

*Examined and certified:*

*Clerk of the House of Representatives*

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*In the name and on behalf of Her Majesty Queen Elizabeth  
the Second I hereby assent to this Act this 30th day  
of March 2009*

*Governor-General.*

## **Taxation (Business Tax Measures) Act 2009**

Public Act 2009 No 5

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**The Parliament of New Zealand enacts as follows:****1 Title**

This Act is the Taxation (Business Tax Measures) Act 2009.

**2 Commencement**

- (1) This Act comes into force on the date on which it receives the Royal assent, except as provided in this section.
- (2) In Part 1, the sections, other than sections 3 and 24, come into force on 1 April 2009.
- (3) In Part 2,—
  - (a) section 32 is treated as coming into force on 19 December 2007:
  - (b) sections 29(1), 30(1), and 31(1) come into force on 1 April 2009:
  - (c) sections 29(2), 30(2), and 31(2) come into force on 1 April 2010.

**Part 1****Business tax measures***Amendments to Income Tax Act 2007***3 Income Tax Act 2007**

Sections 4 to 22 amend the Income Tax Act 2007.

**4 New heading and new section DB 62**

- (1) After section DB 61, the following is added:

*“Legal expenses***“DB 62 Deduction for legal expenses**

*“When this section applies*

- “(1) This section applies to a person when their total legal expenses for an income year is equal to or less than \$10,000.

*“Deduction*

- “(2) The person is allowed a deduction for the legal expenses.

*“Definition*

- “(3) For the purposes of this section, **legal expenses** means fees for **legal services** (as defined in the Lawyers and Conveyancers

Act 2006) provided by a person who holds a practising certificate issued by the New Zealand Law Society or an Australian equivalent.

*“Link with subpart DA*

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

“Defined in this Act: amount, capital limitation, deduction, general limitation, general permission, income year, legal expenses”.

- (2) Subsection (1) applies for the 2009–10 income year and later income years.

#### **5 Valuing closing stock under \$5,000**

- (1) In the heading to section EB 23, “\$5,000” is replaced by “\$10,000”.
- (2) In section EB 23(1)(b), “\$5,000” is replaced by “\$10,000”.
- (3) Subsections (1) and (2) apply for the 2009–10 income year and later income years.

#### **6 When use of spreading method not required**

- (1) Section EW 13(2), other than the heading, is replaced by the following:
- “(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.”
- (2) Subsection (1) applies for the 2009–10 income year and later income years.

#### **7 Straight-line method**

- (1) In section EW 17(1)(a), “\$1,500,000” is replaced by “\$1,850,000”.

- (2) Subsection (1) applies for the 2009–10 income year and later income years.

**8 Consistency of use of straight-line method and market valuation method**

- (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”.
- (3) Subsections (1) and (2) apply for the 2009–10 income year and later income years.

**9 Section EW 54 replaced**

- (1) 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”.

- (2) Subsection (1) applies for the 2009–10 income year and later income years.

**10 Section EW 56 repealed**

- (1) Section EW 56 is repealed.
- (2) Subsection (1) applies for the 2009–10 income year and later income years.

**11 Thresholds**

- (1) In section EW 57(1), “section EW 56(1)(a)(i)” is replaced by “section EW 54(1)(a)(i)”.
- (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:  
“*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).”
- (5) Subsections (1) to (3) apply for the 2009–10 income year and later income years.

**12 Financial arrangements, income, and expenditure relevant to criteria**

- (1) In section EW 58(1), “the natural person” is replaced by “the person”.
- (2) 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”.
- (3) In section EW 58(4),—
  - (a) the subsection heading is replaced by “*Beneficiary of trust other than bare trust*”:
  - (b) “a natural person” is replaced by “a person”.
- (4) In section EW 58(5),—
  - (a) the subsection heading is replaced by “*Trustee*”:
  - (b) “a natural person” is replaced by “a person”.
- (5) Subsections (1) to (4) apply for the 2009–10 income year and later income years.

**13 Section EW 59 replaced**

- (1) 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:
- “(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.

“Defined in this Act: associated person, cash basis person, Commissioner, financial arrangement, income, income tax liability”.

- (2) Subsection (1) applies for the 2009–10 income year and later income years.

#### **14 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)”.
- (2) In section EW 60(4), “to EW 56” is replaced by “and EW 55”.
- (3) Subsections (1) and (2) apply for the 2009–10 income year and later income years.

#### **15 PAYE income payment forms for amounts of tax paid to Commissioner**

In section RD 22,—

- (a) in the heading to section RD 22(3), “\$100,000” is replaced by “\$500,000”:
- (b) in subsection (3), “\$100,000” is replaced by “\$500,000”:
- (c) in subsection (4), “\$100,000” is replaced by “\$500,000”.

#### **16 Unclassified benefits**

In section RD 45,—

- (a) in subsection (2)(a), “\$200” is replaced by “\$300”:
- (b) in subsection (2)(b), “\$15,000” is replaced by “\$22,500”:
- (c) in subsection (3)(a), “\$800” is replaced by “\$1,200”:
- (d) in subsection (3)(b), “\$15,000” is replaced by “\$22,500”:
- (e) in subsection (4)(a), “\$800” is replaced by “\$1,200”:

- (f) in subsection (4)(b), “\$15,000” is replaced by “\$22,500”.

### **17 Adjustments for unclassified benefits on amalgamation**

In section RD 46,—

- (a) in subsection (2), “\$15,000” is replaced by “\$22,500” in both places in which it appears:
- (b) in subsection (3), “\$15,000” is replaced by “\$22,500” in both places in which it appears:
- (c) in subsection (4), “\$15,000” is replaced by “\$22,500” in both places in which it appears:
- (d) in subsection (5), “\$15,000” is replaced by “\$22,500” in both places in which it appears.

### **18 Close company option**

- (1) 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,—

“(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 \$500,000; or

“(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 1 vehicle or 2 vehicles for their private use; or

“(c) the employer did not employ any employees.”

- (2) In section RD 60(2)(b), “subsection (1)(b)” is replaced by “subsection (1)(c)”.

### **19 Small business option**

In section RD 61(1)(a), “\$100,000” is replaced by “\$500,000”.



**20 Section RZ 3 replaced**

Section RZ 3 is replaced by the following:

**“RZ 3 Standard method: 2008–09 and 2009–10 income years**

*“When this section applies*

- “(1) This section applies to the calculation of a person’s provisional tax liability for any instalments payable on or after 1 April 2009 for the 2008–09 income year, and for all instalments for the 2009–10 income year, when section RC 5 (Methods for calculating provisional tax liability) applies.

*“Standard method modified: for 5% uplift*

- “(2) The standard method under section RC 5(2) is modified so that,—

- “(a) for the 2008–09 income year, instead of using 105%, the amount of provisional tax payable is calculated using—
- “(i) 100%, if the person is not a new tax rate person;
- or
- “(ii) 90%, if the person is a new tax rate person:

- “(b) for the 2009–10 income year, instead of using 105%, the amount of provisional tax payable is calculated using 100%.

*“Standard method modified: for 10% uplift*

- “(3) The standard method under section RC 5(3) is modified so that, for the 2008–09 income year and the 2009–10 income year, instead of using 110%, the amount of provisional tax payable is calculated using—

- “(a) 105%, if the person is not a new tax rate person; or
- “(b) 95%, if the person is a new tax rate person.

“Defined in this Act: amount, income year, new tax rate person, pay, provisional tax, residual income tax”.

**21 Section RZ 5 replaced**

Section RZ 5 is replaced by the following:

**“RZ 5 Calculating amounts under standard method: 2008–09 and 2009–10 income years**

*“When this section applies*

- “(1) This section applies to the calculation of a person’s provisional tax liability for any instalments payable on or after 1 April

2009 for the 2008–09 income year, and for all instalments for the 2009–10 income year, when section RC 10 (Calculating amount of instalment under standard and estimation methods) applies.

*“Calculation modified: 2008–09 income year*

“(2) In the calculation of the amount of an instalment for the 2008–09 income year, in section RC 10(3)(a),—

“(a) subparagraph (i) is modified so that instead of a 5% uplift,—

“(i) no uplift is applied, if the person is not a new tax rate person; or

“(ii) a 10% reduction is applied, if the person is a new tax rate person:

“(b) subparagraph (ii) is modified so that instead of a 10% uplift,—

“(i) a 5% uplift is applied, if the person is not a new tax rate person; or

“(ii) a 5% reduction is applied, if the person is a new tax rate person.

*“Calculation modified: 2009–10 income year*

“(3) In the calculation of the amount of an instalment for the 2009–10 income year, in section RC 10(3)(a),—

“(a) subparagraph (i) is modified so that instead of a 5% uplift, no uplift is applied:

“(b) subparagraph (ii) is modified so that instead of a 10% uplift,—

“(i) a 5% uplift is applied, if the person is not a new tax rate person; or

“(ii) a 5% reduction is applied, if the person is a new tax rate person.

“Defined in this Act: amount, income year, new tax rate person, pay, provisional tax, residual income tax”.

## 22 Definitions

(1) In section YA 1, after the definition of **legal defeasance**, the following is inserted:

“**legal expenses** is defined in section DB 62 (Deduction for legal expenses) for the purposes of that section”.

- (2) In section YA 1, in paragraph (b)(ii) of the definition of **initial provisional tax liability**, “\$35,000” is replaced by “\$50,000”.

*Amendment to Tax Administration Act 1994*

**23 Provisional tax and rules on use of money interest**

- (1) In section 120KE(1)(b) of the Tax Administration Act 1994, “\$35,000” is replaced by “\$50,000”.
- (2) Subsection (1) applies for the 2009–10 income year and later income years.

*Amendments to Goods and Services Tax Act  
1985*

**24 Goods and Services Tax Act 1985**

Sections 25 to 27 amend the Goods and Services Tax Act 1985.

**25 Taxable periods**

In section 15(2)(a), “\$250,000” is replaced by “\$500,000”.

**26 Requirements for accounting on payments basis**

In section 19A(1)(b)(i), “\$1,300,000” is replaced by “\$2,000,000”.

**27 Persons making supplies in course of taxable activity to be registered**

In section 51(1)(a), “\$40,000” is replaced by “\$60,000”.

**Part 2**

**Minor remedial matters**

*Amendments to Income Tax Act 2007*

**28 Income Tax Act 2007**

Sections 29 to 31 amend the Income Tax Act 2007.

**29 Employer’s liability for attributed benefits**

- (1) In section RD 50(5), “63.93%” is replaced by “61.29%”.
- (2) In section RD 50(5), “61.29%” is replaced by “58.73%”.

- (3) Subsection (1) applies for the 2009–10 income year and later income years.
- (4) Subsection (2) applies for the 2010–11 income year and later income years.

### **30 Calculation for certain employees when information lacking**

- (1) In section RD 52(3)(b), “63.93%” is replaced by “61.29%”.
- (2) In section RD 52(3)(b), “61.29%” is replaced by “58.73%”.
- (3) Subsection (1) applies for the 2009–10 income year and later income years.
- (4) Subsection (2) applies for the 2010–11 income year and later income years.

### **31 Pooling non-attributed benefits**

- (1) In section RD 53(4)(a), “64%” is replaced by “61%”.
- (2) In section RD 53(4)(a), “61%” is replaced by “59%”.
- (3) Subsection (1) applies for the 2009–10 income year and later income years.
- (4) Subsection (2) applies for the 2010–11 income year and later income years.

#### *Amendment to Tax Administration Act 1994*

### **32 Interpretation**

In section 3(1) of the Tax Administration Act 1994, in paragraph (e)(ii) of the definition of **response period**, “1 year” is replaced by “2 years”.

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**Legislative history**

10 February 2009	Introduction (Bill 11-1)
10 February 2009	First reading and referral to Finance and Expenditure Committee
6 March 2009	Reported from Finance and Expenditure Committee (Bill 11-2)
12 March 2009	Second reading
24 March 2009	Committee of the whole House
26 March 2009	Third reading

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