Taxation (Consequential Rate Alignment and Remedial Matters) Bill 2009

Officials' Report to the Finance and Expenditure Committee on Submissions on the Bill

September 2009

Prepared by the Policy Advice Division of Inland Revenue and the Treasury

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OVERVIEW

The Taxation (Consequential Rate Alignment and Remedial Matters) Bill introduces new resident withholding tax (RWT) rates on interest paid to individuals, to bring them into line with recent changes to personal tax rates. The new rates for individuals will be 12.5%, 21%, 33% and 38%, depending on their income.

The bill introduces a new default rate of 38% for people who do not elect an RWT rate with their bank. This default rate will apply to accounts opened from 1 April 2010. The bill proposes a transitional period for people who have an existing bank account at 1 April 2010 and who are on the current RWT default rate of 19.5%. They will be automatically shifted up to a 21% rate for a year from 1 April 2010. They will then have a year in which to either confirm with their bank that 21% is their correct rate or to select one of the other RWT rates. If they neither confirm the 21% rate nor elect another rate, their RWT rate will then go up to 38% from 1 April 2011. The changes to the default rate are being made to motivate people to use the RWT rate that aligns with their marginal tax rate for the interest they receive from their financial institution.

This has proved to be the most controversial matter in the bill.

The bill aligns the tax rates on portfolio investment entities (PIEs) with the new personal tax rates, so that PIE rates will be 12.5%, 21% and 30%, and makes a number of similar consequentials to other withholding tax rates.

Other amendments include removing the current requirement for Inland Revenue to issue personal tax summaries, clarifying the Commissioner's discretion to allow taxpayers who have made minor errors in a return (involving $500 or less in tax) to correct them in a subsequent return, making the requirement to pay tax in dispute a non-disputable decision and clarifying the meaning of 'dividend' under the dividend stripping rules.

Thirteen submissions were received on the bill. Submitters were generally supportive of the main purpose of the bill, which is to align rates. However, several submitters had significant concerns regarding the proposal to change the default rate to 38% for all taxpayers using the 21% rate on 1 April 2011. During consultation with officials, submitters suggested an alternative proposal which targets taxpayers who use the incorrect rate. Officials support the alternative proposal.

Several submitters raised significant issues that were not directly related to the changes in the bill. These included issues relating to dividend RWT, PIEs and government superannuation allowances. Officials are sympathetic to several of the issues raised, but there has not been sufficient time to address these issues given the timeframe. In any case it is difficult to deal with extraneous policy matters in the context of the select committee bill process.

Significant policy matters

RESIDENT WITHHOLDING TAX (RWT)

Clauses 45, 51 and 60

Issue: Support alignment of RWT rates

Submission
(3 – New Zealand Bankers' Association, 10 – KPMG, 6 – Corporate Taxpayers Group, 5 – New Zealand Institute of Chartered Accountants, 8 – PricewaterhouseCoopers, 11 – Ernst & Young)

Submitters support the consequential alignment of resident withholding tax (RWT) rates on interest income with the new personal tax rates.

Comment

Officials welcome the general consensus in favour of aligning RWT rates with the personal tax rates that are now in place after recent tax cuts (12.5%, 21%, 33% and 38%). Alignment will ensure that compliance costs for taxpayers and administrative costs for Inland Revenue are reduced, as individuals will be able to select the RWT rate that corresponds with their marginal tax rate.

Recommendation

That the submission be noted.

Issue: Default RWT rate

Submission
(3 – New Zealand Bankers' Association, 10 – KPMG, 6 – Corporate Taxpayers Group, 5 – New Zealand Institute of Chartered Accountants)

The default RWT rate that applies where an interest recipient does not elect a rate should be 21%. This is because it will ensure the greatest accuracy in terms of taxing the highest proportion of individuals at the correct rate and ensure the lowest compliance costs. *(KPMG, New Zealand Institute of Chartered Accountants, Corporate Taxpayers Group)*

12.5% is not an appropriate default RWT rate. *(KMPG, New Zealand Institute of Chartered Accountants)*

At the most, the default RWT rate should be 33%. *(Corporate Taxpayers Group)*

The New Zealand Bankers' Association supports the default rate of 38% for new accounts. However, the proposed 38% default rate should only apply to new accounts that are opened after 1 April 2010. The proposed shift to 38% on 1 April 2011 should not take place. Instead, a legislative requirement should be imposed for deposit account holders to elect an RWT rate that aligns with their marginal tax rate. The deposit account holder should be required to change their RWT rate where the rate no longer reflects the account holder's marginal tax rate. Such an approach could be supplemented with the proposed requirement for banks to remind customers to ensure that their RWT rate is aligned with their marginal tax rate on annual resident withholding tax certificates and work by Inland Revenue. *(New Zealand Bankers' Association)*

Comment

Default rate for new bank accounts

Officials maintain that the default rate for new bank accounts that are opened from 1 April 2010 should be 38%. The rationale for this approach is that it provides an incentive to taxpayers to select the RWT rate that is appropriate given their marginal tax rate.

Shift of existing bank accounts to 38% default rate from 1 April 2011

Officials agree with submitters that existing bank accounts should not be shifted to a 38% default rate from 1 April 2011. This is because of the substantial number of contacts that banks will have within a short period of time as a result of moving a large number of customers to the new default rate on 1 April 2011. Additionally, Inland Revenue expects that a large number of extra personal tax summaries and contacts will arise from this proposal. Furthermore, a number of individuals who will be shifted to the 38% default rate would be permanently over-taxed under the current proposal, as they will in fact have a lower marginal tax rate (i.e. 12.5%, 21% or 33%).

Officials instead support an alternative proposal that arose from consultation with submitters. This would involve a more targeted approach with respect to taxpayers who should be on the 38% RWT rate but are on a lower rate. This would involve Inland Revenue identifying individuals who are on the 21% RWT rate but who should be on 38% and instructing interest payers (initially, the major banks) to shift those individuals to the appropriate rate. This would work by the banks providing Inland Revenue with information on customers' tax file numbers and elected RWT rates. Based on information about taxpayers from employer monthly schedules, Inland Revenue would send back "amended" information to the banks on an annual basis. Inland Revenue would also send letters to affected individuals, informing them of this action. As with the current proposal, individuals who are shifted up to 38% would still retain the ability to elect down to a lower rate.

A similar approach is already used by Inland Revenue in relation to secondary tax codes, where it may instruct employers to use a particular PAYE tax code for an individual taxpayer.

Recommendation

That the submission be accepted subject to officials' comments.

Issue: Electing RWT rates

Submission
(11 – Ernst and Young)

Individuals should retain their ability to freely choose between the 21%, 33% and 38% rate and not be required to choose a "correct rate".

Comment

Individuals who are shifted up to a higher RWT rate due to Inland Revenue notifying their interest payer under the alternative proposal would still have the ability to subsequently elect another rate. However, officials note that individuals who do elect back down will likely be identified by Inland Revenue as being on an inappropriate rate the next year and again shifted up to the RWT rate that corresponds with their marginal tax rate.

Recommendation

That the submission be accepted subject to officials' comments.

PORTFOLIO INVESTMENT ENTITIES (PIES)

Clause 49(10)

Issue: Taxable + PIE thresholds

Submission
(4 – University of Auckland – Retirement Policy and Research Centre)

The thresholds for taxable + PIE income should be the same as the threshold for taxable income.

Comment

The changes in this bill simply amend the existing thresholds to take account of the recent tax cuts and threshold changes. They do not change the existing policy that the threshold for taxable + PIE income is higher than the threshold for taxable income.

The reason for this policy is to ensure that investors whose income is entirely or mostly from PIEs are not overtaxed on their PIE income. The problem of over-taxation for these people arises because PIE tax is a final, flat rate. An example of the problem that would arise is where an investor earns $20,000 of only PIE income. In the absence of the higher threshold for taxable + PIE income, every dollar of their income would be taxable at 21% – even though the majority of it should be taxable at 12.5%.

The policy underlying the PIE rules is that PIE investors should not be disadvantaged compared to other investors. When the PIE rules were introduced, each threshold for taxable + PIE income was raised to the next threshold.

Recommendation

That the submission be declined.

Issue: Threshold for 30% rate for 2009-10 income year

Submission
(7 – Barry Preddle)

The thresholds at which the 30% rate applies did not rise at the time of the tax cuts. This means that, for the 2009-10 income year, people earning between $38,000 and $48,000 had to elect the 30% rate for their PIE income, whereas a direct investor would have been able to use 21%. Affected taxpayers should be given a tax credit or rebate.

Comment

It was not possible to make changes to the PIE rates until 1 April 2010 due to the time needed to consult with PIE managers.

A credit or rebate to this group of investors for the 2009-10 income year would be extremely complex and expensive to administer, particularly given that it would apply only to a single transitional year.

Officials also note that PIE tax treatment is still concessionary for this group in a number of respects. In particular, PIE income is not taken into account for determining social policy entitlements or obligations, and the threshold for taxable and PIE income is higher than the threshold for taxable income.

Recommendation

That the submission be declined.

PERSONAL TAX SUMMARIES

Clauses 62(2), 63 and 64

Issue: Support for proposal

Submission
(10 – KPMG)

The submitter supports the change to allow Inland Revenue flexibility in issuing personal tax summaries (PTSs). However, taxpayer perception should be noted, especially since the selective issue of income statements may lead to taxpayers not receiving refunds they are otherwise entitled to.

Comment

These changes relate only to categories of people to whom Inland Revenue automatically issues a PTS. Nothing in the proposals will affect the taxpayer's ability to request a PTS in order to receive a refund.

Officials note that taxpayers who automatically receive a PTS showing they have tax owing must pay that tax.

On the other hand, taxpayers who are not automatically sent a PTS (or who are not required to request a PTS) can first check to see whether they will receive a tax bill or a refund. Individuals can do this by requesting a summary of earnings from Inland Revenue and checking the online refund calculator.

If the calculation shows that they would receive a tax bill, they do not need to request a PTS and therefore do not need to repay under-withheld tax. If it shows that they would receive a refund, they can then request a PTS.

Recommendation

That the submission be noted.

Issue: Proposal is unnecessary

Submission
(5 – New Zealand Institute of Chartered Accountants)

The proposal is unnecessary because the submitter cannot foresee situations where Inland Revenue should be using its discretion to exempt taxpayers from filing tax returns.

Comment

Currently, Inland Revenue is required to issue a PTS to several categories of individual taxpayers. Categories of taxpayers who must automatically receive a PTS include those who have had insufficient tax withheld on $200 or more of income, or who have earned employment income using certain tax codes.

However, issuing a PTS is unnecessary for categories of taxpayer who are no more likely to have had the incorrect amount of tax withheld than any other category. These include spouses of Working for Families recipients and people who have student loans.

It is not administratively sustainable to continue to automatically send unnecessary PTSs. If Inland Revenue is to continue to meet government and public service expectations within likely budgetary limits it needs to be able to make sensible business decisions that are risk-based. Non-discretionary statutory requirements as to when interventions are required are inconsistent with this approach.

Recommendation

That the submission be declined.

MINOR ERRORS IN RETURNS

Clause 66

Submission

(5 – New Zealand Institute of Chartered Accountants, 6 – Corporate Taxpayers Group, 8 – PricewaterhouseCoopers, 10 – KPMG, 11 – Ernst & Young)

The $500 threshold should be raised. Submitters suggest a range of increased thresholds from $1,000 to $100,000 (or 2% of turnover, if less). *(New Zealand Institute of Chartered Accountants, Corporate Taxpayers Group, PricewaterhouseCoopers, KPMG, Ernst & Young)*

There should be a maximum error, rather than a maximum tax effect of the error. *(PricewaterhouseCoopers)*

The threshold should be $500 per adjustment, rather than $500 per return. *(KPMG)*

Comment

Officials consider that $500 per return is a reasonable margin of error for individuals and SMEs, and large taxpayers should have systems in place to prevent large oversights.

Over time, further consideration to the threshold may be able to be considered depending on how the proposal works in practice.

Recommendation

That the submission be declined.

REWRITE OF THE INCOME TAX ACT: DIVIDEND ARISING UNDER DIVIDEND STRIPPING RULES

Clause 53(1)

Issue: Dividend in dividend stripping rules

Submission
(11 – Ernst & Young, 6 – Corporate Taxpayers Group, 5 – New Zealand Institute of Chartered Accountants)

The addition of reference to the dividend stripping rules to schedule 51 (which lists intended rewrite changes) should be amended. Section GB 1(3) should be amended to deem the amount to be assessable income without characterising it as a dividend. *(Ernst & Young)*

Dividends that result from the dividend stripping rules should not be subject to RWT and NRWT. *(Corporate Taxpayers Group)*

Schedule 51 should not confirm the drafting change in the dividend stripping rules as an intended policy change. *(New Zealand Institute of Chartered Accountants)*

Comment

Clause 53(1) confirms that the minor wording change in the dividend stripping rules is an intended drafting outcome in rewriting them. The Rewrite Advisory Panel had concluded that the rewritten rule in section GB 1(3) contained an unintended change in outcome that clarified the law to reflect the Commissioner's view that the provision has always been subject to withholding tax rules.

However, officials note that whether the withholding tax regimes apply to a dividend arising under the dividend stripping rules has been a long-standing policy and interpretation issue.

Officials now consider that there are practical difficulties in applying the resident withholding tax rules to the company distributing the dividend, for the following reasons:

- The company treated as paying the dividend may not have knowledge of the circumstances of the person treated as deriving the dividend that result from dividend stripping.

- Other dividends arising under other anti-avoidance rules are treated as dividends paid, for which a payer can be identified are explicitly excluded from the resident withholding tax rules.

Officials note that if the payer of the dividend is not required to withhold resident withholding tax, the recipient of the dividend remains liable for the tax and any associated penalties and interest, under the normal assessment process. Officials consider this is the appropriate policy outcome.

However, officials consider that if a dividend arising from the dividend stripping rules is derived by a non-resident, the non-resident withholding tax rules remain relevant. Normally, a non-resident deriving a dividend from New Zealand is not required to file a tax return, and the NRWT withheld from the payment is a final tax. However, the NRWT rules provide that if the payer does not withhold NRWT, or does not withhold the correct amount of NRWT, the recipient must file a return of income and pay tax under the normal assessment process.

While the same practical difficulties relating to establishing a withholding obligation exist for the payer of the section dividend arising from the dividend stripping rules, officials consider the NRWT rules should continue apply to the recipient. That outcome would be consistent with the recommended effect for a resident who derives a dividend arising from the dividend stripping rules.

Officials have also considered the submission that a dividend arising from the dividend stripping rules should not be treated as a dividend, with particular reference to the application of the memorandum account rules. The memorandum account rules provide for the benefit of corporate tax to be attributed to shareholders on payment of a dividend (for example, by way of imputation credits). Officials agree with this submission, as this would ensure that:

- The amount of the dividend does not affect the determination of the ratios for the benchmark dividend rules; and

- The paying company is not required to issue a shareholder dividend statement retrospectively; and

- The paying company would not attach imputation credits (or other memorandum account credits) to the dividend. This outcome is consistent with the policy of the imputation rules that imputation credits cannot be streamed to any particular shareholder, and ensures that the taxation obligation is imposed on the recipient of the dividend.

Recommendations

That the submission relating to schedule 51 be declined, but should not refer to withholding tax obligations.

That the submission be accepted that no withholding obligation be imposed on the company treated as paying a dividend arising from the dividend stripping rules.

That the submission that the dividend stripping rules should give rise to assessable income (not a dividend) be declined.

That the submission that memorandum account rules in Part O do not apply in relation to a section GB 1(3) dividend be accepted.

TAX IN DISPUTE

Clause 67

Submissions
(5 – New Zealand Institute of Chartered Accountants, 10 – KPMG)

This submission opposes the proposed amendment. It removes an ability of a taxpayer to challenge a decision of the Commissioner that can have dire circumstances. Not being able to challenge such a decision gives the Commissioner unfettered power to enforce payment from taxpayers, whether that payment is correctly due or not. *(New Zealand Institute of Chartered Accountants)*

The Committee should ensure that this additional power is required and will be used as intended. *(KPMG)*

Comment

Section 138I of the Tax Administration Act 1994 concerns payment of tax in dispute. Before 2003 the legislation required that half the tax being disputed be paid in all cases. This requirement was repealed as the justification for requiring the payment was significantly diminished by the introduction of use-of-money interest.

When the general requirement was repealed, the Commissioner was given the ability to require that a disputant pay all of the tax in dispute if the Commissioner considers that there was a significant risk that the tax in dispute would not be paid if the disputant's challenge was not successful (section 138I(2B)).

This discretion is exercised in exceptional circumstances only – for example, when the Commissioner considers there is a flight risk or a substantial risk of assets being alienated. The delegation for this discretion is set at a high level.

It was never the policy intention that the exceptional/rare event would itself be disputable. Full dispute rights are still available for the substantive dispute.

Officials continue to support the amendment as introduced.

Recommendation

That the submission be declined.

Other issues raised in submissions

RESIDENT WITHHOLDING TAX (RWT)

Issue: Casual interest payers

Submission
(6 – Corporate Taxpayers Group)

The RWT rules should be clarified as to how they apply to non-banking scenarios, especially in one-off transactions. In particular, there should be separate rules for "casual interest payers" (interest payers outside of the major financial institutions). This should include a special default rate of 33% for casual interest payers and 30% for companies. This would apply where the casual interest payer has not been supplied with a tax file number.

Comment

This is a matter that does not arise specifically from the proposals contained in the bill but is an issue that arises more broadly with respect to the application of the RWT system that we have not been able to consider in the time available.

Recommendation

That the submission be declined.

Issue: RWT on interest and dividends

Submission
(6 – Corporate Taxpayers Group)

As an alternative to the submission above, all fully imputed dividends paid by widely-held companies to resident shareholders should be subject to a final tax of 30%.

Tax on all interest paid between unrelated parties should be capped at 30%.

Comment

This is a substantive proposal that is outside the ambit of the bill and has not been considered.

Recommendation

That the submission be declined.

Issue: RWT on dividends

Submission
(5 – New Zealand Institute of Chartered Accountants, 6 – Corporate Taxpayers Group, 8 – PricewaterhouseCoopers, 10 – KPMG, 11 – Ernst & Young)

The RWT rate on dividends should be reduced from 33% to 30% to align with the company tax rate. *(PricewaterhouseCoopers, Corporate Taxpayers Group)*

The RWT rate on dividends should be reduced to 30% if paid to companies or PIEs. *(Ernst & Young)*

Companies should not have to deduct an additional 3% RWT on payment of fully imputed dividends. However, this could remain as an option if a company wished to do so. *(KPMG)*

The RWT rate on dividends should be reduced to 30% for a dividend paid to an associated person of a closely-held company. *(New Zealand Institute of Chartered Accountants)*

Comment

This issue is that 30% will not be a final tax to any recipient (all 30% taxpayers have an obligation to file a tax return) whereas 33% will be final to some individuals. The question is one of compliance cost trade off between the dividend payer and the recipient.

Further, this is a substantive proposal that is outside the ambit of the bill and, in the time available, has not been able to be fully considered.

Recommendation

That the submission be noted.

PORTFOLIO INVESTMENT ENTITIES (PIES)

Issue: Top rate of 30%

Submission
(4 – University of Auckland – Retirement Policy and Research Centre)

PIE income should be subject to the same marginal tax rates as ordinary income. In particular, PIE tax should not be capped at 30%.

Comment

This is outside the ambit of the proposals in the bill.

Recommendation

That the submission be noted.

Issue: PIE income should be included for social policy purposes

Submission
(4 – University of Auckland – Retirement Policy and Research Centre)

PIE income should be taken into account for the purposes of state entitlements and obligations. This should also apply to income that is subject to fringe benefit tax, employer scheme contribution tax, and fund withdrawal tax.

Comment

This is outside the ambit of the proposals in the bill.

Recommendation

That the submission be noted.

Issue: PIE tax rate for non-residents

Submission
(10 – KPMG)

There should be a 0% PIE tax rate for foreign-sourced income of non-resident investors.

Comment

This matter is outside the ambit of the bill. Note that it is currently being considered by the Government as one of the issues resulting from the Prime Minister's Job Summit.

Recommendation

That the submission be noted.

GOVERNMENT SUPERANNUATION ALLOWANCES

Submission
(13 – Dr DE and Mrs SE Wright)

The tax rate of government superannuation allowances should be reviewed.

Comment

We understand that the issue raised relates to defined benefit payments paid by the Government Superannuation Fund (a now-closed superannuation scheme for government employees). In 1990, payments from the scheme were made tax-exempt and were reduced by the amount of tax that would have been payable at the time had the pension been a recipient's only source of income. We understand that the submitter requests that these payments be increased to take account of the recent tax rate reductions.

This is a complex issue that would require significant changes to current policy settings and cannot be addressed in the time available. Further, this does not fall within the ambit of legislation administered by Inland Revenue.

Recommendation

That the submission be declined.

Minor policy and technical issues

MINOR POLICY AND TECHNICAL ISSUES

This section of the report deals with submissions on a range of technical matters and policy details.

The material is presented in tabular form to make it easier to deal with.

No	Issue	Submitter	Submission	Officials' recommendation and comment
1.	Support for size and scope of bill	6 – Corporate Taxpayers Group	The submitter supports the size and scope of this bill.	Note.
2.	Commentary	5 – New Zealand Institute of Chartered Accountants	The commentary should have highlighted certain aspects of the rewrite remedials and provided further explanation of these technical changes.	Note. Officials will consider this point for future commentaries covering rewrite remedial changes. Further information will be contained in the *Tax Information Bulletin* (TIB) following on from the new legislation.
3.	Remedial Unit	6 – Corporate Taxpayers Group	A remedial unit should be established within Inland Revenue to deal with remedial tax matters on a day to day basis.	Decline. There is already a process for dealing with remedial matters.
Resident Withholding Tax (RWT) ***Clauses 45, 51 and 60***				
4.	12.5% rate: reasonable expectation test unnecessary	6 – Corporate Taxpayers Group	A "reasonable expectation" test for the 12.5% rate is not necessary.	Decline. Officials consider that the test is necessary to manage the risk of individuals on higher marginal tax rates electing the 12.5% RWT rate.
5.	12.5% rate: onus of reasonable expectation test	10 – KPMG	The onus should be on the interest earner, not the interest payer, to comply with the reasonable expectation test.	Note. Officials agree that the onus should be on the interest earner, and consider that this is clear in the legislation.
6.	12.5% rate: consequences of incorrect election	6 – Corporate Taxpayers Group	The consequences of incorrectly electing the 12.5% rate should be clarified. The only consequence should be that the person has to file a return at year-end.	Note. The legislation is clear that for most people the only consequence of electing the wrong rate is that the person must request a personal tax summary at year-end and pay the additional tax if the amount of interest they have earned is $200 or more (or include the interest in their tax return if they are required to file a return). However, penalties may apply if a person knowingly elects 12.5% without a reasonable expectation that their income will be $14,000 or under. This will be covered in the *Tax Information Bulletin*.

No	Issue	Submitter	Submission	Officials' recommendation and comment
7.	12.5% RWT rate: Trustees	Officials' submission	It is not clear whether trustees may access the 12.5% rate on interest income. The 12.5% rate should be available only where the minor beneficiary rules do not apply because of the testamentary trust exception in section HC 37.	Accept. The 12.5% rate is inappropriate for the majority of trusts given the minor beneficiary rules.
8.	Consequential amendment for 12.5% rate	Officials' submission	Section 33A of the Tax Administration Act 1994, which deals with thresholds for personal tax summaries, should be consequentially amended to take account of the new 12.5% rate for RWT.	Accept. This will ensure that the rules for people in this category operate as intended.
9.	Reminder requirement	3 – New Zealand Bankers' Association, 6 – Corporate Taxpayers Group, 11 – Ernst & Young	The reminder requirement proposed is inappropriate given that interest recipients are able to choose an RWT rate of 21%, 33% or 38%. *(New Zealand Bankers' Association, Ernst & Young)* Inland Revenue should provide taxpayers with information on the new RWT rates as part of its role instead of the proposal for interest payers to remind interest recipients to elect an appropriate rate. *(Corporate Taxpayers Group)*	Accept, subject to officials' comments. Officials consider that the wording of the reminder notice should explain that the consequence of a taxpayer electing an RWT rate that is inconsistent with their marginal tax rate is that the person may need to file at the end of the year. Officials consider that the reminder notice should only be required to be included on an annual RWT certificate, where one is required to be issued. This almost totally removes the compliance cost of this requirement.
10.	Reminder requirement	5 – New Zealand Institute of Chartered Accountants	If a recipient fails to respond to a reminder notice, their current RWT rate election should continue and they should not be moved to the non-declaration rate.	Accept, subject to officials' comments. Officials agree that the current rate should continue to apply if the recipient does not respond to a reminder notice. However, officials note that under the proposed new approach, Inland Revenue will have the ability to instruct an interest payer to use a particular rate where an individual taxpayer is on an RWT rate that is inconsistent with their marginal tax rate.
11.	Reminder requirement	6 – Corporate Taxpayers Group	There should be clarification of the reminder notice: • "for each year" • what if recipient is a company? • words "consistent with the rate of tax applying to their taxable income"	Note. This submission has been superseded by the recommendation in 9.

No	Issue	Submitter	Submission	Officials' recommendation and comment
12.	Company rate	5 – New Zealand Institute of Chartered Accountants, 8 – PricewaterhouseCoopers, 11 – Ernst & Young	The submitters support the proposal to have a 30% RWT rate available for payers of interest to companies for the 2010-11 income year.	Note.
13.	Non-declaration rate	5 – New Zealand Institute of Chartered Accountants	The submitter supports changing the 39% RWT rate for taxpayers who do not supply a tax file number from to 38%.	Note.
14.	RWT rates should be in schedule 1	6 – Corporate Taxpayers Group	It seems convoluted and not best practice to specify RWT rates in both the substantive legislation and schedule 1 – all rates should be in schedule 1.	Decline
15.	Threshold for monthly accounting for RWT	6 – Corporate Taxpayers Group	The threshold at which RWT must be accounted for on a monthly basis should be increased from $500 to $5000. The current rules should be simplified if monthly liability for RWT is less than $5000. This could be done by requiring that RWT be paid covering 6 monthly periods to 30 September and 31 March.	Decline. This is outside the ambit of the bill and is potentially a substantive matter. In the context of this bill there is insufficient time to consider this.
16.	Threshold for liability to deduct RWT	6 – Corporate Taxpayers Group	The threshold under which there is no liability to deduct RWT should be increased from $5000 to $100,000 of interest per year.	Decline. This is outside the ambit of the bill and is potentially a substantive matter. In the context of this bill there is insufficient time to consider this.
17.	Operational review	6 – Corporate Taxpayers Group	An operational review of RWT collection mechanism should be undertaken.	Note. This is likely to be considered as part of Inland Revenue's work to modernise the tax administration.
Portfolio investment entity (PIE) rules ***Clause 49(10)***				
18.	Rate alignment	6 – Corporate Taxpayers Group, 9 – Investment Savings & Insurance Association of NZ Inc, 10 – KPMG, 5 – New Zealand Institute of Chartered Accountants, 7 – Barry Preddle	The submitters support the alignment of PIE rates with personal marginal tax rates.	Note.

No	Issue	Submitter	Submission	Officials' recommendation and comment
19.	19.5% rate	4 – Retirement Policy and Research Centre – University of Auckland	The submitter supports removing the 19.5% PIE rate, because 19.5% was the correct rate only for taxpayers earning under $38,000 with only investment income.	Note.
20.	Trusts: prescribed investor rate	5 – New Zealand Institute of Chartered Accountants	Trusts should be able to elect a rate of 12.5% or 21%.	Accept in part. Trustees should be able to elect 21%. The 12.5% rate should be available only where the minor beneficiary rules do not apply because of the testamentary trust exception in section HC 37, given that the 12.5% rate is inappropriate for the majority of trusts given the minor beneficiary rules.
21.	Transitional rule for prescribed investor rate (PIR)	9 – Investment Savings & Insurance Associations of NZ Inc, 6 – Corporate Taxpayers Group, 5 – New Zealand Institute of Chartered Accountants, 10 – KPMG	The drafting of the transitional rule for investors currently using the 19.5% PIR should be amended to achieve the intended policy. This clause can currently be interpreted to mean that a person who has elected 19.5% prior to 1 April 2010 will always be entitled to elect the 21% rate.	Accept. The intention of this provision to ensure that the rate for an individual who elects a 19.5% rate before 1 April 2010 will change to 21% on 1 April 2010. It is not intended to override other rules that determine when the 30% rate must be used.
22.	Prescribed investor rate	11 – Ernst & Young	Paragraphs (b), (c) and (e) of the "prescribed investor rate" definition should be clarified.	This is a drafting point to be considered.
23.	Prescribed investor rate	5 – New Zealand Institute of Chartered Accountants, 10 – KPMG	The re-drafted definition of "prescribed investor rate" should specify a 30% rate for non-resident investors.	Accept.
24.	Prescribed investor rate	6 – Corporate Taxpayers Group	For consistency, prescribed investor rates should be included in schedule 1, as with RWT rates and other rates, instead of in the substantive legislation.	Decline.
25.	Extension of time from 2 to 4 years to become a portfolio listed company	1 – Deloitte	Companies that elect to become a portfolio listed company have two years from the date of election to list on a recognised exchange. The period should be extended by a further two years.	Accept.
26.	Application date of PIE tax rate changes	10 – KPMG	The application date of the PIE tax rate changes should be changed to income years beginning on or after 1 April 2010, not the 2010-11 income year.	Accept.

No	Issue	Submitter	Submission	Officials' recommendation and comment
27.	Application date of PIE tax rate changes	10 – KPMG	The NZ dollar hedging arrangements in respect of FDR equities should be excluded from the scope of the financial arrangements rules.	Decline. This is outside the ambit of the bill and is potentially a substantive matter. In the context of this bill there is insufficient time to consider this.
28.	Remedial matters	10 – KPMG	A number of minor technical amendments to the PIE rules should be made to ensure that they achieve their policy intent.	Accept. The submitter raises a number of useful minor drafting points that officials consider should be incorporated into the current PIE rules to ensure they achieve their intended effect.
Retirement Scheme Contribution Tax (RSCT) ***Clauses 49(12), 51(2) and 61***				
29.	Alignment of RSCT rates	5 – New Zealand Institute of Chartered Accountants	The submitter supports the alignment of the Retirement Scheme Contribution Tax (RSCT) with personal marginal tax rates.	Note.
RWT on taxable Maori authority distributions				
30.	RWT on taxable Maori authority distributions	8 – PricewaterhouseCoopers	RWT on taxable Maori authority distributions should be amended to reflect the new personal tax rate structure. In particular, the current 19.5% rate that applies to taxable distributions made by a Maori authority that do not meet the requirements for the 39% rate should be reduced to 12.5%. The existing 39% rate which applies where a Maori authority does not have the tax file number of the recipient and the distributions are more than $200 should be reduced to 38%.	Accept in part. The existing 39% default rate should be reduced to 38% to reflect the highest marginal tax rate, which has now reduced from 39% to 38%. However, with respect to the 19.5% rate, officials believe that the appropriate RWT rate will depend on whether a change is made to the tax rate for Maori authorities, which is currently 19.5%. This is a matter that requires further consideration.
Secondary codes ***Clauses 52(1), 58, 59 and 62(1)***				
31.	New 12.5% secondary code	5 – New Zealand Institute of Chartered Accountants	The submitter supports the introduction of a 12.5% secondary tax code.	Note.
32.	Operation of secondary code rules	5 – New Zealand Institute of Chartered Accountants	Clause 43(3) and (4) should be clarified to ensure that they achieve the policy intent.	Decline. Clause 43(3) and (4) is not related to the introduction of the 12.5% secondary code. The purpose of this provision is to more accurately tax extra pays earned in a job where a secondary tax code is used.

No	Issue	Submitter	Submission	Officials' recommendation and comment
Personal tax summaries (PTSs) ***Clauses 62 and 64***				
33.	Requirement to file	5 – New Zealand Institute of Chartered Accountants	The submitter supports the proposal that when a taxpayer has secondary employment tax deducted at the correct rate, the taxpayer does not need to file a tax return.	Note. However, this is generally the situation under existing law.
34.	Consequential amendment for WfF spouses	Officials' submission	The Tax Administration Act 1994 should be consequentially amended to ensure that spouses of Working for Families (WfF) recipients are not automatically sent PTSs.	Accept.
35.	Consequential amendment for student loan borrowers	Officials' submission	The Student Loan Scheme Act 1992 should be consequentially amended to ensure that a PTS is not automatically issued when a student loan assessment is issued to a borrower.	Accept. This is a consequential drafting amendment related to the policy discussion on pages 10-11.
Extra pays ***Clauses 43 and 52(2)***				
36.	12.5% rate	5 – New Zealand Institute of Chartered Accountants	The submitter supports the proposal to make a 12.5% rate available for extra pays.	Note.
37.	Extra pays where secondary tax code used	5 – New Zealand Institute of Chartered Accountants	The submitter supports the new rule to tax extra pays in a job where a secondary tax code is used.	Note.
38.	Election of 21% rate	5 – New Zealand Institute of Chartered Accountants	The submitter supports the new option for an employee to elect a 21% rate for extra pays.	Note.
39.	Extra pays: Election of 21% rate	5 – New Zealand Institute of Chartered Accountants	The legislation does not seem to achieve the policy intent to allow employees to elect a 21% rate for extra pays.	Decline. This change is simply a consequential of existing policy, which allows individuals to elect a rate for extra pays so long as it is not the lowest rate.

No	Issue	Submitter	Submission	Officials' recommendation and comment
Minor errors in returns ***Clause 66***				
40.	Minor errors in returns	10 – KPMG, 11 – Ernst & Young, 5 – New Zealand Institute of Chartered Accountants	The proposed threshold for errors should not rely on the Commissioner's discretion; errors within the threshold should automatically qualify to be corrected in the next return.	Note. However, it is currently anticipated that Inland Revenue will release a standard practice statement after enactment to clarify when the Commissioner will exercise his discretion.
41.	Minor errors in returns	11 – Ernst & Young	Draft section 113A(2) is insufficient because it only refers to returns of income, whereas s113A(1)(a) refers to liability for income tax, FBT and GST.	Accept.
42.	Minor errors in returns	8 – PricewaterhouseCoopers	The discretion should apply to all tax types and not be limited to income tax, GST and FBT.	Decline. Officials consider that the proposed changes will effectively target the vast majority of tax payable (and, therefore, errors made) by taxpayers, and SMEs in particular. To increase the scope of this provision to all taxes is likely to increase the compliance cost of administration for the Commissioner, without sufficient corresponding benefit to the majority of taxpayers.
RWT and intermediaries ***Clauses 44, 48 and 81***				
43.	RWT and intermediaries	9 – Investment Savings & Insurance Associations of NZ Inc, 11 – Ernst & Young	Additional amendments are required to ensure that the taxpayers are also deemed to be deriving resident passive income in order to be able to claim the relevant tax credits.	Accept. Officials agree that the amendment proposed for section RE 10B should clarify that the distribution is treated as resident passive income for the purpose of the provisions listed in draft RE 10B(2)(a).
44.	RWT and intermediaries	5 – New Zealand Institute of Chartered Accountants	The amendments should clarify the application of the tax credit and the RWT rules for intermediaries or agents acting on behalf of New Zealand residents with foreign investment fund (FIF) interests.	Accept.

No	Issue	Submitter	Submission	Officials' recommendation and comment
Electronic communication ***Clause 57***				
45.	Electronic communication	8 – PricewaterhouseCoopers, 10 – KPMG, 5 – New Zealand Institute of Chartered Accountants	Inland Revenue should communicate with taxpayers electronically. *(PricewaterhouseCoopers, KPMG)* Inland Revenue should be allowed to communicate electronically with taxpayers for all purposes. *(New Zealand Institute of Chartered Accountants)*	Note. Officials are working on identifying and removing legislative and operational barriers to communicating electronically with taxpayers as part of Transform Inland Revenue.
46.	Guidelines for electronic communication	8 – PricewaterhouseCoopers	Inland Revenue should provide guidelines on how the proposed change to communicate with taxpayers electronically will work in practice. Inland Revenue should consider the following practical matters: • how taxpayers will be notified that they will receive electronic communications from Inland Revenue; • what information/documents will be communicated electronically; • how Inland Revenue will ensure that it has the correct email address to communicate with a taxpayer. Inland Revenue could include an extra line on the income tax return form for taxpayers to confirm or correct their email address; • how this change will apply to matters subject to statutory deadlines.	Accept, subject to officials' comments. As part of Transform IR, Inland Revenue is looking at ways to increase and standardise electronic communications with taxpayers and tax agents. This will include consideration of the operational issues raised by the submitter. Officials will consider how taxpayers will be notified that they will receive electronic communications from Inland Revenue, and what information and documents will be communicated electronically on an issue-by-issue basis. Inland Revenue is also looking at how to obtain taxpayers' correct email addresses, and will also need to consider to what extent this change should apply to matters subject to statutory deadlines. Officials will also consider whether it is appropriate to publish guidelines on electronic communication on these matters, and what form such guidelines should take.
47.	Consistency of electronic communication	10 – KPMG	There should be standard criteria for communicating with taxpayers electronically which are consistently applied by all areas of Inland Revenue.	Note. As Inland Revenue intends to deliver as many services as possible via electronic means in the future, officials agree that, long-term, electronic communication should be applied consistently across Inland Revenue. However, in the transition period before this occurs, there will be some areas where electronic communications have not yet been fully implemented.

No	Issue	Submitter	Submission	Officials' recommendation and comment
48.	Designated email address	11 – Ernst & Young	Organisations should be able to agree what the designated email address should be and to provide a back-up email address. This is because it is possible that if a person in an organisation does not open their email (because they are ill for example), no-one else may be able to access that email. Therefore consent should still be required for non-individuals.	Note. The proposed rule will allow organisations to agree what the designated email address should be and to provide a back-up email address. This is because where a taxpayer has specifically instructed Inland Revenue to use a particular email address, Inland Revenue would not, in general, have reasonable grounds to believe that the taxpayer will receive communications if Inland Revenue uses a different email address.
Permanent Forestry Sink Initiative (PFSI) ***Clauses 49, 54, 82 and 83***				
49.	Permanent Forestry Sink Initiative	5 – New Zealand Institute of Chartered Accountants	The submitter supports the amendment which makes it clear that expenses incurred by a person deriving PFSI emission units are treated as forestry business expenses.	Note.
50.	Permanent Forestry Sink Initiative	Officials' submission	PFSI foresters should also be eligible to use the income equalisation account mechanism.	Accept.
Tax recovery ***Clauses 56 and 68***				
51.	Tax recovery	5 – New Zealand Institute of Chartered Accountants	The submitter does not oppose the amendment, but notes that is not appropriate for New Zealand to collect tax for other jurisdictions where objection rights have not expired.	Note.
Timing of beneficiary income ***Clause 18***				
52.	Beneficiary income	5 – New Zealand Institute of Chartered Accountants, 8 – PricewaterhouseCoopers, 10 – KPMG 11 – Ernst & Young	The submitters support the extension of the time period within which income may be beneficiary income.	Note.
53.	Beneficiary income	5 – New Zealand Institute of Chartered Accountants, 10 – KPMG	Trusts should be able to elect income as trustee or beneficiary income.	Decline. The present system is well understood and works.

No	Issue	Submitter	Submission	Officials' recommendation and comment
54.	Beneficiary income	8 – PricewaterhouseCoopers	The Commissioner of Inland Revenue should grant an extension of time for the filing of the beneficiary's income tax return when problems arise for beneficiaries to file their income tax return by the due date.	Note. This is a pre-existing problem that, in practice, does not seem to be causing issues.
55.	Beneficiary income	11 – Ernst & Young	The issue of how allocated, attributed or notional taxable income derived through trusts can be treated for income tax purposes should be clarified in the income tax legislation.	Decline. This is outside the ambit of the bill and is potentially a substantive matter. In the context of this bill there is insufficient time to consider this.
GST waste disposal ***Clause 71***				
56.	GST waste disposal	5 – New Zealand Institute of Chartered Accountants	The submitters support the clarification of this levy as subject to GST.	Note.
Cost of timber ***Clauses 11, 49, 77 and 81***				
57.	Cost of timber	5 – New Zealand Institute of Chartered Accountants, 11 – Ernst & Young	The removal of the generally accepted accounting practice (GAAP) requirement should be reconsidered. *(New Zealand Institute of Chartered Accountants)* The submitter agrees with removing the references to GAAP. *(Ernst and Young)*	Decline New Zealand Institute of Chartered Accountants' recommendation on the basis that if GAAP must be satisfied for a person to be allowed this deduction, a person who is not required to satisfy GAAP would be denied a deduction. Note the submission from Ernst and Young.
58.	Cost of timber	11 – Ernst & Young	There is no need to change the Income Tax Act 2004 as well as the Income Tax Act 2007.	Decline. The international financial reporting standards (IFRS) changes apply, at their earliest, from 1 Jan 2005 and at their latest, to balance dates falling on or after 1 January 2007. The 2004 Act requires amendment to validate the deduction for taxpayers complying with IFRS.
59.	Cost of timber	5 – New Zealand Institute of Chartered Accountants, 11 – Ernst & Young	The definition "cost of timber" should not be replaced with "expenditure relating to disposal of timber".	Accept, subject to officials' comments. Officials consider the term "cost of timber" should explicitly exclude provisions for future expenditure (for example, provisions for environmental restoration expenditure), but note this can be addressed in the definitions so that the term can be retained in the

No	Issue	Submitter	Submission	Officials' recommendation and comment
				text of the provisions. Officials also recommend that the definition of "cost of timber" clarify that it applies to certain expenditures incurred up to the time of harvest.
Research & Development and generally accepted accounting principles (GAAPs) ***Clause 74***				
60.	R&D and GAAPs	5 – New Zealand Institute of Chartered Accountants	The reference to paragraphs of International Accounting Standard 38 should be to paragraphs 54 to 67.	Accept.
Associated person (AP) definition in GST for charities ***Clause 70***				
61.	AP definition in GST for charities	5 – New Zealand Institute of Chartered Accountants	The proposed amendment may sanction charitable bodies making distributions outside of their charitable purposes.	Decline. Officials do not consider that the proposed amendment would appear to sanction charitable bodies making distributions outside their charitable purposes. In both cases, the amendments require that the supply is made in, or enables, the carrying out of the charitable, benevolent, philanthropic, or cultural purposes.
62.	AP definition in GST for charities	5 – New Zealand Institute of Chartered Accountants	The amendments should be expanded to section 2A(1)(g) to similarly not associate a trustee and a settlor of a trust where the settlor is a charity or non-profit body.	Decline. Officials have not been presented with any evidence that the current treatment of a supply from a settlor to a trustee, where the settlor is a charity or non-profit body, may cause any problems in practice.
63.	AP definition in GST for charities	5 – New Zealand Institute of Chartered Accountants	In the future, there should be a review of the GST associated persons rules in conjunction with the draft income tax legislation in the area of associated persons.	Decline. The GST associated persons rules were reformed in 2000 and are considered appropriate for GST purposes.
Binding rulings ***Clause 65***				
64.	Binding rulings	5 – New Zealand Institute of Chartered Accountants	The submitter supports the amendment to allow Inland Revenue to issue a binding ruling in relation to the Income Tax Act 2004 despite having received the application for the ruling after the beginning of the 2008-09 income year.	Note.

No	Issue	Submitter	Submission	Officials' recommendation and comment
65.	Binding rulings	5 – New Zealand Institute of Chartered Accountants	An amendment should be made to provide similar treatment for rulings applied for after 1 April 2005 on an arrangement entered into before the commencement of the Income Tax Act 2004.	Accept.
Attribution rule and company intermediaries				
66.	Attribution rule and company intermediaries	6 – New Zealand Institute of Chartered Accountants	The current wording of section GB 27(4)(a) should be broadened in order to achieve the policy objective of relief applying when the company's only activity was the one from which the income has been attributed.	Note. This is outside the ambit of the bill and is potentially a substantive matter. In the context of this bill there is insufficient time to consider this
Rewrite: Timing of ICA debits – loss of shareholder continuity ***Clauses 41 and 53***				
67.	Timing of ICA debits – loss of shareholder continuity	5 – New Zealand Institute of Chartered Accountants, 6 – Corporate Taxpayers Group, 11 – Ernst & Young	The provisions for imputation credit continuity should be restored to those in the 2004 Act. *(New Zealand Institute of Chartered Accountants)* The changes proposed in clause 41 and clause 53(3) of the bill should be deleted and replaced by amendments to each of the relevant sections in the ITA 2007 so as to refer to the time at which shareholder continuity is lost rather than to the day or the start of the day or on which shareholder continuity is lost. *(Ernst & Young)* The timing of the debit for loss of continuity should revert to the Income Tax Act 2004 treatment. *(Corporate Taxpayers Group)*	Accept. Officials agree with New Zealand Institute of Chartered Accountants and Corporate Taxpayers Group that recent case law has rendered the original rationale for the rewrite drafting changes redundant. As the Commissioner has decided not to appeal the decision of the High Court in *CIR v Albany Food Warehouse Ltd*, CIV-2008-485-1444, Wellington Registry, the 2004 Act approach should be restored.

No	Issue	Submitter	Submission	Officials' recommendation and comment
68.	Timing of ICA debits – loss of shareholder continuity	5 – New Zealand Institute of Chartered Accountants, 10 – KPMG	If a timing rule is desired for a continuity breach it should apply at the end of the day (continuity is lost) rather than the start of the day (continuity is lost). *(New Zealand Institute of Chartered Accountants)* The debit to the imputation credit account should arise at the end of the day on which shareholder continuity is lost for any of the balance at the end of the previous day which is unused during the day (continuity is lost). *(KMPG)*	Note. Accepting the submissions to restore the effect of the 2004 Act provisions makes these submissions redundant (see recommendation 67 above).
69.	Timing of ICA debits – loss of shareholder continuity	5 – New Zealand Institute of Chartered Accountants, 2 – Minter Ellison Rudd Watts	If the timing rule is retained as drafted, section OB 41(3) (and other similar memorandum account rules) should be amended retrospectively to clarify that the time of the imputation debit arising from a breach of shareholder continuity is the beginning of the day of loss of shareholder continuity. This would clarify the relationship between the proposed amendments to schedule 51 and the substantive provisions. *(New Zealand Institute of Chartered Accountants)* Rather than only including a clarification reference in schedule 51, the 2007 Act debit date provisions themselves should also be amended from the date of Royal assent of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 to provide that the debit arises at the beginning of the day on which shareholder continuity is lost. *(Minter Ellison Rudd Watts)*	Note. Accepting the submissions to restore the effect of the 2004 Act provisions makes these submissions redundant (see recommendation 67 above).
70.	Timing of ICA debits – loss of shareholder continuity	2 – Minter Ellison Rudd Watts	Section OZ 18(3) should be amended to follow the wording used in the 2004 Act and therefore it should read: *'The debit arises at the time at which shareholder continuity is lost'*	Note. Accepting the submissions to restore the effect of the 2004 Act provisions makes these submissions redundant (see recommendation 67 above).

No	Issue	Submitter	Submission	Officials' recommendation and comment
Rewrite: Meaning of settlor for certain employee shareholder purchase schemes ***Clauses 19, 20, and 53***				
71.	Meaning of settlor for certain employee shareholder purchase schemes	5 – New Zealand Institute of Chartered Accountants	The amendments are unnecessary as there is a presumption against double taxation when income is derived by a trustee in their representative fiduciary capacity (*C of T v Luttrell [1949] NZLR 823*).	Decline. A benefit from a share purchase agreement is treated as income from employment for income tax purposes, not as a distribution from a trust. Further, as set out in a TIB item (TIB Vol 1/5, Trusts – appendix), the effect of the *Luttrell* decision has been expressly overridden in relation to certain distributions from non-complying trusts and foreign trusts.
72.	Meaning of settlor for certain employee shareholder purchase schemes	5 – New Zealand Institute of Chartered Accountants, 11 – Ernst & Young	The provision should apply to employee share purchase schemes which do not give rise to an assessable benefit. *(New Zealand Institute of Chartered Accountants)* The term "employee share purchase scheme" should be defined or the paragraph HC 27(3B)(b) should be deleted. *(Ernst & Young)*	Accept. Officials agree that it is unnecessary for the proposed provision (section HC 27(3B)) to apply to a share purchase scheme that does not give rise to an assessable benefit.
73.	Meaning of settlor for certain employee shareholder purchase schemes	5 – New Zealand Institute of Chartered Accountants	There is a potential timing difference between the year in which a trustee is deemed to have income from a deductible settlement and the year in which the benefit may arise. This should be fixed as it means income is not harmonised to the extent it arises in the same income year.	Decline. The timing difference between the income of the trustee and the employee's benefit being income is irrelevant. The purpose of this rule is to prevent double taxation where a deductible settlement by the employer gives rise to both income of the trustee (section HC 7(3)) and income from employment (section CE 1(d)).
74.	Meaning of settlor for certain employee shareholder purchase schemes	5 – New Zealand Institute of Chartered Accountants	The income derived under section CE 1(d) is not likely to be equal as the proposed section HC 27(3B)(b) implies and this should be remedied.	Accept. Officials agree that it is not necessary for the income of the employee to be equal to the deductible payment, but the income should be limited to (cannot exceed) the amount of the deductible payment of the employer.
75.	Meaning of settlor for certain employee shareholder purchase schemes	5 – New Zealand Institute of Chartered Accountants	The proposed provisions of sections HC 27(3B)(b) and (c)(ii) are in conflict as income does not arise under section CE 1(d) when a share purchase scheme is approved under section DC 12. This should be remedied.	Accept.

No	Issue	Submitter	Submission	Officials' recommendation and comment
76.	Meaning of settlor for certain employee shareholder purchase schemes	5 – New Zealand Institute of Chartered Accountants	Clause 19(2)(a) should refer to the period from 2 October 2007 if the intention is to refer to a day that is the first day of the 2008-09 income year.	Accept.
Rewrite				
77.	Dividend under dividend stripping rules ***Clause 53***	5 – New Zealand Institute of Chartered Accountants	The savings provisions should refer to 2 October 2007.	Accept.
78.	Natural resources and non-resident withholding tax ***Clause 47***	5 – New Zealand Institute of Chartered Accountants	The amendment should apply to section RF 2(1)(b) by amending the definition of "royalty".	Decline. Officials disagree that the definition of "royalty" should be amended. Officials agree to review whether the drafting of the proposed RF 1(3) should provide a clearer relationship with other provisions in subpart RF.
79.	Nominal settlements ***Clause 50***	5 – New Zealand Institute of Chartered Accountants	A person who makes a nominal settlement on a trust should not be treated as a nominee for the purposes of the Act.	Decline. Officials consider that a person who is acting "at the request of another person" (old law), to settle a nominal amount on trust, is "acting on the other person's behalf" (new definition of "nominee"). The amendment clarifies the point for the avoidance of doubt.
80.	Election to use simplified method for determining income interests in a FIF ***Clauses 15 and 79***	5 – New Zealand Institute of Chartered Accountants	The grandparenting of existing provisions should be by reference to income years.	Accept.
81.	Capital gain amounts ***Clauses 5 and 73***	5 – New Zealand Institute of Chartered Accountants, 11 – Ernst & Young	The cross-references in the proposed amendments are incorrect and should be fixed.	Accept in part. The amendment is intended to clarify that section CD 44(7)(c) overrides the effect of section CD 44(11). Officials agree with the submission of Ernst & Young, but do not agree that the amendment should refer to section CD 26 as submitted by New Zealand Institute of Chartered Accountants. Officials recommend that this submission be accepted to the extent that the submission is that the cross-references should refer to section CD 44(7)(c).

No	Issue	Submitter	Submission	Officials' recommendation and comment
82.	Cross referencing in YA 1	Officials' submission	The cross references contained in the definitions of lease, lessor, and lessee in section YA 1 should be corrected.	Accept.
83.	Life insurance consequential ***Clause 37***	9 – Investment Savings & Insurance Associations of New Zealand Inc	The amendment to section IT 1 in this bill should be deleted because it is to be repealed by the life insurance tax provisions of the Taxation (International Tax, Life Insurance, and Remedial Matters) Bill.	Decline. The repeal of section IT 1 is to apply on or after 1 July 2010. The amendment in this bill will apply from the beginning of the 2008-09 income year, until the repeal takes effect. This ensures that the 2007 Act is corrected for the unintended change in law, to apply to periods falling before the repeal of section IT 1.
Life insurance				
84.	Group life policies – employer sponsored group policies	9 – Investment Savings and Insurance Association of New Zealand Inc, 12 – Sovereign Limited, Tower Limited and AXA New Zealand	The transitional rules require life insurers to distinguish between employee members of an employer sponsor group scheme that joined before 1 July 2010 and those that joined after that date. A different tax treatment would then apply to each group of employee members. The requirement to separately identify start dates for employee member is not practical or feasible for two reasons: • Difficulties in obtaining information from employers or scheme administrators; and • The costs incurred in obtaining that information is prohibitive contrasted to the tax benefit provided by the transitional rule.	Accept in part. We recommend the following solution: • Extend the scope of the grandparenting rules to cover lives insured after 1 July 2010 in limited situation when the policyholder is either an employer or union and the policy compulsorily covers employees and union members respectively and the premium is paid by the employer or union. • The grandparenting period be shortened to 3 years from 1 July 2010 (instead of the current 5-year). This reduced period of time is a trade-off for allowing lives to be taxed under the old rules after 1 July 2010 and ensures that there is limited fiscal impact. Submitters are comfortable with the suggested solution.
85.	Group life policies – trade-union sponsored group policies	12 – Sovereign Limited, Tower Limited and AXA New Zealand	A technical change is needed so that group life policies sold to trade unions to cover their members are covered by the grandparenting provisions.	Accept. These policies are indistinguishable from a compulsory workplace policy taken out by an employer.

No	Issue	Submitter	Submission	Officials' recommendation and comment
86.	Group life master policies	9 – Investment Savings and Insurance Association of New Zealand Inc	To reduce costs, new lives insured on and after 1 July 2010 under a group life master policy should also be grand-parented.	Decline. Accepting this submission would mean preferential tax treatment is given to individuals who voluntarily choose to be covered by workplace policies instead of taking out ordinary term cover themselves.
87.	Meaning of "cannot be changed" and "guarantee"	9 – Investment Savings and Insurance Association of New Zealand Inc	Some life policies may contain features and benefits other than life cover. The current wording of the transitional rules implies that the premium for the whole policy must remain constant.	Decline. The words "to the extent to which" in both sections EY 30(5) and EY 9 make it clear that the transition rules apply to the life insurance component of the premium only.
88.	Credit-card repayment insurance	9 – Investment Savings and Insurance Association of New Zealand Inc	Credit-card repayment insurance policies directly entered into between the life insurer and the card holder should be grandparented.	Accept. There is no reason to differentiate between credit-card repayment insurance policies (when it is part of a life policy) based on the legal relationship with the policyholder.
89.	Expense deductibility	9 – Investment Savings and Insurance Association of New Zealand Inc	Life insurers should have the option to not apply sections EY 16 and EY 19 to exclude fees from the calculation of policyholder base allowable deductions and shareholder base income when the quantum of those fees was determined on the basis that they would be outside the tax net.	Decline. Some life insurance policies provide life insurers with the ability, if they so choose, to alter the terms of the contract in the event of tax law changes. As such, the matter identified is a commercial issue between shareholders and policyholders. The suggestion would be excessively complex to legislate, comply with (and administer) if the taxation and deductibility of amounts were determined by whether these amounts were to be assumed to be in the tax net or not.
90.	Cover review period	9 – Investment Savings and Insurance Association of New Zealand Inc	If the amount of life insurance increases above the transition threshold of the greater of 10 percent of insurance cover and movement in the consumer price index, the grand-parenting for that policy ceases from the start of the relevant income year. The grandparenting for the policy should apply, at the option of the insurer, to that part of the relevant income year until when the cover increases.	Decline. Introducing a choice of when grandparenting would cease in the circumstances outlined would increase complexity.

No	Issue	Submitter	Submission	Officials' recommendation and comment
91.	Drafting matters	9 – Investment Savings and Insurance Association of New Zealand Inc	A number of drafting matters were identified (some in the form of questions) in connection with the new life insurance rules.	Accept, subject to officials' comments. In response to the matters raised: (a) The words "retained earnings" should be added to sections EY 17(2)(b)(i) and (ii) for clarity. (b) The term "policyholder unvested liabilities" can be defined. (c) Sections EY 18 and EY 22 require amendment to ignore net transfers. The other matters identified will be outlined in a *Tax Information Bulletin* (TIB) after the enactment of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009.
92.	Premium payback policies	Matter raised by officials	Premium payback policies (life policies which pay a portion of premiums back to policyholders who maintain their policies for a set minimum period) are not eligible for grandparenting. The nature of the policies also mean that they also fall within the definition of "savings product policies" and are required to return policyholder base income.	Accept. Premium payback policies should be covered by the grand parenting rules. These policies, where they do not give rise to policyholder income should also be clarified that they are not "savings product policy" as it implies the policyholder is receiving a savings return. Premium payback policies will be fully taxed under the shareholder base.

No	Issue	Submitter	Submission	Officials' recommendation and comment
Miscellaneous technical issues				
93.	Charitable donation deduction limit ***Clause 76***	11 – Ernst & Young	Clause 76 of the bill should be removed. Removing the 5% limit in section DB 32(3) of the Income Tax Act 2004 in respect of charitable donations by companies with effect from 19 December 2007 should not be done.	Decline. Clause 76 restores the 5% limit to section DB 32(3) of the Income Tax Act 2004 for charitable donations by companies with effect from 19 December 2007. We are also aware that some taxpayers have interpreted this application date to mean that removal of the 5% limit applies to gifts made in the 2007-2008 income year. Officials do not support this submission. The amendment to the Income Tax Act 2004 was an oversight. The explanatory note and commentary issued in respect of the Taxation (Annual Rates, Business Taxation, KiwiSaver, Remedial Matters) Bill 2007 clearly stated that it was intended that the removal of the 5% limit in section DB 32(3) would apply for the 2008-09 and later years. Furthermore, this amendment was part of a package of measures to enhance the tax incentives for charitable giving and all of the other measures have correctly applied from the 2008-09 income year.
94.	International financial reporting standards (IFRS)	Matter raised by officials	A technical amendment is necessary to the definition of creditor workout to ensure that it applies to workouts which are effected either by the alteration of the terms of a trust deed governing financial arrangements or to the terms of financial arrangements.	Accept. The proposed amendments achieve the policy objective that all legally binding creditor workouts qualify for the tax treatment.
95.	International financial reporting standards (IFRS)	Matter raised by officials	A technical amendment is necessary to the YTM method used for financial arrangements subject to a creditor workout where floating rate financial arrangements are involved.	Accept.
96.	"Relative" definition	Matter raised by officials	A minor technical amendment is necessary to ensure that the current definition of "relative" in the Income Tax Act that is used in the Securities Act 1978 continues to apply for the purposes of the Securities Act 1978.	Accept.

No	Issue	Submitter	Submission	Officials' recommendation and comment
97.	Telecommunications exemption in controlled foreign company rules	Matter raised by officials	The exemption in paragraph EX 20B(11)(b) of the Income Tax Act 2007 should be widened to include the case where a person owns the network operator and holds the controlled foreign company *indirectly* (through another company or companies), and the exemption should be restricted to cases where there is an effective voting interest of strictly more than 50%, rather than 50% or more.	Accept.
98.	Payroll giving remedials	Matters raised by officials	Two minor technical amendments are being made to the payroll-giving rules set out in the Taxation (International Taxation, Life Insurance, and Remedial Matters) Bill. Sections LD 6(3)(a) and LD 7(3)(a) should be amended to clarify their original intent. Section LD 4(7) should be amended to clarify the intended scope of the definition of "pay".	Accept. The proposed amendments clarify the scope of the new definition of "pay" for the purposes of payroll giving, and the consequences when a payroll donation tax credit is extinguished. Sections LD 6 and LD 7 are intended to clarify the consequences when a tax credit for payroll donations is extinguished. However, these sections contain provisions (sections LD 6(3)(a) and LD 7(3)(a)) that restore the payroll donation tax credit when the substantive provisions are intended to extinguish the credit. Section LD 4(7) contains the definition of "pay" for the purposes of the new payroll-giving rules. The definition was intended to ensure that payroll donations could only be made from the salary, wages or other similar amounts paid to an employee by their employer. However, this provision may lead some people to interpret it as allowing people who receive income-tested benefits to have payroll donations deducted from these amounts.
99.	Remedial ***Clause 10***	11 – Ernst & Young	Numeral "1" should not be substituted for the word "one" in subsection DC 14(4).	Decline. The use of the numeral "1" is consistent with the PCO and Inland Revenue drafting styles.
100.	Remedial ***Clause 21***	11 – Ernst & Young	The proposal in clause 21(2) should refer to "a person", or should expressly refer to Maori authorities as well as companies and trustees.	Accept. Officials agree that it would be useful to ensure the language is consistent with that used in section LE 2.

No	Issue	Submitter	Submission	Officials' recommendation and comment
101.	Remedial ***Clauses 22 and 23***	11 – Ernst & Young	Subsection IA 3(5) should continue to refer to subsections IA 6 and IA 7.	Decline. Officials consider that the amendment removes a cross-reference from section IA 3(5) that has no direct effect on section IA 3. If a company wishes to use the loss grouping provisions, section IA 3(2)(a) states the company must satisfy the requirements set out in section IC 5. Section IA 6 applies for the purposes of subpart IC, and in particular section IC 5, which in turn must be satisfied for section IA 3(2)(a) to apply. There is no other provision within section IA 6 that has any relationship with section IA 3. Officials consider it is unnecessary for section IA 3(5) to refer to section IA 7, as that effect is already given by section IA 2(5). This amendment removes unnecessary duplication.
102.	Remedial ***Clause 29***	11 – Ernst & Young	The words "in relation to a CFC resident in the country in which the loss arose" should not be replaced by the words "from the country in which the CFC that has the net loss is resident".	Accept in part. Officials agree that the CFC and FIF income/loss rules are statutory constructions, and do not look to attribute a source to such income or loss. However, the 2007 Act does not correctly reflect the outcome in the 2004 Act, and therefore some clarification is necessary Officials recommend that the submission be accepted to the extent that the Act does not attribute a "source" to CFC losses and FIF (BE) losses, and that the drafting be amended to clarify this.
103.	Remedial ***Clause 46***	11 – Ernst & Young	The existing reference to "resident passive income" in paragraph RE 22(1)(a) should be retained or the section YA 1 definition of that term should be retained.	Decline. This amendment restores the effect of section NF 5 of the 2004 Act, in response to a recommendation of the Rewrite Advisory Panel. The policy is that if the payer of the income has made reasonable enquiries and concluded that the recipient is a non-resident, the payer is not required to withhold RWT from the payment. This rule applies even if the recipient is a resident. The provision allows a defence for not withholding RWT on the basis of the "reasonable enquiries". Officials consider that describing the amount to pay as resident withholding income suggests the payer should know the amount is subject to RWT, which is contrary to the intended policy.