \text{liabilities proportion} \times \text{gate})}{(1 + \text{gate})}$$

“*Definition of items in formula*

- “(2) In the formula,—

- “(a) **asset base gross income** is the amount of annual gross income that the life insurer would have for the policies’ asset base, if the life insurer is treated as having no assets other than the asset base, and amounts under **section EY 28** are ignored: 15
- “(b) **liabilities proportion** is the proportion of the policies’ asset base that is attributed to policy liabilities, using an average of policy liabilities over the income year, and an average of the asset base’s value over the year: 20
- “(c) **gate** is the proportion of a policyholder’s share of profits from the asset base that is used in the formula that calculates a transfer to the benefit of the life insurer’s shareholders from the profits of the asset base, as described in the definition of **profit participation policy**. 25

“Defined in this Act: amount, annual gross income, asset base, income year, life insurer, policy liabilities, policyholder base gross income, profit participation policy 30

**“EY 18 Policyholder base gross expenditure or loss: profit participation policies**

For an income year, a life insurer has **policyholder base gross expenditure or loss** to the extent to which, for profit participation policies, they would have expenditure or loss under **section EY 17**, treating the item **asset base gross income** as being the annual total deduction for the policies’ asset base, if the life insurer is treated as having no assets other than the asset base. 5

“Defined in this Act: amount, annual total deduction, asset base, income year, life insurer, policyholder base gross expenditure or loss, profit participation policy 10

**“Shareholder base**

*“Non-participation policies*

**“EY 19 Shareholder base gross income: non-participation policies**

15

*“What this section applies to*

“(1) This section applies to amounts derived by a life insurer to the extent to which the amounts do not relate to profit participation policies.

*“Income*

20

“(2) For an income year, a life insurer has **shareholder base gross income** equal to—

“(a) an amount of income they derive, to the extent to which the income—

“(i) relates to life risk, other than for annuities; and 25

“(ii) is not described in **paragraphs (b) to (e)**:

“(b) the life risk component of premiums they derive:

“(c) fees and commissions they derive:

“(d) life reinsurance claims they derive:

“(e) investment income they derive that is not accounted for as policyholder base gross income under **section EY 15(2)**: 30

“(f) income not otherwise accounted for in this subpart, for the income year.

“Defined in this Act: income year, life reinsurance, policyholder base gross income, profit participation policy, shareholder base gross income

“**EY 20 Shareholder base gross expenditure or loss: non-participation policies** 5

“*What this section applies to*

“(1) This section applies to amounts incurred by a life insurer to the extent to which the amounts do not relate to profit participation policies. 10

“*Expenditure or loss*

“(2) For an income year, a life insurer has **shareholder base expenditure or loss** equal to—

“(a) an amount of expenditure or loss they incur, to the extent to which the expenditure or loss— 15

“(i) relates to life risk, other than for annuities; and

“(ii) is not described in **paragraphs (b) to (e)**:

“(b) the life risk component of claims they incur:

“(c) fees and commissions they incur:

“(d) life reinsurance premiums they incur: 20

“(e) expenditure or loss to the extent to which it is incurred in deriving shareholder base gross income described in **section EY 19(2)(e)**:

“(f) expenditure or loss not otherwise accounted for in this subpart, for the year. 25

“Defined in this Act: income year, life reinsurance, profit participation policy, shareholder base gross expenditure or loss, shareholder base gross income

“*Profit participation policies*

“**EY 21 Shareholder base gross income: profit participation policies** 30

“*What is included*

“(1) For an income year, a life insurer has **shareholder base gross income** to the extent to which they have an amount for profit participation policies calculated using the formula—



$$\text{adjusted asset base gross income} \times \frac{(1 - \text{liabilities proportion}) \times \text{gate}}{(1 + \text{gate})}.$$

*“Definition of items in formula*

“(2) In the formula,—

- “(a) **adjusted asset base gross income** is the amount of annual gross income that the life insurer would have for the profit participation policies’ asset base, if the life insurer is treated as having no assets other than the asset base, section CX 55 (Proceeds from certain disposals by portfolio investment entities, New Zealand Superannuation Fund, or life insurers) is ignored, and amounts under **section EY 28** are ignored: 5 10
- “(b) **liabilities proportion** is the proportion of the profit participation policies’ asset base that is attributed to policy liabilities, using an average of policy liabilities over the income year, and an average of the asset base’s value over the year: 15
- “(c) **gate** is the proportion of a policyholder’s share of profits from the asset base that is used in the formula that calculates a transfer to the benefit of the life insurer’s shareholders from the profits of the asset base, as described in the definition of **profit participation policy**. 20

“Defined in this Act: amount, annual gross income, asset base, income year, life insurer, policy liabilities, profit participation policy, shareholder base gross income

“**EY 22 Shareholder base gross expenditure or loss: profit participation policies** 25  
 For an income year, a life insurer has **shareholder base gross expenditure or loss** to the extent to which, for profit participation policies, they would have expenditure or loss under **section EY 21**, treating the item **adjusted asset base gross income** as being the annual total deduction for the policies’ asset base, if the life insurer is treated as having no assets other than 30

the asset base, and section DB 23 (Cost of revenue account property) is ignored.

“Defined in this Act: amount, annual total deduction, asset base, income year, life insurer, profit participation policy, shareholder base gross expenditure or loss

5

*“Reserves: non-participation policies*

**“EY 23 Reserving amounts for life insurers: non-participation policies**

*“Reserves*

“(1) As provided by **subsection (3), sections EY 24 to EY 27** 10  
apply to calculate a life insurer’s reserving amounts for life insurance policies, other than annuities, that have a risk component and that are not profit participation policies.

*“Actuarial determination*

“(2) All reserving amounts must be actuarially determined, for each 15  
class of policies.

*“Positive and negative amounts: shareholder base gross income, or expenditure or loss*

“(3) If a reserving amount calculated under **sections EY 24 to EY 27** is a positive amount, the life insurer has that amount 20  
of shareholder base gross income, treated as derived. If a reserving amount calculated under **sections EY 24 to EY 27** is a negative amount, the life insurer has that amount of shareholder base gross expenditure or loss, treated as incurred in deriving shareholder base gross income. 25

*“Which reserve can be used when?*

“(4) For an income year, for a relevant class of policies, a life insurer has a reserving amount under—

“(a) **section EY 24**, for outstanding claims reserves (the **outstanding claims reserving amount**): 30

“(b) **section EY 25**, for premium smoothing reserves (the **premium smoothing reserving amount**) if, for the relevant policies, the insurer chooses to calculate a premium smoothing reserving amount and for a period that begins, continues or ends in the income year (the **PSR period**),— 35

- “(i) the premium payable is level or substantially level; or
- “(ii) a material mismatch occurs between the life risk component and the amount of premium payable:
- “(c) **section EY 26**, for unearned premium reserves (the **unearned premium reserving amount**) if, for the relevant class of policies, the life insurer chooses to not calculate a premium smoothing reserving amount: 5
- “(d) **section EY 27**, for capital guarantee reserves (the **capital guarantee reserving amount**). 10
- “*Choice*
- “(5) Despite **subsection (4)(b) and (c)**, a life insurer may not change between calculating a premium smoothing reserving amount and an unearned premium reserving amount for a class of policies once a choice has been made as to which reserving amount will be used for the class of policies. If an individual policy of a class does not meet the relevant requirements described in **subsection (4)(b)(i) and (ii)**, then a life insurer has an unearned premium reserving amount. 15
- “Defined in this Act: actuarially determined, amount, income year, life insurance policy, life insurer, life risk, profit participation policy, shareholder base gross expenditure or loss, shareholder base gross income 20
- “**EY 24 Outstanding claims reserving amount: non-participation policies not annuities** 25
- “*Calculation of reserving amount*
- “(1) For an income year (the **current year**), a life insurer has, in the circumstances described in **section EY 23(4)(a)**, a reserving amount for each class of policies calculated using the formula—
  - opening outstanding claims reserve – closing outstanding claims reserve.
- “*Definition of items in formula in subsection (1)* 30
- “(2) In the formula in **subsection (1)**,—
  - “(a) **opening outstanding claims reserve** is—

- “(i) the amount of the life insurer’s closing outstanding claims reserve for the class of policies, for the income year before the current year; or
- “(ii) the amount of the life insurer’s outstanding claims reserve calculated under **subsections (3) and (4)** for the class of policies and the beginning of the current year, if the life insurer has no closing outstanding claims reserve for the income year before the current year: 5
- “(b) **closing outstanding claims reserve** is the amount of the life insurer’s outstanding claims reserve calculated under **subsections (3) and (4)** for the class of policies and the end of the current year. 10
- “*Outstanding claims reserve calculation*
- “(3) A life insurer’s outstanding claims reserve is calculated for the relevant policies using the formula— 15
- life risk claims incurred + life risk claims reported + risk margin.
- “*Definition of items in formula in subsection (3)*
- “(4) In the formula in **subsection (3)**,—
- “(a) **life risk claims incurred** is the total of the present values of the life risk component of claims that have occurred prior to the end of the income year but were not reported to the life insurer for that year. The life risk component must take into account the probability of the claims being paid, and future expenses for administering the claims, but the present values of relevant life reinsurance claims must be subtracted from the total: 20 25
- “(b) **life risk claims reported** is the total of the present values of the life risk component of claims reported but not yet paid. The life risk component must take into account the probability of the claims being paid, and future expenses for administering the claims, but the present values of relevant life reinsurance claims must be subtracted from the total: 30
- “(c) **risk margin** is the total appropriate margin for the life risk component of claims described in **paragraph (a) or (b)**, to the extent to which the margin is actuarially 35

determined, reflects the inherent uncertainty in the relevant best estimate assumptions, and is not already included in the life risk component of the claims.

“Defined in this Act: amount, best estimate assumptions, income year, life insurer, life reinsurance, life risk, present value 5

“**EY 25 Premium smoothing reserving amount: non-participation policies not annuities**

“*Calculation of reserving amount*

“(1) For an income year (the **current year**), a life insurer has, in the PSR period described in **section EY 23(4)(b)**, a reserving amount for a class of policies calculated using the following formula: 10

opening premium smoothing reserve – closing premium  
smoothing reserve.

“*Definition of items in formula in subsection (1)*

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

“(a) **opening premium smoothing reserve** is— 15

“(i) the amount of the life insurer’s closing premium smoothing reserve for the class of policies, for the income year (the **prior year**) before the current year; or

“(ii) the amount of the life insurer’s premium smoothing reserve calculated under **subsections (3) to (6)** for the class of policies, calculated at the beginning of the current year, if the insurer has no closing outstanding premium smoothing reserve for the prior year: 20 25

“(b) **closing premium smoothing reserve** is the amount of the life insurer’s premium smoothing reserve calculated under **subsections (3) to (6)** for the class of policies, calculated at the start of the year.

“*Premium smoothing reserve calculation* 30

“(3) A life insurer’s premium smoothing reserve is calculated using the formula—

future life risk claims + future costs + (future profit carrier  
 × profit margin) – future life risk premiums.

“*Definition of items in formula in subsection (3)*”

“(4) In the formula in **subsection (3)**,—

“(a) **future life risk claims** is the total of the present values of the future life risk component of claims for the relevant policies’ PSR period described in **section EY 23(4)(b)**. The future life risk component must take into account the probability of claim, and the probability of the relevant policies being in force, but the present values of relevant future life reinsurance claims must be subtracted from the total: 5 10

“(b) **future costs** is the total of the present values of the costs of administration and claims management for the future life risk component of claims:

“(c) **future profit carrier** is the insurer’s choice of either the future life risk component of claims or future life risk component of premiums for the relevant policies’ PSR period described in **section EY 23(4)(b)**, but calculating the relevant future life risk component by not subtracting any amount on account of life reinsurance. The choice between claims or premiums must be made on the basis that the use of the chosen profit carrier gives a reasonable match between emerging profits and services provided by the life insurer: 15 20

“(d) **profit margin** is the amount calculated under **subsection (5)**: 25

“(e) **future life risk premiums** is the total of present values of the future life risk component of premiums for the relevant policies’ PSR period described in **section EY 23(4)(b)**. The future life risk component must take into account the probability of the relevant policies being in force, but the present values of relevant future life reinsurance premiums must be subtracted from the total. 30

“*Profit margin*”

“(5) For the purposes of the item **profit margin** in **subsection (4)**, an amount is calculated for the relevant policies using the following formula, using the method described in **subsection** 35

**(8)**, and adjusted for the spreading requirement in **subsection (9)**:

$$\frac{\text{future life risk premiums} - \text{future life risk claims} - \text{future costs}}{\text{future profit carrier}}$$

*“Definition of items in formula in subsection (5)*

- “(6) In the formula in **subsection (5)**,—
- “(a) **future life risk premiums** is the item **future life risk premiums** in **subsection (4)(e)**: 5
  - “(b) **future life risk claims** is the item **future life risk claims** in **subsection (4)(a)**:
  - “(c) **future costs** is the item **future costs** in **subsection (4)(b)**: 10
  - “(d) **future profit carrier** is whichever future profit carrier that the life insurer chooses under the item **future profit carrier** in **subsection (4)(c)**.

*“Best estimate assumptions for PSR*

- “(7) In actuarially determining an item described in **subsection (4)** for the formula in **subsection (3)**, the actuary must use best estimate assumptions. All possible policy discontinuances must be considered, and future costs must exclude the costs of acquiring policies. 15

*“Best estimate assumptions for profit margin*

- “(8) In actuarially determining an item described in **subsection (6)** for the formula in **subsection (5)**, the actuary must use—
- “(a) best estimate assumptions from the end of the prior year, if the item is being used for calculating the item **closing premium smoothing reserve** in **subsection (2)**, and a premium smoothing reserving amount was calculated in the prior year; or 25
  - “(b) best estimate assumptions from the current year if the item is being used for calculating the item **closing premium smoothing reserve** in **subsection (2)**, and the relevant policy is first entered into in the current year, or no premium smoothing reserving amount was calculated in the prior year. 30

- “Best estimate assumptions for profit margin: change*
- “(9) The effect of a change in best estimate assumptions must be spread evenly over the remaining PSR period described in **section EY 23(4)(b)**, for the relevant policies.
- “Special grouping rule for the purposes of best estimate assumptions* 5
- “(10) For the purposes of determining best estimate assumptions and profit margins under this section, policies may be grouped together if the policies have in common,—
- “(a) substantially the same contractual terms and conditions, other than their PSR periods described in **section EY 23(4)(b)**; and 10
- “(b) substantially the same assumptions for pricing their life risk.
- “Defined in this Act: actuarially determined, best estimate assumptions, life reinsurance, life risk, present value 15
- “EY 26 Unearned premium reserving amount: non-participation policies not annuities**
- “Calculation of reserving amount*
- “(1) For an income year (the **current year**), a life insurer has, in the circumstances described in **section EY 23(4)(c)**, a reserving amount for each class of policy calculated using the formula— 20
- $$\frac{\text{opening unearned premium reserve} - \text{closing unearned premium reserve.}}$$
- “Definition of items in formula*
- “(2) In the formula,—
- “(a) **opening unearned premium reserve** is— 25
- “(i) the amount of the life insurer’s closing unearned premium reserve for the class of policies, for the income year before the current year; or
- “(ii) the amount of the life insurer’s unearned premium reserve under **subsection (3)** for the class of policies, calculated at the beginning of the current year, if the life insurer has no closing un- 30



earned premium reserve for the income year before the current year:

“(b) **closing unearned premium reserve** is the amount of the life insurer’s unearned premium reserve under **subsection (3)** for the class of policies, calculated at the end of the current year. 5

“*Unearned premium reserve*

“(3) A life insurer’s unearned premium reserve is the amount of the premium, for the relevant policies, that the life insurer accounts for in the current year or any prior year, to the extent to which the amount relates to life risk in income years after the current year, but subtracting relevant life reinsurance premiums. 10

“Defined in this Act: amount, income year, life insurer, life reinsurance, life risk 15

“**EY 27 Capital guarantee reserving amount: non-participation policies not annuities**

“*Calculation of reserving amount*

“(1) For an income year (the **current year**), a life insurer has for each class of policies, in the circumstances described in **section EY 23(4)(d)**, a reserving amount calculated using the formula— 20

opening capital guarantee reserve – closing capital guarantee reserve.

“*Definition of items in formula*

“(2) In the formula,—

“(a) **opening capital guarantee reserve** is— 25

“(i) the amount of the life insurer’s closing capital guarantee reserve for the class of policies, for the income year before the current year; or

“(ii) the amount of the life insurer’s capital guarantee reserve under **subsection (3)** for the class of policies, calculated at the beginning of the current year, if the life insurer has no closing capital guarantee reserve for the income year before the current year: 30

“(b) **closing capital guarantee reserve** is the amount of the life insurer’s capital guarantee reserve under **subsection (3)** for the class of policies, calculated at the end of the current year.

“*Capital guarantee reserve* 5

“(3) A life insurer’s capital guarantee reserve is the net amount of credits and debits on account of a risk-linked provision for future obligations in relation to a guarantee, for the class of policies, by the life insurer that capital invested will be returned or that a minimum return on capital will be paid. 10

“*Reflex in policyholder base*

“(4) For the income year, if the reserving amount under this section is positive, the life insurer has that amount of policyholder base gross expenditure or loss. For the income year, if the reserving amount under this section is negative, the life insurer has that amount of policyholder base gross income. 15

“Defined in this Act: amount, income year, life insurer, pay, policyholder base gross expenditure or loss, policyholder base gross income

“*Shareholder base other profit: profit participation policies* 20

“**EY 28 Shareholder base other profit: profit participation policies**

“*Calculation of income*

“(1) For an income year, a life insurer has **shareholder base gross income** to the extent to which they have an amount for profit participation policies calculated using the formula— 25

$$\text{other profit} \times \frac{\text{gate}}{(1 + \text{gate})} - \text{previous negative amount.}$$

“*Definition of items in formula in subsection (1)*

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

“(a) **other profit** is the amount calculated for the income year under **subsections (5) to (11)**: 30

“(b) **gate** is the proportion of a policyholder’s share of profits from the asset base that is used in the formula that calcu-

lates a transfer to the benefit of the life insurer’s shareholders from the profits of the asset base, as described in the definition of **profit participation policy**:

“(c) **previous negative amount** is the amount from the previous year described in **subsections (3) and (4)**. 5

*“Formula in subsection (1): negative amounts and positive amounts*

“(3) If for an income year, the formula in **subsection (1)** calculates a positive amount, that amount is included in the life insurer’s shareholder base gross income, and if it is a negative amount, then that amount is not included in the life insurer’s shareholder base gross expenditure or loss, but *see* **subsection (4)**. 10

*“Negative amounts: carry forward*

“(4) The amount by which the amount calculated using the formula in **subsection (1)** for an income year is less than zero is carried forward to the next year, to be used under this section in the formula as the item **previous negative amount** in that next year. 15

*“Other profit* 20

“(5) For the purposes of the item **other profit** in **subsection (2)**, an amount is calculated for the income year (the **current year**) for profit participation policies using the formula—

(premiums – premiums estimate) – (claims – claims estimate) –  
(closing policy liabilities – estimated closing policy liabilities).

*“Definition of items in formula in subsection (5)*

“(6) In the formula in **subsection (5)**,— 25

“(a) **premiums** is the amount of premiums for policies for the current year, but subtracting relevant life reinsurance premiums:

“(b) **premiums estimate** is the total amount of valuation premiums described in **subsection (7)** that the life insurer expected, using best estimate assumptions, to receive in the current year for policies that are in force at the start of the current year, or are first entered into in 30

the current year, after subtracting relevant life reinsurance premiums:

“(c) **claims** is the amount of claims for the current year, but subtracting relevant life reinsurance claims:

“(d) **claims estimate** is the amount of claims that the life insurer expected, using best estimate assumptions, to receive in the current year for policies that are in force at the start of the current year, or are first entered into in the current year, but ignoring surrenders and after subtracting relevant life reinsurance claims: 5 10

“(e) **closing policy liabilities** is the total amount of policy liabilities for policies determined at the end of the current year for vested benefits after the previous year’s bonus declaration:

“(f) **estimated closing policy liabilities** is the total estimated policy liabilities at the end of the current year for policies in force at the start of the current year and expected to be in force at the end of the current year, taking into account vested benefits after the previous year’s bonus. The estimated policy liabilities must not take into account any future bonus declarations, and must use best estimate assumptions. 15 20

*“Definition of valuation premiums*

“(7) In this section, **valuation premiums** means the amount of premiums payable for a policy, actuarially determined by reference to the premium formula used when the policy was first entered into, or, if the premium formula is unavailable, by reference to mortality, expense, and other assumptions applicable to premiums for similar policies at the start of the income year beginning on or after 1 April 2009. The valuation premiums must not include any allowance for future bonus declarations or future shareholder profits. 25 30

*“Valuation premiums: no unjustifiable change*

“(8) The amount of the valuation premium for a policy must not change, unless significant changes to the policy justify changing the valuation premium. 35

*“Definition of policy liabilities*

“(9) In this section, and in **sections EY 17 and EY 21**, **policy liabilities** means, for a policy, an amount that is the present value of future mortality and maturity claims, plus the present value of future expenditure or loss plus the present value of future tax payments less the present value of future valuation premiums. The amount of policy liabilities must not include any allowance for surrenders or the payment of surrender values and relevant life reinsurance premiums and claims must be subtracted.

*“Policy liabilities: minimum*

“(10) For the purposes of this section and of **sections EY 17 and EY 21**, the minimum amount of policy liabilities for a policy is the current surrender value of the policy.

*“Best estimate assumptions for other profit*

“(11) In actuarially determining the items **premiums estimate** and **claims estimate** under **subsection (6)**, and **policy liabilities** for the purposes of this section, the actuary must use the same best estimate assumptions for each determination of policy liabilities. The actuary may choose start-of-year best estimate assumptions or end of year best estimate assumptions, but once a choice is made, it may not be changed.

“Defined in this Act: actuarially determined, amount, best estimate assumptions, income year, life insurance policy, life insurer, life reinsurance, present value, policy liabilities, profit participation policy, valuation premiums

*“Transitional adjustments and annuities*

**“EY 29 Transitional adjustments: life risk**

*“When this section applies*

“(1) This section applies to a life insurance policy, other than an annuity, that is first entered into before 1 April 2009, and for which the life insurer has no policyholder base gross income, or expenditure or loss, if—

“(a) the policy meets the relevant requirements for the relevant period described in **subsection (2)**; and

“(b) the amount of insurance cover does not increase for the relevant income year by more than the greater of—

- “(i) 10% of the previous year’s insurance cover; and
- “(ii) the percentage change in consumer price index for the previous income year.

*“Requirements and periods for which this section applies*

- “(2) This section applies to a policy to the extent to which, for the relevant period, it is described by the following requirements:
    - “(a) for a life insurance policy for which only 1 premium is ever payable, or for which the rate of premiums payable is always the same amount and cannot be changed, the period that—
      - “(i) starts on the first day of the first income year beginning on or after 1 April 2009; and
      - “(ii) finishes on the day that the policy ceases to be in force:
    - “(b) for a life insurance policy for which the rate of premium is guaranteed for a continuous period (the **continuous guarantee period**) that begins before 1 April 2009, the period that—
      - “(i) starts on the first day of the first income year beginning on or after 1 April 2009; and
      - “(ii) ends on the later of the day that is the last day of the continuous guarantee period that begins before 1 April 2009 or whichever day described in **paragraph (c)(ii)** is relevant:
    - “(c) for a life insurance policy for which the premium may vary each year, the period that—
      - “(i) starts on the first day of the first income year beginning on or after 1 April 2009; and
      - “(ii) ends on the day that is 5 years after the first day of the first income year beginning on or after 1 April 2009, or the day that the policy expires, if earlier.
- “When this section does not apply: once-only opt out*
- “(3) This section does not apply to a class of policies after the life insurer irrevocably chooses in a notice received by the Commissioner that this section does not apply for the class.

*“Adjustment*

- “(4) For the income year, a life insurer has an amount of shareholder base gross expenditure or loss, treated as incurred in deriving their shareholder base gross income, calculated for the relevant class of policies using the formula— 5

$$\text{premiums} - \text{total net reserving amounts} - (1.2 \times \text{expected death strain}).$$

*“Definition of items in formula*

- “(5) In the formula,—
- “(a) **premiums** is the life insurer’s total premiums for the income year for the policies, but subtracting relevant life reinsurance premiums: 10
- “(b) **total net reserving amounts** is the total of reserving amounts for the income year under **sections EY 24 to EY 26**, but treating amounts that are shareholder base gross income as negative amounts, and amounts that are shareholder base gross expenditure or loss as positive amounts: 15
- “(c) **expected death strain** is the amount calculated under the expected death strain formula (life) in accordance with **sections EZ 53 to EZ 60** (which relate to the transitional adjustment for expected death strain) for the income year. 20

*“Negative amounts*

- “(6) If **subsection (4)** gives a negative amount for a policy, it is ignored for that policy.
- “Defined in this Act: amount, Commissioner, income year, life insurer, shareholder base gross expenditure or loss, shareholder base gross income 25

**“EY 30 Annuities**

*“When this section applies*

- “(1) This section applies to a life insurance policy that is an annuity.

*“Negative and positive amounts 30*

- “(2) If the formula in **subsection (3)** gives a negative amount, the life insurer has that amount of shareholder base gross expend-

iture or loss, treated as incurred in deriving shareholder base gross income. If the formula in **subsection (3)** gives a positive amount, the life insurer has that amount of shareholder base income, treated as derived.

*“Adjustment*

5

- “(3) For the income year, a life insurer has an amount of shareholder base gross income, expenditure or loss calculated for the relevant annuities using the formula—

closing actuarial reserves – (0.99 × expected death strain).

*“Definition of items in formula*

- “(4) In the formula,—

10

“(a) **closing actuarial reserves** is the life insurer’s closing actuarial reserves (active annuities), calculated in accordance with **section EZ 59(2)** (Meaning of actuarial reserves):

“(b) **expected death strain** is the amount calculated under the expected death strain formula (active annuities) in accordance with **sections EZ 53 to EZ 60** (which relate to the transitional adjustment for expected death strain) for the income year.

15

“Defined in this Act: amount, income year, life insurer, shareholder base gross income or loss”.

20

- (2) **Subsection (1)** applies for income years beginning on and after 1 April 2009.

**144 Policyholder income formula: FDR adjustment**

- (1) Section EY 43B(1)(a) and (b) are replaced by the following:

25

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

“(b) the life insurer or the multi-rate PIE uses the fair dividend rate method for the property; and”.

30

- (2) Section EY 43B(2) is replaced by the following:

*“When has life insurer indirectly invested in multi-rate PIE?”*

- “(2) For the purposes of subsection (1), a life insurer is treated as investing indirectly in a multi-rate PIE (**PIE A**) when a multi-



rate PIE has invested in PIE A and the investment may be traced through an unbroken chain of investments in multi-rate PIEs to a direct investment by the life insurer in a multi-rate PIE.”

- (3) In section EY 43B, in the list of defined terms, “portfolio investment-linked life fund” is omitted, and “multi-rate PIE” and “PIE” are inserted. 5
- (4) **Subsections (1) to (3)** apply for the 2009–10 income year.

**145 Policyholder income formula: PILF adjustment**

- (1) In section EY 43C(1), the words before paragraph (a) and paragraph (a) are replaced by the following: 10
  - “(1) This section applies for the purposes of section EY 42(5C) to property that supports only actuarial reserves for a life fund PIE to the extent to which the property is—
    - “(a) an attributing interest in a FIF— 15
      - “(i) held by a life insurer or a multi-rate PIE that the life insurer has invested indirectly or indirectly; and
      - “(ii) for which the life insurer or multi-rate PIE uses the fair dividend rate method:” 20
- (2) Section EY 43C(2), other than the heading, is replaced by the following:
  - “(2) For the purposes of subsection (1), a life insurer is treated as investing directly in a multi-rate PIE (**PIE A**) when a multi-rate PIE has invested in PIE A and the investment may be traced through an unbroken chain of investments in multi-rate PIEs to a direct investment by the life insurer in a multi-rate PIE.” 25
- (3) Section EY 43C(3)(b)(ii) is replaced by the following:
  - “(ii) dividends or distributions for shares described in subsection (1)(b) other than a distribution from a multi-rate PIE to which section CX 56B (Distributions to investors in multi-rate PIEs) applies.” 30
- (4) Section EY 43C(9)(c)(ii) is replaced by the following:
  - “(ii) dividends and distributions for the shares, other than distributions from a multi-rate PIE to which section CX 56B applies.” 35

- (5) In section EY 43C, in the list of defined terms, “portfolio investment-linked life fund” is omitted and “life fund PIE”, “multi-rate PIE”, and “PIE” are inserted.
- (6) **Subsections (1) to (5)** apply for the 2009–10 income year.
- 146 Non-resident life insurers with life insurance policies in New Zealand** 5
- (1) Section EY 48(3) is replaced by the following:  
*“Shareholder base and policyholder base*
- “(3) The life insurer’s income, or expenditure or loss, is apportioned between their policyholder base or shareholder base under the provisions of this subpart to the extent to which the income, or expenditure or loss, relates to— 10
- “(a) life insurance policies that the life insurer, as insurer, offered or was offered or entered into in New Zealand:
- “(b) life reinsurance policies held by the life insurer that relate exclusively to life insurance policies described in **paragraph (a)**.” 15
- (2) In section EY 48(4), “other than under a formula referred to in subsection (3)” is replaced by “other than under the provisions of this subpart”. 20
- (3) **Subsections (1) and (2)** apply for income years beginning on and after 1 April 2009.
- 147 Section EZ 31 repealed**
- (1) Section EZ 31 is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years. 25
- 148 Section EZ 32B repealed**  
 Section EZ 32B is repealed.
- 149 New headings and sections EZ 53 to EZ 60 added**
- (1) After section EZ 52, the following is added: 30

***“Life insurance transitional adjustment:  
expected death strain***

*“Expected death strain formulas*

**“EZ 53 How expected death strain is calculated**

*“Calculation of expected death strain: steps* 5

“(1) For an income year, the life insurer calculates their expected death strain by following these steps:

“(a) first, use the relevant expected death strain formula to calculate an amount for each life insured under each life insurance policy existing at the start of the income year (*see: subsections (2) and (3)* for guidance on the relevant expected death strain formula): 10

“(b) second, for each such life insurance policy, add together the amounts for the lives insured under it:

“(c) third, add together the totals reached under **paragraph (b)**. 15

*“Expected death strain formula (life)*

“(2) **Section EZ 54(1)** sets out the expected death strain formula (life). This is the formula a life insurer uses for an income year, to calculate an amount for a life insured under a life insurance policy, except to the extent to which an annuity is being paid under the policy at some time in the income year. 20

*“Expected death strain formula (active annuities)*

“(3) **Section EZ 54(2)** sets out the expected death strain formula (active annuities). This is the formula a life insurer uses for an income year, to calculate an amount for a life insured under a life insurance policy, to the extent to which an annuity is being paid under the policy at some time in the income year. 25

“Defined in this Act: business, income year, life insurance, life insurance policy, life insured, life insurer, pay 30

**“EZ 54 Expected death strain formulas**

*“Expected death strain formula (life)*

“(1) The expected death strain formula (life) is—

claim probability  $\times$  (opening sum assured – opening actuarial reserves).

*“Expected death strain formula (active annuities)*

“(2) The expected death strain formula (active annuities) is—

claim probability  $\times$  opening actuarial reserves.

*“Definition of items in formulas*

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

*“Claim probability*

“(4) **Claim probability** is the probability of a claim arising under the policy for the life insured’s death in the income year. It is determined at the start of the income year using the same mortality assumptions as are used to calculate the life insurer’s actuarial reserves at the start of the income year. It is expressed as a decimal. Variations to **claim probability** are in **sections EZ 55(2) and EZ 57(2)**. 10

*“Opening sum assured*

“(5) **Opening sum assured** is the claim that would be payable under the policy for the life insured’s death in the income year or, if no such claim would be payable, the claim that would be payable under the policy for the life insured’s survival to the relevant date or age specified in the policy. It is determined at the start of the income year. It may be zero. Variations to **opening sum assured** are in **sections EZ 56(2), EZ 57(3), and EZ 58(2)**. 15 20

*“Opening actuarial reserves*

“(6) **Opening actuarial reserves** is the amount in the life insurer’s actuarial reserves for the life insured under the policy. It is determined at the start of the income year. 25

“Defined in this Act: actuarial reserves, amount, claim, income year, life insured, life insurer, pay

**“EZ 55 Expected death strain formulas: option when more than 1 life insured**

*“When this section applies*

“(1) This section applies when a life insurance policy covers more than 1 life insured. 5

*“Claim probability*

“(2) In using the relevant expected death strain formula, the life insurer may use as **claim probability** a common factor for all the lives insured under the policy.

*“Features of common factor 10*

“(3) The common factor must be a reasonable approximation of the average probability of a claim arising under the policy for each life insured’s death in the income year. It must be weighted as necessary to take account of—

“(a) differing claims for individual lives insured under the policy; and 15

“(b) differing amounts in the life insurer’s actuarial reserves for individual lives insured under the policy.

“Defined in this Act: actuarial reserves, amount, claim, income year, life insurance policy, life insured, life insurer 20

**“EZ 56 Expected death strain formula (life): when annuity payable on death**

*“When this section applies*

“(1) This section applies when, and to the extent to which, a life insurance policy provides for the payment of an annuity the start of which is contingent on the life insured’s death. 25

*“Opening sum assured*

“(2) In using the expected death strain formula (life), the life insurer uses as **opening sum assured** the net present value of the annuity. The net present value is determined— 30

“(a) at the start of the income year; and

“(b) on the assumption that the life insured died at the start of the income year; and

“(c) using the same assumptions and bases of calculation as are used to calculate the life insurer’s actuarial reserves for the income year.

“Defined in this Act: actuarial reserves, income year, life insurance policy, life insured, life insurer, payment

5

“**EZ 57 Expected death strain formulas: when annuity payable on survival to date or age specified in policy**

“*When this section applies*

“(1) This section applies when, and to the extent to which, a life insurance policy provides for the payment of an annuity the start of which is contingent on the life insured’s survival to the relevant date or age specified in the policy.

“*Claim probability*

“(2) In using the relevant expected death strain formula, the life insurer must use **claim probability** as defined in **section EZ 54(4)**, without regard to the fact that the payment of the annuity is not contingent on the life insured’s death.

“*Opening sum assured*

“(3) In using the expected death strain formula (life), the life insurer must use as **opening sum assured** the net present value of the annuity. The net present value is determined—

“(a) at the relevant date or age specified in the policy; and

“(b) on the assumption that the life insured survived to the date or age; and

“(c) using the same assumptions and bases of calculation as are used to calculate the life insurer’s actuarial reserves for the income year.

“Defined in this Act: actuarial reserves, income year, life insurance policy, life insured, life insurer, pay, payment

“**EZ 58 Expected death strain formula (life): when partial reinsurance exists**

“*When this section applies*

“(1) This section applies when a life insurer has partial life reinsurance.

*“Opening sum assured*

- “(2) In using the expected death strain formula (life), the life insurer must reduce **opening sum assured** by the claim receivable by the life insurer under the life reinsurance policy for the contingency against which the life insured is covered under the life insurance policy. 5

“Defined in this Act: claim, life insurance policy, life insured, life insurer, life reinsurance policy, partial reinsurance

*“Actuarial reserves*

“**EZ 59 Meaning of actuarial reserves** 10

*“Actuarial reserves generally*

- “(1) For the purposes of **sections EZ 53 to EZ 58, actuarial reserves** means a life insurer’s reserves as calculated under **section EZ 60**.

*“Closing actuarial reserves for annuities* 15

- “(2) For the purposes of the item **closing actuarial reserves in section EY 30(3)** (Annuities), **closing actuarial reserves (active annuities)** means a life insurer’s opening actuarial reserves under **section EZ 54(6)** for a life insurance policy, to the extent to which an annuity is being paid under the policy where the life insured dies in the income year for which the formula in **section EY 30** is applied. Where the life insured survives to the end of that income year, the **closing actuarial reserves (active annuities)** is zero. 20

*“Link between actuarial reserves and life insurer* 25

- “(3) Actuarial reserves, for a life insurer at any time, means the life insurer’s actuarial reserves at that time.

“Defined in this Act: actuarial reserves, life insurance policy, life insurer

“**EZ 60 Actuarial reserves: calculation**

*“Calculation by actuary* 30

- “(1) The life insurer’s actuarial reserves must be actuarially determined.

*“All reserves or 1 or more amounts*

- “(2) The actuary may calculate—

- “(a) the actuarial reserves for all the life insurance policies for which the life insurer is the insurer; or
- “(b) the amount in the life insurer’s actuarial reserves for 1 or more life insurance policies for which the life insurer is the insurer. 5
- “Interest, mortality, and other assumptions and bases of calculation*
- “(3) The actuary must do the calculation using interest, mortality, and other assumptions and bases of calculation that—
- “(a) are based on the same principles as those used in the actuarial advice on which the following are calculated: 10
- “(i) the level of surplus funds available to the life insurer for allotment or payment to shareholders or policyholders; or
- “(ii) the level of surplus funds available to the life insurer, if a superannuation scheme, for allotment to objects of the scheme other than the object of providing for members’ benefits; and 15
- “(b) are likely to produce a reasonable estimation of the future experience of the life insurer in relation to life insurance policies of which the life insurer is the insurer, having regard to the past experience of the life insurer in relation to life insurance policies of which the life insurer was the insurer; and 20
- “(c) conform with commercially acceptable practice. 25
- “Reserves for policy never negative*
- “(4) The amount in the actuarial reserves for a life insurance policy must never be negative.
- “Reserves for all policies never less than total of surrender values* 30
- “(5) The actuarial reserves at any time must not be less than the total of the surrender values of all the life insurance policies they cover at that time.
- “Reserves for policies same at end of one, and start of next, income year* 35
- “(6) The amount in the actuarial reserves for life insurance policies at the start of an income year is the same as the amount in the



actuarial reserves for the life insurance policies at the end of the previous income year.

*“Effect of partial reinsurance*

- “(7) The actuarial reserves of a life insurer who has partial life reinsurance must be reduced by an amount that the actuary responsible for actuarial control of the life insurer considers appropriate having regard to the nature of the life reinsurance policies. 5

“Defined in this Act: actuarial reserves, actuary, amount, income year, life insurance policy, life insurer, life reinsurance policy, partial reinsurance, payment, shareholder, superannuation scheme”. 10

- (2) **Subsection (1)** applies for income years beginning on and after 1 April 2009.

**150 New heading and sections EZ 61 to EZ 63 added**

Before the heading to Part F, the following is added: 15

*“Transitional and other miscellaneous provisions relating to entry into new life insurance regime*

**“EZ 61 Disposal and re-acquisition upon entry**

Immediately before the first day of the income year beginning on or after 1 April 2009, all of the property of a life insurer that supports actuarial reserves for the purposes of the policyholder income formula in section EY 43 (Policyholder income formula) is treated as disposed of, for market value consideration, to a third person, and immediately re-acquired from that person for the same consideration. 20 25

“Defined in this Act: actuarial reserves, amount, dispose, income year, life insurer, market value

**“EZ 62 Allowance for cancelled amount: spreading**

*“Policyholder base gross expenditure or loss* 30

- “(1) For an income year beginning on or after 1 April 2009, a life insurer may choose, by a notice received by the Commissioner on or before the last day for furnishing a return of income for the relevant income year, that an amount is policyholder base gross expenditure or loss for the income year, if— 35

“(a) the life insurer has no taxable income, other than in relation to its policyholder base, for the tax year corresponding to the income year, and no taxable income, other than in relation to its policyholder base, for every earlier tax year going back to, and including, the tax year that corresponds with the first income year beginning on or after 1 April 2009; and 5

“(b) the amount is stated in the notice and the amount is equal to or less than the least of the following:

“(i) the amount of available tax loss for the tax year that corresponds with the income year, before applying this section; and 10

“(ii) the available concession amount for the income year, described in **subsection (2)**; and

“(iii) the amount that would be the life insurer’s schedular policyholder base income for the income year, before applying this section for the year. 15

*“Available concession amount*

“(2) For the purposes of **subsection (1)**, the available concession amount for the income year is a positive amount calculated using the formula— 20

base concession amount – used.

*“Definition of items in formula*

“(3) In the formula,—

“(a) **base concession amount** is the lesser of the following: 25

“(i) the cancelled amount described in **section IT 1** (Cancellation of life insurer’s policyholder net losses); and

“(ii) the amount of available tax loss for the tax year that corresponds with the first income year beginning on or after 1 April 2009 before applying this section for the year: 30

“(b) **used** is the total amount of policyholder base gross expenditure or loss that is under this section for income years before the income year.

“Defined in this Act: amount, Commissioner, income year, life insurer, net loss, policyholder base gross expenditure or loss, return of income, schedular policyholder base income, tax loss, tax year, taxable income 5

“**EZ 63 Reinsurance transition: life financial reinsurance may be life reinsurance**

A contract that is entered into before 1 April 2009 and that, but for this section, would be a contract for life financial reinsurance is treated as life reinsurance, not life financial reinsurance, for the period starting on the first day of the first income year beginning on or after 1 April 2009, and ending on the later of,— 10

“(a) the last day of the term of the contract, as that term is stated in the contract before 1 April 2009 and ignoring any renewal; and 15

“(b) 31 March 2014.

“Defined in this Act: income year, life financial reinsurance, life reinsurance”.

**151 Recharacterisation of certain debentures** 20

(1) Section FA 2(3) is repealed.

(2) Section FA 2(4), other than the heading, is replaced by the following:

“(4) **A profit-related debenture—**

“(a) means a debenture with a rate of interest that is set from time to time by reference to— 25

“(i) the dividend payable by the company issuing the debenture; or

“(ii) the profits of the company issuing the debenture, however measured: 30

“(b) does not include a debenture under which the interest payable is determined by a fixed relationship to—

“(i) banking rates; or

“(ii) general commercial rates; or

“(iii) economic, commodity, industrial, or financial indices, but the application of this subparagraph is 35

- subject to section FZ 1(3) (Treatment of interest payable under debentures issued before certain date).”
- (3) Section FA 2(5), other than the heading, is replaced by the following: 5
- “(5) In this section, a **substituting debenture**—
- “(a) means a debenture issued by a company to a shareholder or class of shareholders of the company when the amount of the debenture is determined by reference to 1 or more of the following aspects of the shares in the company or another company held by the shareholder or class of shareholder at the time the debenture is issued or at an earlier time: 10
- “(i) the number of shares:
- “(ii) the available subscribed capital of the relevant company calculated under the slice rule set out in section CD 23 (Ordering rule and slice rule): 15
- “(iii) some other reference to the shares:
- “(b) includes a debenture issued to a shareholder or a class of shareholder when the amount of the debenture is determined by reference to 1 or more aspects of the shares as described in **paragraph (a)** held by the shareholder in a company other than that issuing the debenture, whether or not the company is being, or has been, liquidated: 20
- “(c) does not include a debenture that is a convertible note.” 25
- (4) Section FA 2(6) is repealed.
- (5) Section FA 2(7), other than the heading, is replaced by the following:
- “(7) For the purposes of **subsection (5)**, the amount of the debenture means the principal sum secured by or owing under the debenture.” 30

## 152 What this subpart does

- (1) Section FC 1(1)(d) is replaced by the following:
- “(d) the transfer of property on a distribution in kind by a company in a transfer of value caused by a shareholding in the company.” 35
- (2) **Subsection (1)** applies for the 2009–10 and later income years.

**153 Transfer at market value**

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

- “(2) For property referred to in section FC 1(1)(a), the disposal and acquisition is treated as occurring immediately before the death of the person.” 5

**154 What this subpart does**

- (1) Section FE 1(1)(a)(i) is replaced by the following:

“(i) is controlled by a single non-resident, or is a New Zealand resident (an **outbound entity**) with an income interest in a CFC, or a New Zealand resident that controls an outbound entity; and” 10

- (2) In section FE 1, in the list of defined terms, “CFC” and “income interest” are inserted.

- (3) In section FE 1, in the list of defined terms, “control” is omitted. 15

- (4) **Subsections (1) and (2)** apply for the 2009–10 and later income years.

**155 When this subpart applies**

- (1) In section FE 2(1)(d), “trust.” is replaced by “trust:”, and the following is added: 20

“(e) a company that is resident in New Zealand and has an income interest in a CFC:

“(f) a company that is resident in New Zealand and has—

“(i) an ownership interest in a company described in **paragraph (e)** of 50% or more: 25

“(ii) control of a company described in **paragraph (e)** by any other means:

“(g) a natural person, or a trustee of a trust settled by a New Zealand resident, if the natural person or trustee is resident in New Zealand and has— 30

“(i) an income interest in a CFC:

“(ii) an ownership interest in a company described in **paragraph (e) or (f)** of 50% or more:

“(iii) control of a company described in **paragraph (e) or (f)** by any other means.” 35

- (2) In section FE 2, in the list of defined terms, “CFC” and “income interest” are inserted.
- (3) In section FE 2, in the list of defined terms, “control” is omitted.
- (4) **Subsections (1) and (2)** apply for the 2009–10 and later income years. 5

**156 Section FE 3 replaced**

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

**“FE 3 Interest apportionment for individuals**

*“Natural persons and trustees: inbound, not described in section FE 2(1)(g) 10*

- “(1) This subpart applies to a natural person or trustee not described in **section FE 2(1)(g)** with the following modifications:

- “(a) the New Zealand group of the natural person or trustee is made up of the natural person or trustee and all associated persons who— 15

- “(i) are resident in New Zealand; or

- “(ii) are carrying on business in New Zealand through a fixed establishment in New Zealand; or

- “(iii) derive income that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable: 20

- “(b) the worldwide group of the trustee is made up of the trustee and—

- “(i) the trustee’s New Zealand group; and 25

- “(ii) all non-residents who are associated with the trustee or a member of the trustee’s New Zealand group:

- “(c) in the calculation of the amount of the natural person’s total assets, private and domestic assets are excluded. 30

*“Natural persons and trustees: outbound, described in section FE 2(1)(g)*

- “(2) This subpart applies to a natural person or trustee described in **section FE 2(1)(g)** with the following modifications:

- “(a) the New Zealand group of the natural person or trustee is made up of the natural person or trustee and all associated persons who are not excess debt outbound com- 35

- panies and are not included in a New Zealand group of an excess debt outbound company, and who—
- “(i) are resident in New Zealand; or
  - “(ii) are carrying on business in New Zealand through a fixed establishment in New Zealand; or 5
  - “(iii) derive income that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable:
- “(b) the worldwide group of the trustee is made up of the trustee and— 10
    - “(i) the trustee’s New Zealand group; and
    - “(ii) all CFCs in which the trustee or a member of the trustee’s New Zealand group has an income interest:
  - “(c) in the calculation of the amount of the natural person’s total assets, private and domestic assets are excluded. 15
- “Defined in this Act: amount, associated person, business, CFC, double tax agreement, fixed establishment, generally accepted accounting practice, group of companies, income interest, natural person, New Zealand, resident in New Zealand, source in New Zealand, total group assets, total group debt, trustee”. 20
- (2) **Subsection (1)** applies for the 2009–10 and later income years.
- 157 Some definitions**
- (1) In section FE 4, after the definition of **excess debt entity**, the following is inserted: 25
- “**excess debt outbound company** for an income year is an excess debt entity that meets the requirements of **section FE 2(1)(e) or (f)**, and none of the requirements of section FE 2(1)(a) to (d)”.
- (2) **Subsection (1)** applies for the 2009–10 and later income years. 30
- 158 Thresholds for application of interest apportionment rules**
- (1) After section FE 5(1), the following is inserted:
- “*Exceptions for excess debt outbound companies*
- “(1B) Despite subsection (1), an excess debt outbound company and a natural person or trustee who is described in **section FE** 35

**2(1)(g)** do not have to apportion interest expenditure for an income year under section FE 6 if, for the income year,—

“(a) the ratio of the total group assets measured under section FE 16 for its New Zealand group to the total group assets measured under section FE 18 for its worldwide group is 90% or greater: 5

“(b) its New Zealand group—

“(i) has a total amount of deductions for interest allowed under sections DB 6 to DB 8 (which relate to deductions for interest) to the group, less the total deductions allowed in relation to interest payable intra-group, that is not greater than \$250,000; and 10

“(ii) does not include an entity with an income interest in a CFC, and the CFC derives rent from land in the country or territory in which the CFC is resident. 15

*“Natural persons’ worldwide group total assets*

“(1C) For the purposes **subsection (1B)(a)**, the total group assets of a natural person’s worldwide group under section FE 18 are measured on the basis that the natural person is an excess debt entity that has a worldwide group made up of— 20

“(a) the natural person; and

“(b) the natural person’s New Zealand group; and

“(c) all CFCs in which the natural person or a member of the natural person’s New Zealand group has an income interest.” 25

(2) In section FE 5, in the list of defined terms, “CFC”, “excess debt outbound company”, “income interest”, and “total group assets” are inserted. 30

(3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.

### **159 Apportionment of interest by excess debt entity**

(1) Section FE 6(1) is replaced by the following:

*“Who this section applies to 35*

“(1) This section applies to an excess debt entity or a natural person if section FE 5 requires the entity or person to apportion



their interest expenditure for an income year under this section, treating the natural person, for the purposes of this section other than in the definition of **threshold amount**, as an excess debt entity.”

- (2) In section FE 6(2), in the formula, “total deduction” is replaced by “total deduction + FRFE dividend” 5
- (3) In section FE 6(3)(a), “DB 8” is replaced by “DB 8 (which relates to deductions for interest expenditure)”.
- (4) After section FE 6(3)(a), the following is inserted:
  - “(ab) **FRFE dividend** means the total amount of dividends paid by the excess debt entity in relation to fixed-rate foreign equity—
    - “(i) issued by the entity; and
    - “(ii) held by a person resident in New Zealand who is not a company that is a member of the entity’s New Zealand group.”. 15
- (5) In section FE 6, in the list of defined terms, “fixed-rate foreign equity” is inserted.
- (6) **Subsections (1), (2), (4), and (5)** apply for the 2009–10 and later income years. 20

**160 Calculation of debt percentages**

- (1) In section FE 12(1), the second sentence is replaced by “A natural person must calculate their debt percentage under the rules set out in sections FE 13 to FE 16 and FE 18.”
- (2) In section FE 12(2), “or natural person” is omitted. 25
- (3) Section FE 12(5) is replaced by the following:
  - “*Membership of company’s worldwide group*
  - “(5) For an excess debt entity that is a company, the worldwide group is made up of all companies included as members of the worldwide group under—
    - “(a) sections FE 31 and FE 32, for an excess debt entity that is not an excess debt outbound company: 30
    - “(b) sections **FE 31B** to FE 32, for an excess debt outbound company.”
- (4) Section FE 12(6) is replaced by the following: 35

- “Natural persons: membership of New Zealand groups*
- “(6) For a natural person, the membership of the New Zealand group is determined as described in **sections FE 3(1) and (2)**, as applicable.
- “Trustees: membership of New Zealand and worldwide groups* 5
- “(7) For a trustee, the memberships of the New Zealand group and the worldwide group are determined as described in **sections FE 3(1) and (2)**, as applicable.”
- (5) In section FE 12, in the list of defined terms, “control” is omitted and “excess debt outbound company” is inserted. 10
- (6) **Subsections (1) to (5)** apply for the 2009–10 and later income years.
- 161 Financial arrangements entered into with persons outside group** 15
- (1) In section FE 13(1), “However, this section applies only if the financial arrangement would otherwise be included in the calculation of the debt percentage of the New Zealand group or worldwide group, as the case may be.” is added after “person A.” 20
- (2) In section FE 13(2), “and a worldwide group” is inserted after “New Zealand group”.
- (3) Section FE 13(3)(a) is replaced by the following:
- “(a) a non-resident who is not carrying on business through a fixed establishment in New Zealand and who— 25
- “(i) does not derive income that has a New Zealand source:
- “(ii) does derive income that has a New Zealand source and, for all of that income, relief from New Zealand tax under a double tax agreement is available; or” 30
- (4) In section FE 13, in the list of defined terms, “double tax agreement” and “source in New Zealand” are inserted.
- (5) **Subsections (3) and (4)** apply for the 2009–10 and later income years. 35

**162 Consolidation of debts and assets**

(1) Section FE 14(2) and (3) are replaced by the following:

*“Natural persons’ and trustees’ calculation*

“(2) For a natural person and an excess debt entity that is a trustee, the debt percentage of a New Zealand group is calculated under generally accepted accounting practice for the consolidation of companies for the purposes of eliminating intra-group balances by consolidating the debts and assets for the group. 5

*“When member not resident* 10

“(3) If a member of a New Zealand group is not resident in New Zealand, the assets and debts of the member are included in a consolidation only to the extent to which the assets and debts are for the group member to—

“(a) carry on business in New Zealand through a fixed establishment in New Zealand: 15

“(b) derive income that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable.”

(2) In section FE 14, in the list of defined terms, “double tax agreement” and “source in New Zealand” are inserted. 20

(3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.

**163 Total group debt**

(1) Section FE 15(1) and (2) are replaced by the following: 25

*“Meaning*

“(1) In this subpart for a New Zealand group, **total group debt** means the sum of the outstanding balances for—

“(a) financial arrangements entered into by a natural person, or an excess debt entity, or another member of the New Zealand group, if the financial arrangement— 30

“(i) provides funds to the natural person, the entity, or another member of the group; and

“(ii) gives rise to an amount for which the natural person, the entity, or another member of the group, would have a deduction: 35

“(b) fixed-rate foreign equity that is—

- “(i) issued by the entity or another member of the New Zealand group; and
- “(ii) held by a person resident in New Zealand.

*“Exchange rate fluctuations*

- “(2) **Subsection (1)(a)(ii)** does not include a deduction for an amount that arises only from movement in currency exchange rates.” 5
- (2) In section FE 15, in the list of defined terms, “fixed-rate foreign equity” and “resident in New Zealand” are inserted.
- (3) **Subsections (1) and (2)** apply for the 2009–10 and later income years. 10

**164 Total group assets**

- (1) After section FE 16(1), the following is inserted:
  - “CFC investments excluded*
  - “(1B) If the excess debt entity or another member of the New Zealand group has an investment in a CFC in which the entity or member has an income interest, the value of the investment is excluded from the calculation and measurement of total group assets under this section, except to the extent to which— 15 20
    - “(a) the value represents the outstanding balances of financial arrangements to which section FE 13 applies:
    - “(b) the CFC derives income with a New Zealand source and for which relief from New Zealand tax under a double tax agreement is unavailable. 25
  - “When member not resident*
  - “(1C) If the excess debt entity or another member of a New Zealand group is not resident in New Zealand, the assets of the entity or member are included in the calculation and measurement of total group assets under this section only to the extent to which the assets are for the entity or member to— 30
    - “(a) carry on business in New Zealand through a fixed establishment in New Zealand:
    - “(b) derive income that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable.” 35

- (2) In section FE 16, in the list of defined terms, “CFC”, “double tax agreement”, “income interest”, and “source in New Zealand” are inserted.
- (3) **Subsections (1) and (2)** apply for the 2009–10 and later income years. 5

**165 Measurement of debts and assets of worldwide group**

- (1) In section FE 18(1), the words before paragraph (a) are replaced by the following:
  - “(1) The amount of total group debt and the amount of total group assets of the worldwide group of an excess debt entity is calculated—” 10
  - (2) Section FE 18(2) and (3) are replaced by the following:
    - “*Date of measurement*
    - “(2) The amount of total group debt and the amount of total group assets of the worldwide group of an excess debt entity for an income year are measured using— 15
      - “(a) the average amount at the end of each day of the income year; or
      - “(b) the average amount at the end of each 3-month period in the income year; or 20
      - “(c) the amount as at the worldwide group’s balance date that immediately precedes the income year.
    - “*Measurement of amounts*
    - “(3) Despite subsection (1), an excess debt entity must measure the amount of total group debt by applying section FE 15 as if it referred to a deduction that would be allowed if the entity, or another group member, were resident in New Zealand.” 25
  - (3) In section FE 18(4), the first sentence is replaced by “If an excess debt entity is unable to calculate the debt percentage of their worldwide for an income year, they may ask the Commissioner to estimate the percentage under this subpart.” 30
  - (4) In section FE 18(5), the words before paragraph (a) and paragraph (a) are replaced by the following:
    - “(5) The debt percentage of the worldwide group of an excess debt entity is treated as 68.1818% in the following cases: 35

- “(a) the entity is unable to calculate the percentage and does not ask the Commissioner to make an estimate under subsection (4):”.
- (5) In section FE 18, in the list of defined terms, “natural person” is omitted. 5
- (6) **Subsections (1) to (5)** apply for the 2009–10 and later income years.
- 166 Banking group’s New Zealand net equity**
- (1) Section FE 21(3)(d)(ii) is replaced by the following: 10  
 “(ii) that is made by a non-resident who is not a member of the New Zealand banking group or associated with a member of the group under the parts of subpart YB (Associated persons and nominees) that apply for the purposes of the whole Act (excluding the 1973, 1988, and 15  
 1990 version provisions) or of the 1988 version provisions; and”.
- (2) In section FE 21(4), the words before paragraph (a) are replaced by the following:
- “(4) **Adjustment 1** is the financial value of fixed-rate foreign equities that are—” 20
- (3) Section FE 21(7)(a)(i) and (ii) are replaced by the following: 25  
 “(i) acquired from a person who, at the time of acquisition, is not associated with a member of the group under the parts of subpart YB that apply for the purposes of the whole Act (excluding the 1973, 1988, and 1990 version provisions) or under the 1988 version provisions; or  
 “(ii) relating to an entity that is acquired from a person who is not associated with a member of the group 30  
 under the parts of subpart YB that apply for the purposes of the whole Act (excluding the 1973, 1988, and 1990 version provisions) or under the 1988 version provisions:”.
- (4) In section FE 21(8) is replaced by the following: 35  
 “(8) **Adjustment 5** is the total amount of capital gain arising for the 2004–05 income year or a later income year from a transfer

- of an intangible asset between a member of the group and a person who is associated with a member of the group under the parts of subpart YB that apply for the purposes of the whole Act (excluding the 1973, 1988, and 1990 version provisions) or the 1988 version provisions.” 5
- (5) **Subsection (2)** applies for the 2009–10 and later income years.
- 167 New Zealand group for excess debt entity that is a company**
- (1) In section FE 25(2), “company” is replaced by “company. However, **section FE 30** does not apply to an excess debt outbound company” 10
- (2) In section FE 25, in the list of defined terms, “excess debt outbound company” is inserted.
- (3) In section FE 25, in the list of defined terms, “control” is omitted. 15
- (4) **Subsections (1) and (2)** apply for the 2009–10 and later income years.
- 168 Identifying New Zealand parent**
- (1) Section FE 26(2)(b)(ii) is replaced by the following: 20
- “(ii) no single non-resident who is carrying on business in New Zealand through a fixed establishment in New Zealand or who derives income that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable has an ownership interest in the entity of 50% or more:” 25
- (2) In section FE 26(2)(b), “more.” is replaced by “more; or” and the following is added: 30
- “(c) the entity is an excess debt outbound company and no single company resident in New Zealand has an ownership interest in the entity of 50% or more.”
- (3) The heading to section FE 26(3) is replaced by “*Top tier New Zealand resident company if not excess debt outbound company*” 35

- (4) In section FE 26(3), the words before the paragraphs are replaced by the following:
- “(3) If subsection (2) does not apply, and the excess debt entity is not an excess debt outbound company, the entity’s New Zealand parent is the company (**company A**) that meets all the following requirements:” 5
- (5) In section FE 26(3)(a)(ii), “New Zealand; and” is replaced by “New Zealand; or” and the following is added:
- “(iii) not resident in New Zealand but deriving income that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable; and” 10
- (6) In section FE 26(4)(a)(ii), “New Zealand; and” is replaced by “New Zealand; or” and the following is added:
- “(iii) not resident in New Zealand but deriving income that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable; and” 15
- (7) After section FE 26(4), the following is inserted:
- “*Top tier New Zealand resident company for excess debt outbound company*” 20
- “(4B) If subsection (2) does not apply, and the excess debt entity is an excess debt outbound company, the entity’s New Zealand parent is the company (**company C**) that meets all the following requirements:” 25
- “(a) company C—
- “(i) is resident in New Zealand; and
- “(ii) has an ownership interest of 50% or more in the entity; and
- “(b) no company that meets the requirements of **paragraph (a)(i) and (ii)** has a direct ownership interest in company C.” 30
- (8) Section FE 26(6), other than the heading, is replaced by the following:
- “(6) If subsection (2) does not apply, and no company meets the requirements of subsection (3), (4), **or (4B)**, the excess debt entity is treated as the New Zealand parent.” 35



- (9) Section FE 26(7), other than the heading, is replaced by the following:
  - “(7) In subsections (3) **to (4B)**, ownership interests are determined under sections FE 38 to FE 41, but for the purpose of identifying a New Zealand parent, the ownership interests of an associated person are ignored.” 5
- (10) In section FE 26, in the list of defined terms, “excess debt outbound company”, “double tax agreement”, and “source in New Zealand” are inserted.
- (11) In section FE 26, in the list of defined terms, “control” is omitted. 10
- (12) **Subsections (1) to (10)** apply for the 2009–10 and later income years.

**169 Section FE 28 replaced**

- (1) Section FE 28 is replaced by the following: 15
  - “**FE 28 Identifying members of New Zealand group**
    - “*New Zealand parent’s group*
      - “(1) A New Zealand group is made up of an excess debt entity, the entity’s New Zealand parent, and a company—
        - “(a) that is— 20
          - “(i) resident in New Zealand;
          - “(ii) carrying on a business in New Zealand through a fixed establishment in New Zealand;
          - “(iii) deriving income that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable; and 25
        - “(b) that is identified under section FE 27 as being under the control of the New Zealand parent; and
        - “(c) that is not a member of the New Zealand banking group of a registered bank. 30
      - “*Special rule for some entity’s group*
        - “(2) Despite **subsection (1)**, if the excess debt entity is not an excess debt outbound company and is not a company identified under section FE 27 as being under the control of the New Zealand parent because the threshold is not met, the New Zealand group is made up of the entity and a company— 35
          - “(a) that is—

- “(i) resident in New Zealand:
- “(ii) carrying on a business in New Zealand through a fixed establishment in New Zealand:
- “(iii) deriving income that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable; and 5
- “(b) that is a company that—
- “(i) would be identified under section FE 27 as being under the control of the entity if the entity were treated as the New Zealand parent; or 10
- “(ii) if the entity is identified under section FE 27 as being under the control of another company (**company A**), would be identified under section FE 27 as under the control of company A if company A were included in the New Zealand group and treated as the New Zealand parent; or 15
- “(iii) would be identified under section FE 27 as under the control of a company (**company B**) included in the entity’s New Zealand group under **sub-paragraph (ii)**, if company B were treated as the New Zealand parent; or 20
- “(iv) is not a member of the New Zealand banking group of a registered bank.
- “*Another special rule for some other entity’s group*
- “(3) Despite **subsection (1)**, if the excess debt entity is an excess debt outbound company and is not a company identified under section FE 27 as being under the control of the New Zealand parent because the threshold is not met, the entity is included in the New Zealand group for the New Zealand parent if— 25
- “(a) the entity is a company that meets the requirements of **subsection (1)(a) and (c)**; and 30
- “(b) a member of the New Zealand group has a 50% or more ownership interest in the entity.
- “Defined in this Act: business, company, control, double tax agreement, excess debt entity, excess debt outbound company, fixed establishment, New Zealand, New Zealand banking group, registered bank, resident in New Zealand, source in New Zealand”.
- 35

- (2) In section FE 28, in the list of defined terms, “control” is omitted.
- (3) **Subsection (1)** applies for the 2009–10 and later income years.

**170 Section FE 29 replaced** 5

- (1) Section FE 29 is replaced by the following:

**“FE 29 Combining New Zealand groups owned by natural persons and trustees**

*“When this section applies*

- “(1) This section applies when a natural person or trustee described in **section FE 2(1)(g)** has— 10

- “(a) a 50% or more ownership interest in a member of a New Zealand group (**group 1**) having a member that is an excess debt outbound company; and

- “(b) a 50% or more ownership interest in a member of a different New Zealand group (**group 2**) having a member that is an excess debt outbound company. 15

*“Groups combine*

- “(2) Group 1 and group 2 combine into 1 New Zealand group.

*“Defined in this Act: excess debt outbound company, New Zealand”.* 20

- (2) **Subsection (1)** applies for the 2009–10 and later income years.

**171 Ownership interests in companies outside New Zealand group**

- (1) Section FE 30(1)(b) and (c) are replaced by the following: 25

- “(b) a particular excess debt entity (**company A**) that is not an excess debt outbound company is outside the group; and

- “(c) company A is—

- “(i) resident in New Zealand: 30

- “(ii) carrying on business in New Zealand through a fixed establishment in New Zealand:

- “(iii) deriving income that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable; and” 35

- (2) Section FE 30(3)(b) is replaced by the following:  
 “(b) company B is—  
     “(i) resident in New Zealand:  
     “(ii) carrying on business in New Zealand through a fixed establishment in New Zealand: 5  
     “(iii) deriving income that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable; and”.
- (3) In section FE 30, in the list of defined terms, “excess debt outbound company”, “double tax agreement”, and “source in New Zealand” are inserted. 10
- (4) In section FE 30, in the list of defined terms, “control” is omitted.
- (5) **Subsections (1) to (3)** apply for the 2009–10 and later income years. 15
- 172 Worldwide group for corporate excess debt entity**
- (1) The heading to section FE 31 is replaced by “**Worldwide group for corporate excess debt entity if not excess debt outbound company**”.
- (2) In section FE 31(1), the words before the paragraphs and paragraph (a) are replaced by the following: 20  
 “(1) For an income year, for an excess debt entity that is a company and is not an excess debt outbound company, a worldwide group is made up of—  
     “(a) the entity; and” 25
- (3) In section FE 31, in the list of defined terms, “excess debt outbound company” is inserted.
- (4) **Subsections (1) to (3)** apply for the 2009–10 and later income years.
- 173 New sections FE 31B and FE 31C inserted** 30
- (1) After section FE 31, the following is inserted:  
 “**FE 31B Worldwide group for excess debt outbound companies**  
     *“Members of worldwide group*  
 “(1) For an income year, a worldwide group for an excess debt outbound company is made up of— 35  
     “(a) the company; and

- “(b) the company’s New Zealand group for the income year; and
- “(c) the company’s worldwide GAAP group, as described in **subsection (2)**.

“*Worldwide GAAP group* 5

- “(2) An excess debt outbound company’s worldwide GAAP group is made up of all non-residents who are required to be included with the company in consolidated financial statement under generally accepted accounting practice.

“Defined in this Act: excess debt outbound company, generally accepted accounting practice, income year, non-resident 10

**“FE 31C CFCs in worldwide group for natural persons or trustees described in section FE 2(1)(g)**

“*When this section applies*

- “(1) This section applies when a natural person or trustee described in **section FE 2(1)(g)** has— 15

- “(a) a 50% or more ownership interest in an excess debt outbound company that is a member of a worldwide group (**worldwide group A**); and

- “(b) an income interest in a CFC that is not part of the worldwide group A. 20

“*Transfer*

- “(2) The CFC is part of the worldwide group A.

“*Ownership interests*

- “(3) For the purposes of this section, ownership interests are determined under sections FE 38 to FE 41. 25

“Defined in this Act: CFC, excess debt outbound company, income interest, New Zealand, non-resident”.

- (2) **Subsection (1)** applies for the 2009–10 and later income years. 30

**174 Section FE 32 replaced**

- (1) Section FE 32 is replaced by the following:

**“FE 32 Joint venture parties***“What this section applies to*

“(1) This section applies to a company (the **joint venture company**) in a worldwide group under **section FE 31 or FE 31B** if—

5

“(a) a person (the **excluded joint venturer**) holds an ownership interest equal to 50% in the joint venture company; and

“(b) 1 other person (the **included joint venturer**) in the worldwide group holds an ownership interest equal to 50% in the joint venture company; and

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“(c) but for the application of this section, the worldwide group includes every person who holds both an ownership interest equal to 50% in the joint venture company and—

15

“(i) who has an ownership interest in the included joint venturer; or

“(ii) in whom the included joint venture company has an ownership interest.

*“Exclusion of excluded joint venturer*

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“(2) The joint venture company may choose to exclude the excluded joint venturer from its worldwide group for an income year, despite **sections FE 31 and FE 31B**.

*“Ownership interests*

“(3) For the purposes of this section, ownership interests are determined under sections FE 38 to FE 41.

25

*“Defined in this Act: company, excess debt entity, income year”.*

(2) **Subsection (1)** applies for the 2009–10 and later income years.

**175 Subpart FF repealed**

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(1) Subpart FF is repealed.

(2) **Subsection (1)** applies for the 2009–10 and later income years.

**176 Consolidation rules**

(1) Section FM 2(2)(g) is replaced by the following:

35

- “(g) section 74 of the Tax Administration Act 1994.”
- (2) **Subsection (1)** applies for the 2009–10 and later income years.
- 177 Some general rules for treatment of consolidated groups**
- (1) Section FM 6(3)(b) is repealed. 5
- (2) Section FM 6(3)(c) is replaced by the following:  
“(c) sections FM 8(3)(c), FM 27 to FM 30, GB 38, GB 40, and OP 3 to OP 50 (which relate to dividends and consolidated groups):”.
- (3) Section FM 6(3)(e) is replaced by the following: 10  
“(e) section 74 of the Tax Administration Act 1994.”
- (4) In section FM 6(5), “YA 2(2)(e)” is replaced by “YA 2(7)”.
- (5) Section FM 6(5) is replaced by the following:  
“*Balance of imputation credit account*”
- “(5) Sections OA 3 (General rules for maintaining memorandum 15  
accounts) and YA 2(7) (Meaning of income tax varied) apply for the purposes of section GB 38, subpart OP, and section 74 of the Tax Administration Act 1994 as if the references to the imputation rules were references to sections OP 3 to OP 50.”
- (6) In section FM 6, in the list of defined terms, “FDP account” 20  
and “FDP rules” are omitted.
- (7) **Subsections (1) to (3), (5) and (6)** apply for the 2009–10 and later income years.
- 178 Heading and sections FM 24 to FM 26 repealed**
- (1) Sections FM 24 to FM 26 are repealed. 25
- (2) **Subsection (1)** applies for the 2009–10 and later income years.
- 179 Imputation rules**  
In section FN 2(i), “YA 2(2)(d)” is replaced by “YA 2(7)(b)”.
- 180 Treatment of interest payable under debentures issued before certain date** 30  
In section FZ 1(3), “Despite section FA 2(3)(c), section” is replaced by “Section”.

**181 Attribution rule for income from personal services**

- (1) In section GB 27(2)(c), “\$60,000” is replaced by “\$70,000”.
- (2) In section GB 27(2)(c), “\$70,000” is replaced by “\$75,000”.
- (3) In section GB 27(2)(c), “\$75,000” is replaced by “\$80,000”.
- (4) **Subsection (1)** applies for the 2008–09 and later income years. 5
- (5) **Subsection (2)** applies for the 2010–11 and later income years.
- (6) **Subsection (3)** applies for the 2011–12 and later income years. 10

**182 Interpretation of terms used in section GB 27**

- (1) Section GB 28(2), other than the heading, is replaced by the following:
  - “(2) A person is treated as being associated with another person if the person would be treated as associated under the parts of subpart YB (Associated persons and nominees) that apply for the purposes of the whole Act (excluding the 1973, 1988, and 1990 version provisions) or the 1988 provisions, at the time the services are personally performed by the working person.” 15
- (2) Section GB 28(2), other than the heading, is replaced by the following: 20
  - “(2) A person is treated as being associated with another person if they are associated at the time the services are personally performed by the working person.”
- (3) **Subsection (2)** applies for the 2009–10 and later income years. 25

**183 Benefits provided to employee’s associates**

- (1) In section GB 32, the heading is replaced by “**Benefits provided through employment relationships**”.
- (2) Section GB 32(1)(a) is replaced by the following: 30
  - “(a) the benefit is provided to a person because of the existence of an employment relationship; and”.
- (3) In section GB 32(2), the heading is replaced by “*Exemption for shareholder-employees and corporates*”.
- (4) Section GB 32(2)(c) is replaced by the following: 35
  - “(c) the person receiving the benefit is a company; and”.



- (5) Section GB 32(4), other than the heading, is replaced by the following:
- “(4) Section CX 18 (Benefits provided when both employment and shareholding relationships exist) applies to determine when a benefit provided to a person through both an employment relationship and a shareholding relationship is treated as a fringe benefit and not a dividend.” 5
- (6) **Subsections (1) to (5)** apply for the 2009–10 and later income years.
- 184 Section GB 39 repealed** 10
- (1) Section GB 39 is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years.
- 185 Arrangements involving money not at risk**
- In section GB 45(3), in paragraph (f) of the definition of **acceptable property**, “CE 1(d)” is replaced by “CE 1(1)(d)”. 15
- 186 Defined terms for sections GB 45 and GB 46**
- (1) Section GB 48(1)(b) is replaced by the following:
- “(b) the persons are associated under the parts of subpart YB (Associated persons and nominees) that apply for the purposes of the whole Act (excluding the 1973, 1988, and 1990 version provisions) or of the 1988 version provisions.” 20
- (2) **Section GB 48(1)(b)** is replaced by the following:
- “(b) the persons are associated persons.” 25
- (3) In section GB 48(3)(d) and (e), “under subpart YB” is omitted in all places in which it appears.
- (4) **Subsections (2) and (3)** apply for the 2009–10 and later income years.
- 187 New section GC 4B inserted** 30
- After section GC 4, the following is inserted:

**“GC 4B Disposals of emissions units at below market value***“When this section applies***“(1)** This section applies when—**“(a)** a person (the **transferor**) disposes of an emissions unit to another person (the **transferee**); and 5**“(b)** the disposal is not a surrender or conversion under the Climate Change Response Act 2002; and**“(c)** the disposal is for no consideration or an amount of consideration less than the market value of the emissions unit at the time of disposal. 10*“Disposal treated as being for market value***“(2)** For the purposes of this Act, the consideration received by the transferor and provided by the transferee is treated as being equal to the market value of the emissions unit at the time.*“Defined in this Act: amount, convert, emissions unit, surrender”.* 15**188 Leases for inadequate rent****(1)** In section GC 5(5), in the definition of **related company**, the words before paragraph (a) are replaced by the following:**“related company** means a company that is associated with—”. 20**(2)** **Subsection (1)** applies for the 2009–10 and later income years.**189 Insufficient amount receivable by person****(1)** Section GC 8(1)(b) is repealed.**(2)** **Subsection (1)** applies for the 2009–10 and later income 25 years.**190 Compensating arrangement: person receiving more than arm’s length amount****(1)** Section GC 10(2)(b) is repealed.**(2)** **Subsection (1)** applies for the 2009–10 and later income 30 years.**191 Requests for matching treatment****(1)** Section GC 11(2)(b) is replaced by the following:

- “(b) including, when the other party is a CFC, the calculation of net attributable CFC income or net attributable CFC loss in relation to the other party, and the resultant calculation of the attributed CFC income or an attributed CFC loss or attributed CFC net loss of a person.” 5
- (2) In section GC 11, in the list of defined terms,—
- (a) “branch equivalent income” and “branch equivalent loss” are omitted:
- (b) “net attributable CFC income” and “net attributable CFC loss” are inserted. 10
- (3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.
- 192 Section GC 12 replaced**
- (1) Section GC 12 is replaced by the following:
- “GC 12 Effect on person’s withholding obligations”** 15
- An adjustment under any of sections GC 7 to GC 10 has no effect on an obligation of the taxpayer to withhold under Part R (General collection rules) in relation to the amount other than to the extent to which section GC 11(2) applies.
- “Defined in this Act: amount”. 20
- (2) **Subsection (1)** applies for the 2009–10 and later income years.
- 193 New section GZ 2 inserted**
- (1) After section GZ 1, the following is added:
- “GZ 2 Arrangements involving cancellation of conduit tax relief credits”** 25
- “What this section applies to*
- “(1) This section applies to a company with a CTRA that enters an arrangement involving a person who is a New Zealand resident if— 30
- “(a) the arrangement involves transactions giving rise to CTR credits in the CTRA and undertaken between 1 December 2007 and the beginning of the 2009–10 income year; and
- “(b) a purpose of the arrangement is to produce a benefit under a taxation law for the person. 35

“(2) The company has an income tax liability equivalent to the amount of CTR credits referred to in **subsection (1)(a)**.

“Defined in this Act: amount, arrangement, CTR credit, CTRA, taxation law”.

(2) **Subsection (1)** applies for the 2009–10 and later income years. 5

#### 194 Shareholding requirements

After section HA 7(3), the following is added:

“*Shareholder continuity requirements*

“(4) For the application of shareholder continuity requirements to the memorandum accounts of qualifying companies, *see* section OA 8(3B) (Shareholder continuity requirements).” 10

#### 195 New section HA 8B inserted

(1) After section HA 8, the following is inserted:

“**HA 8B No CFC income interests or FIF direct income interests of 10% or more** 15

A qualifying company must not have—

“(a) income interests in a CFC:

“(b) attributing interests in a FIF that are a direct income interest of 10% or more.

“Defined in this Act: attributing interest, CFC, direct income interest, FIF, income interest, qualifying company”.

(2) **Subsection (1)** applies for the 2009–10 and later income years.

#### 196 Fully imputed distributions

(1) In section HA 15(1), the first sentence is replaced by “This section applies when a qualifying company with an imputation credit account or foreign dividend payment (FDP) account pays a dividend to a person resident in New Zealand.” 25

(2) Section HA 15(9) is replaced by the following:

“*Relationship with sections HA 14 and HA 16* 30

“(9) If part of the dividend is exempt income under sections HA 14 and HA 16, an imputation credit or FDP credit is treated as attached to the part that is not exempt income.”

**197 Section HA 16 replaced**

Section HA 16 is replaced by the following:

**“HA 16 Dividends paid by qualifying companies to trustee shareholders**

If a dividend that is exempt income under section HA 14(2) is paid to a trustee shareholder, and it is or becomes beneficiary income of a beneficiary resident in New Zealand, the amount is exempt income of the beneficiary under section CW 15(2) (Dividends paid by qualifying companies) as if the beneficiary were the shareholder referred to in section HA 15. 5 10

“Defined in this Act: amount, dividend, exempt income, pay, resident in New Zealand, shareholder, trustee”.

**198 Credit accounts and dividend statements**

Section HA 19(1), other than the heading, is replaced by the following: 15

“(1) This section applies when a qualifying company pays a dividend that is treated either as a fully imputed distribution under section HA 15 or as exempt income under sections HA 14 and HA 16.”

**199 Calculating qualifying company election tax** 20

(1) In section HA 41(4)(c), “relevant date:” is replaced by “relevant date.” and paragraph (d) is repealed.

(2) Section HA 41(8)(c) is replaced by the following:

“(c) if the company pays income tax with a purpose or intention of reducing the amount of election tax, the amount of credit in the imputation credit account is reduced by the amount of the credit arising from the company’s action, unless that purpose is merely incidental.” 25

(3) In section HA 41, in the list of defined terms, “FDP” is omitted.

(4) **Subsections (1) to (3)** apply for the 2009–10 and later income years. 30

**200 Corpus of trust**

(1) Section HC 4(5)(b) is repealed.

(2) Section HC 4(5)(c) is replaced by the following:

- “(c) it would fall under paragraph (a) if the settlor were resident in New Zealand at the time of the settlement.”
- (3) In section HC 4, in the list of defined terms, “FDP” is omitted.
- (4) **Subsections (1) to (3)** apply for the 2009–10 and later income years. 5
- 201 Taxable distributions from non-complying and foreign trusts**
- (1) Section HC 15(5)(a)(ii) is replaced by the following:
- “(ii) a capital gain derived by the trustee through a transaction or series of transactions between the trustee and a person associated with them under the parts of subpart YB (Associated persons and nominees) that apply for the purposes of the whole Act (excluding the 1973, 1988, and 1990 version provisions) or under the 1988 version provisions:” 10
- (2) Section HC 15(5)(a)(ii) is replaced by the following:
- “(ii) a capital gain derived by the trustee through a transaction or series of transactions between the trustee and a person associated with them:” 20
- (3) **Subsection (2)** applies for the 2009–10 and later income years.
- 202 Who is a settlor?**
- (1) Section HC 27(1)(e) is replaced by the following:
- “(e) subpart YB (Associated persons and nominees) as modified by **section YB 10** (Who is a settlor?).” 25
- (2) **Subsection (1)** applies, for the purposes of—
- (a) provisions other than the land provisions, for the 2009–10 and later income years:
- (b) the land provisions other than section CB 11, for land acquired on or after 1 April 2009: 30
- (c) section CB 11, for land on which improvements are begun on or after 1 April 2009.

**203 Trusts and minor beneficiary rule**

- (1) In section HC 36(5), the definition of **associated person** or **person associated** is replaced by the following:  
“**associated person** or **person associated** does not include a person associated only under **sections YB 4 and YB 5** (which relate to relatives who are treated as associated persons)”.
- (2) **Subsection (1)** applies for the 2009–10 and later income years.

**204 Limitation on deductions by partners in limited partnerships**

In section HG 11(8)(b), “under section HG 2” is omitted.

**205 Eligibility requirements for entities**

- (1) Section HL 3(9), other than the heading, is replaced by the following:  
“(9) The business requirement is that the entity must not carry on a business of life insurance. This requirement does not apply to a life fund PIE.”
- (2) In section HL 3(11), “HL 14(1)” is replaced by “HL 15(1)”.
- (3) **Subsections (1) and (2)** apply for income years beginning on and after 1 April 2009.

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

- (1) Section HL 4(1)(a) is replaced by the following:  
“(a) referred to in sections HL 2(2) and HL 3; and”.
- (2) Section HL 4(2)(a) is replaced by the following:  
“(a) the portfolio investor class of the entity fails to meet a requirement under section HL 6 or HL 9 on the last day of a quarter—  
“(i) beginning 6 months or more after the date on which the portfolio investor class is formed; and  
“(ii) ending more than 3 months before an announcement by the entity to its investors that the portfolio investor class is winding up within 12 months of the announcement; and

- “(ab) the entity fails to meet a requirement under section HL 10 on the last day of a quarter—
- “(i) beginning 6 months or more after the date on which the entity becomes a portfolio investment entity; and 5
- “(ii) ending more than 3 months before an announcement by the entity to its investors that the entity is winding up within 12 months of the announcement; and”.
- (3) In section HL 4(2)(b)(ii), “paragraph (a)(ii)” is replaced by “paragraphs (a)(ii) and (ab)(ii)”. 10

#### 207 Investor membership requirement

- (1) Section HL 6(1)(a) is replaced by the following:
- “(a) 20 persons, treating all interests held by associated persons and included by subsection (4) as being held by 1 person.”. 15
- (2) After section HL 6(1)(i), the following is inserted:
- “(ib) Auckland Regional Holdings.”.
- (3) In section HL 6(1)(j)(iii), “entity:” is replaced by “entity.” and section HL 6(1)(k) is repealed. 20
- (4) Section HL 6(4)(a) and (b) are replaced by the following:
- “(a) the investor is not listed in subsection (1)(b) to **(ib)**; and
- “(b) the associated person is not listed in subsection (1)(b) to **(ib)**; and”.
- (5) In section HL 6, in the list of defined terms, “1988 version provisions” is omitted. 25

#### 208 Investor interest size requirement

- (1) After section HL 9(4)(h), the following is inserted:
- “(hb) Auckland Regional Holdings.”. 30
- (2) Section HL 9(4)(j) is repealed.
- (3) Section HL 9(6)(a) and (b) are replaced by the following:
- “(a) the investor is not listed in subsection (4)(a) to **(hb)**; and
- “(b) the associated person is not listed in subsection (4)(a) to **(hb)**; and”.



**209 Further eligibility requirements relating to investments**

Section HL 10(2)(b)(iii) is replaced by the following:

“(iii) an amount of income from a lease of land, but this subparagraph does not apply if the lessee under the lease is associated with the entity deriving the amount:”.

5

**210 Unlisted company choosing to become portfolio listed company**

In section HL 12(1)(a), “100 shareholders” is replaced by “at least 100 shareholders”.

10

**211 Becoming portfolio investment entity**

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

“(b) the entity, if treated as becoming a portfolio investment entity when the election would be effective, would cease under section HL 4 to be eligible through a failure to meet 1 or more of the requirements in section HL 6, HL 9, or HL 10 in each quarter of the 12-month period.”

15

**212 Portfolio class taxable income and portfolio class taxable loss for portfolio allocation period**

In section HL 20(3), the formula is replaced by the following:

class net income – class net loss – other loss used.

20

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

(1) In section HL 29(6)(a)(ii), “HL 21” is replaced by “HL 22”.

(2) In section HL 29(7), the words before paragraph (a) are replaced by the following:

25

“(7) The investor is treated as receiving for the allocated credits, for the tax year corresponding to the investor’s income year or, in the case of an investor having a portfolio investor exit period, for the quarter to which the portfolio investor exit period relates,—”.

30

**214 Subpart HL replaced by subpart HM**

(1) Subpart HL is replaced by the following:

“Subpart HM—Portfolio investment entities

*“Introductory provisions***“HM 1 Outline of subpart and relationship with other Parts** 5*“Subpart HM*

“(1) This subpart sets out—

“(a) the entry and exit rules for portfolio investment entities,  
*see* **sections HM 7 to HM 30**:“(b) who an investor is, and what an investor class is, *see* 10  
**sections HM 4 and HM 5**:“(c) what a multi-rate PIE must do in relation to its investors  
and its investments, *see* **sections HM 31 to HM 62**:“(d) the treatment of losses by PIEs, *see* **sections HM 63**  
**to HM 69**: 15“(e) how an entity makes an election to become a PIE, and  
the consequences of making the election, *see* **sections**  
**HM 70 to HM 75**.*“Relationship with Parts C and D*

“(2) The following sections apply to portfolio investment entities: 20

“(a) section CB 26 (Disposal of certain shares by portfolio  
investment entities):“(b) section CP 1 (Attributed income of investors in multi-  
rate PIEs):“(c) section CX 55 (Proceeds from disposal of investment 25  
shares):“(d) section CX 56 (Attributed income of certain investors  
in multi-rate PIEs):“(e) section CX 56B (Distributions to investors in multi-rate  
PIEs): 30“(f) section CX 56C (Distributions to investors by listed  
PIEs):

“(g) section CX 57 (Credits for investment fees):

“(h) section DB 53 (Attributed PIE losses of certain in-  
vestors): 35“(i) section DB 54 (Treatment of credits for investment  
fees).

*“Relationship with subpart LS*

- “(3) Subpart LS (Tax credits for multi-rate PIEs and investors) contains the rules relating to the amount and use of a tax credit arising under this subpart.

“Defined in this Act: amount, investor, investor class, multi-rate PIE, PIE, portfolio investment entity, tax credit

“Compare: 2007 No 97 ss HL 1, HL 2

**“HM 2 What is a portfolio investment entity?**

*“Meaning*

- “(1) A portfolio investment entity (a **PIE**) is a company or fund that— 10

“(a) makes investments on behalf of 1 or more investors in the entity or in an investor class of the entity; and

“(b) meets and maintains the requirements for PIE status; and 15

“(c) chooses to become a PIE by notifying the Commissioner.

*“PIE types*

- “(2) An entity that chooses to become a PIE must be 1 of the following types of entity: 20

“(a) a multi-rate PIE:

“(b) a listed PIE:

“(c) a benefit fund PIE:

“(d) a life fund PIE.

“Defined in this Act: benefit fund PIE, Commissioner, company, investor, investor class, life fund PIE, listed PIE, multi-rate PIE, notify, PIE, portfolio investment entity

“Compare: 2007 No 97 s YA 1 ‘ portfolio investment entity’

**“HM 3 Foreign PIE equivalents**

A **foreign PIE equivalent** means an entity that— 30

“(a) is not resident in New Zealand; and

“(b) is—

“(i) a company:

“(ii) a superannuation scheme:

- “(iii) the trustee of a trust that would be a unit trust if it had more than 1 subscriber, purchaser, or contributor participating as beneficiaries under the trust; and
- “(c) meets the requirements relating to investment types, income sources, and maximum shareholding in investments in **sections HM 11 to HM 13** applying the exception set out in **section HM 23(2)**; and 5
- “(d) has investors that would qualify as an investor class under **section HM 14** taking into account the limitations under **sections HM 21(2) and HM 22**; and 10
- “(e) meets the requirements relating to investors’ interests in **section HM 15** applying the exceptions set out in **section HM 21(3) to (5) and section HM 22**.
- “Defined in this Act: company, investor, investor class, investor interest, resident in New Zealand, superannuation scheme, trustee, unit trust 15
- “Compare: 2007 No 97 s HL 5(1)

#### “HM 4 Who is an investor?

##### “*Meaning of investor*

- “(1) An **investor** in a PIE or foreign PIE equivalent means— 20
- “(a) for an entity that is a company, a shareholder in a company:
- “(b) for a life fund PIE, a person whose benefits under the relevant life insurance policy are directly linked to the value of investments held in the PIE: 25
- “(c) for an entity that is not a company or a life fund PIE, a person who is entitled to a proportion of the funds available for distribution by the entity—
- “(i) under the rules of the entity or terms of the trust under which the entity is established; and 30
- “(ii) as if the entity were a company and the person were a shareholder in the company.

*“Proxies*

- “(2) Despite **subsection (1)**, if a share, entitlement, or life insurance policy is held through a proxy referred to in **section HM 33**, the investor is the proxy.

“Defined in this Act: company, foreign PIE equivalent, investor, life fund PIE, life insurance policy, PIE, share, shareholder 5

“Compare: 2007 No 97 s HL 5B(1)

**“HM 5 What is an investor class?**

*“Meaning of investor class*

- “(1) An **investor class** of an entity means a group of 1 or more investors in the entity that meet the requirements of **subsections (2) to (4)**. 10

*“Entitlement to distributions*

- “(2) Each investor in the group must have an entitlement to a distribution by the entity of proceeds from the entity’s investments that means the requirements of **subsections (3) and (4)** are met. 15

*“Same investments*

- “(3) The investments must be the same for all investors in the group. 20

*“Similar proportionate entitlement*

- “(4) Each investor’s interest in the investment as a proportion of the value of their entitlement must not differ from the average value for the group and the investment by 2.5% or more unless— 25

“(a) the investment is an arrangement under which the PIE is assured of receiving sufficient proceeds from the investments to repay each investor in the group an amount contributed to it:

“(b) the excess in any difference between the proportion for the investor and the average value for the group arises from differences between the notified tax rates of those investors in the group. 30

“Defined in this Act: arrangement, investor, investor class, investor interest, notified tax rate, pay 35

“Compare: 2007 No 97 s HL 5B(2), (3)

**“HM 6 Intended effects for multi-rate PIEs and investors***“Intended effects for entity*

- “(1) The intended effects for an entity that is using funds supplied by investors to make investments of certain types and who meets the requirements for multi-rate PIE status are that— 5
- “(a) in relation to proceeds of the investments that are attributed to investors who are natural persons or certain trustees or other persons, the PIE has a tax liability—
- “(i) calculated using a tax rate for each investor; and
- “(ii) resembling the total tax liability the group of investors would have if the investors were to make the investments separately: 10
- “(b) the PIE has no tax liability on proceeds of the investments that are attributed to other investors:
- “(c) the PIE allocates to each investor amounts resembling the amounts that the investor would receive, after allowing for the tax paid by the PIE if making the investment separately. 15

*“Intended effects for investors*

- “(2) The intended effects for an investor in the multi-rate PIE are that— 20
- “(a) the investor has no tax liability on income arising from proceeds for which the PIE has a tax liability, unless the investor has given the PIE a rate that is lower than the correct rate: 25
- “(b) the investor is liable for tax on any assessable income arising from proceeds for which the PIE has a tax liability:
- “(c) the investor receives on the investment in the PIE an economic return that the investor would receive after payment of tax liabilities if personally making investments similar to those made by the PIE in which they have an investor interest. 30

“Defined in this Act: amount, assessable income, investor, investor interest, multi-rate PIE, pay, PIE, tax, trustee 35

“Compare: 2007 No 97 s HL 1(2)(a)

*“Entry rules*

**“HM 7 Requirements**

For an entity to be a PIE, it must—

- “(a) meet the requirements of the entry rules in **sections HM 8 to HM 10, HM 17, and HM 18**, as applicable; 5  
and
- “(b) be 1 of the types of entity referred to in **section HM 2(2)**; and
- “(c) choose under **section HM 70** to become a PIE; and
- “(d) maintain the requirements of the rules in **sections HM 8 to HM 20**, as applicable; and 10
- “(e) not lose PIE status under the exit rules in **sections HM 24 to HM 30**.

“Defined in this Act: PIE

“Compare: 2007 No 97 ss HL 2(2), HL 15(1), (2) 15

*“Requirements*

**“HM 8 Residence in New Zealand**

The entity must be—

- “(a) resident in New Zealand; and
- “(b) not treated under a double tax agreement as not resident 20  
in New Zealand.

“Defined in this Act: double tax agreement, resident in New Zealand

“Compare: 2007 No 97 s HL 3(10)

**“HM 9 Collective schemes**

The entity must be— 25

- “(a) a company:
- “(b) a superannuation scheme:
- “(c) the trustee of a trust that would be a unit trust if there  
were more than 1 subscriber, purchaser, or contributor  
participating as beneficiaries under the trust: 30
- “(d) a separate identifiable fund forming part of a life insurer  
that holds investments subject to life insurance policies

under which benefits are directly linked to the value of the investments held in the fund.

“Defined in this Act: company, life insurance policy, life insurer, superannuation scheme, trustee, unit trust

“Compare:

“**HM 10 Exclusion: life insurance business** 5

The entity must not carry on a business of life insurance unless it is a life fund PIE.

“Defined in this Act: life fund PIE, life insurance

“Compare: 2007 No 97 s HL 3(9)

“**HM 11 Investment types** 10

The entity’s investments, to the extent of 90% or more by value of its assets, must be—

“(a) an interest in land:

“(b) a financial arrangement:

“(c) an excepted financial arrangement: 15

“(d) a right or option in relation to property listed in **paragraphs (a) to (c)**.

“Defined in this Act: excepted financial arrangement, financial arrangement, land

“Compare: 2007 No 97 s HL 10(1) 20

“**HM 12 Income sources**

Income derived by the entity, to the extent of 90% or more, must—

“(a) be derived from property referred to in **section HM 11**; and 25

“(b) consist of the following:

“(i) a dividend:

“(ii) a replacement payment:

“(iii) an amount of income treated under subpart EW (Financial arrangements rules) as derived by the entity: 30

“(iv) an amount of income derived from a lease of land, but this subparagraph does not apply if the



lessee under the lease is associated with the entity receiving the amount:

“(v) an amount derived from the disposal of property referred to in **section HM 11**:

“(vi) FIF income: 5

“(vii) attributed PIE income:

“(viii) a distribution from a superannuation fund.

“Defined in this Act: amount, associated person, attributed PIE income, dividend, FIF income, income, land, lessee, replacement payment, superannuation fund 10

“Compare: 2007 No 97 s HL 10(2)

“**HM 13 Maximum shareholdings in investments**

“*When this section applies*

“(1) This section applies when an entity has an investment consisting of shares in a company other than shares in— 15

“(a) a PIE, or an entity that qualifies for PIE status:

“(b) a foreign PIE equivalent:

“(c) a land investment company.

“*Voting interests: companies other than unit trusts*

“(2) The investment must carry voting interests in the company of no more than 20%. This subsection does not apply to a unit trust. **Subsection (5)** overrides this subsection. 20

“*Investments in unit trusts*

“(3) For an investment in a unit trust, the investment must have a market value no more than 20% of the market value of all interests in the unit trust. **Subsection (5)** overrides this subsection. 25

“*Class requirements*

“(4) For each investment and each investor class of the entity, the percentage thresholds set out in **subsections (2) and (3)** apply to the investment by the class in the same way as they apply to the investment by the entity. **Subsection (5)** overrides this subsection. 30

“*Exception for limited non-complying investments*

“(5) Despite **subsections (2) to (4)**, the 20% cap in those subsections can be exceeded if the total market value of all invest- 35

ments where the cap is exceeded is not more than 10% of the market value of the total investments of the entity or investor class.

“Defined in this Act: company, foreign PIE equivalent, investor class, land investment company, market value, PIE, share, voting interest, unit trust

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“Compare: 2007 No 97 s HL 10(3)–(5)

“**HM 14 Minimum number of investors**

“*Requirement for entities other than listed companies*

“(1) If the entity is not a company listed on a recognised exchange in New Zealand, each investor class must include 20 or more persons.

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“*Requirements for listed companies*

“(2) If the entity is a company listed on a recognised exchange in New Zealand, it must have only 1 investor class of which each investor is a member. Each investor interest must be a share traded on the exchange. This subsection applies equally to an unlisted PIE that meets the requirements of **section HM 18**.

15

“*Exceptions*

“(3) **Subsection (4) and sections HM 21(2) and HM 22** override **subsection (1)**.

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“*Exception for boutique classes*

“(4) **Subsection (1)** does not apply to an investor class (the **boutique investor class**) of an entity if—

“(a) the investor class does not have 20 or more members; and

25

“(b) the entity has 1 or more other investor classes that meet the requirement of **subsection (1)**; and

“(c) no investor in the boutique investor class, other than the manager or trustee of the entity, can control investment decisions relating to the class; and

30

“(d) the interests of investors in all boutique investor classes of the entity add up to less than 10% of the total value of interests in the entity.

“Defined in this Act: company, investor, investor class, investor interest, listed company, listed PIE, New Zealand, recognised exchange, share, trustee

35

“Compare: 2007 No 97 s HL 6(1A), (1), (2), (4)

**“HM 15 Maximum investors’ interests**

*“Requirement for investors’ interests*

- “(1) An investor in an investor class must not hold more than 20% of the total interests of investors in the class.

*“Exceptions*

5

- “(2) **Sections HM 21(3) to (5) and HM 22** override this section.

“Defined in this Act: investor, investor class

“Compare: 2007 No 97 s HL 9(1), (6)

**“HM 16 Associates combined**

For the purposes of **sections HM 14 and HM 15**, if a person is associated with an investor, the person and the investor are treated as 1 person, but only if both the person and the investor hold an investor interest of 5% or more. **Section HM 21(6)** overrides this section.

10

“Defined in this Act: associated person, investor, investor interest

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“Compare: 2007 No 97 s HL 9(6)

**“HM 17 Same rights to all investment proceeds**

*“What this section does*

- “(1) This section is an additional entry rule for a PIE that is not a life fund PIE.

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*“Same rights in relation to proceeds of investments*

- “(2) All investor interests in the entity that give rights in relation to proceeds from a portfolio investment must give the same rights in relation to all types of proceeds from the investment.

*“Category B income excluded*

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- “(3) This section does not apply if the proceeds are category B income.

“Defined in this Act: category B income, investor interest, life fund PIE, PIE, portfolio investment

“Compare: 2007 No 97 s HL 5C

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**“HM 18 Requirements for listed PIEs: unlisted companies***“Choosing to become listed PIE*

- “(1) A company that is not listed on a recognised exchange in New Zealand may choose under **section HM 70** to become a listed PIE if it— 5
- “(a) has 100 shareholders or more; and
  - “(b) has resolved to become a company listed on a recognised exchange in New Zealand if it were to obtain the required consents; and
  - “(c) has applied to the Securities Commission for an exemption to disclose in a prospectus its intention to become a listed company; and 10
  - “(d) satisfies the Commissioner that the company would apply to become a listed company if it were to obtain the required consents. 15

*“Two-year period*

- “(2) If the company is not listed within 2 years of the election, it loses PIE status from the last day of that period.

“Defined in this Act: Commissioner, company, listed company, listed PIE, New Zealand, PIE, recognised exchange, shareholder 20

“Compare: 2007 No 97 s HL 12

**“HM 19 Requirements for listed PIEs: fully crediting distributions***“What this section does*

- “(1) This section is an additional rule for an entity that is a listed PIE other than a life fund PIE. 25

*“Fully crediting distributions*

- “(2) When a listed PIE distributes an amount to an investor in an investor class, the distribution must be fully credited as described in section CD 43(26) (Available subscribed capital (ASC) amount) to the extent permitted by the imputation credits or FDP credits that the directors of the company determine are available. 30

*“Relationship with section CX 56C*

- “(3) For the treatment of imputation credits when a shareholder chooses to include the distribution as income in their return 35

of income, *see* **section CX 56C(2)** (Distributions to investors by listed PIEs).

“Defined in this Act: amount, company, director, FDP credit, imputation credit, income, investor, investor class, life fund PIE, listed PIE, return of income, shareholder

5

“Compare: 2007 No 97 s HL 8

**“HM 20 Re-entering as PIE: 5-year rule**

If an entity loses PIE status through the application of **sections HM 24 to HM 29**, it cannot choose to become a PIE again until 5 years have passed from the date of loss of status to the date on which a new election takes effect.

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“Defined in this Act: PIE

“Compare: 2007 No 97 s HL 3(11)

*“Exceptions*

**“HM 21 Exceptions for certain investors**

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*“When this section applies*

“(1) This section applies when an investor is—

“(a) a PIE, or an entity that qualifies for PIE status:

“(b) a foreign PIE equivalent:

“(c) a life insurer:

20

“(d) the New Zealand Superannuation Fund:

“(e) the Accident Compensation Corporation, or a Crown entity subsidiary of the Corporation:

“(f) the Earthquake Commission:

“(g) Auckland Regional Holdings.

25

*“Investor classes*

“(2) **Section HM 14(1)** does not apply to an investor class of an entity if the class includes at least 1 investor listed in **subsection (1)**.

*“Certain investors in non-listed PIEs*

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“(3) **Section HM 15** does not apply in relation to an entity other than a listed PIE in the case of an investor listed in **subsection (1)**.

- “*Certain investors in listed PIEs*”
- “(4) **Section HM 15** does not apply in relation to a listed PIE in the case of an investor listed in **subsection (1)** that holds more than 20% but less than 40% of the total interests in the investor class. 5
- “*Transitional provision for investors in listed PIEs*”
- “(5) **Section HM 15** does not apply in the case of an investor in a listed PIE, other than an investor listed in **subsection (1)**, that holds more than 20% but less than 40% of the total interests in the investor class and held more than 20% and less than 10 40% of the total interests at all times from 17 May 2006 to the relevant time.
- “*Not combined associates*”
- “(6) **Sections HM 16** does not apply if either the associated person or the investor is an investor listed in **subsection (1)**. 15
- “Defined in this Act: associated person, foreign PIE equivalent, investor, investor class, life insurer, listed PIE, PIE  
“Compare: 2007 No 97 ss HL 6(4), HL 9
- “**HM 22 Exceptions for certain funds**”
- “*Public unit trust*” 20
- “(1) **Sections HM 14(1) and HM 15** do not apply to an investor class of a PIE if, treating the class as a unit trust, it would meet the requirements of 1 or more of paragraphs (a) and (c) to (e) of the definition of **public unit trust**.
- “*Certain superannuation funds*” 25
- “(2) **Sections HM 14(1) and HM 15** do not apply in the case of an investor class of an entity that is—
- “(a) a superannuation fund established under the proposal for the restructuring of the National Provident Fund required by the National Provident Fund Restructuring Act 1990: 30
- “(b) a fund established by the Government Superannuation Fund Act 1956:
- “(c) a superannuation fund that—
- “(i) was in existence before 17 May 2006; and 35

- “(ii) would, if treated as a unit trust, meet 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 its manager or trustee, who can control the its investment decisions. 5

“Defined in this Act: investor class, PIE, public unit trust, superannuation fund, trustee, unit trust

“Compare: 2007 No 97 ss HL 6(3), HL 9(2)

**“HM 23 Exceptions for foreign PIE equivalents**

*“Investor classes and investors’ interests* 10

- “(1) If an investor in a PIE is a foreign PIE equivalent,—
  - “(a) the requirement for investor classes under **section HM 14(1)** is treated as met:
  - “(b) no limitation on investors’ interests under **section HM 15** applies in the case of that investor. 15

*“Shareholding in investments*

- “(2) If a PIE holds an investment in a foreign PIE equivalent, no maximum limit on shareholding in investments under **section HM 13** applies to that investment.

“Defined in this Act: foreign PIE equivalent, investor, investor class, investor interest, PIE 20

“Compare: 2004 No 35 ss HL 9(4), HL 10(4)

*“Exit rules*

**“HM 24 Ending of New Zealand residence**

An entity loses PIE status immediately if it is no longer resident in New Zealand. 25

“Defined in this Act: PIE, resident in New Zealand

“Compare: 2007 No 97 s HL 4(1)

**“HM 25 When entity no longer meets investment or investor requirements**

30

*“Effect*

- “(1) An entity loses PIE status if,—
  - “(a) on the last day of a quarter (the **first quarter**),—

“(i) the entity no longer meets a requirement of <b>sections HM 11 to HM 13</b> ; or	
“(ii) an investor class of the entity no longer meets a requirement of <b>sections HM 13 to HM 15</b> ; and	
“(b) the failure to meet the requirements—	5
“(i) is significant and is within the control of the entity:	
“(ii) is not remedied by the last day of the next quarter (the <b>second quarter</b> ).	
“ <i>Date of loss of status</i>	10
“(2) The date of loss of PIE status is—	
“(a) when <b>subsection (1)(b)(i)</b> applies, the last day of the first quarter:	
“(b) when <b>subsection (1)(b)(i)</b> does not apply, the last day of the second quarter.	15
“ <i>Transitional quarters disregarded</i>	
“(3) <b>Subsection (1)</b> does not apply if the start of the first quarter would be within—	
“(a) 6 months plus 1 day of the date on which the entity becomes a PIE, or the investor class is formed; or	20
“(b) 3 months before an announcement by the entity to its investors that it or the relevant investor class is winding up within 12 months of the announcement.	
“Defined in this Act: investor class, PIE, quarter	
“Compare: 2007 No 97 s HL 4(2)	25
“ <b>HM 26 Starting life insurance business</b>	
An entity that is not a life fund PIE loses PIE status immediately if it starts to carry on the business of life insurance.	
“Defined in this Act: business, life fund PIE, life insurance, PIE	
“Compare: 2004 No 35 s HL 4(1)	30



**“HM 27 When multi-rate PIE no longer meets investor interest adjustment requirements**

A multi-rate PIE loses PIE status immediately if it fails to meet a requirement of **section HM 48**.

“Defined in this Act: investor interest, multi-rate PIE, PIE

5

“Compare: 2004 No 35 s HL 4(1)

**“HM 28 When listed PIE no longer meets crediting requirement**

A listed PIE loses PIE status immediately if it fails to meet the requirements of **section HM 19**.

“Defined in this Act: listed PIE, PIE

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“Compare: 2004 No 35 s HL 4(1)

**“HM 29 Choosing to cancel status**

An entity loses PIE status if it chooses to cancel PIE status by notifying the Commissioner under **section 31B** of the Tax Administration Act 1994. **Section HM 71(3)** applies to determine the date the election takes effect.

15

“Defined in this Act: Commissioner, notify, PIE

“Compare: 2004 No 35 s

**“HM 30 When foreign PIE equivalent no longer meets requirements**

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*“Commencing New Zealand residence*

“(1) A foreign PIE equivalent loses its status immediately if it becomes resident in New Zealand.

*“Continued failure*

“(2) A foreign PIE equivalent loses its status if it no longer meets the requirements set out in **section HM 3(b) to (e)** at the end of 2 consecutive quarters. The loss of status takes effect from the first day of the third quarter.

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“Defined in this Act: foreign PIE equivalent, quarter, resident in New Zealand

“Compare: 2007 No 97 s HL 5(2)

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*“Rules for multi-rate PIEs**“Introductory provisions***“HM 31 Rules for multi-rate PIEs***“Rules*

- “(1) A multi-rate PIE must— 5
- “(a) attribute income arising from the proceeds of an investment to an investor, and pay tax on the income based on the investor’s tax rate, *see sections HM 34 to HM 40:*
- “(b) calculate and pay its tax liability, choosing certain periods to do this, *see sections HM 41 to HM 47:* 10
- “(c) adjust investors’ interests in the entity or distributions from the entity to reflect an amount of tax paid, *see section HM 48:*
- “(d) use tax credits received to satisfy the entity’s tax liability, in some cases providing any surplus credits to certain investors by making an adjustment described in **paragraph (c)**, *see sections HM 49 to HM 55.* 15

*“Further provisions related to payment options, tax rates, and exit periods*

- “(2) For the provisions relating to the options available to a multi-rate PIE for calculating and paying its tax liability, prescribed and notified tax rates for investors, and exit levels and periods, *see sections HM 56 to HM 60.* 20

“Defined in this Act: exit level, exit period, investor, investor interest, multi-rate PIE, notified tax rate, pay, prescribed tax rate, tax, tax credit 25

“Compare: 2007 No 97 s

**“HM 32 Rules for and treatment of investors in multi-rate PIEs***“Tax rates*

- “(1) An investor in a multi-rate PIE must notify the PIE of a tax rate applying to their investment income or have a default rate apply, *see sections HM 56 to HM 60.* 30

*“Attributed income*

- “(2) An amount of income attributed by a multi-rate PIE to an investor in the PIE is—

- “(a) income of the investor under **section CP 1** (Attributed income of investors in multi-rate PIEs):
- “(b) for certain investors, excluded income of the investor under **section CX 56** (Attributed income of certain investors in multi-rate PIEs). 5

“Defined in this Act: amount, excluded income, income, investor, multi-rate PIE, notify

“Compare: 2007 No 97 s

**“HM 33 Proxies for PIE investors**

“*Proxies* 10

- “(1) An entity may become a proxy for an investor in a multi-rate PIE for an attribution period if the entity—
  - “(a) holds an investor interest for the investor; and
  - “(b) notifies the PIE that it holds the interest as proxy.

“*Role* 15

- “(2) The proxy must perform the duties set out in **subsection (3)** in relation to amounts attributed to them for the period as holder of the interest as if—
  - “(a) the proxy were a multi-rate PIE; and
  - “(b) the investor interest were an interest of the investor in the income of the proxy; and 20
  - “(c) the amounts attributed and distributions received by the proxy were amounts of the proxy to which the investor is entitled as holder of the interest.

“*Duties* 25

- “(3) The proxy’s duties are to—
  - “(a) attribute amounts to the investor for the period; and
  - “(b) distribute amounts and credits to the investor for the period; and
  - “(c) pay income tax on the investment income for the period; and 30
  - “(d) adjust the investor interest of the investor or distributions to the investor under **section HM 48**; and
  - “(e) provide returns as required under **section 57B** of the Tax Administration Act 1994 to the Commissioner and any other information required by the Commissioner; and 35

- “(f) provide the investor with a notice under **section 31C** of that Act; and
- “(g) provide the PIE with information about the investor and investor interest that may be relevant to any eligibility requirements of the PIE. 5

“Defined in this Act: amount, attribution period, Commissioner, income, income tax, investor, investor interest, multi-rate PIE, notify, PIE  
“Compare: 2007 No 97 s HL 33

*“Attributing income to investors*

“**HM 34 Attribution periods** 10

A multi-rate PIE must use 1 of the following periods for attributing an amount for a tax year to an investor and an investor class:

- “(a) for an entity that uses the quarterly calculation option under **section HM 43**, but chooses the attribution period by notifying the Commissioner before the start of the tax year or on choosing to become a PIE, a day, a month, or a quarter: 15
- “(b) for an entity that chooses under **section HM 44** to pay provisional tax and chooses the attribution period by notifying the Commissioner before the start of the tax year or on choosing to become a PIE, a day, a month, a quarter, or an income year: 20
- “(c) for an entity that does not make a choice under **paragraphs (a) and (b)**, a day. 25

“Defined in this Act: amount, attribution period, Commissioner, investor, investor class, multi-rate PIE, PIE, provisional tax, tax year  
“Compare: 2007 No 97 s HL 16(2)

“**HM 35 Determining net amounts and taxable amounts**

*“What this section applies to* 30

- “(1) This section applies for the purposes of a calculation under **section HM 36(2)**.

*“Net amounts*

- “(2) The net amount for an investor class of a multi-rate PIE for an attribution period is calculated using the formula— 35

assessable income – deductions.

*“Definition of items in formula*

- “(3) In the formula in **subsection (2)**,—
- “(a) **assessable income** is the total amount of the PIE’s assessable income attributed to the class for the attribution period: 5
- “(b) **deductions** is the total amount of the PIE’s expenditure or loss for which the PIE is allowed a deduction that is—
- “(i) incurred by the PIE in deriving the assessable income referred to in **paragraph (a)**; and 10
- “(ii) attributed to the class for the attribution period.

*“Net income or net loss*

- “(4) If the result of the formula is positive, the amount is net income of the class for the period. If the result of the formula is negative, the amount is a net loss of the class for the period. 15

*“Taxable amounts*

- “(5) The taxable amount for an investor class of a multi-rate PIE for an attribution period is calculated using the formula—
- net income – net loss – other loss used. 20

*“Definition of items in formula*

- “(6) In the formula in **subsection (5)**,—
- “(a) **net income** is the amount of the PIE’s net income referred to in **subsection (4)**:
- “(b) **net loss** is amount of the PIE’s net loss referred to in **subsection (4)**: 25
- “(c) **other loss used** is the lesser of the following amounts:
- “(i) the total amount for the class of formation loss that is attributable for the attribution period under **sections HM 65 to HM 69** and any amount of land loss under **section HM 64** that has not been used for an earlier period: 30
- “(ii) the total amount of net income referred to in **paragraph (a)**.

*“Taxable income or tax loss*

“(7) If the result of the formula is positive, the amount is taxable income of the class for the period. If the result of the formula is negative, the amount is a tax loss of the class for the period.

*“Use of valuations or financial statements* 5

“(8) Income and deductions of the multi-rate PIE are allocated to investors and investor classes for attribution periods as—

“(a) reflected in the PIE’s valuation of investors’ interests, if the PIE makes these valuations:

“(b) shown in the PIE’s financial statements, if the PIE does not makes the valuations referred to in **paragraph (a)**. 10

“Defined in this Act: amount, assessable income, attribution period, deduction, formation loss, income, investor class, investor interest, land loss, multi-rate PIE, net income, net loss, PIE, tax loss, taxable income

“Compare: 2007 No 97 ss HL 19, HL 20 15

**“HM 36 Calculating amounts attributed to investors**

*“Calculating amount*

“(1) The amount of attributed PIE income or attributed PIE loss for an income year for an investor and an investor class in a multi-rate PIE is the total of the amounts calculated using the formula in **subsection (2)** for— 20

“(a) each attribution period in the income year; and

“(b) each day in the attribution period; and

“(c) each investor class to which the investor belongs on the day. 25

*“Formula*

“(2) The formula is—

$$\frac{\text{percentage} \times (\text{income} - \text{loss})}{\text{days in period}} - (\text{expenses} - \text{credits for fees}).$$

*“Definition of items in formula*

“(3) In the formula,—

“(a) **percentage** is the percentage of the investor’s entitlement to a distribution by the PIE to the investor class: 30

- “(b) **income** is the amount of taxable income determined under **section HM 35(5) and (7)** for the period:
- “(c) **loss** is the amount of tax loss determined under **section HM 35(5) and (7)** for the period:
- “(d) **days in period** is the number of days in the period: 5
- “(e) **expenses** is the total amount for the day in the 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 investor class: 10
- “(ii) expenditure of the investor as a member of the investor class and transferred under subpart DV (Expenditure specific to certain entities) to the PIE:
- “(f) **credits for fees** is the amount of the credit for the fee paid or credited by the PIE to the account of the investor as a member of the investor class on the day in the period. 15
- “*Treatment of attributed loss for PIEs paying provisional tax*
- “(4) Despite **subsection (3)**, an investor in a multi-rate PIE that chooses under **section HM 44** to pay provisional tax has no attributed PIE loss. 20
- “*When derived or incurred*
- “(5) The investor is treated as deriving the income or incurring the loss in the income year of the investor in which the end of the PIE’s income year falls. 25
- “Defined in this Act: amount, attributed PIE income, attributed PIE loss, attribution period, income, income year, investor, investor class, multi-rate PIE, PIE, provisional tax, tax loss, taxable income
- “Compare: 2007 No 97 s HL 26 30
- “**HM 37 When income cannot be attributed**
- “*When this section applies*
- “(1) This section applies when a multi-rate PIE has income or property in which no investor has an interest, or income or property in which no person has a conditional entitlement under **section HM 38**. 35

*“Sole investor*

“(2) The PIE is treated as the sole investor in an investor class having an interest in the income or property.

“Defined in this Act: income, investor, investor class, multi-rate PIE

“Compare: 2007 No 97 s HL 17(1)

5

**“HM 38 When superannuation fund investor has conditional entitlement**

*“When this section applies*

“(1) This section applies for the purposes of **section HM 37** in relation to an attribution period when a person has a conditional entitlement to an investor interest in a multi-rate PIE that is a superannuation fund that meets the requirements of **subsection (4)** in income or property of the PIE. 10

*“Attribution*

“(2) The investor interest is treated as held by the person for the attribution period. 15

*“When conditional entitlement exists*

“(3) A person is treated as having a conditional entitlement to an investor interest if—

“(a) the investor interest is bought by or for the person’s employer; and 20

“(b) the person and the employer have agreed that the person will have an unconditional entitlement to the interest before the end of a vesting period that is no longer than 5 years; and 25

“(c) the agreement exists before the attribution period; and

“(d) the vesting period ends after the attribution period.

*“Modifications to certain vesting periods*

“(4) For the purposes of **subsection (3)(b)**,—

“(a) for a PIE that exists on 17 May 2006, a vesting period longer than 5 years is allowed but the vesting period must not be longer than the longest vesting period allowed by the PIE at that date for an interest created on that date: 30

“(b) for a PIE that does not exist on 17 May 2006, but the investor interest has been transferred to it by a super- 35



annuation scheme in existence on that date without significant change to the interest, a vesting period of any length is allowed.

“Defined in this Act: attribution period, employer, income, investor interest, multi-rate PIE, PIE, superannuation fund, superannuation scheme 5

“Compare: 2007 No 97 s HL 17(2)

**“HM 39 New investors in existing investor classes**

*“When this section applies*

“(1) This section applies when a person is a new investor in an existing investor class of a multi-rate PIE but, at the time of investing, the PIE holds insufficient investments for the person to qualify as an investor in the class. 10

*“Person treated as investor*

“(2) The PIE may treat the person as an investor in the class if the PIE acquires sufficient investments as soon after the investor’s acquisition of the interests as is practicable. 15

“Defined in this Act: investor, investor class, multi-rate PIE, PIE

“Compare: 2007 No 97 s HL 18

**“HM 40 Deductions for attributed PIE losses for zero-rated and exiting investors 20**

*“When this section applies*

“(1) This section applies to an investor in a multi-rate PIE when—  
“(a) an amount of attributed PIE loss is attributed under **section HM 36** to the investor for an attribution period in a tax year; and 25

“(b) either—  
“(i) the investor is a zero-rated investor; or  
“(ii) the PIE calculates its tax liability using the quarterly calculation option under **section HM 43** and the amount is attributed to the investor’s exit period. 30

*“Deduction*

“(2) In the investor’s income year in which the end of the PIE’s income year falls, the investor is allowed a deduction under section DB 53 (Attributed PIE losses of certain investors). The 35

amount of the deduction is equal to the amount attributed for the income year or exit period.

“Defined in this Act: amount, attributed PIE loss, attribution period, deduction, exit period, income year, investor, multi-rate PIE, PIE, tax year, zero-rated investor 5

“Compare: 2007 No 97 s HL 27

*“Calculating and paying tax liability*

**“HM 41 Options for calculation and payment of tax**

*“Available options*

“(1) The options available to a multi-rate PIE for calculating and paying its income tax liability are— 10

“(a) the payment of tax calculated under the exit calculation option, *see* **section HM 42**; or

“(b) the payment of tax calculated under the quarterly calculation option, *see* **section HM 43**; or 15

“(c) the payment of provisional tax and terminal tax calculated on an income-year basis, *see* **section HM 44**.

*“Default option*

“(2) The PIE must use the default option under **subsection (1)(b)** unless it chooses an option under **subsection (1)(a) or (c)** by notifying the Commissioner. 20

*“Income tax liability*

“(3) The income tax liability of the PIE for the tax year is equal to the total amount calculated under the relevant method for periods in the tax year or, in the case of the provisional tax option under **section HM 44**, for the PIE’s income year corresponding to the tax year. 25

“Defined in this Act: amount, Commissioner, income tax liability, income year, multi-rate PIE, notify, pay, PIE, provisional tax, tax year, terminal tax

“Compare: 2007 No 97 ss HL 16(3), HL 22–HL 24 30

**“HM 42 Exit calculation option**

*“When this section applies*

“(1) This section applies when a multi-rate PIE chooses for a tax year to calculate its income tax liability for exiting investors

and remaining investors. The PIE must notify the Commissioner under **section 31C** of the Tax Administration Act 1994 of this election.

*“Calculation for exiting investors*

- “(2) For an investor whose interest has reached the exit level during the tax year, the PIE must calculate its income tax liability under **section HM 47** for the investor and the relevant exit period. The exit level and exit periods are determined under **sections HM 61 and HM 62**. 5

*“Calculations for investors for non-exit periods*

- “(3) For investors and periods in the income year other than exit periods, the PIE must calculate its income tax liability under **section HM 47** for the relevant period. 10

*“Payment to Commissioner*

- “(4) The PIE must pay to the Commissioner— 15
- “(a) the amount of income tax liability for an exiting investor for the exit period—
- “(i) within 1 month after the end of the month of withdrawal; or
- “(ii) if the month of withdrawal is November, by the following 15 January; and 20
- “(b) the rest of the PIE’s income tax liability for the tax year within 1 month after the end of the tax year for remaining investors in the PIE at the end of the tax year, after allowing for any payment under **paragraph (a)** or any voluntary payment under **section HM 45**. 25

*“Provisional tax rules*

- “(5) The PIE is not required to pay provisional tax under subpart RC (Provisional tax) for the tax year.

“Defined in this Act: amount, Commissioner, exit level, exit period, income tax liability, income year, investor, multi-rate PIE, pay, PIE, provisional tax, tax year 30

“Compare: 2007 No 97 s HL 24(1)–(4)

**“HM 43 Quarterly calculation option***“Quarterly calculation*

- “(1) A multi-rate PIE that does not choose to calculate and pay its income tax liability under the exit calculation or provisional tax options, must calculate its tax liability for each quarter of the tax year using the formula set out in **section HM 47**. 5

*“Quarterly payment*

- “(2) The PIE must pay to the Commissioner the amount of its income tax liability for the quarter within 1 month of the end of the quarter. The notice requirements are set out in **section 31C** of the Tax Administration Act 1994. 10

*“Exiting investors: zero-rated*

- “(3) If an investor’s interest in the PIE has reached the exit level, they are treated under **section HM 60** as a zero-rated investor for the exit period which includes a grace period of 5 working days after the end of the quarter. This subsection does not apply if the PIE voluntarily chooses to pay an amount under **section HM 45**. 15

*“Exiting investors: remaining value to Commissioner*

- “(4) If an investor’s interest at the end of an exit period is more than zero, the PIE must pay an amount equal to the value of the interest to the Commissioner at the same time as the payment referred to in **subsection (2)**. 20

*“Provisional tax rules*

- “(5) The PIE is not required to pay provisional tax under subpart RC (Provisional tax) for the tax year. 25

“Defined in this Act: amount, Commissioner, exit level, exit period, income tax liability, investor interest, multi-rate PIE, notice, pay, PIE, provisional tax, quarter, tax year, working day, zero-rated investor

“Compare: 2007 No 97 s HL 22

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**“HM 44 Provisional tax calculation option***“When this section applies*

- “(1) This section applies when a multi-rate PIE chooses to calculate its income tax liability on an income year basis and pay provisional tax by notifying the Commissioner before the start 35

of the income year or when choosing to become a PIE. Notification is made under **section 31C** of the Tax Administration Act 1994.

*“Application of subparts RB and RC*

- “(2) The PIE must calculate its tax liability for the income year 5  
corresponding to the tax year under **section HM 47** and pay  
provisional tax for the tax year as required by subpart RC (Pro-  
visional tax) and terminal tax for the tax year as required by  
subpart RB (Terminal tax).

*“Treatment of losses*

- “(3) If the calculation of the liability results in a negative amount, 10  
the loss must be carried forward to a later tax year, and **section  
HM 63** does not apply.

“Defined in this Act: income tax liability, income year, multi-rate PIE, notify,  
pay, PIE, provisional tax, tax year

“Compare: 2007 No 97 s HL 23(1), (2)

**“HM 45 Voluntary payments**

*“When this section applies*

- “(1) This section applies when a multi-rate PIE pays an amount of 20  
tax under **section HM 42 or HM 43** and an investor reduces  
their investor interest in an investor class of the PIE.

*“Voluntary payment*

- “(2) The PIE may pay an amount of income tax to the Commis-  
sioner that represents an amount of its tax liability for the in-  
vestor as a member of an investor class for the tax year. 25

*“Time of payment*

- “(3) The payment must be made—  
“(a) within 1 month after, as applicable,—  
“(i) for calculation and payment of tax under the 30  
quarterly option, the end of the quarter; or  
“(ii) for the calculation and payment of tax under the  
exit calculation option, the month of the reduc-  
tion; or

“(b) if the month is November, by the following 15 January.

“Defined in this Act: amount, Commissioner, income tax, investor, investor class, investor interest, multi-rate PIE, pay, PIE, quarter

“Compare: 2007 No 97 s HL 25

“**HM 46 Calculation process** 5

To calculate its tax liability, a multi-rate PIE must—

“(a) determine the net amount for each investor class of the PIE:

“(b) determine the taxable amount for each investor class of the PIE: 10

“(c) calculate its tax liability for each investor in an investor class for each day of an attribution period.

“Defined in this Act: amount, attribution period, investor, investor class, multi-rate PIE, PIE

“Compare: 2007 No 97 ss HL 19, HL 20 15

“**HM 47 Calculation of tax liability or tax credit of multi-rate PIEs**

“*What this section does*

“(1) This section quantifies the amount of the tax liability or tax credit of a multi-rate PIE for a calculation period. 20

“*Calculating amount*

“(2) The amount of the PIE’s tax liability or tax credit is the sum of the amounts calculated using the formula in **subsection (3)** for—

“(a) each investor class in which the investor has an interest: 25

“(b) each investor in an investor class:

“(c) each attribution period in the calculation period:

“(d) each day in an attribution period.

“*Formula*

“(3) The formula is— 30

rate × amount.

“*Definition of items in formula*

“(4) In the formula,—

“(a) **rate** is—

- “(i) the tax rate relating to the investor for the period;  
or  
“(ii) 30%, if the PIE is treated as the sole investor under **section HM 37**;
- “(b) **amount** is the amount calculated under **sections HM 36(1) and (2) and HM 37**, as applicable, for the investor. 5
- “Result of formula: tax liability or tax credit*
- “(5) If the result of the formula in **subsection (3)** is positive, the amount is the PIE’s tax liability for the calculation period. If the result is negative, the amount is a tax credit of the PIE under **section LS 1** (Tax credits for multi-rate PIEs), *see section HM 55*. 10
- “Defined in this Act: amount, attribution period, calculation period, investor, investor class, investor interest, multi-rate PIE, PIE, tax credit 15
- “Compare: 2007 No 97 ss EG 3, HL 21
- “Adjusting investors’ interests*
- “**HM 48 Adjustments to investors’ interests or to distributions**
- “Adjustment*
- “(1) When a multi-rate PIE pays a tax liability or receives a tax credit under **section LS 1** (Tax credits for multi-rate PIEs) in relation to an investor, it must make an adjustment to an investor’s interest to reflect the investor’s prescribed investor rate. The PIE may choose to adjust— 20
- “(a) the investor’s interest in an investor class; or 25  
“(b) the amount of a distribution paid to the investor; or  
“(c) the amount of a payment required from the investor to satisfy the PIE’s tax liability.
- “Investor’s choice*
- “(2) The PIE may offer the choice made under **subsection (1)** to the investor. 30
- “Date of adjustment*
- “(3) An adjustment under **subsection (1)(a)** must be made—  
“(a) for the quarterly option, within 2 months of the end of the quarter; or 35

- “(b) for the exit calculation option, within 2 months of the end of the tax year; or
- “(c) for the provisional tax option, within 3 months of the end of the income year.

“Defined in this Act: amount, income year, investor, investor interest, multi-rate PIE, pay, PIE, prescribed investor rate, provisional tax, quarter, tax year  
“Compare: 2007 No 97 s HL 7

“*Using tax credits*

“**HM 49 Tax credits: when sections HM 50 to HM 55 apply**

“*When sections apply* 10

- “(1) **Sections HM 50 to HM 55** apply in relation to the tax credits of a multi-rate PIE or proxy for an investor in a multi-rate PIE that has not chosen to calculate its income tax liability under **section HM 44** using the provisional tax option.

“*Limitation* 15

- “(2) The entity must not, other than under **sections HM 51 to HM 55**,—

- “(a) use the credit to reduce the liability of the entity for income tax or to obtain a refund of income tax:

- “(b) attach the credit to a distribution or transfer the credit to another person. 20

“*Relationship with Part L*

- “(3) **Sections HM 51 to HM 55** override Part L (Tax credits and other credits) other than **subpart LS** (Tax credits for multi-rate PIEs and investors). 25

“Defined in this Act: income tax, income tax liability, investor, multi-rate PIE, provisional tax, tax credit

“Compare: 2007 No 97 s HL 29(1), (2)

“**HM 50 Attributing credits to investors**

“*When this section applies* 30

- “(1) This section applies when a multi-rate PIE has—

- “(a) a credit for tax paid or withheld under subpart LB (Tax credits for payments, deductions, and family income):



“(b) an imputation credit under subpart LE (Tax credits for imputation credits):

“(c) a credit for tax paid in a foreign country or territory under subpart LJ (Tax credits for foreign income tax).

“*Attributing amount to investor* 5

“(2) The amount of the credit attributable to an investor in an investor class of the PIE for an attribution period is calculated using the formula in **subsection (3)**. The amount attributed to the investor is the total of the amounts calculated for each investment of the PIE and each day in the attribution period. 10

“*Calculation of amount*

“(3) The formula is—

$$\frac{\text{credit} \times \text{class's percentage} \times \text{investor's percentage}}{\text{days in period.}}$$

“*Definition of items in formula*

“(4) In the formula,—

“(a) **credit** is amount of the credit the PIE has in relation to the investment that gives rise to the credit: 15

“(b) **class's percentage** is the amount of the proceeds from the investment to which the investor class is entitled, including related tax credits:

“(c) **investor's percentage** is the amount to which the investor is entitled of a distribution by the PIE to the investor class: 20

“(d) **days in period** is the number of days in the attribution period.

“Defined in this Act: amount, attribution period, imputation credit, investor, investor class, multi-rate PIE, pay, PIE, tax credit 25

“Compare: 2007 No 97 ss HL 29(3)-(5), YA 1 ‘portfolio class fraction’, ‘portfolio investor interest fraction’

“**HM 51 Use of foreign tax credits by PIEs**

“*When this section applies* 30

“(1) This section applies when a multi-rate PIE has a tax credit under subpart LJ (Tax credits for foreign income tax) that is attributable in a tax year to an investor other than—

- “(a) a zero-rated investor:
  - “(b) an exiting investor who is treated under **section HM 60** as zero-rated.
- “*Using tax credit to satisfy income tax liability*
- “(2) The multi-rate PIE may use the tax credit under **section LS 1** (Tax credits for multi-rate PIEs) to satisfy its income tax liability for the tax year in relation to the investor. The amount of the credit is determined under **subsection (3)**. 5
- “*Amount*
- “(3) The total amount of the credits able to be used is the lesser of— 10
- “(a) the total amount of credits attributed to the investor as a member of any investor class for the calculation period together with any amount attributed to the investor in an earlier calculation period that remains unused: 15
  - “(b) the amount of the PIE’s tax liability in relation to the investor as a member of any investor class for the calculation period or an earlier calculation period, and not met by any credit allocated to the earlier period. 20
- “*Use under exit calculation option* 20
- “(4) For a multi-rate PIE that calculates its tax liability for a tax year using the exit calculation option under **section HM 42**, the amount may be used for calculation periods earlier or later in the tax year, and in relation to different classes for the same investor. 25
- “*Use under quarterly option*
- “(5) For a multi-rate PIE that calculates its tax liability for a tax year using the quarterly option under **section HM 43**, the amount may be used only for the relevant calculation period and later periods in the tax year, and in relation to different classes for the same investor. 30
- “Defined in this section: amount, calculation period, income tax liability, investor, investor class, multi-rate PIE, PIE, quarter, tax credit, tax year, zero-rated investor
- “Compare: 2007 No 97 s HL 29(10)–(12) 35

“**HM 52 Use of foreign tax credits by zero-rated and certain exiting investors**

“*When this section applies*

- “(1) This section applies when a multi-rate PIE has a tax credit under subpart LJ (Tax credits for foreign income tax) that is attributable in a tax year to an investor who is—
- “(a) a zero-rated investor;
  - “(b) an exiting investor who is treated under **section HM 60** as zero-rated.

“*Using tax credit to satisfy income tax liability* 10

- “(2) The investor may use the tax credit under **section LS 3 or LS 4** (which relate to the use of tax credits) to satisfy their income tax liability for the tax year. The amount of the credit is determined under **subsection (3) or (4)**.

“*Amount* 15

- “(3) The total amount of the credits able to be used is the lesser of—
- “(a) the total amount of the attributed foreign tax credits for the income year or exit period, as applicable;
  - “(b) the amount calculated by multiplying the attributed PIE income of the investor from the PIE for the tax year by,—
    - “(i) for an exiting investor described in **subsection (1)(b)**, the prescribed investor rate notified in relation to the investor for the attribution period before their exit period; or
    - “(ii) for a zero-rated investor, their basic tax rate set out in schedule 1 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits) for the tax year.

“*Amount for PIEs or proxies*

- “(4) Despite **subsection (3)**, the amount of the credit is the attributed amount if the investor is—
- “(a) a multi-rate PIE; or

“(b) a proxy for an investor in a multi-rate PIE.

“Defined in this Act: amount, attributed PIE income, attribution period, exit period, foreign tax, income tax liability, income year, investor, multi-rate PIE, notify, PIE, prescribed investor rate, tax credit, tax year, zero-rated investor

“Compare: 2007 No 97 s HL 29(7), (8)

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“**HM 53 Use of tax credits other than foreign tax credits by PIEs**

“*When this section applies*

“(1) This section applies when a multi-rate PIE has—

“(a) a tax credit under Part L (Tax credits and other credits) other than a tax credit under subpart LJ (Tax credits for foreign income tax); and

“(b) the credit is attributable in a tax year to an investor in an investor class other than—

“(i) a zero-rated investor:

15

“(ii) an exiting investor who is treated under **section HM 60** as zero-rated.

“*Using tax credit to satisfy income tax liability*

“(2) The PIE may use the tax credit under **section LS 1** (Tax credits for multi-rate PIEs) to satisfy its income tax liability for the tax year in relation to the investor as a member of the class or of another investor class. A tax credit under this section is used only after the use of any credit under **section HM 52**.

20

“*Amount*

25

“(3) The amount of the tax credit is the amount attributed.

“Defined in this Act: amount, income tax liability, investor, investor class, multi-rate PIE, tax credit, tax year, zero-rated investor

“Compare: 2007 No 97 s HL 29(13)

“**HM 54 Use of tax credits other than foreign tax credits by investors**

30

“*When this section applies*

“(1) This section applies when a multi-rate PIE has a tax credit under Part L (Tax credits and other credits) other than a tax

credit under subpart LJ (Tax credits for foreign income tax), that is attributable in a tax year to an investor who is—	
“(a) a zero-rated investor:	
“(b) an exiting investor who is treated under <b>section HM 60</b> as zero-rated.	5
<i>“Using tax credit to satisfy income tax liability</i>	
“(2) The investor may use the tax credit under <b>section LS 3 or LS 4</b> (which relate to the use of tax credits) to satisfy their income tax liability for the tax year.	
<i>“Amount</i>	10
“(3) The amount of the tax credit is the amount attributed.	
“Defined in this Act: amount, income tax liability, investor, multi-rate PIE, tax credit, tax year, zero-rated investor	
“Compare: 2007 No 97 s HL 29(7)(b)	
<b>“HM 55 Tax credits for losses</b>	15
A multi-rate PIE that has a negative amount arising under <b>section HM 47(5)</b> and has not chosen to calculate its tax liability using the provisional tax option under <b>section HM 44</b> has a tax credit for a tax year under <b>section LS 1</b> (Tax credits for multi-rate PIEs).	20
“Defined in this Act: amount, multi-rate PIE, provisional tax, tax credit, tax year	
“Compare: 2007 No 97 s HL 28	
<i>“Prescribed and notified rates for investors in multi-rate PIEs</i>	25
<b>“HM 56 Prescribed investor rates for investors, default and optional: 30%</b>	
<i>“Investors generally</i>	
“(1) An investor in a multi-rate PIE has a prescribed investor rate of 30% unless <b>sections HM 57 to HM 60</b> apply.	30
<i>“Certain trustees</i>	
“(2) An investor in a multi-rate PIE who is a trustee of a trust other than a trust referred to in <b>section HM 58(b)</b> may choose to	

have a tax rate of 30%. If they do not choose a rate, a default rate of 0% applies.

“Defined in this Act: investor, multi-rate PIE, prescribed investor rate, trustee  
“Compare: 2007 No 97 s YA 1 ‘portfolio investor rate’, ‘prescribed investor rate’

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**“HM 57 Prescribed investor rates for certain natural person investors: 19.5%**

An investor in a multi-rate PIE who is a natural person (other than a trustee) has a prescribed investor rate of 19.5% if—

- “(a) they are resident in New Zealand; and 10
- “(b) they have, in either of the 2 income years immediately before the tax year,—
  - “(i) \$38,000 or less in taxable income; and
  - “(ii) a total amount of \$60,000 or less of taxable income and attributed PIE income less any attributed PIE loss. 15

“Defined in this Act: amount, attributed PIE income, income year, investor, multi-rate PIE, prescribed investor rate, resident in New Zealand, tax year, taxable income, trustee

“Compare: 2007 No 97 s YA 1 ‘portfolio investor rate’, ‘prescribed investor rate’

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**“HM 58 Prescribed investor rates for certain investors: 0%**

An investor (a **zero-rated investor**) in a multi-rate PIE has a prescribed investor rate of 0% if they are resident in New Zealand and are—

- “(a) a company: 25
- “(b) an organisation or trust deriving exempt income under section CW 41 or CW 42 (which relate to charities):
- “(c) a person who derives income as a trustee, other than a trustee who chooses the 30% rate under **section HM 56**: 30
- “(d) an exiting investor referred to in **section HM 60**:
- “(e) a PIE when an amount is attributed, other than a trustee who chooses the 30% rate under **section HM 56**:
- “(f) a proxy acting under **section HM 33**: 35

“(g) a superannuation fund, if the trustee chooses the 30% rate under **section HM 56**.

“Defined in this Act: amount, company, exempt income, investor, multi-rate PIE, PIE, prescribed investor rate, resident in New Zealand, superannuation fund, trustee

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“Compare: 2007 No 97 s YA 1 ‘prescribed investor rate’

“**HM 59 Notified rates**

“*Notifying PIE*

“(1) Despite **sections HM 56 to HM 58**, an investor who has provided their tax file number to a multi-rate PIE may notify the PIE of the prescribed investor rate to be applied for a period. Section 28B of the Tax Administration Act 1994 sets out the requirements for the notice.

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“*Time of notification*

“(2) The investor must give notice before the end of the relevant period.

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“*Application of prescribed rate*

“(3) A multi-rate PIE must apply the prescribed investor rate last notified by an investor in relation to every day of the period. However, this subsection does not apply if the PIE has made a voluntary payment of tax under **section HM 45** that is intended to satisfy its income tax liability for the period in relation to the investor unless the rate last notified applies to the voluntary payment.

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“*When chosen rate lower than rate prescribed in sections HM 56 to HM 58*

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“(4) If an investor notifies a prescribed investor rate that is lower than the rate that would apply under **sections HM 56 to HM 58**, income attributed to them by the PIE is not excluded income of the investor under **sections CX 56 and CX 56B** (which relate to attributed income of and distributions to certain investors in multi-rate PIEs).

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“*When rate disregarded*

“(5) The Commissioner may notify a PIE to disregard a prescribed investor rate notified by an investor if the Commissioner con-

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siders the rate is incorrect. The 30% default rate under **section HM 56** then applies.

*“When no rate notified*

“(6) If an investor does not notify a multi-rate PIE of their prescribed investor rate, the rate applying for a period is 30%. 5

“Defined in this Act: Commissioner, excluded income, income, investor, multi-rate PIE, notify, pay, PIE, prescribed investor rate, tax file number

“Compare: 2007 No 97 s YA 1 ‘portfolio investor rate’, ‘prescribed investor rate’

“**HM 60 Certain exiting investors zero-rated** 10

Despite **sections HM 56 to HM 59**, the tax rate applying to an investor is 0% if—

“(a) the investor exits from a multi-rate PIE in a quarter in which they are attributed income from the PIE; and

“(b) the PIE calculates and pays tax using the quarterly option under **section HM 43**; and 15

“(c) the PIE does not choose to make voluntary payments under **section HM 45**.

“Defined in this Act: income, investor, multi-rate PIE, pay, PIE, quarter

“Compare: 2007 No 97 s YA 1 ‘portfolio investor rate’, ‘prescribed investor rate’ 20

*“Exit levels and periods*

“**HM 61 Exit levels for investors**

An investor in a multi-rate PIE is treated as reaching the exit level when the PIE’s tax liability for the investor is equal to, 25  
or more than, the value of the investor’s interest in the PIE at the end of the exit period (the **exit level**).

“Defined in this Act: exit level, investor, investor interest, multi-rate PIE, PIE

“Compare: 2007 No 97 s

“**HM 62 Exit periods** 30

*“When this section applies*

“(1) This section applies when an investor in a multi-rate PIE reaches the exit level during a tax year.



*“Exit period: exit calculation*

- “(2) For a PIE that calculates its tax liability using the exit calculation option under **section HM 42**, the investor’s exit period—
- “(a) begins with the day that is the later of the start of the tax year and the day on which the investor last became an investor; and 5
- “(b) ends on the day in the tax year when the exit level is reached.

*“Exit period: quarterly calculation*

- “(3) For a PIE that calculates its tax liability using the quarterly calculation option under **section HM 43**, the investor’s exit period is the quarter in which the exit level is reached plus a grace period of 5 working days after the end of the quarter. 10

*“Voluntary payments of tax*

- “(4) **Subsection (3)** does not apply if the PIE voluntarily pays tax under **section HM 45**. 15

“Defined in this Act: exit level, investor, multi-rate PIE, pay, PIE, quarter, tax year, working day

“Compare: 2007 No 97 s YA 1 ‘portfolio investor exit period’

*“Treatment of losses by PIEs* 20

*“Losses of certain multi-rate PIEs*

**“HM 63 Use of investor classes’ losses**

*“When this section applies*

- “(1) This section applies when an investor class of a PIE that calculates and pays tax using the exit calculation or quarterly calculation options under **section HM 42 and HM 43** has a tax loss under **section HM 35(7)** for a calculation period. But this section does not apply to a land loss as defined in **section HM 64(3)**. 25

*“Amount not carried forward* 30

- “(2) The amount is not included in a loss balance carried forward under Part I (Losses) to a later calculation period.

*“Tax credits*

- “(3) To the extent to which the amount relates to an investor other than a zero-rated investor, the PIE has a tax credit under **section LS 1** (Tax credits for multi-rate PIEs) of an amount equal to the credit multiplied by the relevant prescribed investor rate. 5

“Defined in this Act: amount, calculation period, investor class, land loss, loss balance, pay, PIE, prescribed investor rate, provisional tax, tax credit, zero-rated investor

“Compare: 2007 No 97 s HL 32(1)

“**HM 64 Use of land losses of investor classes** 10

*“When this section applies*

- “(1) This section applies when an investor class of a multi-rate PIE that calculates and pays tax using the exit calculation option or the quarterly calculation option under **section HM 42 or HM 43** has a land loss for a calculation period. 15

*“Amount carried forward*

- “(2) The amount of land loss may be included in a loss balance carried forward under Part I (Losses) to a later calculation period and used under **section HM 35(5)** to reduce an amount of taxable income from the class. 20

*“Meaning of land loss*

- “(3) For the purposes of this section, a **land loss** means a tax loss under **section HM 35(7)** of an investor class of a PIE for a calculation period if, at the end of the period, the class has, through the investor interests of the members of the class, an entitlement to the distribution of the proceeds of the PIE’s investments that— 25

“(a) are investments in land or shares in a land investment company; and

“(b) have a value that is more than 50% of the market value of all the PIE’s investments in which the class has the entitlement. 30

“Defined in this Act: amount, calculation period, investor class, investor interest, land, land investment company, land loss, loss balance, market value, multi-rate PIE, pay, PIE, quarter, share, tax loss, taxable income 35

“Compare: 2007 No 97 s HL 32(2), (3)

*“Formation losses*

**“HM 65 Formation losses carried forward to tax year**

*“What this section applies to*

- “(1) This section applies to an entity that becomes a PIE, other than a multi-rate PIE that calculates and pays tax using the exit calculation or quarterly calculation option under **section HM 42 or HM 43**, when the entity has a formation loss. 5

*“Amount carried forward*

- “(2) The amount of formation loss may be included in a loss balance carried forward under Part I (Losses) to a tax year in which the entity is a PIE. 10

“Defined in this Act: amount, formation loss, loss balance, multi-rate PIE, pay, PIE, quarter, tax, tax year

“Compare: 2007 No 97 s HL 30(1), (2)

**“HM 66 Formation losses carried forward to first quarter 15**

*“When this section applies*

- “(1) This section applies when an entity becomes a multi-rate PIE that—
- “(a) calculates and pays tax using the exit calculation or quarterly calculation option under **section HM 42 or HM 43**; and 20
- “(b) has a formation loss.

*“Amount carried forward*

- “(2) The amount of formation loss may be carried forward under Part I (Losses) to the quarter in which the entity becomes a PIE. 25

“Defined in this Act: amount, formation loss, multi-rate PIE, pay, PIE, quarter

“Compare: 2007 No 97 s HL 30(1)

**“HM 67 When formation losses carried forward are less than 5% of formation investment value 30**

If the total amount of formation loss carried forward under **section HM 66** is less than 5% of the total market value of the PIE’s investments at the time it becomes a PIE, it may allocate to an attribution period the amount not already allocated, when

calculating under **section HM 35(5)** the taxable amount of an investor class for the attribution period.

“Defined in this Act: amount, attribution period, formation loss, investor class, market value, PIE, taxable amount

“Compare: 2007 No 97 s HL 30(3)

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**“HM 68 When formation losses carried forward are 5% or more of formation investment value: 3 year spread**

*“What this section applies to*

- “(1) This section applies to spread the formation loss over the period of 3 years from the date the entity becomes a PIE when the amount of formation loss carried forward under **section HM 66** is 5% or more of the total market value of the PIE’s investments at the time it becomes a PIE. 10

*“Amount*

- “(2) The maximum amount of formation loss that the PIE may allocate to an attribution period, when calculating under **section HM 35(5)** the taxable amount of an investor class for the attribution period, is the amount calculated using the formula— 15

$$\text{initial loss} \times \frac{\text{days}}{1095}.$$

*“Definition of items in formula*

- “(3) In the formula,— 20
- “(a) **initial loss** is the amount of formation loss:
- “(b) **days** is the number of days in the attribution period.

“Defined in this Act: amount, attribution period, formation loss, investor class, market value, PIE, taxable amount

“Compare: 2007 No 97 s HL 30(4), (5)

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**“HM 69 Allocation of formation losses of multi-rate PIEs to investor classes**

*“Maximum amount for allocation*

- “(1) Despite **sections HM 67 and HM 68**, the maximum amount of formation loss that may be allocated, when calculating under **section HM 35(5)** the taxable amount of an investor 30

class for an attribution period, is calculated using the formula—

$$\text{class net income} - \frac{\text{credits}}{\text{rate}}$$

*“Definition of items in formula*

“(2) In the formula,—

“(a) **class net income** is the amount of the net income of the investor class for the period under **section HM 35(4)**: 5

“(b) **credits** is the total amount attributed to the investor class for the period of—

“(i) imputation credits:

“(ii) Maori authority credits: 10

“(iii) RWT credits:

“(iv) FDP credits:

“(c) **rate** is the basic rate for companies set out in schedule 1, part A, clause 2 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits). 15

“Defined in this Act: amount, attribution period, company, FDP credit, formation loss, imputation credit, investor class, Maori authority credit, net income, RWT

“Compare: 2007 No 97 s HL 30(6), (7)

*“Elections and consequences 20*

**“HM 70 Choosing to become PIE**

An entity that, at the time of election, meets the requirements of **sections HM 8 to HM 20**, except to the extent to which the relevant requirement is said not to be applicable to the entity, may choose to become a PIE by notifying the Commissioner under **section 31B** of the Tax Administration Act 1994. 25

“Defined in this Act: Commissioner, notify, PIE

“Compare: 2007 No 97 s HL 11(1), (3)

**“HM 71 When elections take effect**

*“Notice of election 30*

“(1) An election under **section HM 70** to become a PIE takes effect on the latest of the following dates:

- “(a) the date the entity is formed:  
“(b) the date set out in the notice:  
“(c) 30 days before the Commissioner receives the notice.  
*“When entity does not meet basic requirements*
- “(2) Despite **subsection (1)**, an entity’s election to become a PIE 5  
does not take effect if, in the period ending 12 months after the  
date on which the election would be effective,—  
“(a) the entity cancels the election:  
“(b) an event or situation arises that means the entity would  
lose PIE status under any of **sections HM 24 to HM** 10  
**28.**
- “Notice of cancellation*
- “(3) An election under **section HM 29** to cancel PIE status takes  
effect on the latest of the following dates:  
“(a) the date the entity became a PIE: 15  
“(b) the date set out in the notice:  
“(c) the date on which the Commissioner receives the notice.
- “Defined in this Act: Commissioner, notice, PIE  
“Compare: 2007 No 97 ss HL 11(2), (2B), (4), HL 13(1), (4), HL 15(2) 20
- “HM 72 Transition: provisional tax**
- “When this section applies*
- “(1) This section applies when an entity chooses to become a PIE  
in an income year and has an increased liability for provisional  
tax for the income year because of the election. 25
- “Penalties and interest*
- “(2) The entity is not liable to pay any penalty or interest for which  
it would otherwise be liable for an inaccuracy arising from the  
increased liability in—  
“(a) an estimate of provisional tax made before the election: 30  
“(b) a payment of provisional tax due before the end of the  
2-month period that starts when the election takes ef-  
fect.
- “Tax liability*
- “(3) An entity that becomes a PIE in a tax year and is liable to pay 35  
an amount of income tax because of the disposal and reacquisi-

tion referred to in **section HM 74** may satisfy the tax liability by paying the Commissioner at least—

- “(a) one third of the liability in the tax year; and
- “(b) one half of the balance remaining after a payment under **paragraph (a)** in the tax year after that in which the entity became a PIE; and 5
- “(c) the balance owing after the payments under **paragraphs (a) and (b)** in the second tax year after that in which the entity became a PIE.

“Defined in this Act: amount, Commissioner, income tax, income year, pay, PIE, provisional tax, tax year 10

“Compare: 2007 No 97 s HL 14

“**HM 73 Transition: entities with non-standard income years**

“*When this section applies*

- “(1) This section applies when— 15
  - “(a) an entity with a non-standard income year chooses to become a PIE; and
  - “(b) the entity calculates and pays its tax liability using the exit calculation or quarterly calculation option under **section HM 42 or HM 43.** 20

“*Consequential changes in balance date*

- “(2) Section 39 of the Tax Administration Act 1994 applies as if—
  - “(a) the day before that on which the election takes effect were the original balance date of the entity; and
  - “(b) the next 31 March after the election takes effect were a new balance date approved by the Commissioner for the entity. 25

“Defined in this Act: Commissioner, non-standard income year, pay, PIE, quarter 30

“Compare: 2007 No 97 s HL 13(2)

“**HM 74 Transition: treatment of shares held in certain companies**

“*When subsection (2) applies*

- “(1) **Subsection (2)** applies when—
  - “(a) an entity chooses to become a PIE; and 35

- “(b) before the election takes effect—
- “(i) the entity holds a share in relation to which the proceeds of disposal would be excluded income under **section CX 55(3)(a) and (b)** (Proceeds from disposal of investment shares) once the entity becomes a PIE: 5
- “(ii) the entity is a share supplier in a returning share transfer in relation to that type of share; and
- “(c) the share is in a company that is not a PIE and does not become a PIE within 6 months from the date on which the entity became a PIE. 10
- “Disposal and reacquisition*
- “(2) The entity is treated as—
- “(a) disposing of the share to another person; and
- “(b) receiving consideration of an amount that equals the market value of the share at the time; and 15
- “(c) reacquiring the share from the other person for the same consideration.
- “Timing*
- “(3) The disposal and reacquisition is treated as occurring on the day before that on which the election takes effect. 20
- “When subsection (5) applies*
- “(4) **Subsection (5)** applies when an entity—
- “(a) loses PIE status under any of **sections HM 24 to HM 28** or chooses to cancel PIE status under **section HM 29**; and 25
- “(b) holds a share in relation to which the proceeds of disposal would be excluded income under **section CX 55(3)(a) and (b)** while the entity is a PIE.
- “Disposal and reacquisition* 30
- “(5) The entity is treated as—
- “(a) disposing of the share to another person; and
- “(b) receiving consideration of an amount that equals the market value of the share at the time; and
- “(c) reacquiring the share from the other person for the same consideration. 35



*“Timing*

- “(6) The disposal and reacquisition is treated as occurring on the day before PIE status is lost.

“Defined in this Act: amount, company, exempt income, market value, PIE, returning share transfer, share, shareholder

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“Compare: 2007 No 97 ss HL 13(3), HL 15(3)

**“HM 75 Transition: FDPA companies**

When an FDPA company becomes a PIE during a 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 PIE.

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“Defined in this Act: FDP account, FDPA company, PIE, tax year

“Compare: 2007 No 97 s HL 13(3B)”.

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- (2) **Subsection (1)** applies for the 2009–10 and later income years.

**215 Tax losses**

Section IA 2(4)(f) is omitted.

**216 Restrictions relating to ring-fenced tax losses**

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- (1) Section IA 7(3) is repealed.  
 (2) In section IA 7(6), the first sentence is replaced by “The general rules do not apply to a FIF net loss.”  
 (3) Section IA 7(10) is replaced by the following:

*“Net losses of multi-rate PIEs*

25

- “(10) The general rules do not apply to a multi-rate PIE’s net loss when the PIE does not calculate and pay tax using the provisional tax calculation option under **section HM 44** (Provisional tax calculation option).”

- (4) In section IA 7, in the list of defined terms, “life insurer” and “policyholder net loss” are omitted.

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- (5) In section IA 7, in the list of defined terms, “portfolio tax rate entity” is omitted and “multi-rate PIE”, “PIE”, and “provisional tax” are inserted.

- (6) **Subsections (1) and (4)** apply for income years beginning on and after 1 April 2009.
- (7) **Subsection (3) and (5)** applies for the 2009–10 and later income years.
- 217 Restrictions relating to schedular income** 5
- (1) Before section IA 8(1)(a), the following is inserted:  
 “(aa) paragraph (a), which relates to life insurers’ schedular policyholder base income; or”
- (2) In section IA 8, in the list of defined terms, “schedular policyholder base income” is inserted. 10
- (3) **Subsections (1) and (2)** apply for income years beginning on and after 1 April 2009.
- 218 Common ownership: group of companies**
- (1) Section IC 3(2B) is replaced by the following:  
*“When multi-rate PIEs included in group* 15
- “(2B) In relation to 2 or more companies of which 1 is a multi-rate PIE, the companies are treated as a group of companies at a particular time or for a particular period if—
- “(a) the PIE owns 100% of the voting interests in the other companies; and 20
- “(b) the other companies in the group are not land investment companies.”
- (2) In section IC 3, in the list of defined terms, “portfolio land company” and “portfolio tax rate entity” are omitted and “land investment company” and “multi-rate PIE” are inserted. 25
- (3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.
- 219 New section IC 13 added**
- After section IC 12, the following is added:
- “IC 13 Variation of requirements for development companies in Niue** 30
- “When this section applies*
- “(1) This section applies in relation to the required common ownership of group companies set out in sections IC 2(2), IC 3,

and IC 5(1)(a) for the purposes of providing relief to company A for losses incurred in connection with development work in Niue.

*“Order in Council*

- “(2) The Governor-General may make an Order in Council varying the threshold in section IC 3(1)(a) and (b) applying to company A if satisfied that the company— 5
- “(a) is carrying on a business or enterprise that—
- “(i) has been or is carried on wholly or mainly for the development of Niue: 10
- “(ii) has been or is important to the development of Niue; and
- “(b) has incurred expenditure wholly or mainly in deriving income from Niue or in the course of carrying on a business or enterprise in Niue for the purpose of deriving income. 15

*“Named company*

- “(3) For the purposes of **subsection (2)**, company A must be a company named in the order.

*“Application of order*

- “(4) The order may specify a period or periods to which it applies. If no period is specified, the order applies to the whole commonality period. 20

“Defined in this Act: business, commonality period, company, group of companies, income”. 25

**220 Ring-fencing cap on attributed CFC net losses**

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

*“Attributed CFC net losses from 2009–10 or earlier income years*

- “(1B) If a person’s attributed CFC net loss relates to the 2009–10 or a later income year and is carried forward to the tax year, the amount used for the tax year in reducing the person’s net income is equal to the amount of the reduction under subsection (1). 30

*“Attributed CFC net losses from 2008–9 or earlier income years*

- “(1C) If a person’s attributed CFC net loss relates to the 2008–09 or an earlier income year and is carried forward to the 2009–10 or a later tax year,— 5
- “(a) the maximum amount of the attributed CFC net loss (the **maximum useful loss**) that may be used in a reduction of the person’s net income for the tax year is the greater of the following amounts:
- “(i) the amount determined under subsection (1) (the **maximum income reduction**) for the tax year: 10
- “(ii) an amount equal to the branch equivalent income of the person for the tax year:
- “(b) the amount of the attributed CFC net loss (the **applied amount**) used for the tax year must be the lesser of the 15 following amounts:
- “(i) the amount of the attributed loss carried forward:
- “(ii) the maximum useful loss:
- “(c) the effect of the applied amount depends on whether the applied amount exceeds the amount (the **threshold amount**) calculated by subtracting the maximum 20 income reduction from the maximum useful loss:
- “(d) the applied amount reduces the person’s net income for the tax year by an amount equal to—
- “(i) the maximum income reduction, if the applied 25 amount is equal to the maximum useful loss; or
- “(ii) the amount by which the applied amount exceeds the threshold amount, if the applied amount is less than the maximum useful loss and exceeds the threshold amount; or 30
- “(iii) zero, if the applied amount is less than or equal to the threshold amount.”
- (2) **Subsection (1)** applies for the 2009–10 and later income years.

## 221 Group companies using attributed CFC net losses 35

- (1) In section IQ 4(3)(a), the words before subparagraph (i) are replaced by the following:

- “(a) the amount of the tax loss that company A may make available to another group company (**company B**) in the tax year may not be greater than the amount that company B would require as attributed CFC net loss from the same income year or income years to produce a reduction in company B’s net income for the tax year equal to the total of—” 5
- (2) **Subsection (1)** applies for the 2009–10 and later income years.
- 222 Subpart IT replaced** 10  
 Subpart IT is replaced by the following:  
 “Subpart IT—Cancellation of life insurer’s losses
- “IT 1 Cancellation of life insurer’s policyholder net losses**
- “*When this section applies* 15
- “(1) This section applies to the amount of a life insurer’s tax loss to be carried forward to the tax year corresponding to the first income year beginning on or after 1 April 2009, to the extent to which the amount (the **cancelled amount**) would be a ring-fenced tax loss for policyholder net losses under section IA 7(3) (Restrictions relating to ring-fenced losses) if the enactment of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act **2008** were ignored. 20
- “*Cancellation of life insurer’s policyholder net losses*
- “(2) The cancelled amount— 25
- “(a) is removed from the life insurer’s available tax loss for the tax year corresponding to an income year beginning on or after 1 April 2009; and
- “(b) must not be subtracted from the life insurer’s net income under section BC 5 (Taxable income) for the tax year corresponding to an income year beginning on or after 1 April 2009; and 30
- “(c) is not a tax loss component; and

“(d) is cancelled.

“Defined in this Act: available tax loss, income year, life insurer, net income, policyholder net loss, ring-fenced tax loss, tax loss, tax year

**“IT 2 Cancellation of life insurer’s tax loss when allowed into policyholder base 5**

*“When this section applies*

“(1) This section applies to the amount of a life insurer’s tax loss to be carried forward to a tax year corresponding to an income year beginning on or after 1 April 2009.

*“Cancellation of life insurer’s tax loss 10*

“(2) When the life insurer has for an income year an amount of policyholder base gross expenditure or loss as provided by **section EZ 62** (Allowance for cancelled amount: spreading), an equal amount—

“(a) is removed from the life insurer’s available tax loss for the tax year corresponding to the income year; and 15

“(b) must not be subtracted from the life insurer’s net income under section BC 5 for the tax year; and

“(c) is not a tax loss component; and

“(d) is cancelled. 20

“Defined in this Act: available tax loss, income year, life insurer, net income, tax loss, tax year”.

**223 Remaining refundable credits: PAYE, RWT, and certain other items**

(1) In section LA 6(1)(e), “authority credits.” is replaced by “authority credits.” and the following is added: 25

“(f) section LS 1 (Tax credits for portfolio tax rate entities and investors).”

(2) In **section LA 6(1)(f)**, “(Tax credits for portfolio tax rate entities and investors)” is replaced by “(Tax credits for multi-rate PIEs)”. 30

(3) **Subsection (2)** applies for the 2009–10 and later income years.

**224 Remaining refundable credits: tax credits for families**

In section LA 7, the heading and subsection (1) are replaced by the following:

**“LA 7 Remaining refundable credits: tax credits under social policy schemes**

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*“What this section applies to*

1 This section applies to a person’s tax credit remaining for a tax year under section LA 5(5), if it is a tax credit under—

“(a) section LB 4 (Tax credits for families): 10

“(b) section LD 1(5) (Tax credits for charitable and other public benefit gifts).”

**225 New section LA 8B**

(1) After section LA 8, the following is inserted:

**“LA 8B General rules particular to life insurers**

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*“Apportionment*

“(1) For the purposes of this subpart a life insurer’s total tax credit is apportioned between their policyholder base and shareholder base, using the basis of apportionment in **section EY 4** (Apportionment of income of particular source or nature, and of tax credits). 20

*“Unsatisfied income tax liability*

“(2) Despite section LA 3,—

“(a) a life insurer has an unsatisfied income tax liability to the extent to which— 25

“(i) the tax credit apportioned to their policyholder base is less than their schedular income tax liability for schedular policyholder base income (**policyholder base income tax liability**); and

“(ii) the tax credit apportioned to their shareholder base is less than their income tax liability for the tax year, calculating their income tax liability (**shareholder base income tax liability**) as if they only had shareholder base gross income, expenditure, or loss: 30 35

“(b) the amount of unsatisfied income tax liability is the total of the difference, if any, described in **paragraph**

- (a)(i)** and the difference, if any, described in **paragraph (a)(ii)**:
- “(c) the amount of unsatisfied income tax liability under **paragraph (b)** is satisfied when the life insurer pays their terminal tax for the tax year. 5
- “*Use of credits*
- “(3) Despite section LA 4,—
- “(a) if the tax credit apportioned to the policyholder base or the shareholder base is greater than the relevant **base income tax liability** described in **subsection (2)(a)(i) or (ii)**, the tax credit is used, in the order prescribed in section LA 4(1), to satisfy the relevant base income tax liability: 10
- “(b) tax credits not used under **paragraph (a)** are treated as remaining tax credits referred to in section LA 4(2) and the life insurer must deal with the credits under section LA 5. 15
- “Defined in this Act: income tax liability, policyholder base gross expenditure or loss, policyholder base gross income, shareholder base expenditure or loss, shareholder base income, tax credit, tax year”. 20
- (2) **Subsection (1)** applies for income years beginning on and after 1 April 2009.
- 226 Use of credits**
- (1) In section LA 9, “Section OZ 11 (Tax credits for imputation credits and FDP credits) may apply to modify this section.” is omitted. 25
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 227 Section LB 1 replaced**
- Section LB 1 is replaced by the following: 30
- “LB 1 Tax credits for PAYE income payments**
- “*When this section applies*
- “(1) This section applies in a tax year when an employer provides the Commissioner with an employer monthly schedule that



shows an amount of tax withheld from a PAYE income payment of a person who is an employee.

*“Amount of credit*

- “(2) The person has a tax credit for the tax year equal to the amount of tax shown as withheld. 5

*“Application to close companies*

- “(3) Despite **subsection (2)**, the amount of the tax credit must be no more than the amount of tax paid to the Commissioner if—
  - “(a) the employer is a close company; and
  - “(b) the employer and the person are associated persons, or the employer and the spouse, civil union partner, or de facto partner of the person are associated persons; and 10
  - “(c) the employer withheld the amount of tax for the PAYE income payment shown in the employer monthly schedule. 15

*“Exclusions*

- “(4) The person’s credit is extinguished if the Commissioner does not receive an employer monthly schedule for the relevant amount of tax, or when the relevant particulars of the schedule are incorrect. However, the credit is restored to the person if the relevant matter is corrected and, for the purposes of this section, it is as if the error had not been made. 20

“Defined in this Act: amount, amount of tax, associated person, close company, Commissioner, employee, employer, employer monthly schedule, pay, PAYE income payment, tax credit”. 25

**228 Tax credits for resident withholding tax**

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

*“Multi-rate PIEs and their investors*

- “(3) For a multi-rate PIE and an investor in a multi-rate PIE, the amount of a tax credit is limited to the extent allowed under **subpart HM** (Portfolio investment entities).” 30
- (2) In section LB 3, in the list of defined terms, “portfolio tax rate entity” is omitted, and “multi-rate PIE” is inserted.
- (3) **Subsections (1) and (2)** apply for the 2009–10 and later income years. 35

- 229 Tax credits related to personal service rehabilitation payments: providers**  
In section LB 7(4)(b), “schedule 4, part H,” is replaced by “schedule 4, part I.”
- 230 Tax credits related to personal service rehabilitation payments: payers** 5  
In section LB 8(3)(c), “schedule 4, part H,” is replaced by “schedule 4, part I.”
- 231 Tax credits for housekeeping** 10  
In section LC 6(4), “section LA 7 (Remaining refundable credits: tax credits for families)” is replaced by “section LA 7 (Remaining refundable credits: tax credits under social policy schemes)”.
- 232 Subpart LD heading replaced** 15  
The heading to subpart LD is replaced by “**Tax credits for gifts and donations**”.
- 233 New heading inserted**  
Before section LD 1, “*Charitable and other public benefit gifts*” is inserted as a cross heading.
- 234 Tax credits for charitable or other public benefit gifts** 20  
In section LD 1(5), “section LA 7 (Remaining refundable credits: tax credits for families)” is replaced by “section LA 7 (Remaining refundable credits: tax credits under social policy schemes)”.
- 235 Exclusions** 25
- (1) In section LD 2, the words before paragraph (a) are replaced by the following:  
Section LD 1 does not apply to—”.
- (2) In section LD 2(f), “trusts).” is replaced by “trusts):.”, and the following is added: 30  
“(g) in relation to the credit, a person who has a tax credit for a payroll donation.”

**236 New heading and sections LD 4 to LD 7 added**

After section LD 3, the following is added:

***“Payroll donations***

**“LD 4 Tax credits for payroll donations**

*“Who this section applies to* 5

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

“(a) is an employee whose employer files by electronic means an employer monthly schedule that contains particulars relating to the person’s PAYE income payments for a pay period; and 10

“(b) chooses to make a payroll donation in the pay period.

*“Amount of credit*

“(2) The person has a tax credit for the pay period equal to an amount calculated using the formula—

total donations × 33⅓%. 15

*“Definition of item in formula*

“(3) In the formula, **total donations** is the total amount of all payroll donations made by the person in the pay period.

*“Maximum credit*

“(4) Despite **subsection (2)**, the amount of the tax credit must not be more than the amount of tax for the person’s PAYE income payment for the period. 20

*“Non-refundable credits*

“(5) A credit under this section is a non-refundable tax credit to which section LA 4(1) (When total tax credit more than income tax liability) applies for the tax year in which the period falls. 25

*“No refunds for donations*

“(6) A person who has a tax credit under this section may not make an application under section 41A of the Tax Administration Act 1994 for any refund relating to the amount of a payroll donation. 30

“Defined in this Act: amount, amount of tax, employee, employer monthly schedule, non-refundable tax credit, pay period, PAYE income payment, payroll donation, tax credit 35

**“LD 5 When tax credit incorrectly calculated**

If an employer calculates the amount of a person’s tax credit under **section LD 4** for a pay period incorrectly, the credit is extinguished and the correct amount is included in the person’s tax credits for PAYE income payments under section LB 1 5 (Tax credits for PAYE income payments) for the tax year in which the pay period falls.

“Defined in this Act: amount, employer, pay period, PAYE income payment, tax credit, tax year

**“LD 6 When donation is paid to ineligible recipient or not transferred** 10

*“When this section applies*

“(1) This section applies for the purposes of **section LD 4** when—

“(a) an employer fails to transfer a person’s payroll donation to the relevant recipient under **section 24Q** of the Tax Administration Act 1994: 15

“(b) the recipient of a payroll donation is not an entity described in section LD 3(2) or listed in schedule 32 (Recipients of charitable or other public benefit gifts).

*“Treatment of credit* 20

“(2) The tax credit is extinguished.

“Defined in this Act: employer, payroll donation, tax credit

**“LD 7 Meaning and ranking of payroll donation**

*“Meaning*

“(1) A **payroll donation**, for a pay period, is an amount that a person asks their employer to transfer from the amount of the person’s PAYE income payment for the period to an entity described in section LD 3(2) or listed in schedule 32 (Recipients of charitable or other public benefit gifts). 25

*“Priorities of amounts withheld and other deductions* 30

“(2) A person may make a payroll donation only after satisfying any tax obligation that they may have or any other statutory

requirement that they may be obliged to meet from their PAYE income payment.

“Defined in this Act: amount, pay period, PAYE income payment, payroll donation”.

- 237 Tax credits for imputation credits** 5
- (1) In section LE 1(1), “Section OZ 11 (Tax credits for imputation credits and FDP credits) may apply to modify this section.” is added after “tax year.”
- (2) After section LE 1(1), the following is inserted:  
*“Portfolio tax rate entities and their investors* 10
- “(1B) An investor in a portfolio tax rate entity who is allocated an imputation credit under **section HL 29(7)(b)** (Credits received by portfolio tax rate entity or portfolio investor proxy) has a tax credit for the tax year of an amount equal to the amount of the imputation credit.” 15
- (3) **Section LE 1(1B)**, is replaced by the following:  
*“Multi-rate PIEs and their investors*
- “(1B) An investor in a multi-rate PIE who has an imputation credit attributed for use under **section HM 54** (Use of tax credits other than foreign tax credits by investors) has a tax credit for the tax year of an amount equal to the amount of the imputation credit.” 20
- (4) Section LE 1(4) is repealed.
- (5) In section LE 1, in the list of defined terms, “portfolio tax rate entity” is omitted, and “multi-rate PIE” is inserted. 25
- (6) **Subsection (1)** applies for the 2008–09 and later income years.
- (7) **Subsections (3) and (5)** apply for the 2009–10 and later income years.
- 238 Use of remaining credits by companies and trustees** 30
- (1) Section LE 2(1) is replaced by the following:  
*“When this section applies*
- “(1) This section applies when—

- “(a) a person described in subsection (2) has an amount of tax credit remaining for a tax year under section LA 5(4) (Treatment of remaining credits):
- “(b) a life insurer has an amount of tax credit remaining for a tax year under section LA 5(4), but only to the extent to which the amount is for their shareholder base.” 5
- (2) In section LE 2(2),—
- (a) in the words before the paragraphs, “subsection (1)” is replaced by “**subsection (1)(a)**”:
- (b) in paragraph (a), “company” is replaced by “company that is not a life insurer”. 10
- (3) In section LE 2(3), “The person” is replaced by “The person or the life insurer, as applicable,”.
- (4) In section LE 2(4)(a), “section LA 5(4)” is replaced by “section LA 5(4), but, for a life insurer, only to the extent to which the amount is for their shareholder base”. 15
- (5) In section LE 2, in the list of defined terms, “life insurer” and “shareholder base” are inserted.
- (6) **Subsections (1) to (5)** apply for income years beginning on and after 1 April 2009. 20
- 239 New section LE 2B inserted**
- (1) After section LE 2, the following is inserted:
- “LE 2B Use of remaining credits by life insurer on policyholder base**
- “When this section applies* 25
- “(1) This section applies to a life insurer who has an amount of tax credit remaining for a tax year (the **surplus credit year**) under section LA 5(4) (Treatment of remaining credits), but only to the extent to which the amount is for their policyholder base.
- “Policyholder base gross expenditure or loss* 30
- “(2) The life insurer has an amount of policyholder base gross expenditure or loss, treated as incurred in deriving policyholder base gross income, for the income year corresponding to the tax year after the surplus credit year equal to an amount calculated using the formula— 35

policyholder remaining credit

policyholder rate.

*“Definition of items in formula*

“(3) In the formula,—

“(a) **policyholder remaining credit** is the amount of the tax credit remaining for the surplus credit year under section LA 5(4), but only to the extent to which the amount is for the life insurer’s policyholder base: 5

“(b) **policyholder rate** is the basic rate of income tax set out in schedule 1, part A, clause 8 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits).

“Defined in this Act: amount, income tax, income year, life insurer, policyholder base, tax credit, tax year” 10

(2) **Subsection (1)** applies for income years beginning on and after 1 April 2009.

**240 Use of remaining credits by others**

(1) In section LE 3(1), “section LE 2(2)” is replaced by “section LE 2(2) or a life insurer” 15

(2) In section LE 3, in the list of defined terms, “life insurer” is inserted.

(3) **Subsections (1) and (2)** apply for income years beginning on and after 1 April 2009. 20

**241 Tax credits for FDP credits**

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

*“Multi-rate PIEs and their investors*

“(4) For a multi-rate PIE and an investor in a multi-rate PIE, the amount of a tax credit is limited to the extent allowed under **subpart HM** (Portfolio investment entities).” 25

(2) In section LF 1, in the list of defined terms, “portfolio tax rate entity” is omitted, and “multi-rate PIE” is inserted.

(3) **Subsections (1) and (2)** apply for the 2009–10 and later income years. 30

**242 Subpart LH—Tax credits for expenditure on research and development**

In sections LH 1 to LH 17, the compare notes are repealed.

**243 Who this subpart applies to**

- (1) After section LH 1(2), the following is added: 5  
*“Excluded income*  
 “(3) A tax credit that a person has under this subpart is excluded income of the person.”  
 (2) In section LH 1, in the list of defined terms, “excluded income” is inserted. 10  
 (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years.

**244 Tax credits relating to expenditure on research and development**

- (1) After section LH 2(6), the following are added: 15  
*“Treatment when tax credit used under subsection (6)*  
 “(7) The amount of a tax credit used under subsection (6) is treated as excess tax for the purposes of section LA 6(2)(e) and Part 10B of the Tax Administration Act 1994.  
*“Statements* 20  
 “(8) Despite subsection (2), no amount of tax credit arises before the statements referred to in sections 68D or 68E of the Tax Administration Act 1994 are provided.”  
 (2) **Subsection (1)** applies for the 2008–09 and later income years. 25

**245 Requirements**

- (1) After section LH 3(5), the following is added:  
*“Modifications of requirements*  
 “(6) The requirements of this section are modified as follows: 30  
 “(a) **section LH 5B** modifies the requirements in subsection (1)(a) in relation to certain research and development activities:



- “(b) **section LH 5C** modifies the requirements in subsection (1)(e) in relation to the allocation of certain items of expenditure or depreciation loss.”
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 5
- 246 New sections LH 5B and LH 5C inserted**
- (1) After section LH 5, the following are inserted
- “LH 5B Modification: timing of research and development activities**
- “When this section applies* 10
- “(1) This section applies for the purposes of section LH 3(1)(a) to modify the rule that research and development activities must be performed in the income year for which the person has the tax credit.
- “First case: deferred pay for employees* 15
- “(2) The timing rule does not apply to research and development activities in relation to which the payment to an employee of an amount described in schedule 21, part A, clause 1(b) (Expenditure and activities related to research and development) is deferred to an income year that is later than the income year in which the relevant research and development activities were performed. 20
- “Second case: project becoming New Zealand-based project*
- “(3) The timing rule does not apply to research and development activities performed outside New Zealand in an income year in which the activities were not part of a research and development project because the requirements of section LH 6(4) were not met, but in a later income year the requirements of that section are met. 25
- “Third case: when eligible expenditure increased in later income years* 30
- “(4) The timing rule does not apply to research and development activities performed outside New Zealand in an income year in relation to which the expenditure was excluded by section

LH 6(5)(c) in earlier income years, but in a later income year the requirements of that section are met.

“Defined in this Act: amount, employee, income year, New Zealand, pay, research and development activities, research and development project, tax credit

**“LH 5C Modification: allocation of expenditure** 5

*“When this section applies*

“(1) This section applies for the purposes of section LH 3(1)(e) to modify the rule that the expenditure must be incurred in the income year in which the research and development activities occurred. 10

*“First case: deferred pay for employees*

“(2) The timing rule does not apply to expenditure relating to an employee that is an amount described in schedule 21, part A, clause 1(b) (Expenditure and activities related to research and development), the payment of which is deferred to an income year that is later than the income year in which the relevant research and development activities were performed. 15

*“Second case: project becoming New Zealand-based project*

“(3) The timing rule does not apply to expenditure or an amount of depreciation loss incurred on research and development activities performed outside New Zealand in an income year in which the activities were not part of a research and development project because the requirements of section LH 6(4) were not met, but in a later income year the requirements of that section are met. 20 25

*“Third case: when eligible expenditure increased in later income years*

“(4) The timing rule does not apply to expenditure or an amount of depreciation loss incurred on research and development activities performed outside New Zealand in an income year in relation to which the expenditure was excluded by section LH 6(5)(c) in earlier income years, but in a later income year the requirements of that section are met. The excess overseas eligible expenditure must be carried forward to the next income year and used to the extent allowed under that section. Any remaining excess must be carried forward to the next income 30 35

year in the same way under this subsection, until the amount is fully used.

“Defined in this Act: amount, depreciation loss, employee, income year, New Zealand, pay, research and development activities, research and development project, salary or wages”.

5

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

**247 New section LH 14B inserted**

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

**“LH 14B Recovery of overpaid tax credit**

10

*“When this section applies*

- “(1) This section applies when the Commissioner considers the amount of a tax credit under this subpart that is used under sections LA 2, LA 6(2), or LH 2(6) (which relate to tax credits) for a tax year is more than the proper amount.

15

*“Recovery of overpayment*

- “(2) The Commissioner may recover the excess as if it were income tax payable by the person.

“Defined in this Act: amount, Commissioner, income tax, pay, tax credit, tax year”.

20

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

**248 What this subpart does**

After section LJ 1(5), the following is added:

*“Relationship with section YD 5*

25

- “(6) Section YD 5 (Apportionment of income derived partly in New Zealand) applies to determine how an amount is apportioned to sources outside New Zealand.”

**249 Tax credits for foreign income tax**

- (1) Section LJ 2(5) is replaced by the following:

30

*“Multi-rate PIEs and their investors*

- “(5) For a multi-rate PIE and an investor in a multi-rate PIE, the amount of a tax credit is limited to the extent allowed under **subpart HM** (Portfolio investment entities).”

- (2) In section LJ 2, in the list of defined terms, “portfolio tax rate entity” is omitted and “multi-rate PIE” is inserted.
- (3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.
- 250 Repaid foreign tax** 5
- (1) Section LJ 7(3) is repealed.
- (2) In section LJ 7(4), the words before paragraph (a) are replaced by the following:
- “(4) The liability under subsection (2) is treated as income tax payable 30 days after the later of the following dates:” 10
- 251 Tax credits relating to attributed CFC income**
- (1) Section LK 1(1), other than the heading, is replaced by the following:
- “(1) A person who has an amount of attributed CFC income for an income year has a tax credit for the tax year corresponding to the income year equal to the following amounts paid or payable in relation to the attributed CFC income: 15
- “(a) the amount of income tax, including NRWT, paid by or on behalf of the CFC from which the income is derived:
- “(b) the amount of foreign income tax paid by or on behalf of the CFC from which the income is derived: 20
- “(c) the amount of foreign income tax paid by a foreign company in relation to the CFC under the legislation of another country or territory that is the equivalent of the international tax rules.” 25
- (2) In section LK 1(3), the second sentence is omitted.
- (3) After section LK 1(4), the following are added:  
“*When subsection (6) applies*
- “(5) **Subsection (6)** applies when— 30
- “(a) a person has a credit under **subsection (1)** in relation to an amount of income tax or foreign tax; and
- “(b) the credit has been used under section LA 2 (Satisfaction of income tax liability) or is carried forward under section LK 4; and
- “(c) the amount of income tax or foreign tax has been repaid. 35

- “Credit repayable or extinguished*
- “(6) The amount of the credit—
- “(a) must be paid to the Commissioner if it has been used under section LA 2:
- “(b) is extinguished, if it is carried forward under section LK 4. 5
- “When liability payable*
- “(7) The liability under **subsection (6)(a)** is treated as income tax payable 30 days after the later of the following dates:
- “(a) the date of the notice of assessment in relation to which the person has used the credit: 10
- “(b) the date on which the person who paid the tax, or a person associated with them, receives the repaid tax.”
- (4) In section LK 1, in the list of defined terms, “assessment”, “associated person”, “Commissioner”, “international tax rules”, “notice”, and “NRWT” are inserted. 15
- (5) In section LK 1, in the list of defined terms, “conduit tax relief” and “CTR company” are omitted.
- (6) **Subsections (2) and (5)** apply for the 2009–10 and later income years. 20
- 252 Calculation of amount of credit**
- Section LK 2(2)(b) is replaced by the following:
- “(b) **tax paid** is the amount of income tax or foreign income tax paid or payable by the CFC (or by the foreign company referred to in subsection (1)(c) in relation to the CFC) for the accounting period corresponding to the tax year, including an amount withheld by another person and paid or payable on behalf of the CFC:” 25
- 253 New section LK 5B inserted**
- (1) After section LK 5, the following is inserted: 30
- “LK 5B Effect of credits carried forward from tax year before 2009–10 tax year**
- “What this section applies to*
- “(1) This section applies to a tax credit—

- “(a) arising for a person under section LK 1 in relation to attributed CFC income from a CFC for a tax year before the 2009–10 tax year; and
- “(b) carried forward under section LK 4 to a tax year (the **credit use year**) that is the 2009–10 or a later tax year. 5
- “*Effect of credit under subpart LA*
- “(2) The amount of the credit for the purposes of subpart LA (General rules for tax credits) for the credit use year is—
- “(a) zero, if the amount of the credit carried forward to the credit use year from the tax year in which the credit 10 arose under section LK 1, (the **branch equivalent credit amount**) is less than the amount (the **non-attributed CFC liability**) that would be the person’s income tax liability for the credit use year if the person’s only assessable income were the amount 15 of branch equivalent income of the person from the CFC—
- “(i) for the credit use year; and
- “(ii) in excess of the attributed CFC income of the 20 person from the CFC for the credit use year; or
- “(b) the amount that would be the person’s income tax liability for the credit use year if the person’s only assessable income were the attributed CFC income of the person from the CFC for the credit use year (the **attributed CFC liability**), if the branch equivalent credit amount 25 is equal to or greater than the greater of—
- “(i) the attributed CFC liability;
- “(ii) the amount that would be the person’s income tax liability for the credit use year if the person’s only 30 assessable income were the branch equivalent income of the person from the CFC for the credit use year (the **branch equivalent liability**); or
- “(c) the lesser of the attributed CFC liability and the amount by which the branch equivalent credit amount exceeds the non-attributed CFC liability, if **paragraphs (a) and 35 (b)** do not apply.

- “Amount of credit treated as being used in credit use year
- “(3) The amount deducted from the credit carried forward to the credit use year to determine the amount available to be carried forward under section LK 4 from the credit use year is—
- “(a) the branch equivalent credit amount, if that amount is less than or equal to the greater of the attributed CFC liability and the branch equivalent liability; or 5
- “(b) the amount that is the greater of the attributed CFC liability and the branch equivalent liability, if **paragraph (a)** does not apply. 10
- “Defined in this Act: assessable income, attributed CFC income, branch equivalent CFC income, CFC, income tax liability, tax credit, tax year”.
- (2) **Subsection (1)** applies for the 2009–10 and later income years.
- 254 Subpart LL repealed** 15
- (1) Subpart LL is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years.
- 255 Sections LQ 1 to LQ 4 repealed**
- (1) Sections LQ 1 to LQ 4 are repealed. 20
- (2) **Subsection (1)** applies for the 2009–10 and later income years.
- 256 Subpart LS replaced**
- (1) Subpart LS is replaced by the following:
- “Subpart LS—Tax credits for multi-rate  
PIEs and investors 25
- “**LS 1 Tax credits for multi-rate PIEs**
- “Tax credit
- “(1) A multi-rate PIE has a tax credit for a tax year for the amount determined— 30
- “(a) under **sections HM 51 and HM 53** (which relate to certain tax credits) for an imputation credit or a credit for tax paid or withheld:

- “(b) under **section HM 55** (Tax credits for losses) arising from a tax loss attributed to an investor.
- “*When this section does not apply*
- “(2) This section does not apply—
  - “(a) in relation to— 5
    - “(i) a zero-rated investor:
    - “(ii) an exiting investor who is treated under **section HM 60** (Certain exiting investors zero-rated) as zero-rated:
  - “(b) if the PIE pays tax using the provisional tax calculation option under **section HM 44** (Provisional tax calculation option). 10
- “*Amount of credit*
- “(3) The amount of the tax credit equals the amount determined under the relevant section. 15
- “*Timing*
- “(4) The PIE has the tax credit for the tax year in which the relevant calculation period falls.
- “*Exception: timing under exit calculation option*
- “(5) If the PIE calculates its income tax liability using the exit calculation option under **section HM 42** (Exit calculation option), the amount of a credit attributable to an investor is able to be used to satisfy a tax obligation relating to the investor. 20
- “Defined in this Act: amount, calculation period, imputation credit, income tax liability, investor, multi-rate PIE, pay, PIE, provisional tax, tax credit, tax loss, tax year, zero-rated investor 25
- “Compare: 2007 No 97 s LS 1
  
- “**LS 2 Tax credits for investors in multi-rate PIEs**
- “*When this section applies*
- “(1) This section applies when— 30
  - “(a) an investor has attributed PIE income from a multi-rate PIE for a tax year; and
  - “(b) the investor’s prescribed investor rate is more than zero; and



“(c) the income is not excluded income of the investor because the test in **section CX 56(1)(b)** (Attributed income of certain investors in multi-rate PIEs) is not met.

*“Amount of credit*

“(2) The investor has a tax credit for the income year in which the PIE’s tax year ends. The amount of the credit is equal to the amount of income tax paid by the PIE in relation to the attributed PIE income, and may be used to satisfy the investor’s income tax liability for the tax year. 5

“Defined in this Act: amount, attributed PIE income, excluded income, income, income year, investor, multi-rate PIE, pay, PIE, prescribed investor rate, tax credit, tax year 10

“Compare: 2007 No 97 s LS 2

**“LS 3 Tax credits for zero-rated investors**

*“When this section applies* 15

“(1) This section applies when a zero-rated investor has attributed PIE income from a multi-rate PIE for a tax year.

*“Amount of credit*

“(2) The investor has a tax credit that may be used to satisfy their income tax liability for the tax year equal to the amount of income tax paid by the PIE for the attributed income for the tax year. 20

*“Credit for PIE’s foreign tax*

“(3) A zero-rated investor also has a tax credit for the tax year for the amount determined under **section HM 52** (Use of foreign tax credits by zero-rated and certain exiting investors) for foreign income tax paid by the PIE. 25

*“Credit for PIE’s other tax credits*

“(4) A zero-rated investor also has a tax credit for the tax year for the amount determined under **section HM 54** (Use of tax credits other than foreign tax credits by investors) for tax paid or withheld. 30

*“Timing*

- “(5) The investor has the tax credit for the tax year corresponding to the income year in which the PIE’s tax year ends.

“Defined in this Act: amount, attributed PIE income, income tax, income tax liability, income year, multi-rate PIE, pay, PIE, tax credit, tax year, zero-rated investor 5

“Compare: 2007 No 97 s LS 3

**“LS 4 Tax credits for certain exiting investors***“When this section applies*

- “(1) This section applies when an exiting investor in a multi-rate PIE who is treated under **section HM 60** (Certain exiting investors zero-rated) as zero-rated has attributed PIE income from the PIE for a tax year in which the exit period falls. 10

*“Amount of credit*

- “(2) The investor has a tax credit that may be used to satisfy their income tax liability for the tax year equal to any amount paid by the PIE under **section HM 43(4)** (Quarterly calculation option) to the Commissioner after the investor exits from the PIE for the residual value of the investor’s interest. 15

*“Credit for PIE’s foreign tax* 20

- “(3) An exiting investor also has a tax credit for the tax year for the amount determined under **section HM 52** (Use of foreign tax credits by zero-rated and certain exiting investors) for foreign income tax paid by the PIE.

*“Credit for PIE’s other tax credits* 25

- “(4) An exiting investor also has a tax credit for the tax year for the amount determined under **section HM 54** (Use of tax credits other than foreign tax credits by investors) for tax paid or withheld.

*“Timing*

- “(5) The investor has the tax credit for the tax year corresponding to the income year in which the PIE’s tax year ends.

“Defined in this Act: attributed PIE income, exit period, foreign income tax, income tax liability, income year, investor, investor interest, multi-rate PIE, pay, PIE, tax credit, tax year

5

“Compare: 2007 No 97 s LS 4”.

- (2) **Subsection (1)** applies for the 2009–10 and later income years

**257 Adjustments for calculation of family scheme income**

10

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

*“Investment income*

- “(5) For the purposes of subsection (1), an amount of income attributed by a portfolio investment entity that is not excluded income of the person is not included in family scheme income.”

15

- (2) In section MB 1, “portfolio investor allocated income” is omitted and “income” and “portfolio investment entity” are inserted.

- (3) **Subsections (1) and (2)** apply for the 2009–10 and later income years

20

**258 Tax credits for superannuation contributions**

- (1) In section MK 1(1), the second sentence is replaced by “Section MK 2 imposes some eligibility requirements for the year described in subsection (3) in relation to the person.”

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

25

*“End of year square-up employer tax credit*

- “(2B) An employer who has a tax credit calculated under section MK 10 for a tax year and who meets the requirements in **section MK 12B** may have an amount of tax credit (the **end of year square-up credit**) for a tax year, calculated under **section MK 12C**.”

30

- (3) **Subsection (2)** applies for employer contributions made on or after 1 April 2008.

**259 Eligibility requirements**

In section MK 2(1), the words before paragraph (a) are replaced by the following:

- “(1) For the purposes of section MK 1(1), the requirements for the person for the year described in section MK 1(3) are the following:”.

**260 New sections MK 12B to MK 12D inserted**

- (1) After section MK 12, the following is inserted:

**“MK 12B Eligibility requirements: end of year square-up credit**

For the purposes of **section MK 1(2B)**, the requirements are that the employer—

“(a) has, in the tax year, an amount of tax credit referred to in section MK 10 for an employee:

“(b) claims their entitlement, if any, to an end of year square-up credit.

“Defined in this Act:

**“MK 12C Amount of credit: end of year square-up credit**

*“End of year square-up credit: calculations*

- “(1) For the tax year the amount of the end of year square-up credit is the lesser of the amounts calculated under **subsections (2) and (3)**, treating negative amounts as equal to zero.

*“First amount*

- “(2) For the purposes of **subsection (1)**, the amount is calculated using the formula—

employer contributions – ETC for tax year.

*“Second amount*

- “(3) For the purposes of **subsection (1)**, the amount is calculated using the formula—

$$\frac{1042.86}{365} \times \text{days in tax year} - \text{ETC for tax year.}$$

*“Definition of items in formulas*

- “(4) In the formulas in **subsections (2) and (3)**,—
- “(a) **employer contributions** is employer contributions for the employee to the extent to which the contributions are for the tax year: 5
  - “(b) **ETC for tax year** is the total amount of tax credit referred to in section MK 10 for an employee for payment periods which start in the tax year:
  - “(c) **days in tax year** is the number of days in the tax year on which the employee meets the requirements of section MK 9(1)(a) and for which salary and wages are paid to the employee. 10

“Defined in this Act:

**“MK 12D Using tax credits: end of year square-up credit**

The Commissioner must use an end of year square-up credit referred to in **section MK 12C** by applying section MK 12, treating the end of year square-up credit as a tax credit referred to in section MK 10. 15

“Defined in this Act.”

- (2) **Subsection (1)** applies for employer contributions made on or after 1 April 2008. 20

**261 Employees opting out**

- (1) In section MK 14, “a tax credit for an employer contribution for the employee’s salary or wages” is replaced by “tax credits under section MK 1(2) and **(2B)**”. 25

- (2) **Subsection (1)** applies for employer contributions made on or after 1 April 2008.

**262 What this subpart does**

Section ML 1(2)(b)(i) to (iii) are replaced by the following:

- “(i) to a director of a company by the company or a person associated with the company: 30
- “(ii) to a person by a person associated with them:
- “(iii) by a person to an employee who has been paid a redundancy payment by a person associated with the person.” 35

**263 Section ML 2 replaced**

Section ML 2 is replaced by the following:

**“ML 2 Tax credit for redundancy payments***“Tax credit*

“(1) A person who derives a redundancy payment has a tax credit 5  
of an amount equal to 6 cents for every complete dollar of  
total redundancy payments derived by them. It does not matter  
whether—

“(a) a redundancy payment is paid in a lump sum or by instalment: 10

“(b) the total redundancy payments relate to 1 or more occasions of redundancy of the person.

*“Maximum amount*

“(2) Despite **subsection (1)**, the maximum credit that the person 15  
has for each occasion of redundancy is \$3,600.

“Defined in this Act: amount, redundancy payment, tax credit”.

**264 Memorandum accounts**

(1) Section OA 2(1)(f) is repealed.

(2) **Subsection (1)** applies for income years beginning on and 20  
after 1 April 2009.

**265 Credits**

(1) In section OA 5(2)(b), “groups.” is replaced by “groups:”, and  
the following is inserted:

“(c) credited under section OZ 18 (Credit-back of PCA balance).” 25

(2) Section OA 5(7) is repealed.

(3) **Subsections (1) and (2)** apply for income years beginning  
on and after 1 April 2009.

**266 Debits**

(1) Section OA 6(7) is repealed. 30

(2) **Subsection (1)** applies for income years beginning on and  
after 1 April 2009.

- 267 Opening balances of memorandum accounts**
- (1) Section OA 7(2)(f) is repealed.
  - (2) **Subsection (1)** applies for income years beginning on and after 1 April 2009.
- 268 Shareholder continuity requirements for memorandum accounts** 5
- (1) In section OA 8(2), “Subsections (4) and (5)” is replaced by “Subsections (3B) to (5)”.
  - (2) After section OA 8(3), the following is inserted:  
*“Exclusions: qualifying companies”* 10
  - “(3B) Subsection (2) does not apply to a qualifying company. But, if section HA 11(1) (When requirements no longer met) applies to the company,—  
    - “(a) an adjustment must be made under section HA 18 (Treatment of dividends when qualifying company status ends) to the company’s imputation credit account and FDP account, as applicable; and 15
    - “(b) the shareholder continuity requirements apply to the company from the day before the date on which the status as a qualifying company ends.” 20
  - (3) Section OA 8(4) is replaced by the following:  
*“Exclusion: ASC accounts”*
  - “(4) Subsection (2) does not apply to an ASC account.”
  - (4) **Subsection (3)** applies for income years beginning on and after 1 April 2009. 25
- 269 Section OA 12 repealed**
- (1) Section OA 12 is repealed.
  - (2) **Subsection (1)** applies for the 2009–10 and later income years.
- 270 Calculation of maximum permitted ratios** 30
- (1) In section OA 18(3), “for the income year” is replaced by “for the tax year corresponding to the income year”.
  - (2) **Subsection (1)** applies for the 2008–09 and later income years.

**271 General rules for companies with imputation credit accounts**

- (1) Section OB 1(2)(f) is replaced by the following:  
“(f) a multi-rate PIE.”
- (2) In section OB 1, in the list of defined terms, “portfolio tax rate entity” is omitted and “multi-rate PIE” is inserted. 5
- (3) **Subsections (1) and (2)** apply for the 2009–10 and later income years

**272 New section OB 3B**

- (1) After section OB 3, the following is inserted: 10  
**“OB 3B General rule for life insurer’s policyholder base**  
An imputation credit does not arise in relation to a life insurer’s policyholder base. Similarly, an imputation debit does not arise in relation to a life insurer’s policyholder base.  
“Defined in this Act: imputation credit, imputation debit, life insurer, policyholder base”. 15
- (2) **Subsection (1)** applies for income years beginning on and after 1 April 2009.

**273 ICA payment of tax**

- (1) Section OB 4(3)(c) is replaced by the following: 20  
“(c) income tax paid by a life insurer to satisfy its schedular income tax liability for schedular policyholder base income; or”
- (2) Section OB 4(3)(e) and (eb) are replaced by the following: 25  
“(e) income tax paid under subpart LA and section LF 1 (which relate to tax credits for FDP credits and their use) by crediting a foreign dividend payment (FDP) credit; or  
“(eb) income tax paid by a tax credit under subpart LA and section LH 2 (which relate to tax credits for research 30 development and their use); or”
- (3) Section OB 4(3)(h) is repealed.
- (4) In section OB 4, in the list of defined terms, “branch equivalent tax account” is omitted.
- (5) In section OB 4, in the list of defined terms, “policyholder base income tax liability” is omitted, and “schedular income 35



tax liability”, and “schedular policyholder base income” are inserted.

- (6) **Subsection (2)** applies for the 2008–09 and later income years.
- (7) **Subsections (1) and (5)** apply for income years beginning on and after 1 April 2009. 5
- (8) **Subsections (3) and (4)** apply for the 2009–10 and later income years.

**274 ICA resident withholding tax withheld**

- (1) In section OB 8(1), “by the company” is replaced by “by the company other than as policyholder base gross income”. 10
- (2) In section OB 8, in the list of defined terms, “policyholder base gross income” is inserted.
- (3) **Subsections (1) and (2)** applies for income years beginning on and after 1 April 2009. 15

**275 New section OB 9B inserted**

After section OB 9, the following is inserted:

**“OB 9B ICA company allocated imputation credit with income from PTRE**

*“Credit*

20

- “(1) An ICA company that is an investor in a portfolio tax rate entity has an imputation credit for the amount of an imputation credit allocated to it under section HL 29(7)(b).

*“Table reference*

- “(2) The imputation credit in **subsection (1)** is referred to in table O1: imputation credits, row 7B (imputation credit allocated with income from PTRE). 25

*“Credit date*

- “(3) The credit date is the day the amount is allocated.

“Defined in this Act: amount, ICA company, imputation credit, portfolio tax rate entity”. 30

**276 Section OB 9B replaced**

- (1) **Section OB 9B** is replaced by the following:

**“OB 9B ICA attributed PIE income with imputation credit***“Credit*

- “(1) An ICA company that is an investor in a multi-rate PIE has an imputation credit for the amount of an imputation credit attributed to it under subpart LJ (Foreign tax credits) and determined under **section HM 54** (Use of tax credits other than foreign tax credits by investors). 5

*“Table reference*

- “(2) The imputation credit in **subsection (1)** is referred to in table O1: imputation credits, row 7B (attributed PIE income with imputation credit). 10

*“Credit date*

- “(3) The credit date is the day the amount is attributed.

“Defined in this Act: amount, attributed PIE income, ICA company, imputation credit, multi-rate PIE”. 15

- (2) **Subsection (1)** applies for the 2009–10 and later income years

**277 Section OB 11 repealed**

- (1) Section OB 11 is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years. 20

**278 Section OB 17 repealed**

- (1) Section OB 17 is repealed.
- (2) **Subsection (1)** applies for income years beginning on and after 1 April 2009. 25

**279 ICA refund of income tax**

- (1) After section OB 32(2)(a), the following is inserted:  
“(ab) a refund of income tax paid by a life insurer to satisfy its schedular income tax liability for schedular policyholder base income; or”. 30
- (2) After section OB 32(6), the following is added:

*“Relationship with section OB 37*

- “(7) This section does not apply to an amount that gives rise to a debit under section OB 37.”
- (3) In section OB 32, in the list of defined terms, “life insurer”, “schedular policyholder base income”, and “schedular income tax liability” are inserted. 5
- (4) **Subsections (1) and (3)** apply for income years beginning on and after 1 April 2009.
- (5) **Subsection (2)** applies for the 2008–09 and later income years. 10

**280 ICA amount applied to pay other taxes**

- (1) Section OB 33(1), other than the heading, is replaced by the following:
  - “(1) An ICA company has an imputation debit for—
    - “(a) an amount of overpaid income tax applied to pay an amount due under the Inland Revenue Acts: 15
    - “(b) an increased amount of tax as described in **section RP 17B(3)** (Tax pooling accounts and their use) applied to pay an amount due under the Inland Revenue Acts other than income tax.” 20
  - (2) After section OB 33(4), the following is added:
    - “Relationship with section OB 37*
  - “(5) This section does not apply to an amount that gives rise to a debit under section OB 37.”
  - (3) **Subsection (2)** applies for the 2008–09 and later income years. 25

**281 ICA refund from tax pooling account**

- (1) Section OB 34(4) is replaced by the following:
  - “Debit date for companies other than qualifying companies*
- “(4) The debit date for a company that is not a qualifying company is— 30
  - “(a) the last day of the previous tax year to the extent of the amount of the debit that is no more than the credit balance in the imputation credit account on that date; or
  - “(b) the day the refund is made to the extent of the remaining amount of the debit that is no more than the credit 35

- balance in the imputation credit account on the day of refund; or
- “(c) the last day of the previous tax year for the remainder of the debit.
- “*Debit date for qualifying companies* 5
- “(5) The debit date for a qualifying company is the day the refund is made.”
- (2) In section OB 34, in the list of defined terms, “company”, “imputation credit account”, “qualifying company”, and “tax year” are inserted. 10
- 282 ICA transfer within tax pooling account**  
In section OB 35(4)(b), “refund” is replaced by “transfer”.
- 283 New section OB 35B**
- (1) After section OB 35, the following is inserted:
- “OB 35B ICA debit for transfer from tax pooling account for policyholder base liability 15**
- “*Debit*
- “(1) An ICA company has an imputation debit for the amount transferred from a tax pooling account to their tax account with the Commissioner, to the extent to which the company is a life insurer, and the amount satisfies its schedular income tax liability for schedular policyholder base income or its income tax liability for a life fund PIE that is a multi-rate PIE. 20
- “*Table reference*
- “(2) The imputation debit in **subsection (1)** is referred to in table O2: imputation debits, row 7B (debit for transfer from tax pooling account for policyholder base liability). 25
- “*Debit date*
- “(3) The debit date is the last day of the tax year. 30
- “Defined in this Act: ICA company, imputation credit, imputation debit, life insurer, schedular income tax liability, schedular policyholder base income, tax year”.
- (2) **Subsection (1)** applies for income years beginning on and after 1 April 2009.

**284 ICA refund of tax credit**

(1) Section OB 37(1) is replaced by the following:

*“Debit*

“(1) An ICA company has an imputation debit for—

“(a) the amount of a transfer to the company under section LA 6(2)(d) (Remaining refundable credits: PAYE, RWT, and certain other items) to the extent to which the transfer does not lead to a refund of income tax: 5

“(b) the amount of a refund to the company under section LA 6(2)(e): 10

“(c) an amount used by the company under section LH 2(6) (Tax credits relating to expenditure on research and development) to pay an amount payable under an Inland Revenue Act to the extent to which the use does not lead to a refund of income tax. 15

*“Exclusion: FDPA companies*

“(1B) Despite **subsection (1)**, an FDPA company does not have an imputation debit to the extent to which the amount transferred, refunded, or used is a tax credit under subpart LF (Tax credits for FDP credits).” 20

(2) Section OB 37(3), other than the heading, is replaced by the following:

“(3) The debit date is—

“(a) for a debit referred to in **subsection (1)(a)**, the day the amount is transferred: 25

“(b) for a debit referred to in **subsection (1)(b)**, the day the amount is refunded:

“(c) for a debit referred to in **subsection (1)(c)**, the day the amount is applied.”

(3) **Subsections (1) and (2)** apply for the 2008–09 and later income years. 30

**285 Section OB 47 replaced**

(1) Section OB 47 is replaced by the following:

**“OB 47 Debit for policyholder base imputation credits**

*“Debit 35*

“(1) An ICA company has an imputation debit for the amount of an imputation credit attached to a dividend derived by the com-

pany, to the extent to which it is derived by it as a life insurer and apportioned to their policyholder base.

“*Table reference*

- “(2) The imputation debit in **subsection (1)** is referred to in table O2: imputation debits, row 20 (debit for policyholder base imputation credits). 5

“*Debit date*

- “(3) The debit date is the last day of the tax year.

“Defined in this Act: ICA company, imputation credit, imputation debit, life insurer, policyholder base, tax year”.

10

- (2) **Subsection (1)** applies for income years beginning on and after 1 April 2009.

## 286 Table O1: imputation credits

- (1) In table O1, after row 7, the following is inserted:

7B	imputation credit allocated with income from PTRE	day of allocation	section OB 9B
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- (2) **Table O1, row 7B** is replaced by the following:

15

7B	attributed PIE income with imputation credit	day of attribution	section OB 9B
----	--	--------------------	---------------

- (3) Table O1, row 9 is repealed.

- (4) Table O1, row 15 is repealed.

- (5) **Subsection (2)** applies for the 2009–10 and later income years.

- (6) **Subsection (4)** applies for income years beginning on and after 1 April 2009. 20

## 287 Table O2: imputation debits

- (1) In table O2, after row 7, the following is inserted:

7B	Debit for transfer from tax pooling account for policyholder base liability	31 March	section OB 35B
----	---	----------	----------------

- (2) Table O2, row 9 is replaced by the following:



- (2) **Subsection (1)** applies for the 2009–10 and later income years.

**291 When company emigrates**

- (1) Section OC 5(2)(b) is replaced by the following:  
“(b) pays any further income tax payable under sections OC 5  
30 to **OC 34** for the tax year.”
- (2) **Subsection (1)** applies for the 2009–10 and later income years.

**292 Section OC 6 repealed**

- (1) Section OC 6 is repealed. 10
- (2) **Subsection (1)** applies for the 2009–10 and later income years.

**293 Section OC 8 repealed**

- (1) Section OC 8 is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income 15  
years.

**294 Section OC 9 repealed**

- (1) Section OC 9 is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income 20  
years.

**295 Section OC 10 repealed**

- (1) Section OC 10 is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income  
years.

**296 FDPA refund of tax credit** 25

- (1) Section OC 16(1), other than the heading, is replaced by the following:  
“(1) An FDPA company has an FDP debit for the amount of a transfer or refund to the company under section LA 6(2)(d) or (e) (Remaining refundable credits: PAYE, RWT, and certain other 30  
items) to the extent to which the amount transferred or re-



funded is a tax credit under subpart LF (Tax credits for FDP credits).”

(2) Section OC 16(3), other than the heading, is replaced by the following:

“(3) The debit date is the day the transfer or refund is made.” 5

(3) **Subsections (1) and (2)** apply for the 2008–09 and later income years.

**297 Section OC 20 replaced**

(1) Section OC 20 is replaced by the following:

“**OC 20 Debit for policyholder base FDP credits** 10

*“Debit*

“(1) An FDP company has an FDP debit for the amount of an FDP credit attached to a dividend derived by the company, to the extent to which it is derived by it as a life insurer and apportioned to their policyholder base. 15

*“Table reference*

“(2) The FDP debit in section (1) is referred to in table O4: FDP debits, row 9, (debit for policyholder base FDP credits).

*“Debit date*

“(3) The debit date is the last day of the tax year. 20

“Defined in this Act: FDP company, FDP credit, FDP debit, life insurer, policyholder base, tax year”.

(2) **Subsection (1)** applies for income years beginning on and after 1 April 2009.

**298 Section OC 23 repealed** 25

(1) Section OC 23 is repealed.

(2) **Subsection (1)** applies for income years beginning on and after 1 April 2009.

**299 Heading before section OC 30 replaced**

The heading before section OC 30 is replaced by “*Further income tax*”. 30

**300 Payment of further FDP for closing debit balance**

(1) In the heading to section OC 30, “**further FDP**” is replaced by “**further income tax**”.

(2) Section OC 30(1) and (2) are replaced by the following:

*“Liability*

5

“(1) An FDPA company or consolidated FDP group is liable to pay further income tax for a closing debit balance in the FDP account of the company or the group.

*“Due date*

“(2) The company or group must pay the further income tax to the Commissioner no later than the 20 June following the end of the tax year.”

10

(3) Section OC 30(3) is repealed.

(4) In section OC 30, in the list of defined terms,—

(a) “FDP rules”, “further FDP”, and “income tax” are omitted:

15

(b) “further income tax” is inserted.

(5) **Subsections (1) to (4)** apply for the 2009–10 and later income years.

**301 Payment of further FDP when company no longer New Zealand resident**

20

(1) In the heading to section OC 31, “**further FDP**” is replaced by “**further income tax**”.

(2) Section OC 31(1) to (3) are replaced by the following:

*“Liability*

25

“(1) An FDPA company is liable to pay further income tax for a debit balance in the company’s FDP account when the company stops being resident in New Zealand.

*“Due date*

“(2) The company must pay the further income tax to the Commissioner by the day the company stops being resident in New Zealand.

30

*“Paramount section*

“(3) A company to which this section applies that stops being an FDPA company on the last day of a tax year is liable for further income tax under this section and not under section OC 30.”

35

- (3) Section OC 31(4) is repealed.
- (4) In section OC 31, in the list of defined terms,—
  - (a) “FDP rules” and “further FDP” are omitted:
  - (b) “further income tax” is inserted.
- (5) **Subsections (1) to (4)** apply for the 2009–10 and later income years. 5

**302 Reduction of further FDP**

- (1) In the heading to section OC 32, “**further FDP**” is replaced by “**further income tax**”.
- (2) In section OC 32(1), the words before paragraph (a) are replaced by the following: 10
  - “(1) An FDPA company’s liability for further income tax under section OC 30 or OC 31 may be reduced under subsection (2) if—”.
- (3) In section OC 32, in the list of defined terms,— 15
  - (a) “further FDP” is omitted:
  - (b) “further income tax” is inserted.
- (4) **Subsections (1) to (3)** apply for the 2009–10 and later income years.

**303 Section OC 33 replaced** 20

- (1) Section OC 33 is replaced by the following:
  - “**OC 33 Income tax paid satisfying liability for further income tax**
  - “*Election*”
  - “(1) On meeting the requirements of **subsection (2)**, an FDPA company that is liable for further income tax may choose to satisfy the liability through a payment of income tax. 25
  - “*Requirements*”
  - “(2) The company must pay the income tax— 30
    - “(a) after the end of the tax year in which the relevant debit balance arises; and
    - “(b) for an income year corresponding to a tax year in which the company is an FDPA company.

*“Payment credited*

- “(3) The payment of income tax satisfies the company’s liability to pay further income tax.

*“When treated as paid*

- “(4) The further income tax is treated as paid on the day the Commissioner receives the payment of income tax. 5

“Defined in this Act: Commissioner, company, FDPA company, further income tax, income tax, income year, pay, tax year”.

- (2) **Subsection (1)** applies for the 2009–10 and later income years. 10

**304 Section OC 34 replaced**

- (1) Section OC 34 is replaced by the following:

**“OC 34 Further income tax paid satisfying liability for income tax**

*“Election* 15

- “(1) A company that pays further income tax may choose to treat the payment as satisfying a liability of the company to pay income tax.

*“FDPA company status*

- “(2) The liability referred to in **subsection (1)** must be for an income year that corresponds with a tax year in which the company is an FDPA company. 20

*“Alternative for consolidated group*

- “(3) A company that is part of a consolidated FDP group may choose that the payment under **subsection (1)** satisfies a group liability for income tax owed by another group company when or after the payment is made. 25

“Defined in this Act: company, consolidated FDP group, FDPA company, further income tax, income tax, income year, pay, tax year”.

- (2) **Subsection (1)** applies for the 2009–10 and later income years. 30

**305 Heading and sections OC 35 to OC 39 repealed**

- (1) The heading before section OC 35, and sections OC 35 to OC 39 are repealed.

- (2) **Subsection (1)** applies for income years beginning on and after 1 April 2009.

**306 Table O3: FDP credits**

- (1) Table O3, rows 2, 3, 5, 6, and 7 are repealed.  
 (2) **Subsection (1)** applies for the 2009–10 and later income years. 5

**307 Table O4: FDP debits**

- (1) In table O4, row 5 is replaced by the following:

5	transfer or refund of tax	day of transfer or refund	section OC 16
	credit		

- (2) In table O4, row 9 is replaced by the following:

9	Debit for policyholder base FDP	31 March	section OC 20
	credits		

- (3) **Subsection (1)** applies for the 2008–09 and later income years. 10  
 (4) **Subsection (2)** applies for income years beginning on and after 1 April 2009.

**308 General rules for companies with CTR accounts**

- (1) Section OD 1(3) is repealed. 15  
 (2) **Subsection (1)** applies for the 2009–10 and later income years.

**309 Section OD 5 repealed**

- (1) Section OD 5 is repealed.  
 (2) **Subsection (1)** applies for the 2009–10 and later income years. 20

**310 Section OD 8 repealed**

- (1) Section OD 8 is repealed.  
 (2) **Subsection (1)** applies for the 2009–10 and later income years. 25

- 311 Section OD 11 repealed**
- (1) Section OD 11 is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years.
- 312 Section OD 23 repealed** 5
- (1) Section OD 23 is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years.
- 313 Section OD 24 repealed**
- (1) Section OD 24 is repealed. 10
- (2) **Subsection (1)** applies for the 2009–10 and later income years.
- 314 Table O5: conduit tax relief credits**
- (1) Table O5, rows 2 and 5 are repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years. 15
- 315 Table O6: conduit tax relief debits**
- (1) Table O6, row 3 is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years. 20
- 316 Branch equivalent tax accounts of companies**
- (1) Section OE 2(2) and (3) are repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years.
- 317 Section OE 6 repealed** 25
- (1) Section OE 6 is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years.
- 318 BETA payment of income tax**
- (1) Section OE 7(3) and (3B) are replaced by the following: 30

*“Application of debit*

- “(3) The company or company B must record a credit in the branch equivalent tax account with the debit balance of an amount equal to the greater of the following amounts:
- “(a) the income tax liability in relation to the attributed CFC income, limited to the amount of the debit balance: 5
  - “(b) the income tax liability that would have been incurred on an amount of income equal to the branch equivalent income of the company for the same period as the attributed CFC income, limited to the amount of the debit balance. 10

*“Amount of income tax liability satisfied*

- “(3B) The application of the credit required by **subsection (3)** is treated as an application of a credit under section BC 8 (Satisfaction of income tax liability) sufficient to satisfy the amount of income tax liability referred to in **subsection (3)(a)**.” 15
- (2) **Subsection (1)** applies for the 2009–10 and later income years.

**319 Heading and sections OE 12 to OE 16 repealed**

- (1) The heading before section OE 12 and sections OE 12 to OE 16 are repealed. 20
- (2) **Subsection (1)** applies for the 2009–10 and later income years.

**320 New heading and section OE 16B inserted**

- (1) Before the headings before section OE 17, the following is inserted: 25

*“Debit if credit balance at beginning of  
2009–10 tax year*

- “**OE 16B Company with credit balance at beginning of 2009–10 tax year** 30  
If a BETA company has a credit balance in its branch equivalent tax account at the beginning of the 2009–10 tax year, a

branch equivalent tax debit of an amount equal to the credit balance arises in the branch equivalent tax account at that time.

“Defined in this Act: BETA company, branch equivalent tax account, branch equivalent tax debit, company, tax year”.

- (2) **Subsection (1)** applies for the 2009–10 and later income years. 5

**321 Table O7: branch equivalent tax credits**

- (1) Tables O7, row 2 is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years. 10

**322 Table O8 repealed**

- (1) Table O8 is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years.

**323 General rules for companies with ASC accounts** 15

- (1) In section OF 1(1), the second sentence is replaced by “This section does not apply to a multi-rate PIE.”
- (2) In section OF 1, in the list of defined terms, “portfolio tax rate entity” is omitted and “multi-rate PIE” is inserted.
- (3) **Subsections (1) and (2)** apply for the 2009–10 and later income years 20

**324 Subpart OJ repealed**

- (1) Subpart OJ is repealed.
- (2) **Subsection (1)** applies for income years beginning on and after 1 April 2009. 25

**325 MACA payment of tax**

- (1) Section OK 2(3)(cb) is replaced by the following:  
“(cb) income tax paid by a tax credit under subpart LA (Tax credits and other credits) and section LH 2 (Tax credits relating to expenditure on research and development); or” 30



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

**326 MACA refund of income tax**

- (1) After section OK 12(6), the following is added:  
*“Relationship with section OK 14B”* 5  
 “(7) This section does not apply to an amount that gives rise to a debit under **section OK 14B.**”  
 (2) **Subsection (1)** applies for the 2008–09 and later income years.

**327 MACA payment of other taxes** 10

- (1) After section OK 13(4), the following is added:  
*“Relationship with section OK 14B”*  
 “(5) This section does not apply to an amount that gives rise to a debit under **section OK 14B.**”  
 (2) **Subsection (1)** applies for the 2008–09 and later income years. 15

**328 New section OK 14B inserted**

- (1) After section OK 14, the following is inserted:  
**“OK 14B MACA refund of tax credit**  
*“Debit”* 20  
 “(1) A Maori authority has a Maori authority debit for—  
 “(a) the amount of a transfer to the authority under section LA 6(2)(d) (Remaining refundable credits: PAYE, RWT, and certain other items) to the extent to which the transfer does not lead to a refund of income tax: 25  
 “(b) the amount of a refund to the authority under section LA 6(2)(e):  
 “(c) an amount used under section LH 2(6) (Tax credits relating to expenditure on research and development) to pay an amount payable under an Inland Revenue Act to the extent to which the use does not lead to a refund of income tax. 30

*“Exclusion*

- “(2) Despite **subsection (1)**, a Maori authority that is an FDPA company does not have a Maori authority debit to the extent to which the amount transferred, refunded, or used is a tax credit under subpart LF (Tax credits for FDP credits). 5

*“Table reference*

- “(3) The Maori authority debit in **subsection (1)** is referred to in table O18: Maori authority debits, row 6B (refund of tax credit).

*“Debit date*

- “(4) The debit date is— 10
- “(a) for a debit referred to in **subsection (1)(a)**, the day the amount is transferred:
- “(b) for a debit referred to in **subsection (1)(b)**, the day the amount is refunded: 15
- “(c) for a debit referred to in **subsection (1)(c)**, the day the amount is applied.

“Defined in this Act: amount, FDPA company, Inland Revenue Acts, Maori authority, Maori authority debit, pay”.

- (2) **Subsection (1)** applies for the 2008–09 and later income years. 20

**329 Table O18: Maori authority debits**

- (1) In table O18, after row 6, the following row is inserted:

6B	transfer, refund, or use of tax credit	day of transfer, refund, or use	section OK 14B
----	---	------------------------------------	----------------

- (2) **Subsection (1)** applies for the 2008–09 and later income years. 25

**330 When credits and debits arise only in consolidated imputation group accounts**

- (1) In section OP 5(2)(d), “credit:” is replaced by “credit.” and paragraph (e) is repealed.
- (2) After section OP 5(4)(d), the following is inserted: 30
- “(db) section OP 33B, row 7B (debit for transfer from tax pooling account for policyholder base liability):”.

- (3) In section OP 5(4)(k), “ratio.” is replaced by “ratio:”, and the following is added:  
 “(l) section OP 44, row 18 (debit for policyholder base imputation credits).”
- (4) **Subsection (1)** applies for the 2009–10 and later income years. 5
- (5) **Subsections (2) and (3)** apply for income years beginning on and after 1 April 2009.
- 331 Consolidated ICA payment of tax**
- (1) Section OP 7(3)(d) is replaced by the following: 10  
 “(d) income tax paid by a life insurer to satisfy its schedular income tax liability for schedular policyholder base income; or”.
- (2) Section OP 7(3)(fb) is replaced by the following: 15  
 “(fb) income tax paid by a tax credit under subpart LA (Tax credits and other credits) and section LH 2 (Tax credits relating to expenditure on research and development); or”.
- (3) In section OP 7, in the list of defined terms, “policyholder base income liability” is omitted, and “schedular income tax liability” and “schedular policyholder base income” are inserted. 20
- (4) **Subsections (1) and (3)** apply for income years beginning on and after 1 April 2009.
- (5) **Subsection (2)** applies for the 2008–09 and later income years. 25
- 332 Section OP 14 repealed**
- (1) Section OP 14 is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years.
- 333 Consolidated ICA resident withholding tax withheld** 30
- (1) In section OP 17, “by a group company” is replaced by “by a group company other than as policyholder base gross income”.
- (2) In section OP 17, in the list of defined terms, “policyholder base gross income” is inserted.

- (3) **Subsections (1) and (2)** apply for income years beginning on and after 1 April 2009.

**334 Section OP 20 repealed**

- (1) Section OP 20 is repealed.  
 (2) **Subsection (1)** applies for income years beginning on and after 1 April 2009. 5

**335 Section OP 21 repealed**

- (1) Section OP 21 is repealed.  
 (2) **Subsection (1)** applies for income years beginning on and after 1 April 2009. 10

**336 Consolidated ICA refund of income tax**

- (1) Section OP 30(2) is replaced by the following:  
*“No debit*  
 “(2) The debit in subsection (1) does not include— 15  
 “(a) a refund of income tax paid by a life insurer to satisfy its schedular income tax liability for schedular policyholder base income; or  
 “(b) a refund of income tax paid before a debit arises under section OP 42 to the extent to which the amount of the refund is less than the amount of the debit.” 20  
 (2) In section OP 30(3), “subsection (2)” is replaced by “**subsection (2)(b)**”.  
 (3) After section OP 30(4), the following is added:  
*“Relationship with section OP 35*  
 “(5) This section does not apply to an amount that gives rise to a debit under section OP 35.” 25  
 (4) In section OP 30, in the list of defined terms, “life insurer”, “schedular income tax liability”, and “schedular policyholder base income” are inserted.  
 (5) **Subsections (1), (2), and (4)** apply for income years beginning on and after 1 April 2009. 30  
 (6) **Subsection (3)** applies for the 2008–09 and later income years.

**337 Consolidated ICA amount applied to pay other taxes**

- (1) After section OP 31(4), the following is added:  
*“Relationship with section OP 35*  
 “(5) This section does not apply to an amount that gives rise to a debit under section OP 35.” 5  
 (2) **Subsection (1)** applies for the 2008–09 and later income years.

**338 New section OP 33B**

- (1) After section OP 33, the following is inserted  
**“OP 33B Consolidated ICA debit for transfer from tax pooling account for policyholder base liability** 10  
*“Debit*  
 “(1) A consolidated imputation group has an imputation debit for the amount transferred from a tax pooling account to their tax account with the Commissioner, to the extent to which the amount satisfies its schedular income tax liability for schedular policyholder base income or its income tax liability for a life fund PIE that is a multi-rate PIE. 15  
*“Table reference*  
 “(2) The imputation debit in **subsection (1)** is referred to in table O20: imputation debits of consolidated imputation groups, row 7B (debit for transfer from tax pooling account for policyholder base liability). 20  
*“Debit date*  
 “(3) The debit date is the last day of the tax year. 25  
*“Defined in this Act: ICA company, imputation credit, imputation debit, life insurer, schedular income tax liability, schedular policyholder base income, tax year”.*  
 (2) **Subsection (1)** applies for income years beginning on and after 1 April 2009. 30

**339 Consolidated ICA refund of tax credit**

- (1) Section OP 35(1) is replaced by the following:  
*“Debit*  
 “(1) A consolidated imputation group has an imputation debit for—

- “(a) the amount of a transfer under section LA 6(2)(d) (Remaining refundable credits: PAYE, RWT, and certain other items) to the extent to which the transfer does not lead to a refund of income tax:
- “(b) the amount of a refund under section LA 6(2)(e): 5
- “(c) an amount used under section LH 2(6) (Tax credits relating to expenditure on research and development) to pay an amount payable under an Inland Revenue Act to the extent to which the use does not lead to a refund of income tax. 10
- “*Exclusion*
- “(1B) Despite **subsection (1)**, a consolidated group does not have an imputation debit to the extent to which the amount transferred, refunded, or used is—
- “(a) a tax credit for a payment of FDP relating to a dividend derived by a group company; and 15
- “(b) the dividend was derived when the company did not have an FDP account and—
- “(i) was not part of a consolidated group; or
- “(ii) was part of a consolidated group without an FDP account.” 20
- (2) Section OP 35(3), other than the heading, is replaced by the following:
- “(3) The debit date is—
- “(a) for a debit referred to in **subsection (1)(a)**, the day the amount is transferred: 25
- “(b) for a debit referred to in **subsection (1)(b)**, the day the amount is refunded:
- “(c) for a debit referred to in **subsection (1)(c)**, the day the amount is applied.” 30
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years.
- 340 Section OP 38 repealed**
- (1) Section OP 38 is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years. 35

**341 Section OP 44 replaced**

(1) Section OP 44 is replaced by the following:

**“OP 44 Consolidated ICA debit for policyholder base imputation credits**

*“Debit”* 5

“(1) A consolidated imputation group has an imputation debit for the amount of an imputation credit attached to a dividend derived by a group company, to the extent to which it is derived by a group company that is a life insurer and apportioned to that life insurer’s policyholder base. 10

*“Table reference*

“(2) The imputation debit in **subsection (1)** is referred to in table O20: imputation debits of consolidated imputation groups, row 18 (debit for policyholder base imputation credits). 15

*“Debit date”* 15

“(3) The debit date is the last day of the tax year.

“Defined in this Act: consolidated imputation group, imputation credit, imputation debit, life insurer, policyholder base, tax year”.

(2) **Subsection (1)** applies for income years beginning on and after 1 April 2009. 20

**342 Table O19: imputation credits of consolidated imputation groups**

(1) Table O19, row 9 is repealed.

(2) Table O19, rows 15 and 16 are repealed.

(3) **Subsection (1)** applies for the 2009–10 and later income years. 25

(4) **Subsection (2)** applies for income years beginning on and after 1 April 2009.

**343 Table O20: imputation debits of consolidated imputation groups** 30

(1) In table O20, after row 7, the following is inserted:

7B	Debit for transfer from tax pooling account for policyholder base liability	31 March	section OP 33B
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(2) Table O20, row 9 is replaced by the following:

9 transfer, refund, or use day of transfer, refund, section OP 35  
of tax credit or use

(3) Table O20, row 12 is repealed.

(4) In table O20, row 18 is replaced by the following:

18 Debit for policyholder base imputation 31 March section OP 44  
credits

(5) **Subsections (1) and (4)** applies for income years beginning on and after 1 April 2009.

(6) **Subsection (2)** applies for the 2008–09 and later income 5  
years.

(7) **Subsection (3)** applies for the 2009–10 and later income  
years.

**344 When credits and debits arise only in consolidated FDP group accounts** 10

(1) Section OP 54(2), other than the heading, is replaced by the following:

“(2) The credit referred to in subsection (1) is a credit under section OP 58, described in table O21, row 4.”

(2) In section OP 54(4)(d), “ratio.” is replaced by “ratio:”, and 15  
the following is added:

“(e) section OP 74, row 12 (debit for policyholder base FDP credits).”

(3) **Subsection (1)** applies for the 2009–10 and later income 20  
years.

(4) **Subsection (2)** applies for income years beginning on and  
after 1 April 2009.

**345 Section OP 56 repealed**

(1) Section OP 56 is repealed.

(2) **Subsection (1)** applies for the 2009–10 and later income 25  
years.

**346 Section OP 57 repealed**

(1) Section OP 57 is repealed.



- (2) **Subsection (1)** applies for the 2009–10 and later income years.

**347 Section OP 61 repealed**

- (1) Section OP 61 is repealed.  
 (2) **Subsection (1)** applies for the 2009–10 and later income years. 5

**348 Section OP 62 repealed**

- (1) Section OP 62 is repealed.  
 (2) **Subsection (1)** applies for the 2009–10 and later income years. 10

**349 Consolidated FDP A refund of tax credit**

- (1) Section OP 68(1), other than the heading, is replaced by the following:  
 “(1) A consolidated FDP group has an FDP debit for the amount of a transfer or refund under section LA 6(2)(d) or (e) (Remaining refundable credits: PAYE, RWT, and certain other items) to the extent to which the amount transferred or refunded is a tax credit under subpart LF (Tax credits for FDP credits) relating to a dividend derived by a group company that is part of the group at the time it derives the dividend.” 15 20  
 (2) Section OP 68(3), other than the heading, is replaced by the following:  
 “(3) The debit date is the day the transfer or refund is made.”  
 (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years. 25

**350 Section OP 70 repealed**

- (1) Section OP 70 is repealed.  
 (2) **Subsection (1)** applies for the 2009–10 and later income years.

**351 Section OP 74 replaced** 30

- (1) Section OP 74 is replaced by the following:

**“OP 74 Consolidated FDPA debit for policyholder base FDP credits***“Debit*

- “(1) A consolidated FDP group has an FDP debit for the amount of an FDP credit attached to a dividend derived by a group company, to the extent to which it is derived by a group company that is a life insurer and apportioned to that life insurer’s policyholder base. 5

*“Table reference*

- “(2) The FDP debit in **subsection (1)** is referred to in table O22: FDP debits of consolidated FDP groups, row 12 (debit for policyholder base FDP credits). 10

*“Debit date*

- “(3) The debit date is the last day of the tax year.

“Defined in this Act: consolidated FDP group, FDP credit, FDP debit, life insurer, policyholder base, tax year”. 15

- (2) **Subsection (1)** applies for income years beginning on and after 1 April 2009.

**352 Table O21: FDP credits of consolidated FDP groups**

- (1) Table O21, rows 2, 3, 7, and 8 are repealed. 20
- (2) **Subsection (1)** applies for the 2009–10 and later income years.

**353 Table O22: FDP debits of consolidated FDP groups**

- (1) Table O22, row 8 is repealed.
- (2) In table O22, row 12 is replaced by the following: 25

12	Debit for policyholder base FDP credits	31 March	section OP 74
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- (3) **Subsection (1)** applies for the 2009–10 and later income years.
- (4) **Subsection (2)** applies for income years beginning on and after 1 April 2009.

**354 When credits and debits arise only in CTR group accounts**

(1) Section OP 79(2), other than the heading, is replaced by the following:

“(2) The credit referred to in subsection (1) is a credit under section OD 7, described in table O5, row 4.”

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(2) **Subsection (1)** applies for the 2009–10 and later income years.

**355 Sections OP 81 repealed**

(1) Sections OP 81 is repealed.

(2) **Subsection (1)** applies for the 2009–10 and later income years.

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**356 Sections OP 82 repealed**

(1) Sections OP 82 is repealed.

(2) **Subsection (1)** applies for the 2009–10 and later income years.

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**357 Section OP 88 repealed**

(1) Section OP 88 is repealed.

(2) **Subsection (1)** applies for the 2009–10 and later income years.

**358 Section OP 95 repealed**

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(1) Section OP 95 is repealed.

(2) **Subsection (1)** applies for the 2009–10 and later income years.

**359 Table O23: conduit tax relief credits of consolidated groups**

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(1) Table O23, rows 2 and 3 are repealed.

(2) **Subsection (1)** applies for the 2009–10 and later income years.

**360 Table O24: conduit tax relief debits of consolidated groups**

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(1) Table O24, row 3 is repealed.

- (2) **Subsection (1)** applies for the 2009–10 and later income years.

**361 Section OP 99 repealed**

- (1) Section OP 99 is repealed.  
 (2) **Subsection (1)** applies for the 2009–10 and later income years. 5

**362 Section OP 100 repealed**

- (1) Section OP 100 is repealed.  
 (2) **Subsection (1)** applies for the 2009–10 and later income years. 10

**363 Consolidated BETA payment of income tax**

- (1) Section OP 101(2) and (2B) are replaced by the following:

*“Application of debit*

- “(2) The nominated company of the consolidated BETA group must record a credit in the branch equivalent tax account with the debit balance of an amount equal to the greater of the following amounts for a tax year corresponding to the income year referred to in subsection (1): 15

“(a) the income tax liability of the group or group company B in relation to the attributed CFC income, limited to the amount of the debit balance: 20

“(b) the income tax liability that the group or group company B would have incurred on an amount of income equal to the branch equivalent income of the company for the same period as the attributed CFC income, limited to the amount of the debit balance. 25

*“Amount of income tax liability satisfied*

- “(2B) The application of the credit required by **subsection (2)** is treated as an application of a credit under section BC 8 (Satisfaction of income tax liability) sufficient to satisfy the amount of income tax liability referred to in **subsection (2)(a)**.” 30

- (2) **Subsection (1)** applies for the 2009–10 and later income years.

- 364 Heading and sections OP 105 to OP 108 repealed**
- (1) The heading before section OP 105 and sections OP 105 to OP 108 are repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years. 5
- 365 New heading and section OP 108B inserted**
- (1) Before table O25, the following is inserted:  
*“Debit if credit balance at beginning of 2009–10 tax year*
- “OP 108B Consolidated BETA group with credit balance at beginning of 2009–10 tax year** 10
- If a consolidated BETA group has a credit balance in its branch equivalent tax account at the beginning of the 2009–10 tax year, a branch equivalent tax debit of an amount equal to the credit balance arises in the branch equivalent tax account at that time. 15
- “Defined in this Act: branch equivalent tax account, branch equivalent tax debit, consolidated BETA group, tax year”.
- (2) **Subsection (1)** applies for the 2009–10 and later income years. 20
- 366 Table O25: branch equivalent tax credits of consolidated BETA groups**
- (1) Table O25, row 2 is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years. 25
- 367 Table O26 repealed**
- (1) Table O26 is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years.
- 368 Headings and sections OP 109 to OP 116 repealed** 30
- (1) The headings before section OP 109 and sections OP 109 to OP 116 are repealed.

- (2) **Subsection (1)** applies for income years beginning on and after 1 April 2009.

**369 Tables O27 and O28 repealed**

- (1) Tables O27 and O28 are repealed.
- (2) **Subsection (1)** applies for income years beginning on and after 1 April 2009. 5

**370 ASCA lost excess available subscribed capital**

- (1) Section OZ 5(6)(a) is replaced by the following:  
 “(a) non-taxable gains and losses, including exempt income; and” 10
- (2) **Subsection (1)** applies for the 2009–10 and later income years.

**371 Modifying ratios for imputation credits and FDP credits**

- (1) In section OZ 10(2), “section OA 5(2) and (3) (Credits)” is replaced by “sections LE 8, LE 9, LF 6, and LF 7 (which relate to tax credits for imputation credits and FDP credits)”. 15
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

**372 New section OZ 18**

After section OZ 17, the following is added: 20

**“OZ 18 Credit-back of PCA balance**

Immediately before the first day of the income year beginning on or after 1 April 2009,—

- “(a) the credit balance of a person’s policyholder credit account is credited as an imputation credit to the person’s imputation credit account, and the policyholder credit account is debited accordingly: 25
- “(b) the credit balance of a consolidated group’s policyholder credit account is credited as an imputation credit to the consolidated group’s imputation credit account, and the consolidated group’s policyholder credit account is debited accordingly. 30

“Defined in this Act: consolidated group, imputation credit, imputation credit account, income year, policyholder credit account”.

**373 What this Part does**

- (1) Section RA 1(g) is repealed.
- (2) In section RA 1, in the list of defined terms, “FDP” is omitted.
- (3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.

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**374 Withholding and payment obligations for passive income**

- (1) Section RA 6(3) is repealed.
- (2) In section RA 6, in the list of defined terms, “FDP, foreign dividend” is omitted.
- (3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.

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**375 When obligations not met**

- (1) In section RA 10(1)(b), “the amount; or” is replaced by “the amount.” and paragraph (c) is repealed.
- (2) In section RA 10, in the list of defined terms, “FDP” is omitted.
- (3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.

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**376 Payment dates for interim and other tax payments**

- (1) Section RA 15(2)(c) is replaced by the following:
  - “(c) when the period for which the payment is made is a tax year or income year or both, by 31 May:
  - “(cb) despite **subsection (3)(c)**, for FBT payable for the last quarter of a tax year, by 31 May:”.
- (2) Section RA 15(3)(c) is replaced by the following:
  - “(c) for FBT payable quarterly under sections RD 58, RD 59, and RD 62 (which set out the basis for payment of FBT), the last day of a quarter:”.
- (3) In section RA 15, in the list of defined terms, “FDP” is omitted.
- (4) **Subsections (2) and (3)** apply for the 2009–10 and later income years.

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**377 Application of other provisions for purposes of ESCT rules and NRWT rules**

Section RA 23(2) is repealed.

**378 Who is required to pay provisional tax?**

- (1) Section RC 3(2)(d) is replaced by the following:  
 “(d) a multi-rate PIE that does not choose to calculate and pay tax using the provisional tax calculation option under **section HM 44** (Provisional tax calculation option).” 5
- (2) In section RC 3, in the list of defined terms, “portfolio tax rate entity” is omitted and “multi-rate PIE” is inserted.
- (3) **Subsections (1) and (2)** apply for the 2009–10 and later income years. 10

**379 PAYE rules and their application**

In section RD 2(1), paragraph (b) is replaced by the following:  
 “(b) sections LA 6, LB 1, and **LD 4** (which relate to tax credits); and”.

**380 Salary or wages** 15

- (1) After section RD 5(7), the following is added:  
*“Accommodation benefits*
- “(8) A benefit treated as income under **section CE 1(1)(c)** (Amounts derived in connection with employment) is included in salary or wages.” 20
- (2) In section RD 5, in the list of defined terms, “accommodation” is inserted.

**381 Certain benefits and payments**

- (1) Section RD 6(1)(a) and (b) are replaced by the following:  
 “(a) an accommodation benefit treated as income under section CE 1(1)(c) (Amounts derived in connection with employment); or 25  
 “(b) another benefit in kind that is included in their salary or wages; or”.
- (2) In section RD 6, in the list of defined terms, “accommodation” is inserted. 30

**382 Schedular payments**

In section RD 8(1)(b)(v), “who does not have” is replaced by “who has”.



- 383 Multiple payments of salary or wages**
- (1) Section RD 12(2)(b) is replaced by the following:  
 “(b) to salary or wages from employment as a casual agricultural employee, election day worker, or non-resident seasonal worker.” 5
- (2) In section RD 12, in the list of defined terms, “non-resident seasonal worker” is inserted.
- (3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.
- 384 New section RD 13B inserted** 10  
 After section RD 13, the following is inserted:  
**“RD 13B Adjustments for payroll donations**  
*“When this section applies*
- “(1) This section applies when an employee makes a payroll donation for a pay period for which they have a tax credit under **section LD 4** (Tax credits for payroll donations). 15
- “Subtracting amount of tax credit*
- “(2) The employer or PAYE intermediary must subtract the amount of the tax credit from the amount of tax for the employee’s PAYE income payment for the pay period and record the information in the relevant employer monthly schedule. 20
- “Defined in this Act: employee, employer, employer monthly schedule, pay period, PAYE income payment, PAYE intermediary, payroll donation, tax credit”.
- 385 Schedular payments without notification** 25  
 Section RD 18(3) is replaced by the following:  
*“Additional amount of tax*
- “(3) The person must withhold, in addition to the amount calculated under section RD 10(3), an amount of tax for the schedular payment determined as follows: 30
- “(a) 5% of the amount of the schedular payment if—
- “(i) the person receiving the payment is a company that is a non-resident contractor; and
- “(ii) the non-resident contractor receives the payment other than as a result of a choice that is made for 35

- the purposes that include a purpose of defeating  
the intent and application of **paragraph (b)**:
- “(b) 15% of the amount of the schedular payment in all other cases.
- “*Non-application to non-resident entertainers* 5
- “(4) This section does not apply if the schedular payment is made to a non-resident entertainer.”
- 386** **Schedular payments to non-resident entertainers**  
Section RD 19(2) is repealed.
- 387** **PAYE income payment forms for amounts of tax paid to Commissioner** 10
- (1) In section RD 22, the heading is replaced by “**Returns for amounts of tax paid to Commissioner**”.
- (2) Section RD 22(1) is replaced by the following:  
“*Paying amount withheld with returns* 15
- “(1) An employer or a PAYE intermediary who withholds an amount of tax from a PAYE income payment must pay the amount to the Commissioner under section RD 4 and provide an employer monthly schedule and a PAYE income payment form in relation to the amount.” 20
- (3) In section RD 22(2), the words before paragraph (a) are replaced by the following:
- “(2) The employer or PAYE intermediary must provide the employer monthly schedule and PAYE income payment form referred to in **subsection (1)** by—”. 25
- (4) In section RD 22(3) and (4), “the employer monthly schedule and” is inserted before “PAYE income form” in both places where it appears.
- (5) In section RD 22(3) and (4), “\$100,000” is replaced by “\$250,000” in all places where it appears. 30
- (6) Section RD 22(6), other than the heading, is replaced by the following:
- “(6) In addition to the requirements of subsections (2) to (4), if the employer stops carrying on a business in relation to which an amount of tax for a PAYE income payment has been withheld, 35  
they must notify the Commissioner of the cessation by the 15th

day of the second month following the month in which the business is ended.”

**388 Calculation of all-inclusive pay**

In section RD 51(3)(a), “or applied on their account” is omitted.

5

**389 Close company option**

Section RD 60(1), other than the heading, is replaced by the following:

“(1) This section applies in an income year when an employer that is a close company provides a fringe benefit to a shareholder-employee if, in the preceding income year,—

10

“(a) the gross amounts of tax for both PAYE income payments and employer’s superannuation contributions for the corresponding tax year were no more than \$250,000; or

15

“(b) the only benefit provided by the employer was a fringe benefit—

“(i) arising under section CX 6 (1) (Private use of motor vehicle); and

“(ii) limited to making available to shareholder-employees 2 vehicles for their private use; or

20

“(c) the employer did not employ any employees.”

**390 Small business option**

In section RD 61(1)(a), “\$100,000” is replaced by “\$250,000”.

**391 Persons who have withholding obligations**

25

(1) In section RE 4(6), the words before paragraph (a) are replaced by the following:

“(6) For the purposes of subsection (5), in the calculation of the amount of RWT to be credited against income tax, the amount must be converted to New Zealand currency at the option of the person deriving the resident passive income at either—”

30

(2) In section RE 4, in the list of defined terms, “FDP” is omitted.

(3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.

**392 Agents' or trustees' obligations in relation to certain dividends**

- (1) Section RE 9(2), other than the heading, is replaced by the following:

“(2) To the extent to which the resident passive income consists of a dividend other than a dividend treated as interest, an amount of tax that must be withheld under section RE 3 is treated as an amount to which the RWT rules apply.”

- (2) In section RE 9, in the list of defined terms, “FDP rules” is omitted.
- (3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.

**393 Non-resident passive income**

- (1) In section RF 2(2)(b), “CX 56 (Portfolio investor allocated income and distributions of income by portfolio investment entities)” is replaced by “**CX 56 to CX 56C** (which relate to attributed PIE income)”.

- (2) In section RF 2, in the list of defined terms, “attributed PIE income” is inserted.

- (3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.

**394 Non-cash dividends**

In section RF 10(2), the formula is replaced by the following:

$$\frac{\text{rate A}}{1 - \text{rate A}} \times \text{dividend payment} + \text{rate B} \times \text{amount paid.}$$

**395 Dividends paid to companies under control of non-residents**

- (1) The heading to section RF 11 is replaced by “**Dividends paid to companies associated with non-residents**”.

- (2) Section RF 11(1)(b) and (c) are replaced by the following:

“(b) while the non-resident held the share, company A was associated with the non-resident; and

- “(c) the non-resident has disposed of the share to another company (**company B**) that is resident in New Zealand and associated with the non-resident; and”.
- (3) In section RF 11, in the list of defined terms, “control” is omitted. 5
- (4) **Subsections (1) and (2)** apply, for the purposes of—
- (a) provisions other than the land provisions, for the 2009–10 and later income years:
- (b) the land provisions other than section CB 11, for land acquired on or after 1 April 2009: 10
- (c) section CB 11, for land on which improvements are begun on or after 1 April 2009.
- 396 Subpart RG repealed**
- (1) Subpart RG is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years. 15
- 397 Retirement scheme contributors**
- In section RH 4, “An entity is a retirement scheme contributor” is replaced by “An entity may choose to become a retirement scheme contributor”. 20
- 398 What this subpart does**
- (1) Section RM 1(b) is repealed.
- (2) In section RM 1, in the list of defined terms, “foreign dividend” is omitted.
- (3) **Subsections (1) and (2)** apply for the 2009–10 and later income years. 25
- 399 Refunds for overpaid tax**
- (1) After section RM 2(1), the following is inserted:  
*“Refundable credits*
- “(1B) An amount of tax under subsection (1) includes an amount of a refundable tax credit to which section LA 5(5) (Treatment of remaining credits) applies.” 30
- (2) In section RM 2, in the list of defined terms, “refundable tax credit” is inserted.

**400 Overpayment on income statements**

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

*“Refundable credits*

“(1B) An amount of tax under subsection (1) includes an amount of a refundable tax credit to which section LA 5(5) (Treatment of remaining credits) applies.” 5

(2) In section RM 5, in the list of defined terms, “refundable tax credit” is added.

**401 Using refund to satisfy tax liability**

(1) In section RM 10(1), “An amount of tax under this section includes an amount of a refundable tax credit under section LA 5(5) (Treatment of remaining credits).” is added after “RM 6.” 10

(2) In section RM 10(4), “section LA 7 (Remaining refundable credits: tax credits for families)” is replaced by “section LA 7 (Remaining refundable credits: tax credits under social policy schemes)” 15

(3) In section RM 10, in the list of defined terms, “refundable tax credit” is added.

**402 Information required from employers**

After RP 8(a)(ii), the following is inserted: 20

“(iii) the amount of any payroll donations for the pay period; and

“(iv) the amount of any tax credit under **section LD 4** (Tax credits for payroll donations); and”.

**403 Collection, payment, and information requirements**

After section RP 14(a), the following is inserted: 25

“(ab) transfer the amount of any payroll donation to the relevant recipient within the period described in **section 24Q** of the Tax Administration Act 1994; and”.

**404 Tax pooling intermediaries**

In section RP 17, “provisional tax.” is replaced by “provisional tax, terminal tax, or an increase in an assessment of tax as described in **section RP 17B(3)**.” 30

**405 New section RP 17B inserted**

After section RP 17, the following is inserted:

**“RP 17B Tax pooling accounts and their use**

*“Meaning*

- “(1) A **tax pooling account** means a trust account into which a tax pooling intermediary pays an amount that— 5
  - “(a) they receive in their role as intermediary from a person liable to pay provisional tax; and
  - “(b) is a payment for—
    - “(i) provisional tax: 10
    - “(ii) terminal tax:
    - “(iii) an increased amount of tax described in **subsection (3)**.

*“Use of funds in tax pooling accounts*

- “(2) An amount held in a tax pooling account on behalf of a person may be used only to satisfy the person’s liability for income tax, provisional tax, or an increased amount of tax described in **subsection (3)**. 15

*“When original liability increased*

- “(3) For the purposes of this section, an increased amount of tax— 20
  - “(a) arises when a person’s previous assessed liability is increased after—
    - “(i) the Commissioner amends an assessment under section 113 of the Tax Administration Act 1994:
    - “(ii) the Commissioner makes a determination under section 119 of that Act: 25
    - “(iii) an assessment is made because the Commissioner or the person is treated under section 89H of that Act as having accepted a proposed adjustment: 30
    - “(iv) the person makes a voluntary disclosure:
    - “(v) a dispute between the Commissioner and the person is resolved:
  - “(b) does not include the amount of the previous assessment.

*“Transfer within 60 days for provisional tax or terminal tax 35*

- “(4) If a person chooses to use funds in a tax pooling account to satisfy an obligation for provisional tax or terminal tax for a

tax year, they must ask the tax pooling intermediary within 60 days from the person's terminal tax date for the tax year to transfer the amount to the person's tax account with the Commissioner.

*“Transfer within 60 days for increased amounts”* 5

- “(5) If a person chooses to use funds in a tax pooling account to satisfy an obligation for an increased amount of tax, they must ask the tax pooling intermediary within 60 days from the date on which the Commissioner issues the notice of assessment increasing the amount to transfer the amount to the person's tax account with the Commissioner. 10

“Defined in this Act: amount, amount of tax, assessment, Commissioner, notice, pay, provisional tax, tax account with the Commissioner, tax pooling account, terminal tax”.

**406 Deposits in tax pooling accounts** 15

In section RP 18(2)(c), “person.” is replaced by “person:” and the following is added:

“(d) transferred at the person's request to another intermediary.”

**407 Transfers from tax pooling accounts** 20

- (1) Section RP 19(1) is replaced by the following:

*“Transferring amounts”*

- “(1) A tax pooling intermediary may ask the Commissioner to transfer an amount in their tax pooling account to the tax account of a person who is their client. 25

*“Treatment of transferred amounts”*

- “(1B) An amount transferred and credited to the tax account of a person is treated as follows:

“(a) for an amount credited on or before the person's terminal tax date for a tax year, as income tax paid to meet a provisional tax obligation under the provisional tax rules: 30

“(b) for an amount credited after the person's terminal tax date for a tax year,—



- “(i) first, as applied under section 120F of the Tax Administration Act 1994 to pay interest that the person is liable to pay; and
    - “(ii) secondly, as income tax paid to meet the person’s provisional tax obligation.” 5
- (2) Section RP 19(3), other than the heading, is replaced by the following:
- “(3) The credit date for an amount transferred to a person’s tax account is—
  - “(a) for a request made within the 60-day period referred to in **section RP 17B(4) or (5)**, the date sought under subsection (2); or
  - “(b) for any other case, the date on which the Commissioner receives the request for the transfer.” 10
  
- 408 Definitions** 15
- (1) This section amends section YA 1.
- (2) The definition of **1973 version provisions** is repealed.
- (3) The definition of **1988 version provisions** is repealed.
- (4) The definition of **1990 version provisions** is repealed.
- (5) After the definition of **accident insurance contract**, the following is inserted: 20
 

“**accommodation** is defined in **section CE 1(2)** (Amounts derived in connection with employment) for the purposes of that section”.
- (6) In the definition of **actuarial reserves**, “section EY 3” is replaced by “**section EZ 59**”. 25
- (7) Before the definition of **actuary**, the following is inserted:
  - “**actuarially determined**, for an amount and a person,—
    - “(a) means a requirement that is met when an actuary has—
      - “(i) calculated the amount: 30
      - “(ii) certified that the amount is calculated no later than the last day for furnishing the return of income to which the amount relates:
      - “(iii) provided to the Commissioner in writing, in the form prescribed by the Commissioner, if any, all assumptions, methodologies, bases and working 35

- calculations necessary to support the calculation of the amount:
- “(b) does not include when the calculation of the amount—
- “(i) does not accurately reflect the person’s business experience: 5
- “(ii) is not made according to usual business practice:
- “(iii) is, or is part of, a tax avoidance arrangement”.
- (8) The definition of **after-income tax earnings** is repealed.
- (9) The definition of **after-income tax loss** is repealed.
- (10) After the definition of **approved issuer**, the following is inserted: 10
- “**arm’s length amount**, for an arrangement that is a cross-border arrangement under section GC 6 (Purpose of rules and nature of arrangements) means an arm’s length amount of consideration under section GC 13 (Calculation of arm’s length amounts)”.
- (11) After the definition of **asset**, the following is inserted: 15
- “**asset base** means the asset base for a profit participation policy, described in **paragraph (a)** of the definition of **profit participation policy**”.
- (12) The definition of **associated, associated person, person associated** is replaced by the following: 20
- “**associated, associated person, person associated**, and other expressions indicating the association of persons with each other are defined in **sections YB 1 to YB 15** (which relate to associated persons)”.
- (13) After the definition of **associated mining operations**, the following is inserted: 25
- “**associated non-attributing active CFC**, for a CFC, means a person who is— 30
- “(a) associated with the CFC under section YB 2 (Two companies with common control); and
- “(b) subject with the CFC to the laws of the same country or territory under which, for each company,—
- “(i) the company is liable to income tax on its income because of its domicile, residence, place of incorporation, or centre of management: 35

- “(ii) persons holding income interests in the company are liable for the income tax on its income and the country or territory is the source of 80% or more of that income; and
- “(c) a non-attributing active CFC”. 5
- (14) In the definition of **associated non-attributing active CFC**, **paragraph (a)** is replaced by the following:  
 “(a) associated with the CFC under **section YB 2** (Two companies); and”.
- (15) After the definition of **association rebate**, the following is inserted: 10  
 “**attributable CFC amount** is defined in **section EX 20B** (Attributable CFC amount)”.
- (16) After the definition of **attributed CFC net loss**, the following are inserted: 15  
 “**attributed PIE income** means an amount of income attributed by a multi-rate PIE to an investor in the PIE under **section HM 36** (Calculating amounts attributed to investors)  
 “**attributed PIE loss** means an amount of loss attributed by a multi-rate PIE to an investor in the PIE under **section HM 36** 20  
 (Calculating amounts attributed to investors)”.
- (17) After the definition of **attributing interest**, the following is inserted:  
 “**attribution period**, for a multi-rate PIE, means a period described in **section HM 34** (Attribution periods)” 25
- (18) After the definition of **benefit**, the following is inserted:  
 “**benefit fund PIE** means a defined benefit fund that—  
 “(a) meets the requirements of **section HM 7** (Requirements); and  
 “(b) does not attribute amounts to investors” 30
- (19) After the definition of **benefit fund PIE**, the following is inserted:  
 “**best estimate assumptions** means assumptions about the future that—  
 “(a) are actuarially determined; and 35  
 “(b) are made using professional judgement, training and experience; and  
 “(c) are not deliberately overstated or understated”.

- (20) In the definition of **branch equivalent income**, “as that provision read immediately before being amended by **section 122** of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act **2008**” is added.
- (21) In the definition of **branch equivalent loss**, “as that provision read immediately before being amended by **section 122** of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act **2008**” is added. 5
- (22) After the definition of **calculation method**, the following is inserted: 10
- “**calculation period**, for a multi-rate PIE, means a period in which the entity calculates an amount under **section HM 47** (Calculation of tax liability or tax credit of multi-rate PIEs) that—
- “**(a)** consists of 1 or more attribution periods: 15
- “**(b)** for a calculation under the quarterly calculation option, is a quarter:
- “**(c)** for a calculation under the exit calculation or provisional tax calculation options, is an income year:
- “**(d)** for a calculation under the exit calculation option when an exit period arises, is the exit period”. 20
- (23) In the definition of **charitable or other public benefit gift**, “subpart LD (Tax credits for charitable or other public benefit gifts)” is replaced by “sections LD 1 to LD 3 (which relate to tax credits for charitable or other public benefit gifts)”. 25
- (24) In the definition of **continuity provisions**, paragraph (i) is replaced by the following:
- “**(i)** section OE 10 (which relates to BETA credits for loss of shareholder continuity); and”.
- (25) The definition of **control** is repealed. 30
- (26) After the definition of **controlling shareholder**, the following is inserted:
- “**convert**, for a New Zealand emissions unit, means the transfer of the emissions unit to an account in the Registry established by the Climate Change Response Act 2002 used for the purpose of converting New Zealand emissions units into Kyoto emissions units”. 35

- (27) In the definition of **credit account continuity provisions**, paragraph (c) is replaced by the following:  
“(c) section OE 10 (which relates to BETA credits for loss of shareholder continuity)”.
- (28) In the definition of **creditable membership**, after subparagraph (b)(i), the following is inserted: 5  
“(ib) the period beginning on the day which the Commissioner nominates when requested by the person, in circumstances where, due to matters outside the control of the person, the first deduction of KiwiSaver contributions was delayed, and ending on the day on which securities are first allotted by the KiwiSaver scheme for the person.”. 10
- (29) The definition of **current accounting year** is repealed.
- (30) After the definition of **debenture holder**, the following is inserted: 15  
**“deductible foreign equity distribution** means a distribution by a foreign company to a company, in relation to a share in the foreign company that is not a fixed-rate foreign equity,—  
“(a) for which a deduction is allowed in the calculation of the income tax imposed by a country or territory other than New Zealand on the income of the foreign company: 20  
“(b) sourced directly or indirectly out of an amount paid to the foreign company from another company if—  
“(i) the foreign company is not liable for income tax imposed by a country or territory other than New Zealand on the amount paid to the foreign company; and 25  
“(ii) the other company is allowed a deduction, in the calculation of the income tax imposed by a country or territory other than New Zealand on the income of the other company, for the amount paid to the foreign company”. 30
- (31) The definition of **derivative instrument** is replaced by the following: 35  
**“derivative instrument** means a derivative as defined in NZIAS 39”.

- (32) The definition of **direct income interest** is replaced by the following:
- “**direct income interest**—
- “(a) is defined in section EX 9 (Direct income interests) except for the FIF rules: 5
- “(b) is defined in section EX 30 (Direct income interests in FIFs) for the FIF rules”.
- (33) In the definition of **dividend**, paragraph (a) is replaced by the following:
- “(a) is defined in sections CD 3 to CD 20 (which relate to income from equity) for the purposes of this Act, except for the definition of **investment society dividend**.”. 10
- (34) In the definition of **dividend**, paragraph (c)(ii) is replaced by the following:
- “(ii) includes an amount paid to a shareholder that is a company and a person associated with the company paying the amount, if the amount is excluded from dividend treatment generally only as a result of sections CD 26(2)(b) (Capital distributions on liquidation or emigration) and CD 44; and” 15 20
- (35) In the definition of **dividend**, paragraph (d)(i) is replaced by the following:
- “(i) includes an amount paid to a shareholder that is a company and a person associated with the company paying the amount, if the amount is excluded from dividend treatment generally only as a result of sections CD 26(2)(b) and CD 44; and” 25
- (36) After the definition of **emigrating company**, the following is inserted: 30
- “**emissions unit** means—
- “(a) a New Zealand unit:
- “(b) a Kyoto unit:
- “(c) a unit issued by an overseas registry that is prescribed under the Climate Change Response Act 2002 as a unit that may be transferred to accounts in the Registry under that Act” 35

- (37) In the definition of **employee**, paragraph (c)(i) is replaced by the following:
- “(i) a payment referred to in section RD 5(1)(b)(iii), (3), (6)(b) and (c), and (7) (Salary or wages):”.
- (38) In the definition of **employer monthly schedule**, paragraph (e) is replaced by the following: 5
- “(e) for each employee in the month to which the schedule relates,—
- “(i) the amount of gross earnings:
- “(ii) the total amount of tax withheld: 10
- “(iii) the total amount of payroll donations:
- “(iv) the total amount of tax credits under **section LD 4** (Tax credits for payroll donations):
- “(v) the amount of earnings not liable to the earner premium; and” 15
- (39) After the definition of **excess debt entity**, the following is inserted:
- “**excess debt outbound company** is defined in section FE 4 (Some definitions) for the purposes of subpart FE (Interest apportionment)” 20
- (40) In the definition of **excluded ancillary tax**, paragraph (d) is repealed.
- (41) After the definition of **existing privilege**, the following are inserted:
- “**exit level**, for a multi-rate PIE, means the relationship of the entity’s tax liability to the value of the investor’s interest described in **section HM 61** (Exit levels for investors) 25
- “**exit period**, for an investor in a multi-rate PIE, means a period set out in **section HM 62** (Exit periods)”.
- (42) The definition of **fair dividend rate method** is replaced by the following: 30
- “**fair dividend rate method** means the method of calculating FIF income or FIF loss under sections EX 52 (Fair dividend rate method: usual method) and EX 53 (Fair dividend rate method for unit-valuing funds and others by choice)” 35
- (43) The definition of **FDP rules** is replaced by the following:

- “**FDP rules** means—
- “(a) section GB 41 (FDPA arrangements for carrying amounts forward):
- “(b) sections LF 1, LF 5, LF 8 to LF 10 (which relate to tax credits for FDP credits): 5
- “(c) subpart OC (Foreign dividend payment accounts (FDPA)):
- “(d) section YA 2(2)(d) to (f) (Meaning of income tax varied)”.
- (44) After the definition of **financial arrangements rules**, the following is inserted: 10
- “**financial asset** has the same meaning as in NZIAS 32”.
- (45) After the definition of **financial assistance**, the following is inserted:
- “**financial risk** is defined in **section EY 12** (Meaning of life reinsurance)” 15
- (46) The definition of **financial statements** is replaced by the following:
- “**financial statements** is defined in section 8 of the Financial Reporting Act 1993, but the references in the definition to an entity and to a reporting entity are to be read as references to a person” 20
- (47) The definition of **first tracking date** is repealed.
- (48) After the definition of **fixed principal financial arrangement**, the following is inserted: 25
- “**fixed-rate foreign equity** means an interest (the **equity**) in the capital of a foreign company held by a company (the **holder**) in relation to which the foreign company makes distributions—
- “(a) at a rate that is a specific fixed percentage of the amount subscribed for the issue of the equity; or 30
- “(b) at a rate that—
- “(i) is a percentage of the amount subscribed for the issue of the equity; and
- “(ii) has a fixed relationship to economic, commodity, industrial, or financial indices, to banking rates of interest, or to general commercial rates of interest; or 35



- “(c) at a rate that would be given by **paragraph (a) or (b)** but for variations due to—
  - “(i) a fixed relationship to a rate of income tax:
  - “(ii) compensation to the holder for default by the foreign company: 5
  - “(iii) compensation to the holder for expenditure or loss related to the holding of the equity and suffered by the holder or by a person associated with the holder; or
- “(d) equivalent to the payment of interest for money lent, 10 having regard to—
  - “(i) whether or not the equity is redeemable:
  - “(ii) any security provided to the holder, including put or call options over the equity or an amount payable determined by reference to the amount 15 of distributions payable:
  - “(iii) the variability or lack of variability of the distributions payable”.
- (49) In the definition of **fixed-rate share**, in paragraph (d)(iii), “subparagraphs (i) and (ii):” is replaced by “subparagraphs (i) and (ii)” and paragraph (e) is repealed. 20
- (50) The definition of **foreign dividend** is repealed.
- (51) The definition of **foreign dividend company** is repealed.
- (52) The definition of **foreign dividend company net earnings** is repealed. 25
- (53) The definition of **foreign group** is repealed.
- (54) After the definition of **foreign non-dividend income**, the following is inserted:
 

“**foreign PIE equivalent** is defined in **section HM 3** (Foreign PIE equivalents)”.

 30
- (55) After the definition of **foreign withholding tax**, the following is inserted:
 

“**forest land emissions unit** means a pre-1990 forest land emissions unit or a post-1989 forest land emissions unit”.
- (56) After the definition of **forestry company**, the following is inserted: 35
 

“**formation loss**, for a PIE, means an amount of tax loss or a loss balance arising from a period before the entity became a

- PIE as described in **sections HM 65 to HM 69** (which relate to the treatment of formation losses)”.
- (57) After the definition of **general insurance**, the following is inserted:  
 “**general insurance contract** has the meaning given in IFRS 4”.
- (58) After the definition of **goods**, the following is inserted:  
 “**government screen production payment** means a payment that—  
 “(a) is in the nature of a large budget screen production grant or New Zealand screen production incentive; and  
 “(b) is authorised by the New Zealand Film Commission in relation to a company that—  
 “(i) is resident in New Zealand:  
 “(ii) has a permanent establishment in New Zealand”.
- (59) The definition of **grey list company** is replaced by the following:  
 “**grey list company** means a company that is resident under section YD 3 (Country of residence of foreign companies) in a grey list country if either—  
 “(a) the company is liable in the country to income tax on the company’s income because the company—  
 “(i) is domiciled in the country:  
 “(ii) is resident in the country:  
 “(iii) is incorporated in the country:  
 “(iv) has its place of management in the country:  
 “(b) the company is organised under the laws of the country and the country—  
 “(i) imposes on persons holding income interests in the company the liability for income tax on the company’s income; and  
 “(ii) under the laws of the country, is the source of 80% or more of the income of the company”.
- (60) The definition of **grey list dividend** is repealed.
- (61) In the definition of **holding company**, paragraph (a) is replaced by the following:  
 “(a) for a forestry company, means a company associated with the forestry company:”.

- (62) After the definition of **home vendor mortgage**, the following is inserted:  
 “**honorarium** is defined in **section CW 62B** (Voluntary activities) for the purposes of that section”.
- (63) After the definition of **IFRS**, the following is inserted: 5  
 “**IFRS 4** means the IFRS, numbered 4, that relates to insurance contracts”.
- (64) After the definition of **IFRS 4**, the following is inserted:  
 “**IFRSE** means an International Financial Reporting Standard approved by the International Accounting Standards Board, as amended from time to time” 10
- (65) In the definition of **income interest**, in paragraph (b), “subpart OE” is replaced by “subparts FE (Interest apportionment on thin capitalisation) and OE”.
- (66) In the definition of **income tax liability**, paragraph (a)(ii) is replaced by the following: 15  
 “(ii) income tax for the person and a tax year calculated under **subpart HM** (Portfolio investment entities), if the person is a multi-rate PIE; and”.
- (67) In the definition of **international tax rules**, paragraph (a)(xiii) 20  
 is replaced by the following:  
 “(xiii) section YA 2 (Meaning of income tax varied)”.
- (68) In the definition of **international tax rules**, paragraph (a)(xiv) 25  
 is replaced by the following:  
 “(xiv) subpart YB (Associated persons and nominees)”.
- (69) In the definition of **investor**, paragraph (b) is replaced by the following:  
 “(b) for a portfolio investment entity, is defined in **section HM 4** (Who is an investor?):” 30
- (70) After the definition of **investor**, the following are inserted:  
 “**investor class**, for a portfolio investment entity, is defined in **section HM 5** (What is an investor class?)  
 “**investor interest**, for an investor in a portfolio investment entity, means an interest in the entity that gives the holder an entitlement to a distribution of proceeds from the entity’s investments” 35

- (71) After the definition of **KiwiSaver scheme**, the following is inserted:  
 “**Kyoto emissions unit** means an emissions unit specified in accordance with the Protocol referred to in the Climate Change Response Act 2002”. 5
- (72) After the definition of **land**, the following are inserted:  
 “**land investment company** means a company that, in a tax year,—  
 “(a) is not a portfolio investment entity:  
 “(b) on 80% or more of the days in the tax year on which 10  
 the company has assets of more than \$100,000, 90% of those assets consist of land or shares in a company that meets the description of this definition, and meet the requirements of **section HM 12** (Income sources)  
 “**land loss** is defined in **section HM 64(3)** (Use of land losses 15  
 of investor classes) for the purposes of that section”.
- (73) After the definition of **land loss**, the following is inserted:  
 “**land provisions** means the following provisions:  
 “(a) sections CB 7 to CB 11 (which relate to certain land 20  
 transactions), except CB 8 (Disposal: land used for landfill, if notice of election):  
 “(b) section CB 15 (Transactions between associated persons):  
 “(c) sections FB 3 to FB 5 (which relate to the transfer of 25  
 land on a settlement of relationship property)”.
- (74) The definition of **large budget screen production grant** is repealed.
- (75) After the definition of **licence-specific assets**, the following is inserted:  
 “**life financial reinsurance** is defined in **section EY 12** 30  
 (Meaning of life reinsurance)”.
- (76) After the definition of **life financial reinsurance**, the following is inserted:  
 “**life fund PIE** means a separate identifiable fund forming part 35  
 of a life insurer that—  
 “(a) meets the requirements of **section HM 7** (Requirements); and

- “(b) holds investment subject to life insurance policies under which benefits are directly linked to the value of the investments held in the fund”.
- (77) After the definition of **life reinsurer**, the following is inserted:  
 “**life risk** means an actuarially determined risk contingent on human life”.
- (78) The definition of **limited partnership net deduction** is replaced by the following:  
 “**limited partnership deduction** is defined in section HG 11(12) (Limitations on deductions by partners in limited partnerships) for the purposes of that section”.
- (79) After the definition of **listed PAYE intermediary**, the following is inserted:  
 “**listed PIE** means a company that—  
 “(a) is listed on a recognised exchange in New Zealand or meets the requirements of **section HM 18** (Requirements for listed PIEs: unlisted companies); and  
 “(b) meets the requirements of **section HM 7** (Requirements); and  
 “(c) is not a life fund PIE”.
- (80) In the definition of **loan**, in paragraph (b), “and subpart LL (Underlying foreign tax credits (UFTC)),” is omitted.
- (81) The definitions of **mortality profit** and **mortality profit formula** are repealed.
- (82) After the definition of **motor vehicle**, the following is inserted:  
 “**multi-rate PIE** means a company, superannuation fund, or group investment fund that—  
 “(a) meets the requirements of **section HM 7** (Requirements); and  
 “(b) is not a listed PIE; and  
 “(c) is not a benefit fund PIE”.
- (83) After the definition of **natural resource**, the following is inserted:  
 “**net attributable CFC income**, for a foreign company and for an accounting period, means the amount calculated for the accounting period under **section EX 20C(1)(a)** (Net attributable CFC income or loss)

- “**net attributable CFC loss**, for a foreign company and for an accounting period, means the amount calculated for the accounting period under **section EX 20C(1)(b)** (Net attributable CFC income or loss)”.
- (84) In the definition of **new tax rate person**, in paragraph (b), “portfolio tax rate entity” is replaced by “multi-rate PIE”. 5
- (85) After the definition of **New Zealand business**, the following is inserted:  
 “**New Zealand emissions unit** means an emissions unit issued under the Climate Change Response Act 2002 and designated a New Zealand emissions unit”. 10
- (86) After the definition of **nominee**, the following is inserted:  
 “**non-attributing active CFC** is defined in **section EX 21B** (Non-attributing active CFCs)  
 “**non-attributing Australian CFC** is defined in **section EX 22** (Non-attributing Australian CFCs)”. 15
- (87) The definition of **non-creditable dividend** is repealed.
- (88) In the definition of **non-filing taxpayer**, paragraph (b) is replaced by the following:  
 “(b) a person whose only income derived from New Zealand is schedular payments derived in the person’s capacity as a non-resident entertainer and who chooses not to file a return for the relevant tax year; or”. 20
- (89) In the definition of **non-refundable tax credit**, the following is inserted after paragraph (a): 25  
 “(ab) a tax credit under **section LD 4** (Tax credits for payroll donations):”.
- (90) In the definition of **non-refundable tax credit**, paragraph (g) is replaced by the following:  
 “(g) a tax credit under **sections LS 3(3) and (4) and LS 4(3) and (4)** (which relate to multi-rate PIEs and certain of their investors) and under **section LS 1** (Tax credits for multi-rate PIEs) to the extent to which it arises under **section HM 51** (Use of foreign tax credits by PIEs)”. 30
- (91) After the definition of **non-resident person**, the following is inserted: 35

- “**non-resident seasonal worker** means a non-resident person employed under the recognised seasonal employment scheme to undertake work in New Zealand”.
- (92) After the definition of **notice period**, the following is inserted:  
 “**notified tax rate**, for a multi-rate PIE and an investor, means a prescribed investor rate under **section HM 59** (Notified rates)”.
- (93) The definition of **offshore development** is repealed.
- (94) The definition of **onshore development** is repealed.
- (95) In the definition of **operating lease**, “means” is replaced by “means, except in **section EW 15I(1)(b)(iib)** (Mandatory use of yield to maturity method for some arrangements),”.
- (96) After the definition of **outstanding balance**, the following is inserted:  
 “**outstanding claims reserve** means the actuarially determined amount of a person’s outstanding claims liability for general insurance contracts, excluding contracts having premiums to which section CR 3 (Income of non-resident general insurer) applies, as that liability is measured under Appendix D, paragraphs 5.1 to 5.2.12 of IFRS 4”.
- (97) After the definition of **overseas pension** the following is inserted:  
 “**overtime** is defined in **section CW 17C(4)** (Payments for overtime meals) for the purposes of that section”.
- (98) In the definition of **ownership interest**, “that section” is replaced by “that section and **section YC 18B** (Corporate reorganisations not affecting economic ownership)”.
- (99) After the definition of **payment relating to incapacity to work**, the following is inserted:  
 “**payroll donation** is defined in **section LD 7** (Meaning and ranking of payroll donation)”.
- (100) After the definition of **petroleum mining company**, the following is inserted:  
 “**petroleum mining development** is defined in **section EJ 20** (Meaning of petroleum mining development) for the purposes of **sections EJ 12 and EJ 12B** (which relate to petroleum development expenditure)”.

- (101) After the definition of **physical cost of production**, the following is inserted:  
 “**PIE** means a portfolio investment entity”.
- (102) After the definition of **plot**, the following is inserted:  
 “**policy liabilities** is defined in **section EY 28(9)** (Shareholder base other profit: profit participation policies) for the purposes of **sections EY 17, EY 21, and EY 28** (which relate to profit participation policies)”.
- (103) The definition of **policyholder base** is replaced by the following:  
 “**policyholder base** means, for a life insurer, the base for policyholder base gross income, expenditure or loss, and to which income of a particular source or nature, and tax credits received are apportioned under **section EY 4** (Apportionment of income of particular source or nature, and of tax credits)  
 “**policyholder base gross expenditure or loss** means policyholder base gross expenditure or loss described in **section EY 2(2)** (Policyholder base)  
 “**policyholder base gross income** means policyholder base gross income described in **section EY 2(1)** (Policyholder base)”.
- (104) The definitions of **policyholder base income tax liability**, **policyholder credit**, **policyholder credit account**, **policyholder debit**, **policyholder FDP ratio**, **policyholder income**, **policyholder income formula**, and **policyholder net loss** are repealed.
- (105) The definitions of **portfolio allocation period**, **portfolio calculation period**, **portfolio class fraction**, **portfolio class investment value**, **portfolio class net income**, **portfolio class net loss**, **portfolio class taxable income**, **portfolio class taxable loss**, **portfolio defined benefit fund**, **portfolio entity formation loss**, **portfolio entity investment**, **portfolio entity tax liability**, **portfolio investor allocated income**, **portfolio investor allocated loss**, **portfolio investor class**, **portfolio investor exit period**, **portfolio investor interest**, **portfolio investor interest fraction**, **portfolio investor proxy**, **portfolio investor rate**, **portfolio land company**, **portfolio listed company**, and **portfolio tax rate entity** are repealed.



- (106) The definition of **portfolio investment entity** is replaced by the following:
- “**portfolio investment** means an investment of an entity in an item of property of a type to which **section HM 11** (Investment types) refers 5
- “**portfolio investment entity** means—
- “(a) a multi-rate PIE:
- “(b) a listed PIE:
- “(c) a benefit fund PIE:
- “(d) a life fund PIE”. 10
- (107) In the definition of **portfolio investor rate**, in paragraph (b)(ii), “the time; or” is replaced by “the time; and” and the following is inserted:
- “(iii) the Commissioner has not notified the entity to disregard the rate that the investor has notified to the entity; or”. 15
- (108) After the definition of **possession**, the following is inserted:
- “**post-1989 forest land** means forest land that—
- “(a) was not forest land on 31 December 1989; or
- “(b) was forest land on 31 December 1989 but was deforested between 1 January 1990 and 31 December 2007; or
- “(c) was pre-1990 forest land—
- “(i) that was deforested on or after 1 January 2008; and 25
- “(ii) for which any liability to surrender units arising under the Climate Change Response Act 2002 has been satisfied
- “**post-1989 forest land emissions unit**, for a person, means an emissions unit— 30
- “(a) issued to the person under the Climate Change Response Act 2002 for growing trees on post-1989 forest land; and
- “(b) held continuously by the person since the issue”.
- (109) After the definition of **pre-1983 investments**, the following is inserted: 35
- “**pre-1990 forest land** means forest land—
- “(a) that was forest land on 31 December 1989; and

- “(b) that remained as forest land on 31 December 2007; and  
“(c) where the forest species on the forest land consisted of exotic forest species
- “**pre-1990 forest land emissions unit**, for a person, means an emissions unit— 5
- “(a) issued to the person under the Climate Change Response Act 2002 in relation to pre-1990 forest land; and  
“(b) held continuously by the person since the issue”.
- (110) The definitions of **premium loading** and **premium loading formula** are repealed. 10
- (111) In the definition of **prescribed investor rate**, paragraph (a)(ii) is replaced by the following:  
“(ii) the person is a resident who derives income as a trustee of a trust other than a trust referred to in paragraph (c)(i) and who chooses to be subject to this paragraph for the tax year; or” 15
- (112) The definition of **prescribed investor rate** is replaced by the following:  
“**prescribed investor rate**, for a multi-rate PIE and an investor, means an applicable tax rate under **sections HM 56 to HM 58** (which relate to the default and other tax rates for investors)” 20
- (113) After the definition of **prescribed rate of interest**, the following is inserted: 25  
“**present value** means,—  
“(a) a present value calculated using the risk-free rate of return as the discount rate, gross of tax; but  
“(b) face value, gross of tax, if the whole discount period is less than a year” 30
- (114) After the definition of **profit**, the following is inserted:  
“**profit participation policy**,—  
“(a) means a class of life insurance policy having—  
“(i) a segregated or identifiable asset base; and  
“(ii) policyholders who are entitled to a share of profits that is distributed to, or vested in, the policyholders from the asset base, and the policies provide for the entitlement; and 35

- “(iii) a fixed formula, expressed in terms of a proportion of a policyholder’s share of profits from the asset base, that calculates a transfer to the benefit of the life insurer’s shareholders from the profits of the asset base, and that fixed formula is consistently applied: 5
- “(b) includes a class of life insurance policy that substantially meets the requirements of **paragraph (a)** and that has a guarantee by the life insurer that capital invested will be returned or that a minimum return on capital will be paid, if— 10
- “(i) the life insurer has irrevocably chosen that the class be treated as a profit participation policy; and
- “(ii) the Commissioner receives a notice of the election before the start of the first income year to which it relates”. 15
- (115) In the definition of **profit-related debenture**, “for the purposes of that section” is omitted.
- (116) After the definition of **recognised exchange**, the following is inserted: 20
- “**recognised seasonal employment scheme** means the recognised seasonal employer policy published by the Department of Labour under section 13A of the Immigration Act 1987”.
- (117) The definition of **redundancy payment** is replaced by the following: 25
- “**redundancy payment** means a PAYE income payment paid—
- “(a) to a person whose employment in a position is terminated because the position has become superfluous to the requirements of their employer; and 30
- “(b) in compensation for the loss of the person’s employment”.
- (118) In the definition of **refundable tax credit**, in paragraph (d), “election)” is replaced by “election):” and the following is added: 35
- “(e) a tax credit under section LS 1 (Tax credits for portfolio tax rate entities and their investors)”.

- (119) In the definition of **refundable tax credit**, paragraphs (d) and (e) are replaced by the following:
- “(d) a tax credit under **sections LS 2, LS 3(2), and LS 4(2)** (which relate to multi-rate PIEs and certain of their investors): 5
- “(e) a tax credit under **section LS 1** (Tax credits for multi-rate PIEs) to the extent to which it arises under **section HM 53 or HM 55** (which relate to the use of tax credits other than foreign tax credits)”.
- (120) The definition of **related person** is repealed. 10
- (121) The definition of **relative**, is replaced by the following:
- “**relative**,—
- “(a) except in section HC 36 (Trusts and minor beneficiary rule), means a person connected with another person by— 15
- “(i) being within the second degree of blood relationship to the other:
- “(ii) being in a marriage, civil union, or de facto relationship with the other:
- “(iii) being in a marriage, civil union, or de facto relationship with a person who is within the second degree of blood relationship to the other: 20
- “(iv) being adopted as a child of the other or as a child of a person who is within the first degree of relationship to the other: 25
- “(v) being the trustee of a trust under which a relative has benefited or is eligible to benefit:
- “(b) is defined in section HC 36(5) for the purposes of that section”.
- (122) After the definition of **replaced area fraction**, the following 30 is inserted:
- “**replacement forest land emissions unit** means an emissions unit acquired by a person if—
- “(a) the person has previously disposed of a post-1989 forest land emissions unit; and 35
- “(b) the person has not since the disposal acquired another emissions unit that—
- “(i) replaces the post-1989 forest land emissions unit; and

- “(ii) does not replace another emissions unit”.
- (123) The definition of **required interest** is repealed.
- (124) The definition of **retained earnings** is repealed.
- (125) The definition of **revenue account property** is replaced by the following: 5  
 “**revenue account property**, for a person, means property that—  
 “(a) is trading stock of the person:  
 “(b) if disposed of, would produce income for the person other than income under section EE 48 (Effect of disposal or event), FA 5 (Assets acquired or disposed of after deductions of payments under lease) or FA 9 (Treatment when lease ends: lessee acquiring asset): 10  
 “(c) is an emissions unit of the person”.
- (126) After the definition of **salary or wages**, the following is inserted: 15  
 “**savings product policy** means a life insurance policy, other than annuity, that has or will have a surrender value, but the policy may have a life risk component”.
- (127) In the definition of **schedular income**, paragraph (a) is replaced by the following: 20  
 “(a) schedular policyholder base income:”.
- (128) In the definition of **schedular income**, paragraph (c) is repealed.
- (129) In the definition of **schedular income**, the following is inserted after paragraph (d): 25  
 “(db) income derived by a multi-rate PIE:”.
- (130) After the definition of **schedular payment**, the following is inserted:  
 “**schedular policyholder base income** means schedular policyholder base income described in **section EY 2(3)** (Policyholder base)”. 30
- (131) In the definition of **settlor**, after paragraph (b), the following is added:  
 “(c) is modified by **section YB 10** (Who is a settlor?) for the purposes of **sections YB 7 to YB 9** (which relate to associated persons)”. 35

- (132) In the definition of **share**, after paragraph (e), the following is inserted:  
“(eb) does not include a fixed-rate foreign equity:”.
- (133) The definition of **share purchase agreement** is replaced by the following: 5  
**“share purchase agreement** is defined in sections CE 7 (Meaning of share purchase agreement) and CZ 1 (Share purchase agreement income before 19 July 1968) for the purposes of sections CE 1 to CE 4 (which relate to employment income) and section EX 38 (Exemption for employee share purchase scheme of grey list company)”.
- (134) In the definition of **share reorganisation**, “held by the person, including the person, who holds attributing interests in the FIF” is replaced by “held by persons, including the person, who hold attributing interests in the FIF”. 15
- (135) After the definition of **shareholder**, the following is inserted:  
**“shareholder base** means, for a life insurer, the base for shareholder base gross income, expenditure, or loss, and to which income of a particular source or nature, and tax credits received are apportioned under **section EY 4** (Apportionment of income of particular source or nature, and of tax credits) 20  
**“shareholder base gross expenditure or loss** means shareholder base gross expenditure or loss described in **section EY 3(2)** (Shareholder base)  
**“shareholder base gross income** means policyholder base gross income described in **section EY 3(1)** (Shareholder base)”.
- (136) The definition of **shares of the same class** is replaced by the following:  
**“shares of the same class** means any 2 or more shares of a company— 30  
**“(a)** that carry—  
**“(i)** the same shareholder decision-making rights; and  
**“(ii)** the same rights, in terms of priority, amount payable per share, and otherwise, to be paid profits distributed by the company and distribu- 35

- tions of assets of the company on a cancellation of its shares:
- “(b) for which either the owner, or the amount paid for the issue, of each share is the same if—
    - “(i) the company gives notice to the Commissioner, in a form approved by the Commissioner, that the company chooses to treat the shares as a separate class; and
    - “(ii) the company can at all times from the time of issue of each share identify and distinguish the share from any other shares in the company”.
- (137) The definition of **starting date** is repealed.
- (138) In the definition of **substituting debenture**, “for the purposes of that section” is omitted.
- (139) After the definition of **supply**, the following is inserted:  
 “**surrender**, for an emissions unit, means the transfer of the emissions unit to an account in the Registry established under the Climate Change Response Act 2002 for the purpose of holding emissions units that account holders have surrendered”.
- (140) After the definition of **surrender**, the following is inserted:  
 “**surrender value** means the amount paid when a life insurance policy is cancelled before it reaches the maturity or expiry date contracted for under the policy, but excluding an amount that is the repayment of unexpired premiums”.
- (141) The definition of **tax pooling account** is replaced by the following:  
 “**tax pooling account** is defined in **section RP 17B** (Tax pooling accounts and their use)”.
- (142) The definition of **tax withheld** is replaced by the following:  
 “**tax withheld** means an amount of tax—  
 “(a) withheld from a PAYE income payment under the PAYE rules to the extent to which it is a tax credit under section LB 1 (Tax credits for PAYE income payments):  
 “(b) withheld and paid to the Commissioner under the RWT and NRWT rules to the extent to which it is a tax credit under section LB 3 or LB 5 (which relate to tax credits for passive income):

- “(c) paid under regulations made under section 225 of the Tax Administration Act 1994”.
- (143) After the definition of **technology**, the following is inserted:  
 “**telecommunications service** means a service, relating to information of any kind including pictures, sound, and data, that is— 5  
 is—  
 “(a) the transmission, emission, or reception of such information in analogue or digital code by a technical system using any equipment, including a cable or satellite and associated equipment, for the transmission through any medium of energy in any form, including electric current or electromagnetic radiation: 10  
 “(b) the transfer or assignment of the right to transmit, emit, or receive such information by a system referred to in **paragraph (a)**: 15  
 “(c) the provision of access to a global network for the transmission, emission, or reception of such information”.
- (144) The definition of **tracking account** is repealed.
- (145) The definition of **tracking associate** is repealed.
- (146) The definition of **UFTC** is repealed. 20
- (147) The definition of **UFTC accounting period** is repealed.
- (148) After the definition of **unlisted**, the following is inserted:  
 “**valuation premiums** is defined in **section EY 28(7)** (Shareholder base other profit: profit participation policies) for the purposes of **section EY 28**”. 25
- (149) After the definition of **valuation premiums**, the following is inserted:  
 “**volunteer** is defined in **section CW 62B** (Voluntary activities) for the purposes of that section”.
- (150) The definition of **widely-held GIF** is replaced by the following: 30  
 “**widely-held GIF** means a group investment fund that meets the requirements of—  
 “(a) **section HM 14(1)** (Minimum number of investors), treating the group investment fund as having 1 investor class comprised of all investors in the fund: 35



- “(b) 1 or more of paragraphs (a) and (c) to (e) of the definition of **public unit trust**, treating the group investment fund as a unit trust”.
- (151) The definition of **widely-held superannuation fund** is replaced by the following: 5  
 “**widely-held superannuation fund** means a superannuation fund that meets the requirements of—  
 “(a) **section HM 14(1)** (Minimum number of investors), treating the superannuation fund as having 1 investor class comprised of all investors in the fund: 10  
 “(b) 1 or more of paragraphs (a) and (c) to (e) of the definition of **public unit trust**, treating the superannuation fund as a unit trust”.
- (152) After the definition of **working day** the following is inserted:  
 “**work-related relocation** is defined in **section CW 17B(4)** (Relocation payments)” 15
- (153) The definition of **zero-rated portfolio investor** is replaced by the following:  
 “**zero-rated investor**, for an investor in an investor class of a PIE, means an investor referred to in **section HM 58** (Prescribed investor rates for certain investors: 0%).” 20
- 409 Meaning of income tax varied**  
 (1) Section YA 2(6) is repealed.  
 (2) **Subsection (1)** applies for the 2009–10 and later income years. 25
- 410 Treatment of qualifying company election tax, FBT, FDP penalty tax, imputation penalty tax, and withdrawal tax**  
 Section YA 3 is repealed.
- 411 Two companies with common control**  
 In section YB 2(6), “This section” is replaced by “Subsection (3)”. 30
- 412 Two companies with common control: 1988 version provisions**  
 After section YB 3(3), the following is inserted:

- “Exception for government-related entities*
- “(3B) This section does not apply to make a company an associated person of another company if the first company is an entity referred to in section YB 2(6).”
- 413 Some definitions** 5  
Section YB 20(2)(d) is replaced by the following:  
“(d) section DT 2 (Arrangement for petroleum exploration expenditure and sale of property):”.
- 414 Table, heading, and sections YB 1 to YB 20 replaced** 10  
(1) Table Y1, the heading before section YB 1, and sections YB 1 to YB 20 are replaced by the following:  
*“Associated persons*
- “YB 1 What this subpart does**
- “Associated person rules and nominee rules*
- “(1) This subpart sets out the rules that— 15  
“(a) define when 2 persons are associated persons; and  
“(b) determine how nominees are treated.
- “Other references*
- “(2) If a rule in this subpart states that 2 persons are associated persons for 1 or more provisions in this Act, a reference in the relevant provision to persons who are associated with each other includes those persons. 20
- “Tests*
- “(3) The tests of association are categorised as follows: 25  
“(a) two companies, *see* **section YB 2**:  
“(b) a company and a person other than a company, *see* **section YB 3**:  
“(c) two relatives, *see* **section YB 4**:  
“(d) a person and a trustee for a relative, *see* **section YB 5**:  
“(e) a trustee and a beneficiary, *see* **section YB 6**: 30  
“(f) trustees with a common settlor, *see* **section YB 7**:  
“(g) a trustee and a settlor, *see* **section YB 8**:  
“(h) a settlor and a beneficiary, *see* **section YB 9**:  
“(i) a trustee and a person with a power of appointment or removal, *see* **section YB 11**: 35

- “(j) a partnership and a partner, *see* **section YB 12** :
- “(k) a partnership and an associate of a partner, *see* **section YB 13**:
- “(l) two persons who are each associated with the same third person, *see* **section YB 14**. 5
- “*Application*
- “(4) The sections in this subpart relating to associated persons apply for the purposes of the whole Act unless a section expressly states otherwise.
- “*Loss-attributing qualifying companies and shareholders* 10
- “(5) A special rule provides that a shareholder in a loss-attributing qualifying company and that LAQC are treated as associated persons for the purposes of section DS 4 (Meaning of film reimbursement scheme), *see* section DS 4(5).
- “*Low-turnover traders* 15
- “(6) A special rule applies for the purposes of subpart EB (Valuation of trading stock (including dealer’s livestock)) to determine when a low-turnover trader is associated with a company, *see* section EB 13(2) (Low-turnover valuation).
- “*Control interests in foreign companies* 20
- “(7) A special rule applies for the purposes of section EX 3 (Control interests: total of direct, indirect, and associated person interests) to determine when a New Zealand resident is associated with a non-resident relative, *see* section EX 4(1) (Limits to requirement to include associated person interests). 25
- “*Supplementary dividend holding companies*
- “(8) A special rule applies for the purposes of section LP 2 (Tax credits for supplementary dividends) to determine when a company is associated with a supplementary dividend holding company, *see* section LP 2(6). 30
- “Defined in this Act: associated person, company, loss-attributing qualifying company, low-turnover trader, New Zealand resident, nominee, non-resident, relative, settlor, shareholder, supplementary dividend holding company, trustee

**“YB 2 Two companies***“Common voting interests*

- “(1) Two companies are associated persons if a group of persons exists whose total voting interests in each company are 50% or more. 5

*“Common market value interests*

- “(2) Two companies are associated persons if—
- “(a) a market value circumstance exists for either company; and
  - “(b) a group of persons exists whose total market value interests in each company are 50% or more. 10

*“Common control by other means*

- “(3) Two companies are associated persons if a group of persons exists who control both companies by any other means.

*“Aggregation rule* 15

- “(4) For the purposes of **subsections (1) to (3)**, if a person (**person A**) and another person (**person B**) are associated under any of **sections YB 4 to YB 14**, person A is treated as holding anything held by person B.

*“Exception for certain government entities* 20

- “(5) **Subsection (3)** does not apply to a company that is—
- “(a) a state enterprise;
  - “(b) A Crown Research Institute;
  - “(c) A Crown health enterprise;
  - “(d) a company that is part of the same group of companies as an entity referred to in any of **paragraphs (a) to (c)**. 25

*“Exception for international tax rules*

- “(6) In the international tax rules, 2 companies are not associated persons if 1, but not both, is a non-resident.

“Defined in this Act: associated person, company, Crown Research Institute, group of companies, group of persons, international tax rules, market value circumstance, market value interest, non-resident, state enterprise, voting interest 30

“**YB 3 Company and person other than company**

“*Application: whole Act other than land provisions*

“(1) **Subsections (2) and (3)** apply for the purposes of the Act other than the land provisions.

“*Company and 25% voting interest holder* 5

“(2) A company and a person other than a company are associated persons if the person has a voting interest in the company of 25% or more.

“*Company and 25% market value interest holder*

“(3) A company and a person other than a company are associated persons if— 10

“(a) a market value circumstance exists for the company; and

“(b) the person has a market value interest in the company of 25% or more. 15

“*Aggregation rule*

“(4) For the purposes of **subsections (2) and (3)**, if a person (**person A**) and another person (**person B**) are associated under any of **sections YB 4 to YB 14**, person A is treated as holding anything held by person B. 20

“*Application: land provisions*

“(5) **Subsections (6) and (7)** apply for the purposes of the land provisions.

“*Voting interests*

“(6) A company and a person other than a company are associated persons if a voting interest in the company of 25% or more is held by— 25

“(a) the person:

“(b) the person’s spouse, civil union partner, or de facto partner: 30

“(c) the person’s infant child:

“(d) the trustee of a trust under which the person, their spouse, their civil union partner, their de facto partner, or their infant child has benefited or is eligible to benefit: 35

“(e) any 2 or more of the persons referred to in **paragraphs (a) to (d)**.

*“Market value interests*

- “(7) A company and a person other than a company are associated persons if—
- “(a) a market value circumstance exists for the company; and 5
  - “(b) a market value interest in the company of 25% or more is held by—
    - “(i) the person: 10
    - “(ii) the person’s spouse, civil union partner, or de facto partner: 10
    - “(iii) the person’s infant child: 10
    - “(iv) the trustee of a trust under which the person, their spouse, their civil union partner, their de facto partner, or their infant child has benefited or is eligible to benefit: 15
    - “(v) any 2 or more of the persons referred to in **sub-paragraphs (i) to (iv)**.

*“Person other than company*

- “(8) In this section, a person other than a company includes a company acting in its capacity as a trustee of a trust. 20

“Defined in this Act: associated person, company, land provisions, market value circumstance, market value interest, trustee, voting interest

**“YB 4 Two relatives***“Degree of relationship*

- “(1) Two persons are associated persons if — 25
- “(a) they are within 2 degrees of blood relationship: 25
  - “(b) they are married, in a civil union, or in a de facto relationship: 25
  - “(c) 1 person is within 2 degrees of blood relationship to the other person’s spouse, civil union partner, or de facto partner. 30

*“Land provisions: blood relationships*

- “(2) For the purposes of the land provisions, **subsection (1)(a) and (c)** does not apply, and persons are associated persons because of a blood relationship only if 1 is the infant child of the other. 35

*“Treatment of adoption*

- “(3) For the purposes of this section, a child by adoption is treated as a natural child.

“Defined in this Act: associated person, land provisions

**“YB 5 Person and trustee for relative** 5

Two persons (**person A** and **person B**) are associated persons if person A is the trustee of a trust under which a person associated under **section YB 4** with person B has benefited or is eligible to benefit.

“Defined in this Act: associated person, trustee 10

**“YB 6 Trustee and beneficiary**

*“Association*

- “(1) A trustee of a trust and a person who has benefited or is eligible to benefit under the trust are associated persons.

*“Land provisions* 15

- “(2) This section does not apply for the purposes of the land provisions.

“Defined in this Act: associated person, land provisions

**“YB 7 Two trustees with common settlor**

A trustee of a trust and a trustee of another trust are associated persons if the same person is a settlor of both trusts. 20

“Defined in this Act: associated person, settlor, trustee

**“YB 8 Trustee and settlor**

A trustee of a trust and a settlor of the trust are associated persons. 25

“Defined in this Act: associated person, settlor, trustee

**“YB 9 Settlor and beneficiary**

*“Association*

- “(1) A settlor of a trust and a person who has benefited or is eligible to benefit under the trust are associated persons. 30

*“Land provisions*

“(2) This section does not apply for the purposes of the land provisions.

“Defined in this Act: associated person, land provisions, settlor, trustee

“**YB 10 Who is a settlor?** 5

For the purposes of **sections YB 7 to YB 9**, **settlor** has the meaning set out in section HC 27 (Who is a settlor?) but does not include a person who provides services to a trust for less than market value.

“Defined in this Act: settlor 10

“**YB 11 Trustee and person with a power of appointment or removal**

A trustee of a trust and a person who has a power of appointment or of removal of the trustee are associated persons.

“Defined in this Act: associated person, trustee 15

“**YB 12 Partnership and partner**

*“Association*

“(1) A partnership and a partner in the partnership are associated persons.

*“Limited partnerships 20*

“(2) **Subsection (1)** does not apply in the case of a limited partnership, and a limited partnership and a limited partner are associated persons only if the limited partner has a partnership share of 25% or more in a right, obligation, or other property, status, or thing of the limited partnership. 25

“Defined in this Act: associated person, limited partner, limited partnership, partnership share

“**YB 13 Partnership and associate of partner**

*“Association*

“(1) A partnership and a person associated with a partner other than under this section are associated persons. 30



*“Limited partnerships*

- “(2) **Subsection (1)** does not apply in the case of a limited partnership, and a limited partnership and a limited partner are associated persons only if the limited partner has a partnership share of 25% or more in a right, obligation, or other property, status, or thing of the limited partnership. 5

“Defined in this Act: associated person, limited partner, limited partnership, partnership share

**“YB 14 Tripartite relationship**

*“Test* 10

- “(1) Two persons (**person A** and **person B**) are associated persons if—

“(a) person B is associated with a third person (**person C**) under any of **sections YB 2 to YB 13**; and

“(b) person C is associated with person A under any of **sections YB 2 to YB 13**. 15

*“Exceptions*

- “(2) **Subsection (1)** does not apply if 2 persons are both associated with a third person under—

“(a) **section YB 2** (which relates to the association of 2 companies): 20

“(b) **section YB 3** (which relates to the association of a company and a person other than a company):

“(c) **section YB 4** (which relates to the association of 2 relatives): 25

“(d) **section YB 12** (which relates to the association of a partner and a partnership):

“(e) **section YB 13** (which relates to the association of a partnership and an associate of a partner).

*“Association for purposes of research and development tax credits* 30

- “(3) **Subsection (1)** does not apply in relation to the association of a company and a person, for the purposes of section LH 1(2) (Who this subpart applies to).

“Defined in this Act: associated person, company, tax credit 35

“**YB 15 Exceptions for employee trusts**

“*Beneficiaries*

“(1) **Section YB 6(1)** does not apply if—

“(a) the trust is only for the benefit of employees of an employer; and 5

“(b) neither the beneficiary nor any person associated with the beneficiary directly or indirectly controls the trust.

“*Non-corporate settlors*

“(2) For a settlor that is not a company, **sections YB 7, YB 8, and YB 9(1)** do not apply if— 10

“(a) the settlor settles property on the terms of the trust only for the benefit of employees of the settlor; and

“(b) neither the settlor nor any person associated with the settlor directly or indirectly controls the trust.

“*Corporate settlors* 15

“(3) For a settlor that is a company, **sections YB 7, YB 8, and YB 9(1)** do not apply if—

“(a) the settlor settles property on the terms of the trust only for the benefit of its employees; and

“(b) none of the following directly or indirectly controls the trust: 20

“(i) the settlor:

“(ii) a person associated with the settlor:

“(iii) an executive of the settlor:

“(iv) a director of the settlor: 25

“(v) a person holding a direct voting interest of 25% or more in the settlor:

“(vi) if a market value circumstance exists for the settlor, a person holding a direct market value interest of 25% or more in the settlor. 30

“Defined in this Act: associated person, company, direct voting interest, employee, employer, market value circumstance, market value interest, settlor”.

(2) **Subsection (1)** applies, for the purposes of—

(a) provisions other than the land provisions, for the 2009–10 and later income years: 35

(b) the land provisions other than section CB 11, for land acquired on or after 1 April 2009:

- (c) section CB 11, for land on which improvements are begun on or after 1 April 2009.

**415 Section YC 1 repealed**

- (1) Section YC 1 is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years. 5

**416 New section YC 18B inserted**

After section YC 18, the following is inserted:

**“YC 18B Corporate reorganisations not affecting economic ownership** 10

*“When subsection (3) applies*

- “(1) Subsection (3)** applies if —

- “(a) a company (the **initial parent**) executes an arrangement described in **subsection (2)** (the **arrangement**); and

- “(b) the initial parent is a limited attribution company that is treated under section YC 11(3) as holding all ownership interests in another company immediately before the beginning of the arrangement’s execution; and 15

- “(c) as a result of the arrangement the ownership of the initial parent is reorganised so that another company (the **new parent**) holds all ownership interests in the initial parent; and 20

- “(d) the new parent continues to hold all ownership interests in the initial parent after end of the execution of the arrangement. 25

*“Description of arrangement*

- “(2) The description of the arrangement for the purposes of subsection (1) is as follows:**

- “(a) as a result of the arrangement, the ownership of the initial parent is reorganised so that the new parent holds all ownership interests in the initial parent: 30

- “(b) the ownership interests in the new parent are all held by those people who held ownership interests in the initial parent immediately before the beginning of the arrangement’s execution. Ownership interests in the new parent that are not held by those people are ignored for the 35

purposes of this paragraph, if the Commissioner decides it is reasonable to ignore those ownership interests, and the interests—

“(i) are for the facilitation of the arrangement only; and 5

“(ii) have a market value that is merely nominal relative to the value of the ownership interests in the new parent held by those people:

“(c) no person holding ownership interests in the new parent receives a dividend, gift, or other benefit as a result of the arrangement’s execution: 10

“(d) as a result of the arrangement, the new parent is, immediately after the end of the arrangement’s execution, a limited attribution company that is treated under section YC 11(3) as holding all ownership interests in the initial parent. 15

*“Loss balance and credit account continuity*

“(3) For the purposes of Part I and subparts OB, OC, and OP (which relate to loss balances and memorandum accounts), starting from when the initial parent is first treated under section YC 11(3) as holding all ownership interests in another company, the new parent is treated as— 20

“(a) existing and having the shareholders it has after the end of the arrangement’s execution:

“(b) holding all ownership interests that the initial parent holds: 25

“(c) holding all ownership interests in the initial parent.

*“Effect of subsection (3)*

“(4) **Subsection (3)** does not prevent a change in shareholders, the holdings of ownership interests, or other circumstances after the end of the arrangement’s execution from having an effect on the application of the continuity provisions after the end of the arrangement’s execution. 30

*“Meaning of ownership interest*

“(5) In this section, **ownership interest** has the same meaning as in section YC 18(6). 35

“Defined in this Act: company, continuity provision, dividend, limited attribution company, ownership interest, shareholder”.

- 417 Residence of natural persons**
- (1) Section YD 1(9) and (10) are repealed.
- (2) After section YD 1(8), the following is added:  
*“Treatment of non-resident seasonal workers*
- “(11) Despite subsection (3), a non-resident seasonal worker is 5  
treated for the duration of their employment under the recognised seasonal employment scheme as a non-resident.”
- (3) In section YD 1, in the list of defined terms, “transitional resident” is omitted.
- (4) In section YD 1, in the list of defined terms, “non-resident seasonal worker” and “recognised seasonal employment scheme” are inserted. 10
- (5) **Subsections (2) and (4)** apply for the 2009–10 and later income years.
- 418 Classes of income treated as having New Zealand source** 15  
In the compare note to section YD 4, “s OE 1(4)” is replaced by “ss FB 2(2), OE 1(4)”.
- 419 Apportionment of income derived partly in New Zealand**
- (1) After section YD 5(1), the following is inserted: 20  
*“Relationship with source rules*
- “(1B) This section does not apply to limit the effect of—  
“(a) any of the source rules in section YD 4 other than those in section YD 4(2) and (3); or  
“(b) the source rules in section YD 4(2) and (3) to the extent to which the income referred to is also income referred 25  
to in any source rule other than those in section YD 4(2) and (3).”
- (2) In section YD 5, in the compare note, “FB 2” is replaced by “FB 2(1A)”.
- 420 General rules for currency conversion** 30
- (1) Section YF 1(1)(c) is replaced by the following:  
“(c) this Act does not contain a specific currency conversion rule that requires the conversion of the amount into New Zealand currency under a method other than those in this section.” 35

- (2) In section YF 1(3), the heading is replaced by “*Alternative use of monthly average rates*”.
- (3) Section YF 1(3)(b) is replaced by the following:  
“(b) a provision in this Act specifically allows it.”
- (4) Section YF 1(4) is repealed. 5
- 421 Schedule 1—Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits**
- (1) In schedule 1, part A, clause 8,—
- (a) in the heading “policyholder income” is replaced by “schedular policyholder base income”: 10
- (b) in the words after the heading, “policyholder income” is replaced by “schedular policyholder base income”.
- (2) In schedule 1, part E, the list of sections is replaced by “CB 28, CD 53, CS 1, EK 8, EK 12, EK 23, EX 20, EX 50, EY 43, FE 22, FM 28, HA 15, HA 24, HC 22, HC 34, HF 1, HL 29, LC 1, LC 2, LE 2, LJ 5, LP 8, LP 10, OA 18, OB 19, OB 42, OB 46, OB 69, OB 73, OB 75, OB 78, OB 80, OC 36, OC 38, OE 7, OE 8, OP 100, OP 102, RD 50, RD 51, RD 66, RD 67, RD 69, RD 70, RD 72, RE 11–RE 19, RF 9, RF 12, RM 21, YA 1.” 15 20
- (3) **Subsection (1)** applies for income years beginning on and after 1 April 2009.
- (4) **Subsection (2)** applies for the 2009–10 and later income years.
- 422 Schedule 2—Basic tax rates for PAYE income payments** 25
- (1) In schedule 2, part A, the following is inserted after clause 7:  
“8 If an employee has notified their employer that the employee’s tax code is ‘NSW’ under section 24B(3) of the Tax Administration Act 1994, the basic tax rate amount for a payment for employment as a non-resident seasonal worker is set by applying the rate of 0.19 for each dollar of the payment.” 30
- (2) **Subsection (1)** applies for the 2009–10 and later income years.
- 423 Schedule 13—Depreciable land improvements**
- (1) In schedule 13, after item 16, the following is added: 35

- 17 pipes and conduits
- (2) In schedule 13, after **item 17**, the following is added:
- 18 purpose-built surfaces for outdoor sports grounds
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years.
- 424 Schedule 21—Expenditure and activities related to research and development** 5
- (1) Schedule 21, part A, clause 8 is replaced by the following:  
 “8 Expenditure on materials to be processed or transformed for the purposes of testing or trialling as part of the research and development activities.”
- (2) In schedule 21, part B, clause 7 is replaced by the following: 10  
 “7 Expenditure or amount of depreciation loss incurred in producing materials or items (other than a trial model or preliminary version of a product or plant) for the purposes of testing or trialling as part of the research and development activities to the extent to which it is less than or equal to— 15  
 “(a) the sale proceeds of the materials or items sold other than to an associated person:  
 “(b) the market value of the materials or items not sold or sold to an associated person.”
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years. 20
- 425 Schedule 24—International tax rules: grey list countries**
- (1) In schedule 24, the shoulder reference is replaced by the following: “ss DZ 1, YA 1”.
- (2) **Subsection (1)** applies for the 2009–10 and later income years. 25
- 426 Schedule 27—Countries and types of income with unrecognised tax**
- (1) In schedule 27, the shoulder reference is replaced by the following: “ss LJ 1, LK 2”. 30

- (2) **Subsection (1)** applies for the 2009–10 and later income years.

**427 Schedule 32—Recipients of charitable or other public benefit gifts**

- (1) In schedule 32, the following is omitted: “Bright Hope International Trust” 5
- (2) In schedule 32, the following are inserted: “Educational Aid for International Development Trust Board”, “Global Hope”, “Ingwavuma Orphan Trust Fund of New Zealand”, “Kyrgyzstan New Zealand Rural Trust”, “L Women of Africa Fund”, “Partners Relief and Development NZ”, “Tender Trust”, “The Band Aid Box”, “The Destitute Children’s Home, Pokhara, Charitable Trust”, “The Palestine Children’s Relief Fund Charitable Trust”, “Triyog Himalaya Trust”, and “UNHCR (United Nations High Commissioner for Refugees)”. 10 15
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years.

**428 Schedule 49—Enactments amended**

- In the amendments to the Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49),— 20
- (a) the second item amending section 204(1)(b) relating to section HG 16 of the Income Tax Act 2004 is omitted:
- (b) in the item amending schedule 4, clause 1(c), “an amount of tax, amount of tax” is replaced by “an amount of tax, which amount”. 25

**429 Schedule 50—Amendments to Tax Administration Act 1994**

- (1) The item amending section 3(4)(b) is repealed.
- (2) The item inserting the new Part 2B is repealed.
- (3) The item amending section 125(d) is repealed. 30

**430 Schedule 52—Comparative tables of old and rewritten provisions**

- (1) In schedule 52, part A, the entry for “FB 2(1), (2)” is replaced by—



- (a) an entry for “FB 2(1), (1A)” having “YD 5” in the second column:
- (b) an entry for “FB 2(2)” having “YD 4” in the second column.
- (2) In schedule 52, part A, the entry for “HH 1(1)-(4), (8), (10)” is replaced by—
  - (a) an entry for “HH 1(1)” having “YB 21” in the second column:
  - (b) an entry for “HH 1(2)-(4), (8), (10)” having “HC 28” in the second column.
- (3) In schedule 52, part B, in the second column of the entry for YB 21, “OD 9” is replaced by “HH 1(1), OD 9”.
- (4) In schedule 52, part B, in the second column of the entry for YD 4, “OE 4(1)” is replaced by “FB 2(2)”.
- (5) In schedule 52, part B, in the second column of the entry for YD 5, “FB 2” is replaced by “FB 2(1A)”.

**431 Consequential amendments: associated person and list of defined terms**

In the sections listed in **schedule 1**, the list of defined terms is amended in the manner indicated in the schedule. 20

**Part 2  
Amendments to Tax Administration Act  
1994**

**432 Tax Administration Act 1994**

This Part amends the Tax Administration Act 1994. 25

**433 Interpretation**

- (1) This section amends section 3(1).
- (2) After the definition of **disclosure notice**, the following is inserted:
 

“**discovery obligation** means an order of a court or Taxation Review Authority, or notice of discovery in proceedings before a court or Authority, requiring the disclosure of information to the Commissioner in relation to proceedings before the court or Authority”.

- (3) In section 3(1), the definition of **response period**, is replaced by the following:  
“**response period** is defined in **section 89AB**”.
- (4) In the definition of **tax**, paragraphs (a)(iii)(A) and (d)(iii)(A) are repealed. 5
- (5) **Subsection (2)** applies for challenges commenced on or after the date on which this Act receives the Royal assent.
- (6) **Subsection (3)** applies for the 2008–09 and later income years.
- (7) **Subsection (4)** applies for the 2009–10 and later income 10 years.

#### 434 Construction of certain provisions

- (1) Section 4A(2)(a) is repealed.
- (2) In section 4A(2)(c), “paragraph (a) or” is omitted.
- (3) In section 4A(2)(d), “paragraph (a) or” is omitted. 15
- (4) In section 4A(2)(d), “unpaid tax.” is replaced by “unpaid tax:” and the following is added:  
“(e) Despite paragraph (d), and only for the purposes of Part 10B, the amount of tax deemed to be withheld referred to in paragraph (b) is treated as tax paid although it may not have been paid to the Commissioner by the due date.” 20
- (5) In section 4A(4), in the words before paragraph (a), “RF 13, RG 3, or RG 6” is replaced by “or RF 13”.
- (6) **Subsections (1) to (3) and (5)** apply for the 2009–10 and 25 later income years.

#### 435 New Part 2B

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

**“Part 2B**

**“Intermediaries for PAYE, provisional tax, and resident passive income**

**“PAYE intermediaries**

- “15C PAYE intermediaries and listed PAYE intermediaries** 5
- “(1) A person who meets the requirements of **section 15F** may apply under **section 15D** to the Commissioner for approval to become a PAYE intermediary.
- “(2) A PAYE intermediary may apply under **section 15G** to the Commissioner to become a listed PAYE intermediary. To 10  
make an application, the PAYE intermediary must meet, on a continuing basis, the requirements for a PAYE intermediary.
- “Compare: 2004 No 35 ss NBA 1, NBB 3
- “15D Application for approval as PAYE intermediary**
- “(1) In order to become a PAYE intermediary, a person must— 15
- “(a) meet the requirements of **section 15F**; and
- “(b) have established a trust account that meets the requirements of section RP 6 of the Income Tax Act 2007; and
- “(c) operate systems to protect the personal information and payment details that are obtained in the course of run- 20  
ning the account.
- “(2) The Commissioner may approve an application if the Commissioner is satisfied that the applicant—
- “(a) will comply with the PAYE rules and the ESCT rules if they assume an employer’s obligations under those 25  
rules; and
- “(b) has systems to allow them to make payments and provide information in the format required by the Commissioner.
- “(3) The Commissioner may approve a person as a PAYE intermediary for a set period. 30
- “Compare: 2004 No 35 s NBA 2(1)(a)–(c), (2), (3)
- “15E Revocation of approval**
- “(1) The Commissioner may revoke an approval given under **section 15D** if the person— 35
- “(a) does not comply with the PAYE rules:

- “(b) does not comply with the ESCT rules when they have assumed an employer’s obligations under those rules:
- “(c) is no longer fit to be a PAYE intermediary because they do not meet the requirements of **section 15F**:
- “(d) when they are not a natural person, has been put into liquidation or receivership: 5
- “(e) when they are a company, is no longer registered in New Zealand.
- “(2) If the Commissioner revokes an approval under **subsection (1)(b)**, the Commissioner must notify the person, and any employer for whom the person is a PAYE intermediary, of the revocation and its effective date. The effective date must not be less than 14 days from the date of notification. 10
- “(3) A decision by the Commissioner under this section is not open to challenge. 15
- “Compare: 2004 No 35 s NBA 2(4)

**“15F Fitness of applicants**

- “(1) This section applies for the purposes of **section 15D** to the following:
- “(a) an applicant who is a natural person or a corporation sole: 20
- “(b) each member of an applicant that is an unincorporated body:
- “(c) an officer of an applicant that is a body corporate:
- “(d) a principal of an applicant. 25
- “(2) The applicant, member, officer, or principal, as applicable,—
- “(a) must not be a discharged or undischarged bankrupt; or
- “(b) must not have been convicted of an offence involving fraud; or
- “(c) must be eligible to be a company director. 30
- “Compare: 2004 No 35 s NBA 2(1)(c)

**“15G Application for approval as listed PAYE intermediary**

- “(1) In order to become a listed PAYE intermediary, a PAYE intermediary must—
- “(a) meet the requirements of **section 15D**; and 35
- “(b) have completed and filed the returns of income required from them; and

- “(c) paid the required amounts of tax due from them.
- “(2) A PAYE intermediary is a listed PAYE intermediary only for a period that is no more than the period for which they have been approved as a PAYE intermediary.
- “(3) On approval of an application under this section and before acting as a listed PAYE intermediary for an employer, the listed PAYE intermediary must inform an employer who contracts their services as a listed PAYE intermediary that the Commissioner does not guarantee payment by the intermediary to an employee of the employer, or the performance of a service provided by them.
- “(4) The Commissioner may approve a PAYE intermediary as a listed PAYE intermediary for a set period.  
 “Compare: 2004 No 35 s NBB 2
- “**15H Grounds for revocation of listing** 15  
 The Commissioner may revoke the listing of a listed PAYE intermediary if—
- “(a) an approval of the person as PAYE intermediary is revoked:
- “(b) the person no longer meets the requirements of **section 15F**: 20
- “(c) the person does not provide a subsidy claim form by the date and in the format required by the Commissioner:
- “(d) the person does not comply with an obligation of a listed PAYE intermediary: 25
- “(e) the Commissioner considers revocation is necessary in order to protect the integrity of the tax system.  
 “Compare: 2004 No 35 s NBB 4(1)
- “**15I Procedure for revocation of listing**
- “(1) The Commissioner must notify a listed PAYE intermediary of an intended revocation under **section 15H**, and must provide reasons for the intended revocation. 30
- “(2) If the listed PAYE intermediary who is notified by the Commissioner under **subsection (1)** does not resolve the matters set out in the notice to the satisfaction of the Commissioner 35

within 30 days of the date on which they are notified, the Commissioner may give 14 days notice of revocation.

“(3) At the end of the 14-day notice period under **subsection (2)**, the listing of the listed PAYE intermediary is revoked.

“(4) A decision by the Commissioner under this section is not open to challenge under Part 8A. 5

“Compare: 2004 No 35 s NBB 4(2)–(5)

“**15J Employers’ arrangements with PAYE intermediaries**

“(1) An employer who wishes to enter an arrangement with a PAYE intermediary must notify the Commissioner of the proposed arrangement, providing— 10

“(a) the name of the PAYE intermediary:

“(b) the period for which the PAYE intermediary is to act for the employer:

“(c) the bank account number of the PAYE intermediary into which the employer will deposit amounts: 15

“(d) whether the proposed arrangement requires the PAYE intermediary to collect amounts under the ESCT rules.

“(2) On approval of the arrangement, the Commissioner must notify the employer, and the approval applies to pay periods that begin on or after 14 days after the date on which the notice is given. 20

“(3) An employer or a PAYE intermediary may end the arrangement by notifying the other party and the Commissioner. The notice must state the date that is after the notification for the end of the arrangement. 25

“(4) An employer or a listed PAYE intermediary may end an arrangement by notifying the other party and the Commissioner. The notice must state the date on which the arrangement is to end that must begin on or after 14 days after the date on which the notice is given. 30

“Compare: 2004 No 35 ss NBA 3, NBA 8, NBB 7

**“15K Privacy requirements**

The PAYE intermediary must operate and maintain systems to protect the personal information and payment details that they acquire in running the systems.

“Compare: 2004 No 35 s NBA 5(3)

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**“15L Amended monthly schedules**

The PAYE intermediary may make an amended monthly schedule relating to the employee and a pay period, and is then responsible for the accuracy of the amendments.

“Compare: 2004 No 35 s NBA 5(4)

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**“15M Subsidy claim forms**

“(1) A listed PAYE intermediary must file a subsidy claim form within 1 month of the date of filing an employer monthly schedule to which the form relates.

“(2) The Commissioner may amend the details in a subsidy claim form to correct an error. The amendment must be made within 2 years of receiving the form.

15

“(3) For the purposes of **subsection (2)**, the Commissioner must give the listed PAYE intermediary 14 days notice of a proposed amendment.

20

“(4) For the purposes of section 22, a listed PAYE intermediary must keep the necessary records to verify the information in a subsidy claim form.

“Compare: 2004 No 35 ss NBB 3(2), NBB 5(1)–(3)

***“Tax pooling intermediaries***

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**“15N Establishing tax pooling accounts**

A person who meets the requirements of **section 15Q** may apply under **section 15P** to the Commissioner to establish a tax pooling account.

“Compare: 2004 No 35 s MBA 3(1)

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**“15O Role of Commissioner**

“(1) The Commissioner is not required to oversee or audit the operation of a tax pooling account.

- “(2) The Commissioner is not liable for any loss related to the operation of a tax pooling account through—
  - “(a) the failure of a tax pooling intermediary to deposit in a tax pooling account an amount paid to them by a taxpayer: 5
  - “(b) the unauthorised withdrawal by a tax pooling intermediary from a tax pooling account:
  - “(c) the failure of a tax pooling intermediary to ask for a transfer of funds from a tax pooling account to a taxpayer’s tax account with the Commissioner. 10“Compare: 2004 No 35 s MBA 4(5), (6)
  
- “**15P Applications to establish tax pooling accounts**
- “(1) In order to establish and maintain a tax pooling account, an intermediary must—
  - “(a) hold the account in their name; and 15
  - “(b) operate systems to protect the personal information and payment details that are obtained in the course of running the tax pooling account; and
  - “(c) record the balance in the tax pooling account contributed by each taxpayer. 20
- “(2) A tax pooling account continues until it is wound up under **section 15S**.  
“Compare: 2004 No 35 s MBA 4
  
- “**15Q Fitness of applicants**
- “(1) This section applies for the purposes of **section 15P** to— 25
  - “(a) an applicant who is a natural person; and
  - “(b) an officer of an applicant who is not a natural person; and
  - “(c) a principal of an applicant.
- “(2) The applicant— 30
  - “(a) must not be a discharged or undischarged bankrupt; or
  - “(b) must not have been convicted of an offence involving dishonesty; or
  - “(c) must be eligible to be a company director.“Compare: 2004 No 35 s MBA 3(d) 35



**“15R Requirements for applications to establish tax pooling accounts**

- “(1) An application to establish a tax pooling account must contain—
  - “(a) the applicant’s full name, address, and tax file number; 5  
and
  - “(b) a statement that the applicant—
    - “(i) will operate systems that allow them to meet the requirements set out in **section 15P(1)**; and
    - “(ii) will maintain and operate the systems to meet those requirements; and 10
  - “(c) confirmation that the applicant will establish a trust account into which they agree to pay amounts received in their role as intermediary; and
  - “(d) an undertaking that, before acting as intermediary for a taxpayer, the applicant will inform the taxpayer of the following matters:
    - “(i) the operation of the tax pooling account is not subject to the Commissioner’s oversight or audit:
    - “(ii) the Commissioner has no liability for any loss 20  
related to the tax pooling account:
    - “(iii) the applicant is fit to operate the tax pooling account as required by **section 15Q**:
    - “(iv) the applicant has met the requirements set out in **paragraphs (a) to (c)**. 25
- “(2) The Commissioner may approve an application to establish a tax pooling account if the Commissioner is satisfied that the applicant—
  - “(a) is able to operate the account correctly; and
  - “(b) has systems to allow them to make payments and provide information in the format required by the Commissioner. 30

“Compare: 2004 No 35 s MBA 3

**“15S Winding up tax pooling accounts**

- “(1) An intermediary may wind up their tax pooling account at any time. 35
- “(2) The Commissioner may require an intermediary to wind up their tax pooling account if—

- “(a) the intermediary’s actions are preventing a taxpayer from effectively managing their liability to pay provisional tax and use of money interest; or
- “(b) the intermediary is or has breached their obligations under this Part; or 5
- “(c) the tax pooling account is in deficit; or
- “(d) fewer than 100 taxpayers are, or are likely to be, making deposits in the tax pooling account; or
- “(e) the intermediary does not meet the requirements of **section 15P**; or 10
- “(f) when they are not a natural person, the intermediary has been put into liquidation or receivership.
- “(3) For the purposes of **subsection (2)**,—
- “(a) the Commissioner may require the winding up immediately or may set another date for the winding up: 15
- “(b) the Commissioner must give 30 days’ notice to the intermediary of any intended action using **subsection (2)(d)**.
- “(4) On the winding up of a tax pooling account, the Commissioner may refund the balance of the account to the former holder of the account, or may apply to a court for directions for the disposal of the balance of the account. 20
- “Compare: 2004 No 35 s MBA 8

*“RWT proxies*

- “**15T RWT proxies** 25
- “(1) If the requirements in **subsection (2)** are met, a person may choose to become an RWT proxy for a person who pays resident passive income that consists of a dividend by notifying the Commissioner.
- “(2) The requirements are that— 30
- “(a) the person paying the resident passive income is a non-resident unit trust; and
- “(b) the person receiving the resident passive income is a natural person or a trustee of a qualifying trust who has asked the person referred to in **subsection (1)** to act as an RWT proxy in relation to the payment; and 35
- “(c) the person has agreed to act as the RWT proxy; and

- “(d) the payment of resident passive income is made while the notice is effective.
- “(3) For the purposes of **subsection (1)**, the notification to the Commissioner must contain the person’s election, their name, postal address, and the date from which the election applies. 5
- “(4) The RWT proxy may cancel their election by notifying the Commissioner. The election stops applying from the later of—
- “(a) the date set out in the notice of cancellation:
- “(b) the date on which the Commissioner receives a notice of cancellation. 10
- “Compare: 2004 No 35 s NF 2AA”.
- (2) **Subsection (1)** applies for the tax on income derived in the 2008–09 or later income years.
- 436 Information to be furnished on request of Commissioner**
- (1) In section 17(1C)(a)(ii), “paragraph (b)” is replaced by “paragraph (a)”. 15
- (2) Section 17(1C)(a) is replaced by the following:
- “(a) in determining whether a non-resident is controlled by a New Zealand resident, the New Zealand resident is treated as holding anything held by a person who is resident in New Zealand, or is a controlled foreign company, and is associated with the New Zealand resident; and” 20
- 437 No requirement to disclose tax advice document**
- (1) In section 20B(1), “or under a discovery obligation” is inserted after “under 1 or more of sections 16 to 19”. 25
- (2) **Subsection (1)** applies for challenges commenced on or after the date on which this Act receives the Royal assent.
- 438 Treatment of book or document**
- (1) In section 20C(1), “request for information” is replaced by “request for, or discovery obligation for disclosure of, information”. 30
- (2) Section 20C(2)(a) is replaced by the following:
- “(a) from the time of the request for, or discovery obligation for disclosure of, information.” 35

- (3) Section 20C(3)(a) is replaced by the following:
- “(a) the book or document is ruled not to be a tax advice document for the person by—
- “(i) the District Court:
- “(ii) a court or Taxation Review Authority, if the claim 5  
is made in response to a discovery obligation in proceedings before the court or Authority.”
- (4) **Subsections (1) to (3)** apply for challenges commenced on or after the date on which this Act receives the Royal assent.
- 439 Claim that book or document is tax advice document 10**
- (1) In section 20D(4)(d), “information.” is replaced by “information.” and the following is added:
- “(e) if the requirement to disclose information is under a discovery obligation, by the date by which the discovery obligation requires the disclosure of information.” 15
- (2) **Subsection (1)** applies for challenges commenced on or after the date on which this Act receives the Royal assent.
- 440 Person must disclose tax contextual information from tax advice document**
- (1) In section 20F(2)(d), “information.” is replaced by “information.” and the following is added: 20
- “(e) if the requirement to disclose information is under a discovery obligation, by the date by which the discovery obligation requires the disclosure of information.”
- (2) In section 20F(5), the words before paragraph (a) are replaced 25  
by the following:
- “(5) The Commissioner may apply to a District Court Judge, or to a court or Taxation Review Authority in relation to a tax advisor making a statutory declaration considered in proceedings before the court or Authority, that a tax advisor be barred from 30  
making statutory declarations under this section, if the tax advisor is convicted of an offence under—”.
- (3) After section 20F(5), the following is added:
- “(6) An application under subsection (5) may be made in the course 35  
of proceedings before a court or Taxation Review Authority.”

- (4) **Subsections (1) to (3)** apply for challenges commenced on or after the date on which this Act receives the Royal assent.

**441 Challenge to claim that book or document is tax advice document**

- (1) In section 20G(1), in the words before paragraph (a), “District Court Judge” is replaced by “District Court Judge, or to the court or Taxation Review Authority hearing the proceedings giving rise to the claim,”. 5
- (2) Section 20G(1)(b) is replaced by the following:  
 “(b) information provided or withheld by the person is tax contextual information in relation to the book or document.”. 10
- (3) In section 20G(2), in the words before paragraph (a), “District Court Judge” is replaced by “District Court Judge, court, or Taxation Review Authority” in both places where it appears. 15
- (4) After section 20G(3), the following is added:  
 “(4) An application under this section may be made in the course of proceedings before a court or Taxation Review Authority.”
- (5) **Subsections (1) to (4)** apply for challenges commenced on or after the date on which this Act receives the Royal assent. 20

**442 Keeping of business and other records**

- (1) After section 22(2)(ec), the following is inserted:  
 “(ed) is an employer to whom **section RD 13B** of the Income Tax Act 2007 applies in relation to the treatment of a tax credit for a payroll donation.”. 25
- (2) Section 22(2)(j) is repealed.
- (3) After section 22(2)(kd), the following is inserted:  
 “(ke) the transfer under **section 24Q** of an amount of an employee’s payroll donation to the recipient of the donation.”. 30
- (4) **Subsection (2)** applies for the 2009–10 and later income years.

**443 Records to be kept by employer or PAYE intermediary**

- In section 24(1), “withheld from it,” is replaced by “withheld from it, and the amount of any payroll donation”. 35

**444 PAYE tax codes**

- (1) In section 24B(3), the following is inserted after paragraph (g):  
“(gb) ‘NSW’ for salary or wages for employment as a non-resident seasonal worker.”
- (2) **Subsection (1)** applies for the 2009–10 and later income 5  
years.

**445 Special tax code certificates**

- (1) After section 24F(5), the following is inserted:  
“(5B) This section does not apply to an employee who is a non-resident seasonal worker.” 10
- (2) **Subsection (1)** applies for the 2009–10 and later income  
years.

**446 Variation of requirements**

In section 24P, “sections 24B, 24H, and 24I” is replaced by  
“sections 24B, 24H, 24I, and 24L”. 15

**447 New heading and section 24Q inserted**

After section 24P, the following is inserted:

***Payroll donations*****“24Q Transfer of payroll donations by employers**

- “(1) This section applies for a pay period when a person asks their 20  
employer to transfer an amount of a payroll donation from the  
person’s PAYE income payment to an entity described in sec-  
tion LD 3(2) of the Income Tax Act 2007 or listed in schedule  
32 of that Act.
- “(2) The employer or PAYE intermediary must transfer the amount 25  
to the recipient of the donation within 3 months from the end  
of the pay period.
- “(3) Before making the transfer referred to in **subsection (2)** the  
employer must also ensure that the recipient is an entity de-  
scribed in section LD 3(2) or listed in schedule 32.” 30

**448 Section 28B replaced**

- (1) Section 28B is replaced by the following:

**“28B Notification of investors’ tax rates**

A New Zealand resident who is an investor in a multi-rate PIE must provide their tax file number to the PIE within 1 month of the date of a request from the PIE for the number.”

- (2) **Subsection (1)** applies for the 2009–10 and later income 5 years.

**449 Portfolio tax rate entity to give statement to investors and request information**

- (1) Section 31B(1) is repealed.  
 (2) In section 31B(2B), “subsection (1) or (2)” is replaced by “sub- 10 section (2)”.  
 (3) In section 31B(3), “subsections (1) and (2) do not apply” are replaced by “subsection (2) does not apply”.

**450 Section 31B replaced**

- (1) Section 31B is replaced by the following: 15

**“31B Notification requirements for PIEs**

- “(1) An entity choosing under **section HM 70** of the Income Tax Act 2007 to become a PIE must notify the Commissioner of the election. The notice must be in the prescribed electronic 20 format.  
 “(2) A PIE choosing under **section HM 29** of that Act to cancel PIE status must notify the Commissioner of the election. The notice must be in the prescribed electronic format.

**“31C Notification requirements for multi-rate PIEs**

- “(1) This section sets out the notice requirements for a multi-rate 25 PIE in relation to its investors or a proxy for investors in a multi-rate PIE. The notices must contain the information that the Commissioner considers relevant for a calculation period.  
 “(2) For an exiting investor and a PIE that calculates and pays tax using the quarterly calculation option under **section HM 43** of the Income Tax Act 2007, the notice must be provided for each 30 calculation period in which the exit period falls. The notice must be given by the end of the month following the quarter in which the exit period ends.

- “(3) For a zero-rated investor and a PIE that calculates and pays tax using the exit calculation or quarterly calculation options under **section HM 42 or HM 43** of that Act, other than an exiting investor that is zero-rated under **section HM 60**, the notice must be provided— 5
- “(a) for each quarter in which the exit period falls, if the calculation period is more than 1 day; and
- “(b) for each tax year in which the exit period falls, if the calculation period is a day.
- “(4) For an investor to whom **subsection (3)** applies, the PIE must provide the notice by the end of the 1-month period that starts after the end of the period to which the notice relates. 10
- “(5) For an investor to whom **subsection (2) or (3)** does not apply, the PIE must notify the investor of the relevant information by the 30 June after the end of the tax year or, if the PIE’s corresponding income year ends after the tax year, by the end of the second month after the month in which that corresponding income year ends. 15
- “(6) The PIE must, at least once in a tax year, ask an investor to provide their prescribed investor rate under **sections HM 56 to HM 58** of that Act. 20
- “(7) The PIE must ask a person when they become an investor to provide their tax file number to the PIE. For each investor for whom no tax file number is held, the PIE must, at least once in a tax year, ask the investor to provide their tax file number.” 25
- (2) **Subsection (1)** applies for the 2009–10 and later income years.

#### 451 Applications for RWT exemption certificates

Section 32E(2)(i)(ii) is replaced by the following:

- “(ii) whose annual gross income for the tax year for which they last filed a return of income is more than \$2,000,000.” 30

#### 452 Section 32N repealed

- (1) Section 32N is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years. 35



**453 Returns of income**

- (1) Section 33(1) is replaced by the following:
  - “(1) In each tax year, a taxpayer, other than a taxpayer to whom section 33A applies or a multi-rate PIE that calculates income tax using the exit calculation or quarterly options under **sections HM 42 and HM 43** of the Income Tax Act 2007, must furnish to the Commissioner a return of income in the prescribed form for the preceding tax year, together with such other particulars as may be prescribed.” 5
- (2) Section 33(1C) is replaced by the following: 10
  - “(1C) A multi-rate PIE or a proxy for an investor in the entity that calculates income tax using the exit calculation or quarterly calculation options under **sections HM 42 and HM 43** of that Act must provide returns for which the entity is responsible under **section 57B**.” 15
- (3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.

**454 Annual returns of income not required**

- (1) After section 33A(1)(b)(ixa), the following is inserted:
  - “(ixb) salary or wages from employment as a non-resident seasonal worker if the employee has used the ‘NSW’ tax code; and”.
- (2) After **section 33A(1)(b)(ixb)**, the following is inserted:
  - “(ixc) salary or wages from employment as a non-resident seasonal worker; and”.
- (3) In section 33A(1)(i), “Student Loan Scheme Act 1992.” is replaced by “Student Loan Scheme Act 1992; and” and the following is added:
  - “(j) is a non-resident seasonal worker.”
- (4) Section 33A(2)(a) is replaced by the following: 30
  - “(a) is a non-resident other than a non-resident seasonal worker employed under the recognised seasonal employment scheme; or”.
- (5) **Subsections (1) and (4)** apply for the 2009–10 and later income years. 35
- (6) **Subsection (2)** applies for the 2008–09 income year.

- (7) **Subsection (3)** applies for the 2008–09 and later income years.

**455 Electronic format of employer monthly schedule and PAYE income payment form**

Section 36A(2B) is replaced by the following: 5

- “(2B) An employer or PAYE intermediary to whom section RD 22(1) of the Income Tax Act 2007 applies must provide their employer monthly schedules and PAYE income payment forms to the Commissioner by electronic means and in the required format. But the requirement to file electronically does not apply if the employer— 10
- “(a) is not a new employer and has gross amounts of tax for PAYE income payments and employer’s superannuation contributions payable for the preceding tax year of less than \$100,000: 15
- “(b) is a new employer but only in relation to the months in the income year for which the total amounts of tax for PAYE income payments and employer’s superannuation contributions remain under the \$100,000 threshold: 20
- “(c) is authorised under section 36B to provide the schedule and form in a format other than an electronic format.”

**456 Section 36AB replaced**

- (1) Section 36AB is replaced by the following:

“**36AB Electronic return requirements for multi-rate PIEs** 25  
The Commissioner must prescribe 1 or more electronic formats in which a return required under **section 57B** must be provided by a multi-rate PIE or a proxy for an investor in the PIE. The Commissioner may specify conditions relating to the format, either general or in a particular case.” 30

- (2) **Subsection (1)** applies for the 2009–10 and later income years

**457 Returns to annual balance date**

- (1) Section 38(1B) is replaced by the following:

“(1B) A multi-rate PIE that does not calculate and pay tax using the provisional tax calculation option under **section HM 44** of 35

the Income Tax Act 2007 must not make an election under subsection (1).”

- (2) **Subsection (1)** applies for the 2009–10 and later income years.

**458 Returns by persons with tax credits for housekeeping payments and charitable or other public benefit gifts** 5

- (1) Section 41A(1) is replaced by the following:
  - “(1) A person who has a tax credit under section LC 7 or sections LD 1 to LD 3 of the Income Tax Act 2007 may apply to the Commissioner for 1 or more refunds.” 10
- (2) Section 41A(3) is replaced by the following:
  - “(3) The sum of the housekeeping payments under section LC 7 of that Act and charitable or other public benefit gifts under sections LD 1 to LD 3 of that Act made by a person must be no more than their taxable income in the tax year in which the payment or gift, or both, is made.” 15
- (3) Section 41A(5)(b) is replaced by the following:
  - “(b) the amount of a charitable or other public benefit gift to which sections LD 1 to LD 3 of that Act apply.”
- (4) Section 41A(10) is replaced by the following: 20
  - “(10) When the Commissioner has considered an application, the Commissioner must notify the person of the amount of the tax credit under section LC 7 or sections LD 1 to LD 3 of that Act and of the amount of refund allowed.”

**459 Return by person claiming rebate on redundancy payment** 25

- (1) The section heading to section 41B is replaced by “**Return by person applying for tax credit on redundancy payment**”.
- (2) Section 41B(1) is replaced by the following:
  - “(1) A person who has a tax credit under section ML 2 of the Income Tax Act 2007 may apply to the Commissioner for a refund.” 30
- (3) Section 41B(4) is replaced by the following:
  - “(4) When the Commissioner has considered an application for a refund, the Commissioner must, by notice, inform the taxpayer of the amount of the tax credit the taxpayer has under sections 35

ML 1 to ML 3 of the Income Tax Act 2007 and the amount of refund allowed.”

**460 Portfolio tax rate entities and portfolio investor proxies to make returns, file annual reconciliation statement**

- (1) After section 57B(3), the following is inserted: 5  
 “(3B) A person who is required to perform responsibilities under subsection (3)(a) for a portfolio investor exit period must perform them 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 10  
 “(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.” 15  
 (2) In section 57B(6)(c), “by the end of the second month” is replaced by “by the end of the third month”.  
 (3) Section 57B(7) is repealed. 20

**461 Section 57B replaced**

- (1) Section 57B is replaced by the following:  
**“57B Return requirements for multi-rate PIEs**  
 “(1) This section sets out the return requirements for a multi-rate PIE or a proxy for an investor in the PIE. 25  
 “(2) The responsibilities for each period are—  
 “(a) to file a return in the prescribed form showing—  
 “(i) the amount of the tax liability of the entity for the period; and  
 “(ii) further information that the Commissioner considers relevant; and 30  
 “(b) to pay an amount of tax equal to the PIE’s tax liability for the investor for the period.  
 “(3) If the PIE does not calculate and pay its tax liability using the exit calculation or provisional tax calculation option in **section HM 42 or HM 44** of the Income Tax Act 2007 for a tax 35

- year, the PIE must carry out their responsibilities for a calculation period in the tax year by the end of the month that follows the month in which the calculation period ends.
- “(4) If the PIE calculates and pays its income tax liability using the provisional tax calculation option under **section HM 44** of that Act for a tax year, the PIE must carry out their responsibilities for the tax year as a person with a provisional tax liability under the provisional tax rules. 5
- “(5) If the PIE calculates and pays its income tax liability using the exit calculation option under **section HM 42** of that Act for a tax year, the PIE must carry out their responsibilities— 10
- “(a) for an exiting investor whose exit period falls in the tax year, for the exit period by—
- “(i) the end of the month that follows the month in which the exit period ends: 15
- “(ii) 15 January after the end of the exit period, if the period ends in November; and
- “(b) for an investor who holds an investor interest at the end of the tax year, for the tax year by the end of the month after the end of the tax year. 20
- “(6) If the PIE voluntarily makes a payment of income tax under **section HM 45** of that Act for a period in a tax year that is not included in a return required under **subsection (5)**, the PIE must file a return in the prescribed form as described in **subsection (2)**— 25
- “(a) the end of the month that follows the month in which the period ends:
- “(b) 15 January after the end of the period, if the period ends in November.
- “(7) For a tax year, the PIE must file a return in the prescribed form in relation to information prescribed by the Commissioner— 30
- “(a) by the 30 June after the end of the tax year if—
- “(i) the PIE has a corresponding income year that does not end after the end of the tax year; and
- “(ii) the PIE continues to meet the requirements for PIE status at the end of the corresponding income year; or 35
- “(b) by the end of the 2nd month after that in which the PIE’s corresponding income year ends, if—

- “(i) the PIE has a corresponding income year that ends after the end of the tax year; and
    - “(ii) the PIE continues to meet the requirements for PIE status at the end of the corresponding income year; or
    - “(c) by the end of the 3rd month after that in which the PIE loses PIE status, if the cessation occurs in the corresponding income year.”
  - (2) **Subsection (1)** applies for the 2009–10 and later income years
- 462 Disclosure of trust particulars**  
 In section 59(2),—
- (a) “sections HC 27(4) and YB 21” is replaced by “section YB 21”:
  - (b) “section HH 1(1) of that Act” is replaced by “section YB 21 of that Act”.
- 463 Disclosure of interest in foreign company or foreign investment fund**
- (1) In section 61(1), the words before paragraph (a) are replaced by the following:
    - “(1) Where any person has at any time in an income year an income interest or a control interest in a foreign company or an attributing interest in a foreign investment fund, that person shall disclose to the Commissioner, in the prescribed form and with that person’s return of income for the relevant tax year,—”.
  - (2) In **section 61(1)**, the words before paragraph (a) are replaced by the following:
    - “(1) Where any person has at any time in an income year an income interest or a control interest in a foreign company or an attributing interest in a foreign investment fund, that person shall disclose to the Commissioner, in the prescribed form and within the time allowed by section 37 for providing the person’s return of income for the relevant tax year,—”.
  - (3) Section 61(1C) is replaced by the following:
    - “(1C) A portfolio tax rate entity that does not make payments of tax under section HL 23 of the Income Tax Act 2007 is re-

quired to make a disclosure under **subsection (1)** in the prescribed form by the due date for the entity’s return under section 57B(5) for the tax year.”

- (4) **Section 61(1C)** is replaced by the following:
  - “(1C) A multi-rate PIE that does not calculate and pay tax using the provisional tax calculation option under **section HM 44** of the Income Tax Act 2007 must make a disclosure under **subsection (1)** in the prescribed form within the time allowed by section 37 for filing its return for the corresponding tax year under **section 57B(5)**.”
- (5) **Subsection (4)** applies for the 2009–10 and later income years.

**464 Section 66 repealed**

- (1) Section 66 is repealed.
- (2) **Subsection (1)** applies for income years beginning on and after 1 April 2009.

**465 Tax credit relating to KiwiSaver and complying superannuation fund members: member credit form**  
Section 68C(3)(b) is repealed.

**466 Statements in relation to research and development tax credits: single persons**

- (1) Section 68D(1) is repealed.
- (2) In section 68D(2), “The person” is replaced by “A person who is not a member of an internal software development group”.
- (3) Section 68D(4) is repealed.
- (4) **Subsections (1) to (3)** apply for the 2008–09 and later income years.

**467 Section 68E replaced**

- (1) Section 68E is replaced by the following:
  - “**68E Statements in relation to research and development tax credits: internal software development groups**
  - “(1) The nominated member of an internal software development group must furnish, in the electronic format prescribed by the Commissioner, a statement relating to the research and devel-

- opment tax credits that the members of the group have under section LH 2 of the Income Tax Act 2007 for a tax year.
- “(2) The statement described in **subsection (1)** must be furnished to the Commissioner no later than—
- “(a) the day that is— 5
- “(i) 30 days after the latest day for a member of the group to furnish a return of income or joint return of income under section 37 for the relevant tax year; or
- “(ii) a later day allowed by the Commissioner, if the Commissioner considers that a failure to meet the requirements of **subparagraph (i)** is a result of simple oversight; or 10
- “(b) the day that is 2 years after the latest day for a member of the group to furnish a return of income under section 37 for the relevant tax year if— 15
- “(i) the tax year is the 2008–09 or 2009–10 tax year; and
- “(ii) no member has an amount of a research and development tax credit under section LH 2 in a return of income for that tax year.” 20
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 468 Section 78E repealed**
- (1) Section 78E is repealed. 25
- (2) **Subsection (1)** applies for the 2009–10 and later income years.
- 469 Section 78F repealed**
- (1) Section 78F is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income 30 years.
- 470 Officers to maintain secrecy**
- (1) Section 81(4)(p) is replaced by the following:
- “(p) communicating, for the purpose of section 85F, information to a person who is an officer, employee, or agent 35



- of the New Zealand Film Commission responsible for the administration of a scheme under which government screen production payments are made and who is authorised to receive the information by the Chief Executive of the New Zealand Film Commission:” 5
- (2) In section 81(4)(s)(ii), “section 85K.” is replaced by “section 85K:” and the following is added:
- “(t) communicating to any person who is an employee of the Treasury (as defined in section 2 of the Public Finance Act 1989), any information communicated to that person for the purposes of section LH 15 of the Income Tax Act 2007.” 10
- 471 Disclosure of information for verification of large budget screen production grant entitlement**
- (1) In the heading to section 85F, “**large budget screen production grant**” is replaced by “**government screen production payment**”. 15
- (2) Section 85F(1) and (2) are replaced by the following:
- “(1) The purpose of this section is to facilitate the exchange of information between the Commissioner and the Commission for the purpose of providing to the Commission information which the chief executive considers necessary to enable the Commission to determine the entitlement of a company to a government screen production payment. 20
- “(2) For the purposes of **subsection (1)**, on request from the chief executive, the Commissioner may, at any time, provide to any authorised officer of the Commission all of the following information that is held by the Department: 25
- “(a) particulars relating to the amount of expenditure incurred in relation to a project that is the subject of an application for a government screen production payment: 30
- “(b) particulars relating to the amount of expenditure incurred in New Zealand in relation to a project that is the subject of an application for a government screen production payment: 35
- “(c) the Commissioner’s opinion as to the accuracy of any information provided by an applicant in relation to the

- application for a government screen production payment.”
- (3) In section 85F(3), in the definition of **company**, “refers:” is replaced by “refers.” and the definition of **large budget screen production grant** is repealed. 5
- 472 Disclosure of information in relation to Working for Families tax credits**  
In section 85G(1)(b), “sections MD 1, or MD 1 and ME 1” is replaced by “sections MD 1, or MD 1 and ME 1 of the Income Tax Act 2007”. 10
- 473 Further secrecy requirements**  
Section 87(5)(d) is replaced by the following:  
“(d) being a person who is an officer, employee, or agent of the New Zealand Film Commission responsible for the administration of a scheme under which government screen production payments are made and who is authorised to receive information provided under section 85F; or” 15
- 474 New section 89AB inserted**  
(1) After section 89A, the following is inserted: 20  
**“89AB Response periods**  
“(1) This section applies for the purposes of Parts 4A and 8A to set the period for a notice in response to another notice (the **initiating notice**). The period is called the **response period**.  
“(2) When the initiating notice is a notice of proposed adjustment, the response period is a 2-month period starting on the date of issue of the notice. 25  
“(3) When the initiating notice is a notice of assessment issued by a taxpayer, the response period for a notice of proposed adjustment under section 89DA is— 30  
“(a) a 4-month period starting on the date on which the initiating notice is received in an office of the department; or  
“(b) if the notice of proposed adjustment relates solely to the amount of a tax credit under section LH 2 of the Income 35

Tax Act 2007, a period starting on the date the initiating notice is received in an office of the department and ending 1 year after the latest date to provide a return of income for the relevant tax year.

- “(4) When the initiating notice is either a notice of disputable decision or a notice revoking or varying a disputable decision that is not an assessment, the response period for a notice is—
  - “(a) a 2-month period starting on the date the initiating notice is received in an office of the department, unless **paragraphs (b) or (c)** apply; or 5
  - “(b) for a notice of proposed adjustment to which **paragraph (c)** does not apply, a 4-month period starting on the date the initiating notice is received in an office of the department; or 10
  - “(c) for a notice of proposed adjustment relating solely to the amount of a tax credit under section LH 2 of that Act, a period starting on the date the notice of proposed adjustment is received in an office of the department and ending on the later of— 15
    - “(i) 4 months after the date of the initiating notice: 20
    - “(ii) 1 year after the latest date to provide a return of income for the relevant tax year.
- “(5) When the initiating notice is a disclosure notice, a notice issued by the Commissioner rejecting an adjustment proposed by a disputant, or a disputant’s statement of position, the response period is a 2-month period starting on the date of issue of the initiating notice. 25
- “(6) For the purposes of **subsections (3)(b) and (4)(c)(ii)**, if the taxpayer is a member of an internal software development group to which section 68E applies, the latest date for providing a return means the latest date for any member of the group. 30
- “(7) In **subsections (3)(b) and (4)(c)(ii)**, a temporary extension applies for tax credits for research and development expenditure arising in the 2008–09 and 2009–10 income years, with the time limit of 1 year extended to 2 years.” 35
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

**475 Taxpayers and others with standing may issue notices of proposed adjustment**

(1) After section 89D(2D), the following is added:

“(2E) If the Commissioner makes an assessment of an amount of research and development credit, a taxpayer who has not provided a statement under section 68D or 68E in relation to an assessment period may dispute the assessment only by providing a statement for the period.” 5

(2) **Subsection (1)** applies for the 2008–09 and later income years. 10

**476 Taxpayer may issue notice of proposed adjustment for taxpayer assessment**

(1) After section 89DA(2), the following is added:

“(3) A taxpayer who makes an assessment of an amount of research and development credit but does not provide a statement under section 68D or 68E in relation to the tax year referred to in subsection (1), may dispute the assessment only by providing a statement for the tax year.” 15

(2) **Subsection (1)** applies for the 2008–09 and later income years. 20

**477 Completing the disputes process**

(1) Section 89N(1)(c)(iii) is replaced by the following:

“(iii) the Commissioner has reasonable grounds to believe that a person who is an associated person of the disputant may take steps in relation to the existence or location of the disputant’s assets to avoid or delay the collection of tax from the disputant.” 25

(2) Section 89N(1)(c)(v) is replaced by the following:

“(v) a person who is an associated person of the disputant and is involved in another dispute with the Commissioner involving similar issues has begun judicial review proceedings in relation to the other dispute.” 30

**478 Determination on economic rate**

- (1) After section 91AAF(1), the following is inserted:  
 “(1B) For the purposes of subsection (1), the rate set by the Commissioner may be a default rate for kinds of items of depreciable property.” 5
- (2) Section 91AAF(4)(b) is replaced by the following:  
 “(b) is, for an item of property to which section EE 27, EE 28, EE 30, or EZ 23 of the Income Tax Act 2007 applies, reacquired after the date on which the new determination is issued, by the person who disposed of it before the date on which the new determination is issued.” 10
- (3) After section 91AAF(5), the following is inserted:  
 “(6) The Commissioner may revoke a determination setting an economic rate. The revocation takes effect on the day after the date of publication of the *Gazette* in which notification under section 91AAK is made.” 15
- (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. 20

**479 Determination on special rates and provisional rates**

- (1) Section 91AAG(1)(b) is replaced by the following:  
 “(b) a provisional rate when no applicable rate, other than a default rate, is set in a determination under section 91AAF.” 25
- (2) In section 91AAG(3), the words before the paragraphs are replaced by the following:  
 “(3) The Commissioner may issue a determination setting a special rate or a provisional rate using, as applicable,—”.
- (3) After section 91AAG(3)(c), the following is inserted: 30  
 “(cb) the formula in section EZ 23 of that Act; or”.
- (4) Section 91AAG(4)(a) is replaced by the following:  
 “(a) determining a figure using the applicable formula from subsection (3); and”.
- (5) After section 91AAG(6), the following is added: 35  
 “(7) The Commissioner may revoke a provisional determination if it no longer applies to an item or if the item is no longer

in use or available for use. The revocation takes effect on the day after the date of publication of the *Gazette* in which notification under section 91AAM(4) is made.”

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

(7) **Subsection (5)** applies for the 2008–09 and later income years.

#### 480 Commissioner may decline to issue special rate or provisional rate

(1) Section 91AAH(3)(a) is replaced by the following: 10

“(a) an economic rate, other than a default rate, already applies to the item; or

“(ab) if a default rate applies to the item, the provisional rate would differ from the default rate by an amount that is less than 50% of the amount by which the next highest or lowest rate, as applicable, set out in schedule 12 of the Income Tax Act 2007 is more or less than the default rate; or” 15

(2) **Subsection (1)** applies for the 2008–09 and later income years. 20

#### 481 Notice of setting of economic rate

(1) In section 91AAK, “of issuing a determination” is replaced by “of issuing or revoking a determination”.

(2) **Subsection (1)** applies for the 2008–09 and later income years. 25

#### 482 Applications for determinations

(1) In section 91AAM(4), “of issuing a determination under section 91AAG(4)” is replaced by “of issuing a determination under section 91AAG(4) or revoking a determination under section 91AAG(7)”. 30

(2) **Subsection (1)** applies for the 2008–09 and later income years.

**483 Determination on type of interest in FIF and use of fair dividend rate method**

- (1) In section 91AAO(1), “section EX 40 of the Income Tax Act 2004” is replaced by “section EX 46 of the Income Tax Act 2007”. 5
- (2) Section 91AAO(2)(b)(i) is replaced by the following:
  - “(i) are loans, fixed-return foreign equity as defined in section YA 1 of the Income Tax Act 2007, or arrangements with a fixed economic return.”.
- (3) **Subsection (2)** applies for the 2009–10 and later income years. 10

**484 New heading and section 91AAQ inserted**

After section 91AAP, the following is inserted:

***“Determinations relating to non-attributing active CFCs***

15

**“91AAQ Determination on insurer as non-attributing active CFC**

- “(1) A person may apply in writing to the Commissioner for a determination that a CFC is a non-attributing active CFC for the purposes of **section EX 21B** of the Income Tax Act 2007 if the CFC— 20
  - “(a) is controlled by a company resident in New Zealand that—
    - “(i) has a business of insurance registered and rated under the Insurance Companies (Ratings and Inspection) Act 1994: 25
    - “(ii) is in the same group of companies as a company resident in New Zealand that has a business of insurance registered and rated under the Insurance Companies (Ratings and Inspection) Act 1994; 30
      - and
      - “(b) has a business of insurance in a country or territory outside New Zealand that is registered under the legislation of the country or territory relating to the business of insurance; and 35
      - “(c) had the business before 1 October 2008.

- “(2) In deciding whether or not to grant an application, the Commissioner must consider whether the CFC’s business—
- “(a) is carried on with the main purpose of producing a commercial return on the CFC’s capital; and
  - “(b) produces all or nearly all of the CFC’s income from— 5
    - “(i) premiums from insurance contracts covering risks in the country or territory in which the CFC’s business is located:
    - “(ii) proceeds from investment assets having a total value commensurate with the value of those insurance contracts. 10
- “(3) For the purposes of **subsection (2)**, the Commissioner may take into account the following:
- “(a) the nature and extent of the activities undertaken by the CFC in the business of insurance: 15
  - “(b) the nature and extent of the risks arising in the country or territory that are assumed by the CFC in the business:
  - “(c) the nature and value of the assets used by the CFC in the business compared with the nature and extent of the risks assumed by the CFC in the business: 20
  - “(d) the nature and amount of deductions that the company controlling the CFC has for expenditure or loss incurred in giving support in relation to the business compared with the nature and amount of the assessable income that the company has from the CFC in relation to the business. 25
- “(4) A determination may be made for tax years specified in the determination.
- “(5) A determination may provide for the extension, limitation, variation, cancellation, or revocation of an earlier determination. 30
- “(6) A determination must be published in the *Gazette* within 30 days of the making of the determination.”

**485 New heading and section 91AAR inserted**

- (1) After **section 91AAQ**, the following is inserted: 35



*“Determinations relating to relocation payments*

**“91AAR Determination relating to eligible relocation expenses**

- “(1) The Commissioner may determine that a type of expenditure is an eligible relocation expense for the purposes of **section CW 17B** of the Income Tax Act 2007, **section CW 13B** of the Income Tax Act 2004, and **section CB 12(1B)** of the Income Tax Act 1994. 5
- “(2) The determination may set out the income year or income years for which it is to apply, but may not apply for income years before the 2002–03 income year. 10
- “(3) In determining whether a type of expenditure is an eligible relocation expense, the Commissioner may take into account whether the expenditure necessarily arises from a work-related relocation of an employee, rather than arising as a cost, including a private or capital cost, that an employee has incurred, or will incur, gradually over time irrespective of whether the employee would have relocated. In this regard, the Commissioner may bear in mind— 15
- “(a) whether the expenditure amounts to a substitution for an employee’s salary or wages: 20
- “(b) whether employers generally treat the type of expenditure as a relocation expense:
- “(c) the difficulty of and costs in measuring any element of private benefit. 25
- “(4) The determination may provide for the extension, limitation, variation, cancellation, or revocation of an earlier determination. The Commissioner must give at least 30 days notice of the implementation date of any change to the determination.
- “(5) A person affected by a determination made under this section may dispute or challenge the determination under Parts 4A and 8A. 30
- “(6) Within 30 days of issuing or changing a determination under this section, the Commissioner must publish a notice in the *Gazette* that— 35
- “(a) gives notice that the determination has been issued or changed, as applicable; and

- “(b) states where copies of the determination can be obtained.”
- (2) **Subsection (1)** applies for the 2002–03 and later income years.
- 486 Section 102 repealed** 5
- (1) Section 102 is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years.
- 487 Section 103 repealed**
- (1) Section 103 is repealed. 10
- (2) **Subsection (1)** applies for the 2009–10 and later income years.
- 488 Section 103A repealed**
- (1) Section 103A is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income 15 years.
- 489 Section 104 repealed**
- (1) Section 104 is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income 20 years.
- 490 Time bar for amendment of income tax assessment**
- (1) Section 108(1B)(b) is replaced by the following:
- “(b) 1 year has passed from the latest date to provide a return of income for the relevant tax year and, for a member of an internal software development group to which section 68E applies, the latest date means the latest date for any member of the group; and” 25
- (2) Section 108(1B)(c) is replaced by the following:
- “(c) the taxpayer—
- “(i) has not issued a notice of proposed adjustment to the Commissioner for an amount of a tax credit for research and development expenditure for the 30

- relevant tax year within the relevant response period; and
- “(ii) has not asked for an assessment to be amended under section 113, having provided a detailed research and development statement under section 68D or 68E, as applicable, within the time limit referred to in paragraph (b).” 5
- (3) After section 108(1B), the following is inserted;
- “(1C) In **subsection (1B)(b)**, a temporary extension applies for tax credits for research and development expenditure arising in the 2008–09 and 2009–10 income years, with the time limit of 1 year extended to 2 years.” 10
- (4) **Subsections (1) to (3)** apply for the 2008–09 and later income years.
- 491 Amended assessments for research and development tax credits** 15
- (1) In section 113D, the following is added as subsection (2):
- “(2) If a taxpayer asks for an assessment to be amended under section 113, having provided a detailed research and development statement under section 68D or 68E, as applicable, within the time limit referred to in section 108(1B)(b), the Commissioner may not increase the amount of the credit by more than the amount set out in the taxpayer’s request.” 20
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 25
- 492 Definitions**
- In section 120C(1), the definition of **tax paid**, is replaced by the following:
- “**tax paid**, at a time, means—
- “(a) an amount of tax that— 30
- “(i) is paid or credited by the time for a tax liability; and
- “(ii) has not been refunded or applied by the Commissioner to satisfy another tax liability:

- “(b) an amount credited by the time to a tax pooling account under sections RP 17 to RP 21 of the Income Tax Act 2007:
- “(c) an amount credit or transferred by the time to a taxpayer’s account with the Commissioner from a tax pooling account under sections RP 17 to RP 21 of that Act.” 5
- 493 Section 120EA repealed**
- (1) Section 120EA is repealed.
- (2) **Subsection (1)** applies for income years beginning on and after 1 April 2009. 10
- 494 Instalments of and due dates for provisional tax**  
In section 120KE(1)(b), “\$35,000” is replaced by “\$50,000”.
- 495 Where provisional tax paid by company does not count as overpaid tax**  
In section 120M(a), “but for that section” is replaced by “but for those sections”. 15
- 496 Variation to definition of date interest starts**
- (1) Section 120O(e) is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years. 20
- 497 Section 120R repealed**
- (1) Section 120R is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years.
- 498 Certain rights of objection not conferred** 25  
Section 125(d) is replaced by the following:  
“(d) any decision or determination of the Commissioner approving or not approving a sickness, accident, or death benefit fund for the purposes of section CW 34 of the Income Tax Act 2007; or”. 30

- 499 Imposition of late payment penalties when financial relief sought**
- (1) Section 139BA(3)(b) is replaced by the following:  
 “(b) the last day of the response period allowed by section 177(4) if the taxpayer does not provide the information sought or respond to a counter offer.” 5
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 500 Section 140C repealed**
- (1) Section 140C is repealed. 10
- (2) **Subsection (1)** applies for the 2009–10 and later income years.
- 501 Section 140CA repealed**
- (1) Section 140CA is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years. 15
- 502 Tax shortfalls**
- (1) Section 141(7)(c) is replaced by the following:  
 “(c) the 2 taxpayers are associated persons.”
- (2) In section 141(7D), “of this Act” is omitted. 20
- 503 Abusive tax position**
- Section 141D(3B)(b) is replaced by the following:  
 “(b) the sum of the tax shortfall from the arrangement for the taxpayer and the tax shortfalls from the arrangement for persons with whom the taxpayer is associated is less than \$50,000; and” 25
- 504 Evasion or similar act**
- Section 141E(1)(c) is replaced by the following:  
 “(c) knowingly does not make a deduction, withholding of tax, or transfer of payroll donation required to be made by a tax law; or” 30

- 505 Due dates for payment of imputation penalty tax, FDP penalty tax, and understatement penalty tax**
- (1) The heading to section 142E is replaced by “**Due dates for payment of imputation penalty tax**”.
- (2) Section 142E(2) is repealed. 5
- (3) **Subsections (1) and (2)** apply for the 2009–10 and later income years.
- 506 Knowledge offences**
- (1) Section 143A(3) and (6) are repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income 10 years.
- 507 Evasion or similar offence**
- (1) Section 143B(3) is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income 15 years.
- 508 Taxes that may be recovered**
- (1) In section 173D, the following is added as subsection (2):
- “(2) For the purposes of this Part, assistance in the recovery of taxes includes assistance in the recovery of charges associated with the taxes, whether interest, administrative penalties, costs of 20 collection or conservancy, or another related amount.”
- (2) **Subsection (1)** applies in relation to events and periods occurring before or after 1 April 2008.
- 509 Transfer of excess tax within taxpayer’s accounts**
- (1) After section 173L(2)(b), the following is inserted: 25  
“(bb) in the case of a tax credit for expenditure on research and development, a day after the end of the accounting year to which the credit relates:”.
- (2) Section 173L(3) is replaced by the following:
- “(3) Despite subsection (2)(b) and **(bb)**, a taxpayer who has an 30 early balance date must, for tax withheld or deducted on their behalf or a tax credit for expenditure on research and development, choose a day after the end of the tax year in which the

amount was withheld or deducted or the tax year corresponding to the accounting year to which the credit relates.”

- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years.

**510 Transfer of excess tax to another taxpayer** 5

- (1) After section 173M(2)(f), the following is inserted:  
“(fb) a tax pooling intermediary’s tax pooling account; or”.
- (2) After section 173M(4)(a), the following is inserted:  
“(ab) if **subsection (2)(fb)** applies, a date that occurs on or after the date of the original deposit by the taxpayer.”. 10

**511 Instalment arrangements**

- (1) After section 177B(6), the following is added:  
“(7) Despite sections LA 6(2) and LH 2(6) of the Income Tax Act 2007, a taxpayer with an instalment arrangement who is meeting their obligations under it may choose to have an amount of refundable tax credit remaining for a tax year paid to them rather than used under the ordering rules set out in those sections.” 15
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 20

**512 Section 181 repealed**

- (1) Section 181 is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years.

**513 Section 183 repealed** 25

Section 183 is repealed.

**514 Remission for reasonable cause**

- (1) Section 183A(1)(e) is repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years. 30

**515 Remission on application**

- (1) Section 183H(a)(ii) is repealed.

- (2) **Subsection (1)** applies for the 2009–10 and later income years.

**516 Payments into, and out of, Listed PAYE Intermediary Bank Account**

Section 185D(1) is replaced by the following: 5

- “(1) All payments received by the Commissioner from a listed PAYE intermediary and made under sections RP 2 to RP 5 of the Income Tax Act 2007 must be paid into the Listed PAYE Intermediary Bank Account.”

- 517 Power to make interim payments of WFF tax credit** 10  
In section 225A(2)(b)(iii) and (iv), “of that Act” is omitted.

**Part 3  
Amendments to Goods and Services Tax  
Act 1985**

- 518 Goods and Services Tax Act 1985** 15  
This Part amends the Goods and Services Tax Act 1985.

**519 Interpretation**

- (1) This section amends section 2(1).  
 (2) After the definition of **dwelling**, the following is inserted:  
 “**emissions unit** means— 20  
 “(a) a New Zealand unit as defined in section YA 1 of the Income Tax Act 2007:  
 “(b) a Kyoto unit as defined in section YA 1 of that Act:  
 “(c) a unit issued by an overseas registry that is prescribed under the Climate Change Response Act 2002 as a unit 25  
 that may be transferred to accounts in the Registry under that Act”.
- (3) After the definition of **local authority**, the following is inserted:  
 “**loyalty programme** means a consumer incentive scheme 30  
 under which a customer can obtain loyalty points that are redeemable for goods or services”.



- (4) In the definition of **public authority** “and includes offices of Parliament;” is replaced by “and includes offices of Parliament, the Parliamentary Service, and the Office of the Clerk of the House of Representatives;”.

**520 Meaning of term supply**

5

Section 5(14) is replaced by the following:

- “(14) If a supply is charged with a tax under section 8, but section 11, 11A, 11AB, 11B, or **11C** requires part of the supply to be charged at the rate of 0%, that part of the supply is treated as being a separate supply.”

10

**521 Time of supply**

After section 9(8), the following is added:

- “(9) Despite subsection (1), an operator of a loyalty programme who meets the requirements of **section 11C** may treat a supply of services in a loyalty transaction as taking place at the time at which the loyalty points are redeemed for reward. But this subsection does not apply to a token, stamp, or voucher to which section 5(11D) to (11H) applies.”

15

**522 Value of supply of goods and services**

In section 10(4), “section 11(3)” is replaced by “section 11(3) or (3C)”.

20

**523 Zero-rating of goods**

After section 11(3), the following is inserted:

- “(3B) Subsection (3)(a) does not apply to a supply of goods if the recipient gives the supplier at or before the time of the supply an undertaking in writing that neither the recipient nor an associated person will cause the goods to be reimported into New Zealand in a condition that is substantially the same as the condition the goods were in when the supply was charged with tax under subsection (1)(a) to (1)(l).”

25

30

- “(3C) Despite **subsection (3B)**, a registered person is treated as having supplied goods in the course or furtherance of a taxable activity and must be charged with tax at the rate specified in section 8 if—

- “(a) the supply of the goods by the registered person was charged with tax under subsection (1)(a) to (l); and
- “(b) the goods are imported into New Zealand; and
- “(c) the goods are reacquired by the registered person in substantially the same condition as the condition the goods were in when the supply was charged with tax under subsection (1)(a) to (l); and 5
- “(d) the registered person deducted under section 20(3) input tax as defined in section 3A(1)(c) in relation to the original supply of the goods under subsection (1)(a) to (l). 10

“(3D) **Subsection (3C)**—

- “(a) applies at the time the goods are reacquired by the registered person:
- “(b) does not apply if tax is paid under section 12 on the importation of the goods into New Zealand.” 15

**524 Zero-rating of services**

In section 11A(1)(r)(ii), “paragraph (q).” is replaced by “paragraph (q); or” and the following is added:

- “(s) the services are an emissions unit and the supply is the issue of the emissions unit, if the issue is under an arrangement entered on or after 1 January 2009; or 20
- “(t) the services are supplied as consideration for a supply that is chargeable at the rate of 0% under **paragraph (s)**.” 25

**525 New section 11C inserted**

After section 11B, the following is inserted:

“**11C Treatment of supplies by operators of loyalty programmes**

- “(1) This section applies when an operator of a loyalty programme makes a supply of services by entering into an arrangement (a **loyalty transaction**) with another person (the **purchaser**) through which the operator receives consideration for providing loyalty points to a third person as directed by the purchaser. 30
- “(2) The operator may defer the time of the supply of the services under **section 9(9)** to the time at which loyalty points are redeemed for reward if they meet the requirements of **subsections (3) to (5)**. 35

- “(3) The first requirement is that 25% or more of the operator’s taxable supplies must be zero-rated supplies of goods or services. The 25% threshold—
- “(a) may be met by including the taxable activity of an associated person: 5
  - “(b) must be met for the 12-month period that ends with the month in which the supply of services under the loyalty transaction is made, and the operator must have reasonable grounds for believing the threshold will be met for the 12-month period that begins with the month in which that supply of services is made. 10
- “(4) The second requirement is that —
- “(a) the operator or an associated person must make supplies of goods or services in a business activity (the **main business activity**) that is an activity other than a business of operating a loyalty programme; and 15
  - “(b) the loyalty points supplied by the operator must only be able to be redeemed for reward as part of the main business activity.
- “(5) The third requirement is that when the loyalty points are redeemed, the operator must be able to identify whether— 20
- “(a) tax under section 8 has been imposed on the supply of the loyalty points:
  - “(b) the time of supply has been deferred under **section 9(9)**. 25
- “(6) If the operator has a partner in an associated loyalty programme, the second requirement is still treated as met if, in addition to those requirements, loyalty points supplied by the operator are able to be redeemed for reward by the partner.”
- 526 Taxable periods** 30  
 In section 15(2)(a), “\$250,000” is replaced by “\$500,000”.
- 527 Persons making supplies in course of taxable activity to be registered**  
 In section 51(1)(a), “\$40,000” is replaced by “\$50,000”.

**528 Group of companies**

In section 55(1)(a)(iii), “portfolio tax rate entity” is replaced by “multi-rate PIE”.

**Part 4****Amendments to KiwiSaver Act 2006**

5

**529 KiwiSaver Act 2006**

This Part amends the KiwiSaver Act 2006.

**530 Interpretation**

In section 4(1), in the definition of **PAYE period**, “in paragraph (a) of the definition of **payment period** in section MK 10” is replaced by “**payment period** as defined in section MK 10(3)”.

10

**531 Section 13 repealed**

Section 13 is repealed.

**532 Eligibility to be exempt employer**

15

Section 25(1)(b) is replaced by the following:

“(b) the scheme must be a registered superannuation scheme that is registered on or before the day after the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act **2008** receives the Royal assent; and

20

“(bb) the relevant participation agreement must be entered into by the employer before the day after the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act **2008** receives the Royal assent; and”.

**533 What happens when initial back-dated validation ends, with no confirmed back-dated validation?**

25

In section 59D(4), “paragraph” is replaced by “subsection (3)”.

**534 How and when interest is paid on refunds**

Sections 89(3) and (4) are repealed.

30

**535 Refunds of employer contribution by Commissioner if employee opts out**

In section 100, “may” is replaced by “must”.

**536 General**

After section 101A(2), the following is inserted: 5

“(2B) Despite subsection (1), an employer does not have to pay a compulsory employer contribution as provided in **sections 101FB and 101FC.**”

**537 Compulsory employer contribution amount: general rule**

In section 101D(5)(b)(iii)(B), “; and” is replaced by “; or”, and the following is inserted: 10

“(C) one that has had contributions paid or credited to the contributions scheme or a prior scheme for the contributions scheme by a previous employer, and those contributions met the requirements described in paragraph (b)(i) to (iii); and” 15

**538 New sections 101FB and 101FC inserted**

After section 101F, the following is inserted:

**“101FB Grace periods: employers 20**

“(1) An employer does not have to pay a compulsory employer contribution for a payment of gross salary or wages to an employee in a grace period described in **subsection (2)**, if, for the whole of the relevant grace period,—

“(a) the automatic enrolment rules apply to the employee; and 25

“(b) the employer does not receive a notice under section 34(2) or 39 that the employee has opted in; and

“(c) the employer does not deduct any amount of contributions required to be deducted from an employee’s salary or wages; and 30

“(d) the employer does not receive a notice under section 61 that requires the deduction of contributions for the employee.

“(2) The grace periods for the purposes of **subsection (1)** are— 35

- “(a) the period starting on the day that the employee starts new employment and finishing on the earlier of the day—
- “(i) that is 1 year after the day that the employee starts new employment: 5
  - “(ii) that the employee ceases employment:
- “(b) the period starting on the day that is 1 year after the day that the employee starts new employment and finishing on the earliest of—
- “(i) the day that is before the day on which the employer receives a notice under section 34(2) or 39 that the employee has opted in: 10
  - “(ii) the day that is before the day on which the employer receives a notice under section 61 that requires the deduction of contributions for the employee: 15
  - “(iii) the day that the employee ceases employment.

“**101FC De minimis: other contributions**

For a payment of gross salary or wages to an employee, an employer does not have to pay a compulsory employer contribution for the employee if, for the payment of gross salary or wages, the amount of **other contributions** that meet the requirements of section 101D(5)(b) is calculated using the same percentage as the relevant **CEC rate** in section 101D(4).” 20

- 539 Rules: providers** 25
- (1) In section 101G(3),—
- (a) “or complying superannuation fund” is omitted:
  - (b) “or a rule the same as that clause” is omitted.
- (2) After section 101G(3), the following is added:
- “(4) If a member of a complying superannuation fund will be entitled within 2 months to withdraw an amount from the fund under a rule the same as clause 4(3) of the KiwiSaver scheme rules, the provider must send a notice to the member’s employer stating the date on which the member will be entitled to withdraw.” 30 35

**540 Crown contribution**

- (1) In section 226(1), “a contribution” is replaced by “1 contribution”.
- (2) Section 226(4) is replaced by the following:
- “(4) If A ceases being a member of the first KiwiSaver scheme of which they are a member because the Commissioner accepts an opt-out notice outside the time limit in section 16 or because A’s enrolment is invalid, and the amount of the contribution under this section was never paid, then the next KiwiSaver scheme of which A is a member is treated as their first one, for the purposes of this section and entitlement to the contribution.”

**541 Regulations relating to mortgage diversion facility**

In section 229(2)(i), in the words before the subparagraphs, “a fixed dollar amount, and” is omitted.

**Part 5**

**Amendments to Income Tax Act 2004**

**542 Income Tax Act 2004**

This Part amends the Income Tax Act 2004.

**543 Foreign investment fund income**

- (1) In section CD 26, before paragraph (a), “*Amount not dividend*” is inserted as a subsection heading.
- (2) In section CD 26(b)(iv), “method; and” is replaced by “method.”, and paragraph (c) is repealed.
- (3) After section CD 26(b), the following are inserted as subsections (2) and (3):
  - “*Exclusion for interests in grey list companies*”
  - “(2) Subsection (1)(b)(iv) does not apply if—
    - “(a) the FIF is a grey list company; and
    - “(b) the person holds a direct income interest of 10% or more in the FIF at the beginning of the income year in which the period falls.
  - “*Application of rule for certain managed funds*”
  - “(3) **Subsection (2)** does not apply if—

- “(a) the person is a portfolio investment entity, an entity eligible to be a portfolio investment entity, or a life insurance company; and  
“(b) the FIF is a foreign investment vehicle.”
- (4) In section CD 26, in the list of defined terms, “direct income interest”, “foreign investment vehicle”, “life insurance”, and “portfolio investment entity” are inserted. 5
- 544 Amounts derived in connection with employment**
- (1) In section CE 1, before paragraph (a), “Income” is inserted as a subsection heading. 10
- (2) Section CE 1(c) is replaced by the following:  
“(c) the market value of accommodation that the person receives in connection with their employment or service:”.
- (3) After section CE 1(g), the following is inserted as subsection (2): 15  
*“Meaning of accommodation*  
“(2) For the purposes of this section, **accommodation** means board or lodging, or the use of a house or part of a house.”
- (4) In section CE 1, in the list of defined terms, “accommodation” is inserted. 20
- 545 Meaning of expenditure on account of an employee**  
After section CE 5(3)(b), the following is inserted:  
“(bb) an amount paid under **section CW 13B** (Relocation payments) or **section CW 13C** (Payments for overtime meals):”.
- 546 New section CR 3 added**
- (1) After section CR 2, the following is added:  
**“CR 3 Income for general insurance outstanding claims reserve**  
*“When this section applies* 30  
“(1) This section applies for—  
“(a) an insurer who uses IFRS 4, Appendix D for general insurance contracts; and



“(b) general insurance contracts, excluding contracts having premiums to which section FC 14 applies.

“*Formula for insurer’s income*

“(2) For an income year (the **current year**), an insurer has income of the amount by which the result of the following calculation is more than zero: 5

opening outstanding claims reserve – closing outstanding claims reserve.

“*Definition of items in formula*

“(3) In the formula,—

“(a) **opening outstanding claims reserve** is—

“(i) the amount of the insurer’s **closing outstanding claims reserve** for the income year before the current year; or 10

“(ii) the amount of the insurer’s outstanding claims reserve for general insurance contracts, calculated at the beginning of the current year, if the insurer has no closing outstanding claims reserve for the income year before the current year: 15

“(b) **closing outstanding claims reserve** is the amount of the insurer’s outstanding claims reserve for general insurance contracts, calculated at the end of the current year. 20

“Defined in this Act: amount, general insurance contract, IFRS 4, income, income year, insurer”.

(2) **Subsection (1)** applies for the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years. 25

**547 Expenditure on account, and reimbursement, of employees**

After section CW 13(3), the following is added:

“*Relationship with sections CW 13B and CW 13C* 30

“(4) This section does not apply to an amount referred to in **section CW 13B** (Relocation payments) or **section CW 13C** (Payments for overtime meals).”

**548 New sections CW 13B and CW 13C inserted**

After section CW 13, the following is inserted:

**“CW 13B Relocation payments***“Exempt income*

- “(1) An amount that an employer pays to or on behalf of an employee in connection with the expenses of the employee in a work-related relocation is exempt income of the employee. 5

*“Actual expenditure*

- “(2) The amount paid must be no more than the actual cost incurred by or on behalf of the employee on an expense that the Commissioner lists as an eligible relocation expense in a determination made under **subsection (6)**. 10

*“Time limit*

- “(3) **Subsection (1)** applies only to expenditure incurred for the period from the start of the income year in which the employee relocates or undertakes work at the new location to the end of the next income year. However, this subsection does not apply in the case of a temporary move when— 15

“(a) an employee moves temporarily to a new location and then relocates permanently to that place; and 20

“(b) the temporary move was not treated as a work-related relocation under this section.

*“Meaning of work-related relocation*

- “(4) For the purposes of this section, **work-related relocation** means a relocation of the place where an employee lives that is required— 25

“(a) because the employee’s workplace is not within reasonable daily travelling distance of their residence; and

“(b) as a result of the employee—

“(i) taking up new employment with a new employer; 30  
or

“(ii) taking up new duties at a new location with their existing employer; or

“(iii) continuing in their current position but at a new location. 35

*“Exemption from distance test*

- “(5) The requirement in **subsection (4)(a)** for a workplace to be beyond reasonable travelling distance of the person’s residence does not apply to a person whose accommodation forms an integral part of their work. 5

*“Determinations*

- “(6) The Commissioner may issue a determination for the purposes of this section under **section 91AAR** of the Tax Administration Act 1994 to provide a list of eligible relocation expenses, and may extend or modify the list from time to time as required. The Commissioner must give at least 30 days notice of the implementation date of any alteration. 10

“Defined in this Act: amount, Commissioner, employee, employer, exempt income, income year, work-related relocation

**“CW 13C Payments for overtime meals 15**

*“Exempt income*

- “(1) An amount that an employer pays to or on behalf of an employee for a meal for the employee when the employee is working overtime is exempt income of the employee.

*“Eligibility: agreement or established practice 20*

- “(2) **Subsection (1)** applies only if—  
 “(a) the employee’s employment agreement provides for pay for overtime hours worked; or  
 “(b) the employer has an established policy or practice of paying for overtime meals. 25

*“Actual cost or reasonable estimate*

- “(3) The amount paid must be—  
 “(a) the actual cost to the employee, with documentation required for amounts over \$20 per meal; or  
 “(b) a reasonable estimate of the expenditure likely to be incurred by the employee or a group of employees for whom an amount is payable. 30

*“Meaning of overtime*

- “(4) For the purposes of this section, **overtime**, for a person and a day, means time worked for an employer on the day beyond the person’s ordinary hours of work as set out in their employment 35

agreement when the employee has worked more than 2 hours beyond their ordinary hours on that day.

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

- 549 Benefits provided instead of allowances** 5
- In section CX 17(1)(b), “transport costs)” is replaced by “transport costs); or” and the following is added:
- “(c) an amount that, if it had been paid, would have been exempt income under **section CW 13B** (Relocation payments).” 10
- 550 Gifts of money by company**
- (1) Section DB 32(3) is replaced by the following:
- “*Amount of deduction*
- “(3) The deduction for the total of all gifts made in an income year is limited to the amount that would be the company’s net income in the corresponding tax year in the absence of this section.” 15
- (2) **Subsection (1)** applies for the 2007–08 and later income years.
- 551 New section DT 1A inserted** 20
- (1) Before section DT 1, the following is inserted:
- “**DT 1A Ring-fenced allocations**
- “*When this section applies*
- “(1) This section applies to an amount of a person’s deductions, expenditure and loss for an income year to the extent to which it is— 25
- “(a) petroleum exploration expenditure:
- “(b) petroleum development expenditure:
- “(c) residual expenditure.
- “*Basis for allocation of deductions* 30
- “(2) If, but for this subsection, an amount that relates to petroleum mining operations undertaken outside New Zealand is allocated to an income year (the **current year**), including an amount carried forward and allocated to the current year, the

amount that is allocated to the current year is no more than the amount of the person's income derived from those operations for the current year.

*“Excess allocations: carrying forward and re-instating next year*

5

“(3) Any excess not able to be allocated to the current year because of the basis for allocation described in **subsection (2)** is carried forward and treated as—

“(a) relating to petroleum mining operations outside New Zealand for the next income year; and

10

“(b) allocated to that next income year.

*“Restriction on reinstating excess allocations*

“(4) Despite **subsection (3)**, the excess is not allocated to the next income year, and no deduction is allowed or allocated to any income year in respect of the excess, if section IF 1 (Net losses may be offset against future net income) would not have allowed the excess to be carried forward to that next income year, treating the excess as a net loss for the current year.

15

“Defined in this Act: deduction, income year, net loss, New Zealand, petroleum development expenditure, petroleum exploration expenditure, petroleum mining operation, residual expenditure”.

20

(2) **Subsection (1)** applies for expenditure incurred on or after 4 March 2008.

**552 Arrangement for petroleum exploration expenditure and sale of property**

25

(1) In section DT 2(1)(c), paragraphs (ii) and (iii) are replaced by the following:

“(ii) a petroleum permit; or

“(iii) material or a permit that relates to petroleum mining operations undertaken outside New Zealand, and that material or permit are substantially the same as those described in subparagraphs (i) or **(ii)**, with necessary modifications made to this subpart and the Crown Minerals Act 1991.”

30

(2) **Subsection (1)** applies for expenditure incurred on or after 1 December 2007.

35

**553 Petroleum development expenditure**

- (1) Section DT 5(1) and (2) is replaced by the following:

*“Deduction*

- “(1) A petroleum miner is allowed a deduction for petroleum development expenditure incurred by them. 5

*“Timing of deduction*

- “(2) For an income year, an amount of the deduction is allocated to that year, as provided by—

“(a) **section EJ 11** (Petroleum development expenditure: default allocation rule); or 10

“(b) **section EJ 11B** (Petroleum development expenditure: reserve depletion method).”

- (2) **Subsection (1)** applies for expenditure incurred on or after 1 April 2008.

**554 Disposal of petroleum mining asset to associate** 15

- (1) Section DT 9(1)(b) is replaced by the following:

“(b) section EJ 14(2) (Disposal of petroleum mining asset to associate) prevents the miner from taking the full amount of a deduction allocated under **section EJ 11 or EJ 11B** (which relate to petroleum development expenditure) to the income year in which the miner disposes of the asset.” 20

- (2) Section DT 9(2)(b) is replaced by the following:

“(b) the amount of the deduction allocated under **section EJ 11 or EJ 11B** to the income years after the income year in which the miner disposes of the asset.” 25

- (3) **Subsections (1) and (2)** apply for expenditure incurred on or after 1 April 2008.

**555 New section DW 3 added**

- (1) After section DW 2, the following is added: 30

**“DW 3 Deduction for general insurance outstanding claims reserve***“When this section applies*

- “(1) This section applies for—

- “(a) an insurer who uses IFRS 4, Appendix D for general insurance contracts; and
- “(b) general insurance contracts, excluding contracts having premiums to which section FC 14 applies.
- “*Formula for insurer’s deduction* 5
- “(2) For an income year, an insurer is allowed a deduction for the amount by which the result of the following calculation is less than zero:
- opening outstanding claims reserve – closing outstanding claims reserve.
- “*Definition of items in formula*
- “(3) In the formula,— 10
- “(a) **opening outstanding claims reserve** is—
- “(i) the amount of the insurer’s **closing outstanding claims reserve** for the income year before the current year; or
- “(ii) the amount of the insurer’s outstanding claims reserve for general insurance contracts, calculated at the beginning of the current year, if the insurer has no closing outstanding claims reserve for the income year before the current year: 15
- “(b) **closing outstanding claims reserve** is the amount of the insurer’s outstanding claims reserve for general insurance contracts, calculated at the end of the current year. 20
- “*Link with subpart DA*
- “(4) This section supplements the general permission. The general limitations still apply. 25
- “Defined in this Act: amount, deduction, general insurance contract, general limitation, general permission, IFRS 4, income year”.
- (2) **Subsection (1)** applies for the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years. 30

**556 Economic rate for plant, equipment, or building, with high residual value**

- (1) Section EE 25E(1)(b) is replaced by the following:  
 “(b) the estimated residual market value for the item is more than 13.5% of cost; and” 5
- (2) **Subsection (1)** applies for the 2005–06 and later income years.

**557 Annual rate for item acquired in parson’s 1995–96 or later income year**

- (1) In section EE 26(2), paragraph (a) and the words in paragraph (b) before subparagraph (i) are replaced by the following: 10  
 “(a) the item’s economic rate, special rate, or provisional rate, for an item not described in either **paragraph (b)** or (c):  
 “(b) the item’s economic rate, special rate, or provisional rate multiplied by 1.2, for an item that—” 15
- (2) **Subsection (1)** applies for the 2005–06 and later income years.

**558 Section EJ 11 replaced**

- (1) Section EJ 11 is replaced by the following: 20  
**“EJ 11 Petroleum development expenditure: default allocation rule**  
*“What this section applies to*  
 “(1) This section applies to petroleum development expenditure that relates to a petroleum mining development and that is incurred after 1 April 2008 when, for that development, the petroleum miner has not chosen to apply **section EJ 11B** to any petroleum development expenditure for the development. 25  
*“Default allocation rule*  
 “(2) For the purposes of **section DT 5(2)(a)** (Petroleum development expenditure), a deduction for the petroleum development expenditure is allocated in equal amounts over a period of 7 income years. The period of 7 years starts with the income year in which the expenditure is incurred. 30



*“Relationship with other petroleum mining provisions*

“(3) Sections EJ 12 to EJ 14 override **subsection (2)**. Sections DT 7, DT 8, DT 10, DT 11, DT 16, and IH 3 (which relate to petroleum miners) override this section.

“Defined in this Act: amount, deduction, income year, petroleum development expenditure, petroleum mining development 5

**“EJ 11B Petroleum development expenditure: reserve depletion method**

*“What this section applies to*

“(1) This section applies to petroleum development expenditure 10  
that relates to a petroleum mining development and that is incurred after 1 April 2008, if the petroleum miner has chosen to apply this section for the first income year in which the petroleum mining development first produces petroleum in commercial quantities. 15

*“Choice*

“(2) The choice described in **subsection (1)** is made in a return of income, and applies this section to petroleum development expenditure that relates to a petroleum mining development for the income year of the return and for all subsequent income 20  
years.

*“Reserve depletion method expense allocation rule*

“(3) For the purposes of **section DT 5(2)(b)** (Petroleum development expenditure), the deduction allocated to an income year for the petroleum development expenditure is calculated using 25  
the formula—

$$\begin{array}{r} \text{(reserve expenditure – previous} \\ \text{deductions)} \end{array} \times \frac{\begin{array}{r} \text{reserve depletion} \\ \text{for the year} \end{array}}{\text{probable reserves.}}$$

*“Definition of items in formula*

“(4) The items in the formula are defined in **subsections (5) to (8)**.

- “*Reserve expenditure*”
- “(5) **Reserve expenditure** is the total of petroleum development expenditure to which this section applies for the income year or an earlier income year. 5
- “*Previous deductions*”
- “(6) **Previous deductions** is the total amount of petroleum development expenditure that relates to the relevant petroleum mining development and that has been allocated to an earlier income year. 5
- “*Reserve depletion for the year*”
- “(7) **Reserve depletion for the year** is the amount of petroleum produced from the relevant petroleum mining development for the income year, expressed in barrels of oil equivalent. 10
- “*Probable reserves*”
- “(8) **Probable reserves** is the amount of the reserves of petroleum for the petroleum mining development that are not yet proven but are estimated, at the beginning of the income year, to have a better than 50% chance of being technically and commercially producible, expressed in barrels of oil equivalent. 15
- “*Relationship with other petroleum mining provisions*”
- “(9) Sections EJ 12 to EJ 14 override **subsection (3)**. Sections DT 7, DT 8, DT 10, DT 11, DT 16, and IH 3 (which relate to petroleum miners) override this section. 20
- “Defined in this Act: amount, deduction, income year, petroleum development expenditure, petroleum mining development”
- (2) **Subsection (1)** applies for expenditure incurred on or after 1 April 2008. 25
- 559 Relinquishing petroleum permit**
- (1) Section EJ 12(2)(b) is replaced by the following: 30
- “(b) any part of the deduction allocated to earlier income years under **section EJ 11(2) or EJ 11B(3)**.”
- (2) **Subsection (1)** applies for expenditure incurred on or after 1 April 2008.

**560 New sections EJ 12B and EJ 12C inserted**

(1) After section EJ 12, the following is inserted:

**“EJ 12B Dry well drilled**

*“When this section applies*

“(1) This section applies when— 5

“(a) the petroleum miner has petroleum development expenditure for a well, the drilling of which is completed in an income year, and, from the time of completion, the well—

“(i) will never produce petroleum in commercial quantities; and 10

“(ii) is abandoned; and

“(b) part of a deduction under **section DT 5** (Petroleum development expenditure) for the petroleum development expenditure described in **paragraph (a)** has not been allocated under **section EJ 11 or EJ 11B**. 15

*“Allocation*

“(2) The part of the deduction described in **subsection (1)** is allocated to the income year.

“Defined in this Act: amount, deduction, income year, petroleum development expenditure 20

**“EJ 12C Well not producing**

*“When this section applies*

“(1) This section applies when—

“(a) the petroleum miner has petroleum development expenditure for a well that, in an income year— 25

“(i) stops producing petroleum in commercial quantities; and

“(ii) is abandoned; and

“(b) the petroleum miner has elected to apply **section EJ 11B** for the petroleum development expenditure described in **paragraph (a)** before the start of the income year; and 30

“(c) part of a deduction under **section DT 5** (Petroleum development expenditure) for the petroleum development 35

expenditure described in **paragraphs (a) and (b)** has not been allocated under **section EJ 11B**.

*“Allocation*

- “(2) The part of the deduction described in **subsection (1)** is allocated to the income year. 5

“Defined in this Act: amount, deduction, income year, petroleum development expenditure”.

- (2) **Subsection (1)** applies for expenditure incurred on or after 1 April 2008.

**561 Disposal of petroleum mining asset** 10

- (1) Section EJ 13(2)(b) is replaced by the following:

“(b) it has not been allocated under **section EJ 11 or EJ 11B** to the income year in which the miner disposes of the asset or to an earlier income year.”

- (2) **Subsection (1)** applies for expenditure incurred on or after 1 April 2008. 15

**562 Sections EJ 17 and EJ 18 replaced**

- (1) Section EJ 17 and EJ 18 are replaced by the following:

**“EJ 18 Meaning of petroleum mining development**

*“Meaning* 20

- “(1) In **sections EJ 11 and EJ 11B**, **petroleum mining development** means a place where 1 or more of the activities described in **subsection (2)** is carried out.

*“Activities: inclusions*

- “(2) The activities are those carried out in connection with— 25

“(a) developing a permit area for producing petroleum:

“(b) producing petroleum:

“(c) processing, storing, or transmitting petroleum before its dispatch to a buyer, consumer, processor, refinery, or user: 30

“(d) 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 stabilized 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 5
  - “(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”.

- (2) **Subsection (1)** applies for expenditure incurred on or after 1 April 2008. 10

**563 IFRS taxpayer method**

- (1) After section EW 15B(4)(b)(ii), the following is inserted:
  - “(iib) is a lease that is a finance lease, and under NZIAS 17 and in the person’s financial statements, the lease is classified as an operating lease.”. 15
- (2) In section EW 15B, in the list of defined terms, “finance lease” and “NZIAS 17” are inserted.
- (3) **Subsections (1) and (2)** apply for—
  - (a) the 2007–08 and later income years, unless **paragraph (b) or (c)** applies; or 20
  - (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; 25
  - 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. 30

**564 IFRS method**

- (1) After section EW 15C(3)(a), the following is inserted:
  - “(ab) the IFRS method must be applied using New Zealand dollars, even if another currency may be used as the functional currency under IFRSs.”. 35

- (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.

#### 565 Determination alternatives to IFRS

- (1) In section EW 15D(1)(d), the words before subparagraph (i) are replaced by the following:
- “(d) the financial arrangement is not treated under IFRSs as a hedge of a financial arrangement, or is treated as a hedge of a financial arrangement (**financial arrangement A**) and—”.
- (2) In section EW 15D(1)(d)(ii), “fair value method” is replaced by “modified fair value method”.
- (3) In section EW 15D(2), the words before paragraph (a) are replaced by the following:
- “(2) The person must use 1 of the following methods for the financial arrangement, as modified by subsection (3) or **(4)**.”
- (4) After section EW 15D(3), the following is added:
- “*Determination alternatives to IFRS: G27 modified*
- “(4) When a person applies a determination alternative to IFRS that is *Determination G27*, the following modifications are made:
- “(a) *method C* must be used, and not *methods A, B, or D*:
  - “(b) for *method C*, if relevant, *Determination G9C* and not *Determination 9A* must be used.”
- (5) **Subsections (1), (3), and (4)** 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; 5  
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. 10

**566 Expected value method and equity-free fair value method**

- (1) In section EW 15E(1)(c), the words before subparagraph (i) are replaced by the following:
  - “(c) the financial arrangement is not treated under IFRSs as a hedge of a financial arrangement, or is treated as a hedge of a financial arrangement (**financial arrangement A**) and—”. 15
- (2) In section EW 15E(3), the first sentence is replaced by “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 section EW 15C.” 20
- (3) **Subsections (1) and (2)** apply for—
  - (a) the 2007–08 and later income years, unless **paragraph (b) or (c)** applies; or 25
  - (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; 30  
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. 35

**567 Change of spreading method**

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

*“Requirements for change from straight-line and market value method*

- “(1) A person may change from the straight-line method or the market value method if they change to a method that is not the IFRS taxpayer method, and the Commissioner has given written authorisation for the change.” 5
- (2) In section EW 26(2), the first sentence is replaced by “A person may change from any spreading method to any other method if the Commissioner’s written authorisation under **subsection (1)** is not required for the change, and they have a sound commercial reason for the change.” 10
- (3) In section EW 26(6), the first sentence is replaced by “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 or a change from the market value method to the IFRS taxpayer method.” 15
- (4) Section EW 26(7)(a) is replaced by the following:  
“(a) starting to use or ceasing to use IFRSs to prepare financial statements at the same time as starting to use or ceasing to use the IFRS taxpayer method.” 20
- (5) **Subsections (1) to (4)** apply for—  
(a) the 2007–08 and later income years, unless **paragraph (b) or (c)** applies; or 25  
(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; 30  
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. 35

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

- (1) Section EW 29(13), other than the heading, is replaced by the following:



- “(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 or from the market value method to the IFRS taxpayer method must calculate a base price adjustment as at the date of the change.” 5
- (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 10
  - (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. 15
- 569 Exemptions: direct income interests in FIF in grey list country** 20
- (1) In section EX 33(4)(d), the words before subparagraph (i) are 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**) resident in New Zealand that, for 12 months or more, has—” 25
- (2) Section EX 33(4)(e) is replaced by the following:
- “(e) the year begins less than 10 years after the grey list company first held more than 50% of the voting interests in the resident company; and” 30
- (3) In section EX 33, in the list of defined terms, “voting interest” is inserted.
- 570 Use of particular calculation methods required** 35
- Section EX 40B(b) is replaced by the following:
- “(b) the deemed rate of return method, if use of the comparative value method is not practical because the per-

son cannot determine the market value of the attributing interest at the end of the income year.”

**571 Comparative value method**

Section EX 44(5), other than the heading, is replaced by the following: 5

- “(5) **Opening value** is the market value of the person’s interest in the FIF at the end of the previous income year, calculated using the exchange rate applying under subsection (7) for that previous year. The value is zero if the person did not hold the interest then or was then applying another calculation method to it.” 10

**572 Fair dividend rate method: usual method**

- (1) After section EX 44C(4), the following is inserted:

*“Exclusion for certain managed funds*

- “(4B) Subsection (4)(c) does not apply if— 15

“(a) the person is a portfolio investment entity, an entity eligible to be a portfolio investment entity, or a life insurance company; and

“(b) the FIF is a foreign investment vehicle.”

- (2) In section EX 44C, in the list of defined terms, “company”, “foreign investment vehicle”, “life insurance”, and “portfolio investment entity” are inserted. 20

**573 Fair dividend rate method: method for unit valuers and persons valuing interests daily**

- (1) After section EX 44D(4), the following is inserted: 25

*“Exclusion for certain managed funds*

- “(4B) Subsection (4)(c) does not apply if—

“(a) the person is a portfolio investment entity, an entity eligible to be a portfolio investment entity, or a life insurance company; and

“(b) the FIF is a foreign investment vehicle.” 30

- (2) In section EX 44D, in the list of defined terms, “company”, “foreign investment vehicle”, “life insurance”, and “portfolio investment entity” are inserted.

**574 Cost method**

- (1) In section EX 45B(4)(ac)(ii), “income year; or” is replaced by “income year; and” and the following is inserted:  
     “(iii) the interest was not an attributing interest for the income year before the relevant income year; or”. 5
- (2) In section EX 45B, in the list of defined terms, “attributing interest” is inserted.

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

- (1) Section EX 47(1)(c) is replaced by the following: 10  
     “(c) the fair dividend rate method:”.
- (2) After section EX 47(1), the following are inserted:  
     “*Exclusion for interests in grey list companies*  
     “(1B) **Subsection (1)(c)** does not apply if—  
         “(a) the FIF is a grey list company; and 15  
         “(b) the person holds a direct income interest of 10% or more in the FIF at the beginning of the income year in which the period falls.  
     “*Application of rule for certain managed funds*  
     “(1C) **Subsection (1B)** does not apply if— 20  
         “(a) the person is a portfolio investment entity, an entity eligible to be a portfolio investment entity, or a life insurance company; and  
         “(b) the FIF is a foreign investment vehicle.”
- (3) In section EX 47, in the list of defined terms, “direct income interest”, “foreign investment vehicle”, “life insurance”, and “portfolio investment entity” are inserted. 25

**576 Measurement of cost**

Section EX 56(2B) is repealed.

**577 Transitional rule for IFRS financial reporting method** 30

- (1) In section EZ 50(1)(b), “EW 18(f)” is replaced by “EW 18(1)(f)”.
- (2) In section EZ 50(2), “EW 18(f)” is replaced by “EW 18(1)(f)”.

**578 New sections EZ 51 and EZ 52 added**

After section EZ 50, the following is added:

**“EZ 51 Transitional rule for financial reporting method**

“(1) This section applies for a financial arrangement when—

“(a) the first income year for which a person adopts IFRSs 5  
for the purposes of financial reporting is before the  
2007–08 income year and the person has not chosen to  
apply the IFRS taxpayer method in a return of income  
for any year before the 2008–09; and

“(b) the income year is that first income year or any subse- 10  
quent income year that is before the 2008–09 income  
year.

“(2) Despite sections EW 21(e) and EW 23, for an income year de- 15  
scribed in **subsection (1)(b)**, the person may apply a method  
that is not used by the person for financial reporting purposes if  
it is a method that they would be allowed to use if they had not  
adopted IFRSs. The requirements for using a financial report-  
ing method, other than the requirement in section EW 21(e),  
must still be met by the person.

“Defined in this Act: financial arrangement, IFRS, IFRS taxpayer method, in- 20  
come year, return of income

**“EZ 52 Transitional rule for changes from the fair value method**

“(1) This section applies for a financial arrangement when—

“(a) the person chooses to apply the IFRS taxpayer method 25  
in a return of income for the 2005–06 income year; and

“(b) the person uses the fair value method under the IFRS  
method described in section EW 15C in the 2005–06  
income year; and

“(c) the income year is the 2006–07 or 2007–08 income year.

“(2) The definition of **sound commercial reason** in **section EW** 30  
**26(7)** (Change of spreading method) includes the choice of the  
person to change from the fair value method to another method  
under the IFRS taxpayer method.

“Defined in this Act: financial arrangement, IFRS taxpayer method, income 35  
year, return of income, sound commercial reason”.

**579 Section GC 14EB repealed**

Section GC 14EB is repealed.

**580 Dividends from qualifying company**

(1) Section HG 13(3)(a) is replaced by the following:

“(a) the maximum imputation credit which may be attached to that dividend by virtue of section ME 8(1); and” 5

(2) Section HG 13(4)(a) is replaced by the following:

“(a) the maximum dividend withholding payment credit which may be attached to that dividend by virtue of sections MG 8(1) and MG 10(1) (after taking into account for the purposes of section MG 10(1) any imputation credit attached to that dividend under subsection (3)); and” 10

**581 Effect of failure to meet eligibility requirements for entities** 15

(1) Section HL 4(1)(a) is replaced by the following:

“(a) referred to in sections HL 2(2) and HL 3; and”

(2) Section HL 4(2)(a) is replaced by the following:

“(a) the portfolio investor class of the entity fails to meet a requirement under section HL 6 or HL 9 on the last day of a quarter— 20

“(i) beginning 6 months or more after the date on which the portfolio investor class is formed; and

“(ii) ending more than 3 months before an announcement by the entity to its investors that the portfolio investor class is winding up within 12 months of the announcement; and 25

“(ab) the entity fails to meet a requirement under section HL 10 on the last day of a quarter—

“(i) beginning 6 months or more after the date on which the entity becomes a portfolio investment entity; and 30

“(ii) ending more than 3 months before an announcement by the entity to its investors that the entity is winding up within 12 months of the announcement; and” 35

(3) Section HL 4(2)(b)(ii) is replaced by the following:

- “(ii) is repeated on the last day of the quarter following the quarter referred to in **paragraph (a)** and ending more than 3 months before the announcement referred to in **paragraphs (a)(ii) and (ab)(ii)**.” 5
- 582 Investor membership requirement**
- (1) After section HL 6(1)(i), the following is inserted:  
“(ib) Auckland Regional Holdings:”
- (2) In section HL 6(1)(j)(iii), “entity:” is replaced by “entity” and paragraph (k) is repealed. 10
- (3) Section HL 6(4)(a) and (b) are replaced by the following:  
“(a) the investor is not listed in subsection (1)(b) to **(ib)**; and  
“(b) the associated person is not listed in subsection (1)(b) to **(ib)**; and”.
- 583 Investor interest size requirement** 15
- (1) After section HL 9(4)(h), the following is inserted:  
“(hb) Auckland Regional Holdings:”
- (2) In section HL 9(4)(j), “subsection (5):” is replaced by “subsection (5)” and paragraph (k) is repealed.
- (3) Section HL 9(6)(a) and (b) are replaced by the following: 20  
“(a) the investor is not listed in subsection (4)(a) to **(hb)**; and  
“(b) the associated person is not listed in subsection (4)(a) to **(hb)**; and”.
- 584 Further eligibility requirements relating to investments**
- Section HL 10(2)(b)(iii) is replaced by the following: 25  
“(iii) an amount of income from a lease of land, but this subparagraph does not apply if the lessee under the lease is associated with the entity deriving the amount:”.
- 585 Unlisted company may choose to become portfolio listed company** 30
- Section HL 11B(1)(a) is replaced by the following:  
“(a) has at least 100 shareholders; and”.

**586 Becoming portfolio investment entity**

Section HL 12(1)(b) is replaced by the following:

“(b) the entity, if treated as becoming a portfolio investment entity when the election would be effective, would cease under section HL 4 to be eligible through a failure to meet 1 or more of the requirements in section HL 6, HL 9, or HL 10 in each quarter of the 12-month period.” 5

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

In section HL 27(7), the words before paragraph (a) are replaced by the following: 10

“(7) The investor is treated as receiving for the allocated credits, for the tax year corresponding to the investor’s income year or, in the case of an investor having a portfolio investor exit period, for the quarter to which the portfolio investor exit period relates,—” 15

**588 Determination of amount of credit in certain cases**

Section LB 1(1)(c) to (e) is replaced by the following:

“(c) in the case of an imputation credit attached to a dividend that has an imputation ratio greater than the ratio calculated in accordance with the formula stated in section ME 8(1), so much of the imputation credit as would arise if the imputation ratio of the dividend were the ratio so calculated: 20

“(d) in the case of a dividend withholding payment credit attached to a dividend with a dividend withholding payment ratio greater than the ratio calculated in accordance with the formula stated in section MG 8(1), so much of the dividend withholding payment credit as would arise if the dividend withholding payment ratio of the dividend were the ratio so calculated: 25 30

“(e) in the case of a dividend with a combined imputation and dividend withholding payment ratio greater than the ratio calculated in accordance with the formula stated in section MG 8(1), so much of the dividend withholding payment credit and the imputation credit as remain after any reduction of the dividend withholding payment 35

credit or the imputation credit in accordance with sub-section (5):”.

**589 Credit of tax for imputation credit**

(1) Section LB 2(2) is replaced by the following:

“(2) Any such credit of tax is credited, in so far as it extends, against the income tax liability of the taxpayer for the income year.” 5

(2) In section LB 2(8), “from an interest in an attributing interest in a foreign investment fund” is replaced by “from an attributing interest in a foreign investment fund”.

**590 Credit of tax for dividend withholding payment credit in hands of shareholder** 10

Section LD 8(1)(a) is replaced by the following:

“(a) the taxpayer is entitled to a credit of tax equal to the dividend withholding payment credit so included in assessable income; and”.

15

**591 Credits in respect of dividends to non-resident investors**

Section LE 2(13) is repealed.

**592 Special rules for holding companies**

In section LE 3(6), item **T** is replaced by the following:

“**T** is the basic rate of income tax for companies, expressed as a percentage, stated in schedule 1, part A, clause 5, and applying in respect of the income year”.

20

**593 Allocation rules for imputation credits**

Section ME 8(7) is repealed.

**594 Amount of imputation credit to be attached to cash distribution** 25

Section ME 31(3) is repealed.

**595 Notional distribution deemed to be dividend**

Section ME 33(4) is repealed.



<b>596</b>	<b>Amount of imputation credit to be attached to cash distribution</b> Section ME 36(3) is repealed.	
<b>597</b>	<b>Notional distribution deemed to be dividend or taxable Maori authority distribution</b> Section ME 38(3) is repealed.	5
<b>598</b>	<b>Branch equivalent tax account of company</b> Section MF 3(3) is repealed.	
<b>599</b>	<b>Credits and debits arising to branch equivalent tax account of company</b> Section MF 4(7) is repealed.	10
<b>600</b>	<b>Debits and credits arising to group branch equivalent tax account</b> Section MF 8(7) is repealed.	
<b>601</b>	<b>Use of consolidated group credit to reduce dividend withholding payment, or use of group or individual debit to satisfy income tax liability</b>	15
	(1) Section MF 10(4B) to (4D) are repealed.	
	(2) After section MF 10(4), the following are 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).	20 25
	“(4C) An election made for a company (the <b>first company</b> ) 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 the item e as zero).	30

- “(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 the consolidated group, as the case may be, that makes the election: 5
  - “(b) is not an amount of debit balance for which the election is made:
  - “(c) does not relate to the election.”
- (3) **Subsections (1) and (2)** apply for the 2005–06 and later income years. 10
- 602 Allocation rules for dividend withholding credits**  
Section MG 8(9) is repealed.
- 603 Dividend with both imputation credit and dividend withholding payment credit attached**  
Section MG 10(3) is repealed. 15
- 604 Conduit tax relief account**  
Section MI 3(3) is repealed.
- 605 Credits arising to conduit tax relief account**  
Section MI 4(3) is repealed.
- 606 Debits arising to conduit tax relief account** 20  
Section MI 5(8) is repealed.
- 607 Consolidated group conduit tax relief account**  
Section MI 15(2) is repealed.
- 608 Credits arising to group conduit tax relief account** 25  
Section MI 17(3) is repealed.
- 609 Debits arising to group conduit tax relief account**  
Section MI 18(5) is repealed.

**610 Retirement scheme contributors**

- (1) In section NEB 6(2), the words before paragraph (a) are replaced by the following:
- “(2) An entity may choose to become a retirement scheme contributor for a person for an income year if,—” 5
- (2) **Subsection (1)** applies for the 2007–08 and later income years.

**611 Application of RWT rules**

Section NF 1(2)(b)(xii) is repealed.

**612 Resident withholding tax deductions from dividends deemed to be dividend withholding payment credits** 10

Section NF 8(1)(a) is replaced by the following:  
 “(a) sections LB 1 and LD 9”.

**613 Definitions**

- (1) This section amends section OB 1. 15
- (2) After the definition of **accident insurance contract**, the following is inserted:  
 “**accommodation** is defined in **section CE 1(2)** (Amounts derived in connection with employment) for the purposes of that section” 20
- (3) Before the definition of **actuary**, the following is inserted:  
 “**actuarially determined**—  
 “(a) means, for an amount, a requirement that is met when an actuary has—  
     “(i) calculated the amount: 25  
     “(ii) certified that the amount is calculated by them no later than the last day for furnishing the return of income to which the amount relates:  
     “(iii) provided to the Commissioner in writing, in the form prescribed by the Commissioner (if any), all 30  
         assumptions, methodologies, bases and working calculations necessary to support the calculation of the amount:  
 “(b) does not include when the calculation of an amount—

- “(i) does not accurately reflect the relevant taxpayer’s business experience:  
“(ii) is not made according to usual business practice:  
“(iii) is, or is part of, a tax avoidance arrangement”.
- (4) In the definition of **creditable membership**, subparagraph (b)(i) is replaced by the following: 5
- “(i) the period ending on the day on which securities are first allotted by the KiwiSaver scheme for the person, and beginning on the earliest of— 10
- “(A) the first day of the month in which contributions are first received by the Commissioner for the person: 10
- “(B) the first day of the month in which KiwiSaver contributions are first deducted for the person: 15
- “(C) the day which the Commissioner nominates in answer to a request by the person for such nomination, in circumstances where, due to matters outside the control of the person, the first deduction of KiwiSaver contributions was delayed.” 20
- (5) After the definition of **general insurance**, the following is inserted:
- “**general insurance contract** has the meaning given in IFRS 4” 25
- (6) 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 30
- “**IFRS 4** means the IFRS, numbered 4, that relates to insurance contracts”.
- (7) The definition of **offshore development** is repealed.
- (8) The definition of **onshore development** is repealed. 35
- (9) In the definition of **operating lease**, “means” is replaced by “means, except in **section EW 15B(4)(b)(iib)** (IFRS taxpayer method),”.

- (10) After the definition of **outstanding balance**, the following is inserted:  
 “**outstanding claims reserve** means the actuarially determined amount of a person’s outstanding claims liability for general insurance contracts, excluding contracts having premiums to which section FC 14 applies, as that liability is measured under Appendix D, paragraphs 5.1 to 5.2.12 of IFRS 4”.
- (11) After the definition of **overseas pension**, the following is inserted:  
 “**overtime** is defined in **section CW 13C(4)** (Payments for overtime meals) for the purposes of that section”.
- (12) After the definition of **petroleum mining company**, the following is inserted:  
 “**petroleum mining development** is defined in **section EJ 18** (Meaning of petroleum mining development) for the purposes of **sections EJ 11 and EJ 11B** (which relate to petroleum development expenditure)”.
- (13) In the definition of **prescribed investor rate**, paragraph (a)(ii) is replaced by the following:  
 “(ii) the person is a resident who derives income as a trustee of a trust other than a trust referred to in paragraph (c)(i) and who chooses to be subject to this paragraph for the tax year; or”.
- (14) After the definition of **working day**, the following is inserted:  
 “**work-related relocation** is defined in **section CW 13B(4)** (Relocation payments) for the purposes of that section”.
- (15) **Subsections (7), (8), and (12)** apply for expenditure incurred on or after 1 April 2008.
- (16) **Subsection (9)** 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.

**614 Schedule 16—Depreciable land improvements** 5

- (1) In schedule 16, after item 16, the following is added:

17 pipes and conduits

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

**Part 6**  
**Amendments to other Acts and** 10  
**regulations**

*Income Tax Act 1994*

- 615 Income Tax Act 1994 amended**  
**Sections 616 to 620** amend the Income Tax Act 1994.

**616 Exempt income—Employee allowances and expenditure** 15  
**on account of employee**

- (1) After section CB 12(1), the following are inserted:

“(1B) An amount, not being an amount or part of an amount that is exempt income under subsection (1), is exempt income to the extent to which—

“(a) the amount is paid to or on behalf of an employee in respect of the costs to the employee in a work-related relocation; and

“(b) the amount paid does not exceed the actual cost incurred by or on behalf of the employee on an expense that is listed as an eligible relocation expense in a determination made by the Commissioner under **section 91AAR** of the Tax Administration Act 1994; and

“(c) the expenditure is incurred from the start of the income year in which the employee relocates or undertakes work at the new location to the end of the fol-

- lowing income year unless, in the case of a temporary move,—
- “(i) the employee moves temporarily to a new location and then relocates permanently to that place; and 5
  - “(ii) the temporary move was not treated as a work-related relocation under this subsection.
- “(1C) An amount, not being an amount or part of an amount that is exempt income under subsection (1), is exempt income to the extent to which— 10
- “(a) the amount is paid to or on behalf of an employee for a meal for the employee when the employee is working overtime; and
  - “(b) the amount paid— 15
    - “(i) does not exceed the actual cost to the employee, with documentation required for amounts over \$20 per meal; or
    - “(ii) is a reasonable estimate of the expenditure likely to be incurred by the employee or a group of employees for whom an amount is payable; and 20
  - “(c) either—
    - “(i) the employment agreement provides for pay for overtime hours; or
    - “(ii) the employer’s established practice or policy provides for pay for overtime hours worked.” 25
- (2) **Subsection (1)** applies for the 2002–03 to 2004–05 income years.
- 617 Meaning of “fringe benefit”**
- (1) After section CI 1(o)(v), the following is inserted: 30
- “(vb) it removes a need which would otherwise exist for the employer of the employee to pay the employee an amount in respect of a work-related relocation as described in **section CB 12(1B)** or a payment for an overtime meal as described in **section CB 12(1C)**.”.
- (2) **Subsection (1)** applies for the 2002–03 to 2004–05 income years. 35

**618 Special and provisional economic rates**

- (1) Section EG 10(1)(b) is replaced by the following:  
 “(b) a provisional basic economic rate, where no applicable economic depreciation rate other than a default economic depreciation rate is specified in a determination under section EG 4.” 5
- (2) **Subsection (1)** applies for the 1995–96 and later income years.

**619 Definitions**

- (1) This section amends section OB 1. 10
- (2) In the definition of **expenditure on account of an employee**, the following is added after paragraph (d):  
 “(e) an amount paid under **section CB 12(1B)**.”
- (3) After the definition of **overseas company**, the following is inserted: 15  
 “**overtime**, for a person and a day, means time worked for an employer on the day beyond the person’s ordinary hours of work as set out in their employment agreement when the employee has worked more than 2 hours beyond their ordinary hours on that day.” 20
- (4) After the definition of **working partner**, the following is inserted:  
 “**work-related relocation**,—  
 “(a) for an employee other than an employee whose accommodation forms an integral part of their work, means a relocation of the place where the employee lives that is required because the employee’s workplace is not within reasonable daily travelling distance of their residence as a result of the employee— 25  
 “(i) taking up new employment with a new employer; 30  
 or  
 “(ii) taking up new duties at a new location with their existing employer; or  
 “(iii) continuing in their current position but at a new location: 35  
 “(b) for an employee whose accommodation forms an integral part of their work, means a relocation of the place



where the employee lives that is required as a result of the employee—

“(i) taking up new employment with a new employer; or

“(ii) taking up new duties at a new location with their existing employer; or

“(iii) continuing in their current position but at a new location.”

- (5) **Subsections (2) to (4)** apply for the 2002–03 to 2004–05 income years. 10

**620 Schedule 16—Depreciable land improvements**

- (1) In schedule 16, after item 16, the following is added:

17. Pipes and conduits.

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

*Income Tax Act 1976* 15

**621 Special and provisional economic rates**

- (1) Section 108I(1)(b) of the Income Tax Act 1976 is replaced by the following:

“(b) a provisional basic economic rate, where no applicable economic depreciation rate other than a default economic depreciation rate is specified in a determination under section 108C of this Act.” 20

- (2) **Subsection (1)** applies for the 1993–94 and later income years.

**622 Schedule 21—Depreciable land improvements** 25

- (1) In schedule 21 of the Income Tax Act 1976, after item 16, the following is added:

17. Pipes and conduits.

- (2) **Subsection (1)** applies for the 1993–94 and later income years.

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

- 623 Use of consolidated group credit to reduce dividend withholding payment or use of group or individual debit to satisfy income tax liability** 5  
In section 287(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007, “2005–06” is replaced by “1997–98”.
- Acts referring to associated person*
- 624 Consequential amendments to other Acts: associated person** 10  
The enactments listed in **schedule 2** are amended in the manner indicated in the schedule.
- Amendment to Income Tax (Depreciation Determinations) Regulations 1993* 15
- 625 Income Tax (Depreciation Determinations) Regulations 1993**
- (1) In regulations 2(a), 3(1)(c), 3(2), 6(1)(a), and 9(1) of the Income Tax (Depreciation Determinations) Regulations 1993, “91AE” is replaced by “91AAG”. 20
- (2) In regulations 2(b) and 6(1)(b) of the Income Tax (Depreciation Determinations) Regulations 1993, “91AJ” is replaced by “91AAL”. 20
- (3) **Subsections (1) and (2)** apply for the 2005–06 and later income years. 25
- Amendment to Goods and Services Tax (Grants and Subsidies) Order 1992*
- 626 Schedule—Non-taxable grants and subsidies** 30  
In the schedule of the Goods and Services Tax (Grants and Subsidies) Order 1992, clause 5,—
- (a) “under the Income Tax Act 2004” is replaced by “under the Income Tax Act 2007, Income Tax Act 2004,”:

- (b) “under subpart KJ of the Income Tax Act 2004” is replaced by “under subpart MK of the Income Tax Act 2007 or subpart KJ of the Income Tax Act 2004”.

**Schedule 1**

**s 431 5**

**Consequential amendments to lists of defined terms: associated person**

<i>Section reference in Income Tax Act 2007</i>	<i>Term to be omitted from list</i>
CD 44 Available capital distribution amount	related person
CW 12 Proceeds of share disposal by qualifying foreign equity investor	1990 version provisions
EW 43 Consideration when debt sold at discount to associate of debtor	1988 version provisions
EW 49 Income and deduction when debt sold at discount to associate of debtor	1988 version provisions
EX 1 Meaning of controlled foreign company	control
EX 7 Indirect control interests	control
FA 3 Recharacterisation of certain dividends: recovery of cost of shares held on revenue account	control
FE 1 What this subpart does	control
FE 2 When this subpart applies	control
FE 9 Elections	control

FE 12 Calculation of debt percentages	control
FE 21 Banking group's New Zealand net equity	1973 version provisions, 1988 version provisions, 1990 version provisions
FE 25 New Zealand group for excess debt entity that is a company	control
FE 26 Identifying New Zealand parent	control
FE 27 Establishing companies under parent's control	control
FE 28 Identifying members of New Zealand group	control
FE 30 Ownership interests in companies outside New Zealand group	control
FE 35 Persons who may be excluded from banking groups	control
FE 39 Direct ownership interests	control
GB 28 Interpretation of terms used in section GB 27	1973 version provisions, 1988 version provisions, 1990 version provisions
GB 48 Defined terms for sections GB 45 and GB 46	1973 version provisions, 1988 version provisions, 1990 version provisions
HC 15 Taxable distributions from non-complying and foreign trusts	1973 version provisions, 1988 version provisions, 1990 version provisions

HD 6 When relationship effectively that of principal and agent	control
HD 19 Persons receiving absentees income	control
HL 6 Investor membership requirement	1988 version provisions
RF 11 Dividends paid to companies/under control of/associated with non-residents	control

**Schedule 2**

**s 624**

**Consequential amendments to other Acts:  
associated person**

**Fisheries Act 1996 (1996, No 88)**

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Section 59(10)(c): “paragraphs (c) and (d) of the definition of that term” is replaced by “paragraph (c) of the definition of that term, as it was before the enactment of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act **2008**”.

Section 59(10)(d): replaced by the following:

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“(d) any person who would be an associated person under **subpart YB** of the Income Tax Act 2007.”

**Insolvency Act 2006 (2006 No 55)**

Section 182(1): replaced by the following:

“(1) If authorised by the court, the assignee or a person appointed by the assignee may exercise the power set out in subsection (2) in relation to a company that is associated with the bankrupt under **subpart YB** of the Income Tax Act 2007.”

**Misuse of Drugs Amendment Act 2005 (2005 No 81)**

Section 31, definition of **manufacturer**: “(to the extent to which those rules apply for the whole of that Act excluding the 1973, 1988, and 1990 version provisions)” is omitted.

**Privacy Act 1993 (1993, No 28)**

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Section 6, principle 12(2): “(to the extent to which those rules apply for the whole of that Act excluding the 1973, 1988, and 1990 version provisions)” is omitted.

**Public Service Investment Society Management Act (No 2) 1979  
(1979 No 9)**

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Section 2(2): replaced by the following:

“(2) For the purposes of section 4 of this Act a company shall be deemed to be associated with another company if those companies would be associated with each other under **subpart YB** of the Income Tax Act 2007.”

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**Radiocommunications Act 1989 (1989 No 148)**

Section 153(2): “(to the extent to which those rules apply for the whole of that Act excluding the 1973, 1988, and 1990 version provisions)” is omitted.

Section 161(2): “(to the extent to which those rules apply for the whole of that Act excluding the 1973, 1988, and 1990 version provisions)” is omitted.

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**Smoke-free Environments Act 1990 (1990 No 108)**

Section 2(1), definition of **manufacturer**: “(to the extent to which those rules apply for the whole of that Act excluding the 1973, 1988, and 1990 version provisions)” is omitted.

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**Trustee Companies Management Act 1975 (1975 No 25)**

Section 2(2): replaced by the following:

“(2) For the purposes of section 3 of this Act a company is associated with another company if those companies would be associated with each other under **subpart YB** of the Income Tax Act 2007.”

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**Unit Trusts Act 1960 (1960 No 99)**

Section 3(4): replaced by the following:

“(4) A trustee corporation or company or bank must not act as a trustee of a unit trust, and a company must not act as manager of a unit trust if those 2 persons are associated with each other under **subpart YB** of the Income Tax Act 2007.” 5