

Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill

Government Bill

Explanatory note

General policy statement

Income tax returns and filing requirements

Proposed amendments to the Tax Administration Act 1994 abolish the requirement for the Commissioner to issue income statements to certain taxpayers and clarify the criteria for a taxpayer to be exempt from the requirement to file a tax return. The amendments introduce a new requirement for a taxpayer who chooses to file a tax return for a tax year although not obliged to do so. Such a taxpayer is required to file a tax return for each of the 4 previous tax years that is the 2014–15 or later tax year and for which the taxpayer has not already filed a tax return. The changes apply for the 2014–15 and later tax years.

In addition, an amendment gives the Commissioner a more general power to approve the electronic storage of a taxpayer's tax-related information. Under another amendment, a taxpayer who files a tax return electronically with the Commissioner will not be required to store a signed hard copy of the return. These changes come into force on the day this Act receives the Royal assent.

Working for Families tax credits

Two changes to the Working for Families in-work tax credit under the Income Tax Act 2007 are proposed. People receiving weekly compensation as the surviving spouse of a deceased ACC claimant will be treated as meeting the “hours in work” test for the credit. Also, major shareholders who are not paid as employees, but who otherwise meet the “hours in work” test for the credit, may be entitled to it without passing the “income earned” test.

Two further proposed changes are to exclude amounts from a person’s family scheme income, which determines the person’s entitlement to Working for Families tax credits. The exclusions apply to foster care allowances and distributions from KiwiSaver and complying superannuation schemes.

Look-through companies

A number of remedial issues are provided for in relation to the new look-through companies regime in the Income Tax Act 2007. The issues are:

- requiring look-through companies to make elections and to choose methods, for tax purposes, on behalf of their owners:
- ensuring that the GST corporate group filing rules apply to look-through companies:
- excluding entry into the grandparented qualifying company regime for non-qualifying company amalgamations:
- improving the drafting of definitions and correcting cross-reference errors.

Profit distribution plans

A profit distribution plan is a scheme offered by companies by which the company notifies its shareholders that it is planning to issue them shares on a particular date. The company also announces, before the shares are issued, that the shareholders may choose to have some or all of their shares immediately repurchased by the company. The choice corresponds to the choice that shareholders have under a bonus issue in lieu, where a company asks the shareholder to choose between bonus shares and money or money’s worth. Amendments to the Income Tax Act 2007 and the Tax Administration Act 1994 ensure that the tax treatment of a profit distribution plan is consistent

with the existing tax treatment of a bonus issue in lieu. That is, regardless of whether a shareholder retains the issued shares or sells them back to the company, those shares will be treated as a taxable bonus issue. At present, the cash proceeds are taxable under the normal dividend rules, while the bonus issue under a profit distribution plan is treated as a non-taxable bonus issue.

Expenditure on unsuccessful software development

Under amendments to the Income Tax Act 2007 and the Income Tax Act 2004, the capital costs of unsuccessful software development are able to be deducted if the software cannot be used and the project is abandoned. The amendment is backdated to the 2007–08 income year so that taxpayers who relied on a policy statement by the Commissioner that the general law had that effect are not disadvantaged by their reliance.

Valuation of certain shareholdings for FIF rules

When new foreign investment fund rules were introduced from the 2007–08 income year, a temporary 5-year exemption was given for interests in companies having significant New Zealand shareholdings. Provisions in the Income Tax Act 2007 relating to the exemption are repealed and a minor amendment provides an optional method of valuing such interests when they become subject to the FIF rules.

GST issues

Input credits for second hand goods

An amendment to the Goods and Services Tax Act 1986 will ensure that, on the sale of secondhand goods by a non-resident, input credits cannot be claimed twice. At present, a secondhand goods credit is denied only when the non-resident person selling the goods is the same non-resident who previously supplied the goods to the registered person who entered the goods for home consumption. If a non-resident person leases secondhand goods to a registered person and, on termination of the lease, sells the goods that are located in New Zealand to another non-resident who then sells them to a resident, the resident

is not denied a secondhand goods credit, despite the fact that an input credit has already been claimed for the goods.

Zero-rating of land transactions

Certain amendments are made to clarify the treatment of services acquired by a purchaser, the extent of the exclusion for commercial leases, and information requirements when a supply of land involves a nomination or an undisclosed agency.

Apportionment rules

Various amendments are made to the apportionment rules, including amendments to ensure that the rules apply to imported goods and secondhand goods acquired before registration, to require a final adjustment for a disposal of an asset before the end of an adjustment period, and to allow taxpayers to calculate their actual taxable use of a motor vehicle by reference to 3-month logbook periods. A further amendment denies a deduction on imported goods to a person who merely arranges the delivery of the goods.

Deductible output tax

An amendment to the Income Tax Act 2007 clarifies what is covered in the definition of “deductible output tax”.

Late payment fees

An amendment to the Goods and Services Tax Act 1985 clarifies that late payment fees charged by businesses to their customers are subject to GST.

Liquidators and receivers

Liquidators and receivers commonly change the accounting basis of a registered person for whom they are acting from the payments basis to the invoice basis. Changing the basis often results in refunds being made to the liquidator or receiver, despite in many cases there being no realistic prospect that the debt will ever be paid. An amendment will preclude liquidators and receivers switching from the payments basis to the invoice basis when accounting for GST.

Non-resident film renters

Amendments to the Income Tax Act 2007 remove the separate tax rules for non-resident film renters, allowing non-resident withholding tax to apply to amounts derived by non-residents from renting films in New Zealand.

Remedial amendments to PIE rules

The bill contains a number of remedial amendments to the portfolio investment entity rules in the Income Tax Act 2007, improving the technical accuracy of the rules, including the treatment of flow-through income and expenditure when a PIE derives an amount from another PIE.

Bank thin capitalisation

The current tax minimum equity rules for foreign-owned banks require the New Zealand banking group to hold equity equal to at least 4% of its New Zealand assets (specifically, 4% of its risk-weighted exposures (RWEs)). An amendment to the Income Tax Act 2007 increases the minimum holding to 6% of the RWEs, as announced in Budget 2011.

*Timing of determining serious hardship under
the Tax Administration Act 1994*

The Commissioner is prevented from recovering outstanding tax if the recovery would place an individual in serious hardship. A recent decision of the Court of Appeal has found that serious hardship can be determined at the time of application or at the time the tax became due. An amendment to the Tax Administration Act 1994 clarifies the policy that the time at which the taxpayer's financial position must be considered is the time of application.

KiwiSaver

This bill contains the increase in the KiwiSaver default and minimum employee contribution rate, as announced in Budget 2011. The employee contribution rate is increased from 2% to 3%. The compulsory employer contribution also increases from 2% to 3%, as announced in Budget 2011.

Remedial amendments give proper effect to the Crown guarantee for employees when an employer does not file an employer monthly schedule and also provide for the consolidation of interest payments made by the Commissioner.

Annual rates

The bill sets the annual rates of income tax for the 2012–13 tax year.

Emissions units

The bill makes amendments to 2 provisions in the Income Tax Act 2007 relating to the transfer of emissions units by a public body to take into account differing factual situations. One amendment relates to a transfer to a party to a negotiated greenhouse agreement. The other amends the requirements in the definition of “pre-1990 forest land emissions unit” to take into account differing arrangements for the holding of pre-1990 forest land that is subject to a claim under the Treaty of Waitangi.

Schedule 32 donee applications

The bill adds 4 new entities to the list of eligible recipients in schedule 32 of the Income Tax Act 2007.

Fees charged under regulations and powers to waive fees

Changes are proposed to the Income Tax (Depreciation Determinations) Regulations 1993, the Income Tax (Determinations) Regulations 1987, and the Tax Administration (Binding Rulings) Regulations 1999. Several of the amendments increase some fees charged under the regulations and express the amount of a fee as the amount to which goods and services tax is added. In addition, the Commissioner is given more flexibility in the exercise of his powers to waive a fee for a determination or ruling.

Remedial matters

The following remedial items are proposed in the bill:

- the application of employer superannuation contribution tax to contributions by an employer for past employees is ensured:

- the drafting of the definition of *hire purchase agreement* is clarified, with retrospective application in some cases:
- certain reinsurance cover structures are clarified as being within the new life insurance regime grandparenting rules:
- the rate for extinguishing company tax losses when corporate tax is written off as irrecoverable is aligned with the 28% company tax rate:
- signing requirements for returns and advanced pricing agreements are updated:
- the Commissioner is given a discretion to refuse to give a binding ruling on a tax avoidance arrangement, and minor administrative matters are settled:
- a minor clarification is made to the calculation of a partner's basis in the limited partnership loss limitation rules:
- a reference to the "ASX Market Rules" is updated to the current "ASX Operating Rules":
- a minor clarification is made so that a person required to provide an RWT withholding certificate is allowed to make it available to the recipient electronically, such as from a web site:
- the amount of BETA debits of a company that may be applied to pay income tax of a company in the same group, or of the group, is clarified.

Remedial amendments resulting from the rewrite of the Income Tax Act include:

- minor clarifications relating to the definition of *expenditure on account of an employee*:
- a minor clarification relating to the definition of *employee* for the purposes of share purchase schemes:
- amendments to clarify aspects of the residence rules for the purposes of entitlements under the family scheme:
- an amendment to confirm the connection between the live-stock valuation rules and the carrying on of a business:
- an amendment to correct an inconsistency in the way a changed reporting bank sets its first measurement period:
- certain corrections to cross-references and misplaced defined terms.

Regulatory impact statements

The Inland Revenue produced regulatory impact statements to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of the regulatory impact statements can be found at—

- <http://taxpolicy.ird.govt.nz/publications/type/ris>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 gives the title of the Act.

Clause 2 gives the date on which clauses come into force.

Part 1

Annual rates of income tax

Clause 3 sets the annual rates of income tax for the 2012–13 tax year.

Part 2

Amendments to Income Tax Act 2007

Clause 4 provides that Part 2 amends the Income Tax Act 2007.

Clause 5 repeals *section CC 10(4)*, as part of the removal of the separate tax rules for non-resident film renters.

Clause 6 amends *section CD 7*, to simplify the tax treatment of bonus issues in lieu.

Clause 7 inserts *new section CD 7B*, as part of the alignment of the tax treatment of profit distribution plans and the tax treatment of bonus issues in lieu.

Clause 8 amends *section CD 8*, as part of the alignment of the tax treatment of profit distribution plans and the tax treatment of bonus issues in lieu.

Clause 9 inserts *new section CD 23B*, as part of the alignment of the tax treatment of profit distribution plans and the tax treatment of bonus issues in lieu.

Clause 10 amends *section CD 43*, as part of the alignment of the tax treatment of profit distribution plans and the tax treatment of bonus issues in lieu.

Clause 11 amends *section CE 5*, so that the definition of *expenditure on account of an employee* includes expenditure relating to expenditure that is to be incurred by an employee.

Clause 12 repeals *section CV 17*, as part of the removal of the separate tax rules for non-resident film renters.

Clause 13 amends *section CW 15*, by removing an unnecessary item from the list of defined terms.

Clause 14 amends *section CW 17* to reflect the amended definition in *section CE 5*.

Clause 15 amends *section CX 27*, by removing a reference to income statements.

Clause 16 amends *section CX 55*, making a remedial amendment to the PIE rules by removing the sale proceeds for certain shares from the excluded income of most PIEs.

Clause 17 inserts a *new heading and section DB 40B*, providing a deduction for expenditure on the unsuccessful development of software.

Clause 18 amends *section DC 15*, clarifying the definitions of “employee” and “employer”.

Clause 19 amends *section DW 3*, as part of the removal of the separate tax rules for non-resident film renters.

Clause 20 amends *section EC 1*, clarifying that the subpart relating to the valuation of livestock applies to livestock of a person carrying on a business.

Clause 21 amends *section ED 1B*, providing for transfers of emissions units by public bodies to parties to negotiated greenhouse agreements.

Clause 22 amends *section EJ 2*, updating cross references to other legislation.

Clause 23 amends *section EX 31*, updating cross references to Australian rules.

Clause 24 repeals *section EX 39*, as a result of the expiry of a 5-year exemption from the PIE rules for interests in certain companies.

Clause 25 amends *section EX 68*, providing an optional valuation method for shares affected by the expiry of a 5-year exemption from the PIE rules for interests in certain companies.

Clause 26 amends *section EY 28*, as part of clarifying the grandparenting rules for the new life insurance regime.

Clause 27 amends *section EY 30*, as part of clarifying the grandparenting rules for the new life insurance regime.

Clause 28 repeals *section EZ 32*, as a result of the expiry of an exemption from the PIE rules for interests in certain companies.

Clause 29 amends *section EZ 63*, by removing an unnecessary item from the list of defined terms.

Section 30 amends *section FE 8*, clarifying the measurement periods to be used when a New Zealand banking group changes its reporting bank.

Clause 31 amends *section FE 19*, increasing the tax minimum equity for the New Zealand banking group of a reporting bank to 6% of the group's risk-weighted exposures.

Clause 32 amends *section FM 8*, clarifying the rules concerning the treatment of transactions between companies in a consolidated group.

Clause 33 amends *section HA 7B*, excluding entry into the grandparented qualifying company regime by way of an amalgamation that is not a resident's amalgamation.

Clause 34 amends *section HB 1*, as part of requiring look-through companies to make elections and to choose methods, for tax purposes, on behalf of their owners.

Clause 35 amends *section HB 8*, making a remedial amendment to the look-through company rules.

Clause 36 amends *section HB 13*, correcting a cross-reference.

Clause 37 amends *section HC 18*, correcting a cross-reference.

Clause 38 amends *section HC 25*, clarifying that the section applies to income derived by a non-resident trustee that is not also beneficiary income.

Clause 39 amends *section HG 11*, clarifying the calculation of a partner's basis in the loss limitation rules for a limited partnership.

Clause 40 amends *section HL 21* retrospectively, clarifying the calculation of a person's prescribed investor rate in the former portfolio investment entity rules.

Clause 41 amends *section HM 6B*, improving the treatment in the portfolio investment entity rules of flow-through income and expenditure when a retail PIE derives an amount from a wholesale PIE.

Clause 42 amends *section HM 11*, making technical improvements to the portfolio investment entity rules.

Clause 43 amends *section HM 12*, correcting a cross-reference.

Clause 44 amends *section HM 17*, making technical improvements to the portfolio investment entity rules.

Clause 45 amends *section HM 19C*, correcting a cross-reference.

Clause 46 amends *section HM 32*, making a technical improvement to the portfolio investment entity rules.

Clause 47 amends *section HM 34*, making technical improvements to the portfolio investment entity rules.

Clause 48 amends *section HM 35B*, making a technical improvement to the portfolio investment entity rules.

Clause 49 amends *section HM 43*, making a technical improvement to the portfolio investment entity rules.

Clause 50 amends *section HM 50*, making a technical improvement to the portfolio investment entity rules.

Clause 51 amends *section HM 51*, making a technical improvement to the portfolio investment entity rules.

Clause 52 amends *section HM 53*, making a technical improvement to the portfolio investment entity rules.

Clause 53 amends *section HM 57*, making a technical improvement to the portfolio investment entity rules.

Clause 54 amends *section HM 64*, making technical improvements to the portfolio investment entity rules.

Clause 55 amends *section HM 65*, making a technical improvement to the portfolio investment entity rules.

Clause 56 amends *section IA 8*, as part of the removal of the separate tax rules for non-resident film renters.

Clause 57 amends *section LD 3*, by replacing 2 items in the list of defined terms with the correct item.

Clause 58 amends *section LJ 7* by correcting the use of a defined term.

Clause 59 amends *section MA 7*, by treating, in the test for the *Working for Families* in-work tax credit, a person as having met the hours-in-work test if the person is receiving weekly compensation as the surviving spouse of a deceased ACC claimant.

Clause 60 amends *section MB 1*, by removing an unnecessary item from the list of defined terms.

Clause 61 amends *section MB 5*, so that distributions from KiwiSaver and complying superannuation schemes do not affect the income testing for *Working for Families* tax credit entitlements.

Clause 62 amends *section MB 13*, so that a foster care allowance does not affect the income testing for *Working for Families* tax credit entitlements.

Clause 63 amends *section MC 5*, clarifying the requirements of the residence test for *Working for Families* tax credit entitlements.

Clause 64 amends *section MD 7*, clarifying the requirements of the residence test for *Working for Families* tax credit entitlements.

Clause 65 amends *section MD 9*, by treating, in the test for the *Working for Families* in-work tax credit, an unpaid shareholder-employee who works full-time in a business as deriving income meeting the test.

Clause 66 amends *section MD 10*, consequentially on the amendments to *section MD 9* and correcting a cross-reference.

Clause 67 amends *section OB 4*, clarifying the consequences of the abolition of foreign dividend payment credits.

Clause 68 amends *section OB 29*, as part of the removal of the separate tax rules for non-resident film renters.

Clause 69 amends *section OC 30*, clarifying the consequences of the abolition of foreign dividend payment credits.

Clause 70 amends *section OC 31*, clarifying the consequences of the abolition of foreign dividend payment credits.

Clause 71 amends *section OE 7*, clarifying the calculation of the amount of a company's BETA debits that may be applied to pay income tax of a company in the same group.

Clause 72 amends *section OP 27*, as part of the removal of the separate tax rules for non-resident film renters.

Clause 73 amends *section OP 101*, clarifying the calculation of the amount of a company's, or group's, BETA debits that may be applied to pay income tax of a company in the group or income tax of the group.

Clause 74 amends *section RA 13*, by removing a reference to income statements.

Clause 75 amends *section RD 64*, clarifying that the employer's superannuation contribution tax rules apply to superannuation contributions made for the benefit of past employees.

Clause 76 amends *section RD 65*, as part of the clarification of the application of the employer's superannuation contribution tax rules.

Clause 77 amends *section RD 67*, clarifying the past application of the section.

Clause 78 replaces *section RD 67*, as part of the clarification of the application of the employer's superannuation contribution tax rules.

Clause 79 amends *section RD 69*, as part of the clarification of the application of the employer's superannuation contribution tax rules.

Clause 80 amends *section RD 70*, as part of the clarification of the application of the employer's superannuation contribution tax rules.

Clause 81 amends *section RD 71*, as part of the clarification of the application of the employer's superannuation contribution tax rules.

Clause 82 amends *section RE 14*, as part of the alignment of the tax treatment of profit distribution plans and the tax treatment of bonus issues in lieu.

Clause 83 amends *section RE 15*, as part of the alignment of the tax treatment of profit distribution plans and the tax treatment of bonus issues in lieu.

Clause 84 amends *section RF 2*, as part of the removal of the separate tax rules for non-resident film renters.

Clause 85 amends *section RF 10*, as part of the alignment of the tax treatment of profit distribution plans and the tax treatment of bonus issues in lieu.

Clause 86 inserts *new section RF 11B*, which gives the rate of NRWT for a dividend paid to a non-resident when the dividend is not fully imputed. The resulting rate reflects the relief that should be available to the non-resident under a relevant double tax agreement.

Clause 87 repeals *section RM 5*, as part of the abolition of income statements.

Clause 88 amends *section YA 1*. *Subsection (2)* replaces the definition of *bonus issue*, as part of the alignment of the tax treatment of profit distribution plans and the tax treatment of bonus issues in lieu. *Subsection (3)* amends the definition of *deductible output tax* to clarify its coverage. *Subsection (4)* amends the definition of *dividend*, clar-

ifying the meaning for the purposes of the RWT rules. *Subsection (5)* amends the definition of *employee*, clarifying the application of the definition to a look-through company. *Subsection (6)* amends the definition of *employer*, clarifying the application of the definition to a look-through company. *Subsection (7)* amends the definition of *employment income*, clarifying that it includes amounts paid to a shareholder-employee who has elected that the payments not be subject to the PAYE rules. *Subsection (8)* amends the definition of *flat-owning company*, as a consequence of the new look-through company rules. *Subsections (9) and (10)* amend the definition of *hire purchase agreement*, clarifying the drafting. *Subsection (11)* repeals the definition of *income statement*. *Subsection (12)* amends the definition of *non-filing taxpayer*, as a consequence of *new section 33AA of the Tax Administration Act 1994*. *Subsection (13)* amends the definition of *pre-1990 forest land emissions unit* to take into account the different ways in which land can be held while subject to a claim under the Treaty of Waitangi. *Subsection (14)* inserts a definition of *profit distribution plan*. *Subsections (15) and (16)* amend the definition of *relative* to incorporate references in the definition of *look-through company*. *Subsection (17)* amends the definition of *schedular income* as part of the removal of the separate tax rules for non-resident film renters. *Subsection (18)* amends the definition of *taxable bonus issue* as part of the alignment of the tax treatment of profit distribution plans and the tax treatment of bonus issues in lieu.

Clause 89 amends *section YC 18* to improve the consistency of terminology.

Clause 90 amends *section YC 18B*, correcting a spelling mistake.

Clause 91 amends *section YD 6* as part of the removal of the separate tax rules for non-resident film renters.

Clause 92 repeals *section YD 7* as part of the removal of the separate tax rules for non-resident film renters.

Clause 93 amends *section YD 8* as part of the removal of the separate tax rules for non-resident film renters.

Clause 94 amends *schedule 1* by inserting a new *clause 9* with a cross-reference to *schedule 6*.

Clause 95 amends *schedule 6* by inserting a new row in *table 1*.

Clause 96 amends *schedule 28* by increasing the minimum contribution rate for KiwiSaver complying funds from 2% to 3%.

Clause 97 amends *schedule 29* by inserting a listed investor in part A.

Clause 98 amends *schedule 32* by inserting the names of 4 new donee organisations.

Part 3

Amendments to Tax Administration Act 1994

Clause 99 states that *Part 3* amends the *Tax Administration Act 1994*.

Clause 100 amends *section 3*. *Subsection (2)* repeals the definition of *income statement*. *Subsection (3)* retrospectively replaces the definition of *petroleum permit* to restore the original coverage of the term. *Subsection (4)* amends the definition of *petroleum permit* by retrospectively amending a cross-reference. *Subsection (5)* amends the definition of *tax position*, to remove a paragraph referring to income statements. *Subsection (6)* replaces the definition of *taxpayer's tax position*, to remove a reference to income statements.

Clause 101 amends *section 4A* to remove a paragraph referring to income statements.

Clause 102 amends *section 15B* to remove 2 paragraphs referring to income statements.

Clause 103 amends *section 22*, correcting references to “employer’s superannuation cash contributions” and giving the Commissioner the power to authorise a person to hold, for taxpayers, records in electronic form in or outside New Zealand.

Clause 104 amends *section 23*, so that a person who stores a return in an appropriate electronic form is not required to retain a signed hard-copy transcript.

Clause 105 amends *section 25* to clarify that a person required to provide an RWT withholding certificate may make it available electronically, such as from a website, if the recipient agrees to the use of the method.

Clause 106 inserts *new section 33AA*, which is a revised and rewritten version of *section 33A* and sets out the requirements that a natural person must meet to be excused from providing a tax return to the Commissioner for a tax year. The section also introduces a requirement for a person who is not obliged to make a return for a tax year,

but chooses to do so; the person must make returns for earlier years if the person has not already done so.

Clause 107 amends *section 33A*, to remove a superseded provision that would otherwise unnecessarily require some taxpayers to make returns.

Clause 108 repeals *section 33A*, consequential on the insertion of *new section 33AA*.

Clause 109 amends *section 33C* to update a cross-reference, as required because of the repeal of *section 33A*.

Clause 110 amends *section 36* to provide that a person who files, and retains, a form electronically is not required to retain a signed hard-copy transcript.

Clause 111 amends *section 41* to provide that a person who receives family assistance credits must make an annual return providing information relevant to their entitlement.

Clause 112 amends *section 43*, removing subsections that refer to income statements.

Clause 113 amends *section 47*, correcting the description of an employer's superannuation cash contribution.

Clause 114 repeals *Part 3A*, which relates to income statements.

Clause 115 amends *section 80KM*, replacing a reference to income statements.

Clause 116 amends *section 89C*, removing a reference to income statements.

Clause 117 amends *section 89D*, removing a reference to income statements.

Clause 118 amends *section 91E*, giving the Commissioner the power to decline an application for a private ruling on tax avoidance.

Clause 119 amends *section 91ED*, requiring an applicant for a private ruling on certain provisions to certify the information disclosed in the application.

Clause 120 repeals *section 92AA*, as being unnecessary.

Clause 121 inserts *new section 92AC*, as a consequence of the abolition of income statements, giving the Commissioner a discretion to assess for income tax a person who the Commissioner considers has not been assessed correctly.

Clause 122 amends *section 98*, correcting the description of an employer's superannuation cash contribution.

Clause 123 amends *section 106*, removing references to income statements.

Clause 124 amends *section 108*, removing a reference to income statements.

Clause 125 amends *section 110*, removing a reference to income statements.

Clause 126 amends *section 111*, removing a reference to income statements.

Clause 127 amends *section 120C*, removing a reference to income statements.

Clause 128 repeals *section 141JA*, which depends on the existence of income statements.

Clause 129 amends *section 143*, removing a reference to income statements.

Clause 130 amends *section 143A*, correcting the description of an employer's superannuation cash contribution.

Clause 131 amends *section 177*, so that the financial position of an applicant for financial relief is to be assessed as at the time of the application.

Clause 132 amends *section 177C*, so that when corporate tax is written off as irrecoverable, the company's tax losses are written off at the corporate tax rate.

Clause 133 amends *section 226C* to provide for the addition of GST to the amount of fees charged under the section.

Part 4

Amendments to Goods and Services Act 1985

Clause 134 provides that *Part 4* amends the *Goods and Services Tax Act 1985*.

Clause 135 amends *section 2*. The definition of *land* is amended to clarify the extent of the exclusion for commercial leases from being supplies of land.

Clause 136 amends *section 3A(2)*, to prevent input tax being claimed on secondhand goods sold by a non-resident if input tax has already

been claimed on the goods, and repeals *section 3A(4)*, which is not required under the new apportionment rules.

Clause 137 amends *section 5*, clarifying that late payment fees charged by businesses to customers are subject to GST.

Clause 138 amends *section 8*, imposing the correct threshold for the use of services supplied by a non-resident that must be met for the services to be treated as not being supplied in New Zealand.

Clause 139 amends *section 9*, correcting the time at which the supply of services by a non-resident is treated as occurring if the threshold in *section 8* is not met, and consequentially changing the reference to the threshold.

Clause 140 amends *section 19* to prevent a liquidator, receiver, or administrator of a registered person from changing the accounting basis of the registered person.

Clause 141 amends *section 20*, clarifying the new apportionment rules to exclude input tax that could not be claimed as a deduction formerly.

Clause 142 amends *section 20A*, clarifying the treatment of goods and services acquired in determining the liability of a registered person for GST.

Clause 143 amends *section 21*, allowing a registered person to use a logbook to calculate the actual taxable use of a motor vehicle.

Clause 144 amends *section 21A*, correcting a cross-reference.

Clause 145 amends *section 21B*, clarifying the application of the section to a person who becomes a registered person.

Clause 146 amends *section 21E*, clarifying the apportionment rules for the use of land.

Clause 147 amends *section 21G*, requiring a final adjustment for a disposal of an asset before the end of an adjustment period.

Clause 148 amends *section 21H*, providing for the transition from the apportionment rules applying before *1 April 2011* to the rules in force after that date.

Clause 149 amends *section 24*, updating a cross-reference.

Clause 150 amends *section 55*, to provide for the application of the section to look-through companies.

Clause 151 amends *section 60B*, simplifying the treatment of a supply to the nominee of a purchaser if the nominee and purchaser have a different registration status.

Clause 152 amends *section 78F*, to clarify the information that must be provided to the supplier by a purchaser of land if the supply is made to a nominee of the purchaser.

Part 5

Amendments to other Acts and regulations

Amendments to KiwiSaver Act 2006

Clause 153 identifies the clauses that amend the *KiwiSaver Act 2006*.

Clause 154 amends *section 64*, increasing the default and minimum employee contribution rate from 2% to 3%.

Clause 155 amends *section 78*, correcting a cross-reference.

Clause 156 amends *section 88*, extending the time for the payment of interest on amounts on-paid to a KiwiSaver provider.

Clause 157 amends *section 101D*, increasing the compulsory employer contribution rate from 2% to 3%.

Clause 158 amends *section 226*, changing the heading.

Clause 159 inserts *new section 238*, providing a transitional period for issuers of securities to update prospectuses and investment statements affected by the changes.

Amendments to Income Tax Act 2004

Clause 160 identifies the clauses that amend the *Income Tax Act 2004*.

Clause 161 amends *section CE 5*, in a way corresponding to the amendment of *section CE 5* of the *Income Tax Act 2007*.

Clause 162 amends *section CW 13* to reflect the amended definition in *section CE 5*.

Clause 163 inserts a *new heading and section DB 31B*, corresponding to *new section DB 40B* of the *Income Tax Act 2007*.

Clause 164 amends *section DC 14*, clarifying the definitions of “employee” and “employer”.

Clause 165 amends *section EC 1*, clarifying the scope of application of the subpart relating to the valuation of livestock.

Clause 166 amends *section EJ 2*, updating cross-references.

Clause 167 amends *section HL 20*, providing for the calculation of an investor's prescribed investor rate in a way corresponding to the amendment to *section HL 21* of the *Income Tax Act 2007*.

Clause 168 amends *section OB 1*. *Subsection (2)* amends the definition of *hire purchase agreement* in a way corresponding to the amendment of the definition in *section YA 1* of the *Income Tax Act 2007*.

Amendments to Income Tax Act 1994

Clause 169 identifies the clause that amends the *Income Tax Act 1994*.

Clause 170 amends *section DO 2*, updating cross-references.

Amendments to Income Tax (Depreciation Determinations) Regulations 1993

Clause 171 identifies the clauses that amend the *Income Tax (Depreciation Determinations) Regulations 1993*.

Clause 172 amends *regulation 9*, increasing the fixed fees set by the regulation, changing the description of the fees to show that GST is added to the stated amount, and introducing a new fee to recover charges paid by the Commissioner arising from an unsuccessful query concerning the Commissioner's decision on a provisional rate.

Clause 173 amends *regulation 10*, consequentially changing cross-references.

Clause 174 amends *regulation 11*, allowing the Commissioner, when considering a waiver of fees, to have more flexibility and to take into account charges paid by the Commissioner in considering the application.

Clause 175 revokes *regulation 12*, which provided that GST is included in the stated amount of a fee.

*Amendments to Income Tax (Determinations)
Regulations 1987*

Clause 176 identifies the clauses that amend the *Income Tax (Determinations) Regulations 1987*.

Clause 177 amends *regulation 10*, providing for the publication of determinations in a way consistent with other determinations.

Clause 178 amends *regulation 13*, allowing the Commissioner, when considering a waiver of fees, to have more flexibility in considering the application.

*Amendments to Tax Administration (Binding
Rulings) Regulations 1999*

Clause 179 identifies the clauses that amend the *Tax Administration (Binding Rulings) Regulations 1999*.

Clause 180 amends *regulation 3*, increasing the fixed fees set by the regulation and changing the description of the fees to show that GST is added to the stated amount.

Clause 181 repeals *regulation 7*, which provided that GST is included in the stated amount of a fee.

Hon Peter Dunne

Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act **2011**.

2 Commencement

- (1) This Act comes into force on the day on which it receives the Royal assent, except as provided in this section. 5
- (2) **Section 170(1) and (4)** come into force on 1 February 1995.
- (3) **Section 170(2) and (5)** come into force on 1 April 1998.
- (4) **Section 170(3) and (6)** come into force on 1 October 2001.
- (5) **Section 105** comes into force on 17 October 2002. 10
- (6) **Section 137** comes into force on 1 April 2003.

-
- (7) **Sections 100(3) and (7), 161, 162, 164, 165, 166, and 168(2) and (3)** come into force on 1 April 2005.
- (8) **Section 163** comes into force on 1 April 2007.
- (9) **Section 167** comes into force on 1 October 2007.
- (10) **Sections 11, 14, 17, 18, 20, 22, 30, 32, 37, 38, 39, 40, 57, 58, 59, 61, 63, 64, 65(1), 66(2), 71, 73, 75, 76(1), (2), and (4), 77, 79, 80, 81, 88(4), (7), (9), (10), (19), and (20), 94, 100(4) and (8), 103(1)(a) and (c), 113, 122, and 130** come into force on 1 April 2008. 5
- (11) **Section 88(13)** comes into force on 9 June 2009. 10
- (12) **Sections 67, 69, and 70** come into force on 30 June 2009.
- (13) **Section 86** comes into force on 1 February 2010.
- (14) **Sections 47 and 48** come into force on 1 April 2010.
- (15) **Section 29** comes into force on 30 June 2010.
- (16) **Sections 21, 26, and 27** come into force on 1 July 2010. 15
- (17) **Section 23** comes into force on 1 August 2010.
- (18) **Sections 34, 35, 36, 62, 88(3), (5), (6), and (8), 135, 136(2) and (3), 138, 139, 141, 142, 143, 144, 145, 148, 149, 150, 151, and 152** come into force on 1 April 2011.
- (19) **Sections 42, 43, 46, and 51** come into force on 29 August 2011. 20
- (20) **Section 136(1)** comes into force on the date of introduction of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill.
- (21) **Sections 24 and 25** come into force on 1 October 2011. 25
- (22) **Sections 31, 41, 45, 65(2) and (3), 66(1) and (3), 76(3), and 78** come into force on 1 April 2012.
- (23) **Sections 6, 7, 8, 9, 10, 82, 83, 85, and 88(2), (14), and (18)** come into force on 1 July 2012.
- (24) **Sections 52, 96, 98, 154, and 157** come into force on 1 April 2013. 30
- (25) **Sections 15, 60, 74, 87, 88(11) and (12), 100(2), (5), and (6), 101, 102, 106, 108, 109, 111, 112, 114, 115, 116, 117, 120, 121, 123, 124, 125, 126, 127, 128, and 129** come into force on 1 April 2014. 35

Part 1

Annual rates of income tax

- 3 Annual rates of income tax for 2012–13 tax year**
Income tax imposed by section BB 1 of the Income Tax Act 2007 must, for the 2012–13 tax year, be paid at the basic rates specified in schedule 1 of that Act. 5

Part 2

Amendments to Income Tax Act 2007

- 4 Income Tax Act 2007**
This Part amends the Income Tax Act 2007. 10
- 5 Films**
Section CC 10(4) is repealed.
- 6 Bonus issues in lieu of dividend**
In section CD 7(2), “, minus any resident withholding tax (RWT) payable in relation to the dividend” is omitted. 15
- 7 New section CD 7B**
After section CD 7, the following is inserted:
“CD 7B Shares issued under profit distribution plans
“Profit distribution plan shares
“(1) A share issued by a company under a profit distribution plan is a dividend. 20
“Amount of dividend
“(2) The amount of the dividend is the amount offered by the company for the repurchase of the share.
“Relationship with section CD 22 25
“(3) Section CD 22 does not apply in relation to a share issued under a profit distribution plan and repurchased by the company as part of the plan.
“Defined in this Act: amount, company, dividend, profit distribution plan, RWT, share”. 30

8 Elections to make bonus issue into dividend

- (1) In section CD 8(1), “A bonus issue that is not a bonus issue in lieu” is replaced by “A bonus issue that is not a bonus issue in lieu or a share issued under a profit distribution plan”.
- (2) In section CD 8, in the list of defined terms, “profit distribution plan” and “share” are inserted. 5

9 New section CD 23B

After section CD 23, the following is inserted:

“CD 23B Returns of capital: shares repurchased under profit distribution plans

10

“When this section applies

- “(1) This section applies when a company has issued a share to a shareholder under a profit distribution plan and the shareholder exercises the option to have the share repurchased by the company. 15

“Amount paid

- “(2) The amount paid by the company to repurchase the share is not a dividend.

“Defined in this Act: amount, company, dividend, pay, profit distribution plan, share, shareholder”. 20

10 Available subscribed capital (ASC) amount

- (1) Section CD 43(2)(c) is replaced by the following:

“(c) **returns**, subject to subsections (22) and (23), is the total amount of consideration that the company paid, after 30 June 1994 and before the calculation time, on— 25

“(i) the cancellation of shares in the relevant class and that was not a dividend because of section CD 22 or CD 24 of a corresponding provision of an earlier Act:

“(ii) the repurchase of a share that is not a dividend because of **section CD 23B**.” 30

- (2) After section CD 43(6)(a), the following is inserted:

“(ab) in the case of a share issued under a profit distribution plan, the amount offered by the company for the repurchase of the share; and” 35

- (3) In section CD 43(6)(b), “that is not a bonus issue in lieu” is replaced by “that is not a bonus issue in lieu or a share issued under a profit distribution plan”.
- (4) In section CD 43(7)(a), “neither subsection (6)(a) nor (b)” is replaced by “none of subsection (6)(a), **(ab)**, or (b)”. 5
- (5) In section CD 43, in the list of defined terms, “profit distribution plan” is inserted.
- 11 Meaning of expenditure on account of an employee**
- (1) Section CE 5(1), other than the heading, is replaced by the following: 10
- “(1) **Expenditure on account of an employee** means a payment made by an employer relating to expenditure incurred by an employee or to be incurred by an employee.”
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 15
- 12 Section CV 17 repealed**
Section CV 17 is repealed.
- 13 Dividends paid by qualifying companies**
In section CW 15, in the list of defined terms, “bonus issue” is omitted. 20
- 14 Expenditure on account, and reimbursement, of employees**
- (1) In section CW 17(1), “Expenditure on account of an employee” is replaced by “Expenditure on account of an employee, being a payment to which section CE 5 (Meaning of expenditure on account of an employee) applies, that is”. 25
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 15 Assistance with tax returns**
- (1) In section CX 27, “income statement or return” is replaced by “return”. 30
- (2) In section CX 27, in the list of defined terms, “income statement” is omitted.

16 Proceeds from disposal of investment shares

(1) Section CX 55(4), other than the heading, is replaced by the following:

“(4) This section does not apply to—

“(a) a fixed-rate share, within the meaning of paragraphs (a) to (d) of the definition of that term; or 5

“(b) a share for which the amount payable on cancellation is no more than the available subscribed capital per share calculated under the slice rule.”

(2) In section CX 55, in the list of defined terms,— 10

(a) “non-participating redeemable share” is omitted:

(b) “available subscribed capital”, “fixed-rate share”, “pay”, and “slice rule” are inserted.

17 New heading and section DB 40B inserted

(1) After section DB 40, the following is inserted: 15

“Unsuccessful software development**“DB 40B Expenditure in unsuccessful development of software**

“When this section applies

“(1) This section applies when a person incurs expenditure in the development of software if— 20

“(a) the person incurs the expenditure with the main intention that the software be used in the person’s business; and

“(b) the development of the software is abandoned before the software is fit to be used in the person’s business; and 25

“(c) the person would have been entitled to a deduction for an amount of depreciation loss for the software if the software had been made fit to be used in the person’s business. 30

“Deduction

“(2) The person is allowed a deduction for expenditure incurred in the development of the software to the extent to which no deduction has been allowed for the expenditure under another provision of this Act or under another Act. 35

“Timing of deduction

- “(3) The deduction is allocated to the income year in which the development of the software is abandoned.

“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. 5

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

- (2) **Subsection (1)** applies for the 2008–09 and later income years. 10

18 Some definitions

- (1) In section DC 15(1), in the definition of **employee**, paragraph (a) is replaced by the following:

“(a) means a person that— 15

“(i) is employed by a company:

“(ii) is not a corporation sole, a body corporate, or an unincorporated body:”.

- (2) In section DC 15(1), in the definition of **employee**,—

(a) in paragraph (b)(ii), “the company; or” is replaced by “the company”: 20

(b) paragraph (b)(iii) is repealed.

- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years.

19 Non-resident general insurers, shippers, and film renters 25

- (1) In section DW 3, the section heading is replaced by **Non-resident general insurers and shippers**.

- (2) In section DW 3(2)(b), “New Zealand:” is replaced by “New Zealand.”.

- (3) Section DW 3(2)(c) is repealed. 30

20 Application of subpart

- (1) Section EC 1(1) is replaced by the following:

- “When this subpart applies*
- “(1) This subpart applies to the valuation of property when a person who owns or carries on a business holds livestock for the purposes of sale or exchange in the ordinary course of carrying on the business.” 5
- (2) **Subsection (1)** applies for the 2008–09 and later income years. However, **subsection (1)** does not apply to a person in relation to a tax position taken by the person—
- (a) in the period from 1 April 2008 to 31 May 2011; and
- (b) relating to the valuation of livestock; and 10
- (c) relying on the provisions of subpart EC as they were before the amendment made by **subsection (1)**.
- 21 Valuation of emissions units issued for zero price**
- (1) In section ED 1B(1)(a)(ii), “agreement; and” is replaced by “agreement:” and the following is added: 15
- “(iii) by a public authority as a rebate, under a negotiated greenhouse agreement, for an indirect emissions charge; and”.
- (2) After section ED 1B(7)(a)(iii), the following is added:
- “(iv) emissions units corresponding to a rebate, under a negotiated greenhouse agreement, for an indirect emissions charge:”.
- 22 Spreading forward of deductions for repairs to fishing boats**
- (1) In section EJ 2(1), “Part 10 of the Maritime Transport Act 1994” is replaced by “Part 21 of the Maritime Rules made under the Maritime Transport Act 1994”. 25
- (2) In section EJ 2(6), in the definition of **fishing boat**, “a fishing boat under Part 4 of the Fisheries Act 1983” is replaced by “a fishing vessel under section 103 of the Fisheries Act 1996”. 30
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years.
- 23 Exemption for ASX-listed Australian companies**
- In section EX 31(2)(c), in the words before the paragraphs, “ASX Market Rules, made under Chapter 7 of the Corpor- 35

ations Act 2001 (Aust),” is replaced by “ASX Operating Rules”.

24 Section EX 39 repealed

- (1) Section EX 39 is repealed.
- (2) **Subsection (1)** applies for the 2012–13 and later income years. 5

25 Measurement of cost

- (1) After section EX 68(11), the following is added:
“Optional transitional rule: interests excluded by section EX 39 until 2012–13 income year” 10
- “(12) For interests that were acquired by the person before 1 January 2005 and excluded by section EX 39 from being attributing interests until the beginning of the 2012–13 income year, the person may choose to treat the cost of every interest as being the market value of the interest at the beginning of the 2012–13 income year, for the purposes of the \$50,000 threshold in sections CQ 5(1)(d) or (e) and DN 6(1)(d) or (e).” 15
- (2) **Subsection (1)** applies for the 2012–13 and later income years.

26 Shareholder base other profit: profit participation policies that are existing business 20

- (1) In section EY 28(8), in the definition of **existing business**,—
 - (a) in paragraph (a), “2009; or” is replaced by “2009:”;
 - (b) in paragraph (b)(ii), “2009.” is replaced by “2009:”.
- (2) In section EY 28(8), in the definition of **existing business**, the following is added: 25
 - “(c) the replacement of another policy (the **replaced policy**) caused by a life insurer being sold, or selling or transferring its rights and obligations under the replaced policy, and— 30
 - “(i) the replaced policy was existing business under this subsection; and
 - “(ii) the replaced policy and the policy have the same substantial and material terms, conditions, and bonus entitlements.” 35

- (3) **Subsections (1) and (2)** apply—
- (a) on and after 1 July 2010, except if **paragraph (b)** applies:
- (b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 in a return of income for the tax year corresponding to the first relevant income year. 5
- 27 Transitional adjustments: life risk** 10
- (1) Section EY 30(1)(a) is replaced by the following:
- “(a) reinstating the old policy after either a lapse in premium payments or cancellation by the insured, if the new policy comes into force within 90 days of the lapse or cancellation, and the life insurer treats the new policy and old policy the same; or” 15
- (2) In section EY 30(1)(b), “selling” is replaced by “selling or transferring”.
- (3) In section EY 30(3),—
- (a) in the words before the paragraphs “the individual lives covered, if the policy is issued” is replaced by “either the individual lives covered or a relevant underlying life insurance policy, if the multiple life policy (the **policy**) is issued”: 20
- (b) in paragraph (b), “individual lives covered” is replaced by “individual lives covered or relevant underlying life insurance policy”. 25
- (4) Section EY 30(3)(c) is replaced by the following:
- “(c) to the extent to which, looking through to and in relation to the individual lives covered or relevant underlying policy,— 30
- “(i) the cover was first in place before the grandparenting start day:
- “(ii) the multiple life policy is a life reinsurance policy that was first in place before the grandparenting start day; and” 35
- (5) **Subsections (1) to (4)** apply—

- (a) on and after 1 July 2010, except if **paragraph (b)** applies:
- (b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 in a return of income for the tax year corresponding to the first relevant income year. 5
- 28 Section EZ 32 repealed** 10
Section EZ 32 is repealed.
- 29 Disposal and acquisition upon entry**
In section EZ 63, in the list of defined terms, “portfolio-listed company” is omitted.
- 30 Measurement dates** 15
(1) In section FE 8(4), “the first measurement date for the new reporting bank is the day” is replaced by “the first measurement period for the new reporting bank begins on the day”.
(2) **Subsection (1)** applies for the 2008–09 and later income years.
- 31 Banking group’s equity threshold** 20
(1) In section FE 19(1), the formula is replaced by the following:
 $0.06 \times (\text{risk-weighted exposures} - \text{deductions from equity value}).$
(2) **Subsection (1)** applies for measurement dates under section FE 8(3) of the Income Tax Act 2007 for periods beginning on or after 1 April 2012.
- 32 Transactions between group companies: income** 25
(1) In section FM 8(3)(b)(ii), “if the parties were not group companies” is replaced by “if the parties were not consolidated group companies”.
(2) **Subsection (1)** applies for the 2008–09 and later income years, except for a tax position that is inconsistent with **sub-** 30

section (1) and is taken in a tax return filed before 23 August 2011.

33 Grandparenting requirement

- (1) In section HA 7B “1 April 2011” is replaced by “1 April 2011 and must not have amalgamated, on or after the date on which the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act **2011** receives the Royal assent, with another company that is not a qualifying company” 5
- (2) In section HA 7B, in the list of defined terms “amalgamation” is inserted. 10

34 Look-through companies are transparent

After section HB 1(5), the following is added:

“Elections and methods

- “(6) Inland Revenue Act elections and methods relating to an LTC are chosen by the company ignoring subsection (4), and then subsection (4) applies so that the elections and methods are those of an owner of an effective look-through interest for the look-through company.” 15

35 Disposal of financial arrangements and certain excepted financial arrangements

In section HB 8(1)(b), “owners do not derive income from” is replaced by “look-through company does not have”. 20

36 LTC elections

In section HB 13(5), “subsections (1)(b) and (2)” is replaced by “subsection (1)(a) and (d)”. 25

37 Taxable distributions from foreign trusts

- (1) In section HC 18, “section CV 13(b)” is replaced by “section CV 13(c)”. 30
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

- 38 Foreign-sourced amounts: non-resident trustees**
- (1) In section HC 25(1), “when a non-resident trustee derives” is replaced by “when a non-resident trustee derives, other than as beneficiary income,”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 5
- 39 Limitation on deductions by partners in limited partnerships**
- (1) In section HG 11(12), the definition of **capital contribution** is replaced by the following: 10
“**capital contribution** includes—
“(a) a capital contribution for the purposes of the Limited Partnerships Act 2008:
“(b) amounts that the limited partnership is debtor for in relation to the partner, including a loan to the limited partnership and a credit balance in a current account” 15
- (2) In section HG 11, in the list of defined terms, “loan” is inserted.
- 40 Portfolio entity tax liability and tax credits of portfolio tax rate entity for period**
- (1) After section HL 21(9), the following is inserted: 20
“*Amounts excluded from determination of prescribed investor rate*
“(9B) For the purposes of subsection (9) and the determination of a person’s prescribed investor rate, the person’s taxable income does not include an amount that— 25
“(a) arises because their portfolio investor rate is lower than their prescribed investor rate; and
“(b) is treated as taxable income because section CX 56 (Attributed income of certain investors in multi-rate PIEs) does not apply.” 30
- (2) Section HL 21(13) is repealed.
- (3) **Subsection (1)** applies for the 2008–09 and later income years.
- 41 Optional look-through rule for PIEs**
- (1) Section HM 6B(2) is replaced by the following: 35

- “*Look-through treatment: income*”
- “(2) The retail PIE may choose to apply a look-through approach to the income derived from the wholesale PIE,—
- “(a) treating the income as if it were derived directly from the person who paid the amount to the wholesale PIE; 5
and
- “(b) disregarding the payment from the wholesale PIE.”
- (2) After section HM 6B(3), the following is added:
- “*Look-through treatment: expenditure*”
- “(4) Despite **subsection (2)**, if the income derived by the retail 10
PIE is less than the amount of the retail PIE’s share of the gross income received by the wholesale PIE, the retail PIE is treated as having incurred expenditure equal to the amount calculated using the formula—
- $$\text{income paid to wholesale PIE} - \text{amount derived by retail PIE.}$$
- (3) In section HM 6B, in the list of defined terms, “gross” is inserted. 15
- (4) **Subsections (1) and (2)** apply for the 2012–13 and later income years.
- 42 Investment types**
- (1) Section HM 11(2) is repealed. 20
- (2) In section HM 11(3), “subsection (1)(a)” is replaced by “subsection (1)(a) and modifies subsection (1)(d)”.
- 43 Income sources**
- In section HM 12(2), “section HM 19B(2)” is replaced by “section HM 19B(1)”. 25
- 44 Same rights to all investment proceeds**
- (1) Section HM 17(3) is replaced by the following:
- “*Exclusions*”
- “(3) This section does not apply if—
- “(a) the proceeds are category B income: 30
- “(b) for a single investor class, the only income that the class derives is income under section CC 3 (Financial arrangements).”

- (2) In section HM 17, in the list of defined terms, “income” and “investor class” are inserted.

45 Modified rules for foreign investment variable-rate PIEs

- (1) In section HM 19C(2), “section HM 12(a) and (b)(v)” is replaced by “section HM 12(a) and (b)(iv) and (v)”. 5
- (2) **Subsection (1)** applies for the 2012–13 and later income years.

46 Rules for and treatment of investors in multi-rate PIEs

- Section HM 32(3), other than the heading, is replaced by the following: 10
- “(3) An investor in a foreign investment PIE who notifies the PIE under section HM 55D(2) of their wish to become a notified foreign investor is treated as having notified the PIE of a tax rate under subsection (1).”

47 Attribution periods 15

- (1) In section HM 34, in the words before paragraph (a), “a tax year” is replaced by “a tax year or an income year, as applicable,”.
- (2) In section HM 34(b), “the tax year” is replaced by “the income year”. 20
- (3) In section HM 34, in the list of defined terms, “income year” is inserted.
- (4) **Subsections (1) and (2)** apply for the 2010–11 and later income years.

48 Treatment of certain provisions made by multi-rate PIEs 25

In section HM 35B(1)(b)(i), “portfolio” is omitted.

49 Quarterly calculation option

- (1) In section HM 43(3), “as a zero-rated investor” is replaced by “as zero-rated”. 30
- (2) In section HM 43, in the list of defined terms, “zero-rated investor” is omitted.

50 Attributing credits to investors

(1) Section HM 50(1), other than the heading, is replaced by the following:

“(1) This section applies when a multi-rate PIE has a tax credit other than a tax credit under subpart LS (Tax credits for multi-rate PIEs and investors).” 5

(2) In section HM 50, in the list of defined terms, “imputation credit” is omitted.

51 Use of foreign tax credits by PIEs

(1) In section HM 51(1)(c), “foreign investment PIE.” is replaced by “foreign investment PIE:” and the following is added: 10

“(d) a transitional resident who chooses under section HM 55D(8) to use a prescribed investor rate set out in schedule 6, table 1, row 10 (Prescribed rates: PIE investments and retirement scheme contributions).” 15

(2) In section HM 51, in the list of defined terms, “prescribed investor rate” and “transitional resident” are inserted.

(3) **Subsection (1)** applies for the 2013–14 and later income years.

52 Use of tax credits other than foreign tax credits by PIEs 20

(1) In section HM 53(1)(b)(iii), “an imputation credit.” is replaced by “an imputation credit:” and the following is added:

“(iv) a transitional resident who chooses under section HM 55D(8) to use a prescribed investor rate set out in schedule 6, table 1, row 10 (Prescribed rates: PIE investments and retirement scheme contributions).” 25

(2) In section HM 53, in the list of defined terms, “prescribed investor rate” and “transitional resident” are inserted.

(3) **Subsection (1)** applies for the 2013–14 and later income years. 30

53 Prescribed investor rates for certain investors: 0%

Section HM 57(d) is repealed.

54 Use of investor classes' losses

- (1) In section HM 64(3), “other than a zero-rated investor” is replaced by “other than a zero-rated investor or an investor treated under section HM 61 as zero-rated”.
- (2) Section HM 64(4), other than the heading, is replaced by the following: 5
- “(4) For a notified foreign investor in a foreign investment PIE, the amount is disregarded.”

55 Use of land losses of investor classes

- Section HM 65(5), other than the heading, is replaced by the following: 10
- “(5) For a notified foreign investor in a foreign investment PIE, the amount of land loss is disregarded.”

56 Restrictions relating to schedular income

Section IA 8(1)(d) is repealed. 15

57 Meaning of charitable or other public benefit gift

- In section LD 3, in the list of defined terms,—
- (a) “charitable or other public benefit” and “gift” are omitted:
- (b) “charitable or other public benefit gift” is inserted. 20

58 Repaid foreign tax: effect on income tax liability

- (1) In section LJ 7(3)(b), “the foreign income” is replaced by “the foreign-sourced income”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 25

59 Meaning of full-time earner for family scheme

- (1) In section MA 7(2)(c), “leave.” is replaced by “leave:”, and the following is added: 30
- “(d) a person who receives or will receive weekly compensation from the Accident Compensation Corporation as a surviving spouse or partner of a deceased claimant is treated as being employed, during the week to which that compensation relates, for the number of hours that

- the deceased claimant would have been employed for in a week before dying, but for their incapacity.”
- (2) In section MA 7(3), “subsection (2)(b)” is replaced by “subsection (2)(b) and (d)”.
- 60 Adjustments for calculation of family scheme income** 5
In section MB 1, in the list of defined terms, “income statement” is omitted.
- 61 Treatment of distributions from superannuation schemes**
(1) Section MB 5(2), other than the heading, is replaced by the following: 10
“(2) This section does not apply to a person who receives a distribution from a superannuation scheme—
“(a) as a result of and on or after the person’s retirement from employment with an employer who was a contributor to the scheme: 15
“(b) if the superannuation scheme is a KiwiSaver scheme or a complying superannuation fund.”
- (2) In section MB 5, in the list of defined terms, “complying superannuation fund” and “KiwiSaver scheme” are inserted.
- 62 Family scheme income from other payments** 20
After section MB 13(2)(k), the following is inserted:
“(kb) a payment of a foster care allowance under section 363 of the Children, Young Persons, and Their Families Act 1989.”.
- 63 Third requirement: residence** 25
Section MC 5(2)(a) is replaced by the following:
“(a) has been—
“(i) both a New Zealand resident and present in New Zealand for a continuous period of 12 months at any time; and 30
“(ii) resident in New Zealand under section YD 1 (Residence of natural persons) on the days for which a tax credit arises under section MD 1

(Abating WFF tax credit) or ME 1 (Minimum family tax credit); and”.

64 Third requirement: residence

(1) Section MD 7(2)(a) is replaced by the following:

- “(a) has been— 5
- “(i) both a New Zealand resident and present in New Zealand for a continuous period of 12 months at any time; and
- “(ii) resident in New Zealand under section YD 1 (Residence of natural persons) on the days for which a tax credit arises under section MD 1; and” 10

(2) In section MD 7, in the list of defined terms, “resident” is omitted.

65 Fifth requirement: full-time earner

15

(1) In section MD 9(1), “receiving income from a work activity” is omitted.

(2) Section MD 9(1) is replaced by the following:

“*Normally full-time earner*

“(1) The fifth requirement for an entitlement to an in-work tax credit is that either or both the person referred to in section MD 4 and their spouse, civil union partner, or de facto partner, is normally a full-time earner (the **earner**). Also, the earner must— 20

 “(a) derive income as set out in subsections (2) and (3) as a full-time earner or derive an amount of compensation described in subsection (4); or 25

 “(b) if they are a full-time earner in relation to a close company, be a major shareholder in the close company, and the company must derive gross income in the income year.” 30

(3) In section MD 9, in the list of defined terms, “close company”, “income year”, and “major shareholder” are inserted.

- 66 Calculation of in-work tax credit**
- (1) In section MD 10(3)(d)(i), “refers” is replaced by “refers or is a full-time earner described in **section MD 9(1)(b)**”.
- (2) In section MD 10(3)(d)(ii), “paragraph” is replaced by “sub-paragraph”.
- (3) In section MD 10(3)(d)(ii), “refers” is replaced by “refers or is a full-time earner described in **section MD 9(1)(b)**”.
- 67 ICA payment of tax**
- (1) After section OB 4(3)(g), the following is inserted:
“(gb) further income tax applied under section OC 34 (Further income tax paid satisfying liability for income tax) to pay income tax; or”.
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2009.
- 68 ICA payment of schedular income tax**
- In section OB 29(1), “section CR 3, CV 16, or CV 17 (which relate to non-resident insurers, shippers, and film renters)” is replaced by “section CR 3 (Income of non-resident general insurer) or CV 16 (Non-resident shippers)”.
- 69 Payment of further income tax for closing debit balance**
- (1) After section OC 30(2), the following is added:
“*FDP credit for payment under subsection (1)*”
- “(4) An FDPA company has an FDP credit for an amount of further income tax paid under subsection (1).”
- (2) In section OC 30, in the list of defined terms, “FDP credit” is inserted.
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2009.
- 70 Payment of further income tax when company no longer New Zealand resident**
- (1) After section OC 31(3), the following is added:

- “FDP credit for payment under subsection (1)”*
- “(5) A company that stops being an FDPA company has an FDP credit for an amount of further income tax paid under this section.”
- (2) In section OC 31, in the list of defined terms, “FDP credit” is inserted. 5
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2009.
- 71 BETA payment of income tax**
- (1) In section OE 7(6), “the total income tax liability for the attributed CFC income referred to in subsection (3)” is replaced by “the income tax liability for the income year of the company having the attributed CFC income”. 10
- (2) Section OE 7(7)(b) is replaced by the following:
 “(b) **tax liability** is the income tax liability for the income year of the company having the attributed CFC income.” 15
- (3) Section OE 7(8) is repealed.
- 72 Consolidated ICA payment of schedular income tax**
- In section OP 27(1), “section CR 3, CV 16, or CV 17 (which relate to non-resident insurers, shippers, and film renters)” is replaced by “section CR 3 (Income of non-resident general insurer) or CV 16 (Non-resident shippers)”. 20
- 73 Consolidated BETA payment of income tax**
- (1) In section OP 101(4B), “the total income tax liability for the attributed CFC income referred to in subsection (1)” is replaced by “the income tax liability for the income year of the company or the consolidated BETA group having the attributed CFC income”. 25
- (2) Section OP 101(4C)(b) is replaced by the following: 30
 “(b) **tax liability** is the income tax liability for the income year of the company or the consolidated BETA group having the attributed CFC income.”

- 74 Payment dates for terminal tax**
- (1) Section RA 13(2)(a)(ii) is repealed.
- (2) In section RA 13, in the list of defined terms, “income statement” is omitted.
- 75 ESCT rules and their application** 5
- (1) In section RD 64(2), “employer who makes an employer’s superannuation contribution” is replaced by “employer or a person who makes an employer’s superannuation cash contribution”.
- (2) In section RD 64, in the list of defined terms, “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution”.
- (3) **Subsections (1) and (2)** do not apply for a tax position that is inconsistent with **subsections (1) and (2)** and that is taken in a tax return filed before the date on which the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill was introduced. 15
- 76 Employer’s superannuation cash contributions**
- (1) Section RD 65(1) is replaced by the following: 20
- “*Contribution in money for benefit of employees or past employees*”
- “(1) An **employer’s superannuation cash contribution** means a superannuation contribution paid in money either to a superannuation fund or under the KiwiSaver Act 2006 to the Commissioner for later payment to a superannuation fund, if the contribution is— 25
- “(a) an employer’s superannuation contribution:
- “(b) made by a person for the benefit of 1 or more of their past employees.”
- (2) In section RD 65(3), “An employer who makes an employer’s superannuation cash contribution on behalf of an employee” is replaced by “An employer or person who makes an employer’s superannuation cash contribution on behalf of an employee or past employee”.
- (3) In section RD 65(3), “Subsection (4) overrides this subsection.” is omitted. 35

- (4) **Subsections (1) and (2)** do not apply for a tax position that is inconsistent with **subsections (1) and (2)** and that is taken in a tax return filed before the date on which the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill was introduced. 5
- 77 Calculating amounts of tax for employer’s superannuation cash contributions**
- (1) In section RD 67(a), “if the employer” is replaced by “if, for a contribution that is an employer’s superannuation contribution, the employer”. 10
- (2) In section RD 67, in the list of defined terms, “employer’s superannuation contribution” is inserted.
- (3) **Subsections (1) and (2)** do not apply for a tax position that is inconsistent with **subsections (1) and (2)** and that is taken in a tax return filed before the date on which the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill was introduced. 15
- 78 Section RD 67 replaced**
Section RD 67 is replaced by the following:
- “RD 67 Calculating amounts of tax for employer’s superannuation cash contributions** 20
- The amount of tax for an employer’s superannuation cash contribution is—
- “(a) the amount determined under schedule 1, part D, clause 1 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits), unless **paragraph (b)** applies; or 25
- “(b) 33% of the employer’s superannuation cash contribution, if—
- “(i) the contribution is made by a person for the benefit of 1 or more of their past employees: 30
- “(ii) an employer chooses 33% and the contribution is to a defined benefit fund.
- “Defined in this Act: amount, amount of tax, defined benefit fund, employer, employer’s superannuation cash contribution”. 35

- 79 Choosing different rates for employer’s superannuation cash contributions**
- (1) In section RD 69(1), “on behalf of an employee” is replaced by “that is an employer’s superannuation contribution”.
- (2) In section RD 69, in the list of defined terms, “employer’s superannuation contribution” is inserted. 5
- (3) **Subsections (1) and (2)** do not apply for a tax position that is inconsistent with **subsections (1) and (2)** and that is taken in a tax return filed before the date on which the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill was introduced. 10
- 80 Calculating amounts of tax on failure to withhold**
- (1) In section RD 70(1), “an employer” is replaced by “an employer, person,”.
- (2) **Subsection (1)** does not apply for a tax position that is inconsistent with **subsection (1)** and that is taken in a tax return filed before the date on which the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill was introduced. 15
- 81 Amounts of tax treated as paid to and received by superannuation funds** 20
- (1) In section RD 71,—
- (a) in the words before the paragraphs, “an employer” is replaced by “an employer or a person”:
- (b) in paragraph (a), “the employer” is replaced by “the employer, the person,”. 25
- (2) **Subsection (1)** does not apply for a tax position that is inconsistent with **subsection (1)** and that is taken in a tax return filed before the date on which the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill was introduced.
- 82 Non-cash dividends other than bonus issues in lieu** 30
- (1) In section RE 14, the section heading is replaced by “**Non-cash dividends other than certain share issues**”.
- (2) Section RE 14(1), other than the heading, is replaced by the following:

- “(1) This section applies when a person makes a payment of resident passive income that consists of a non-cash dividend other than—
- “(a) a bonus issue in lieu:
- “(b) a share issued under a profit distribution plan.” 5
- (3) In section RE 14, in the list of defined terms, “profit distribution plan” is inserted.
- 83 Bonus issues in lieu**
- (1) In section RE 15, the section heading is replaced by “**Bonus issues in lieu and shares issued under profit distribution plans**”. 10
- (2) Section RE 15(1), other than the heading, is replaced by the following:
- “(1) This section applies when a person makes a payment of resident passive income that consists of a dividend that is— 15
- “(a) a bonus issue in lieu:
- “(b) a share issued under a profit distribution plan.”
- (3) In section RE 15(2), “amount of tax for the payment” is replaced by “amount of tax for the payment that the person must pay under **subsection (4)**”. 20
- (4) Section RE 15(3)(b) is replaced by the following:
- “(b) **alternative amount** is, as applicable,—
- “(i) the amount of money offered as an alternative to the bonus issue before the amount of tax is determined; or 25
- “(ii) for a share issued under a profit distribution plan, the amount offered by the company for the repurchase of the share before the amount of tax is determined.”
- (5) After section RE 15(3), the following is added: 30
- “Treatment as if amount of tax withheld*
- “(4) For the purposes of subsection (2), the person must pay to the Commissioner the amount calculated as if it were the amount of tax required to be withheld and paid under the RWT rules.”
- (6) In section RE 15, in the list of defined terms, “Commissioner”, 35
- “profit distribution plan”, and “RWT rules” are inserted.

- 84 Non-resident passive income**
Section RF 2(2)(b) is repealed.
- 85 Non-cash dividends**
In section RF 10(5),—
- (a) in paragraph (b), “section CD 7(2) or CD 8(3)” is replaced by “section CD 7(2), **CD 7B(2)**, or CD 8(3)”: 5
 - (b) in paragraph (d), “section CD 7(2) or CD 8(3)” is replaced by “section CD 7(2), **CD 7B(2)**, or CD 8(3)”. 5
- 86 Section RF 11B replaced**
Section RF 11B is replaced by the following: 10
- “RF 11B Dividends paid by companies in certain situations**
The rate of NRWT payable on a payment of non-resident passive income in the form of a dividend paid by a company to a non-resident is—
- “(a) to the extent to which the payment is a fully-imputed dividend, 0% if— 15
 - “(i) the non-resident has a direct voting interest in the company of 10% or more:
 - “(ii) the non-resident does not have a direct voting interest in the company of 10% or more and, in the absence of this section, the post-treaty tax rate for the dividend would be less than 15% if no imputation credits were attached to the payment: 20
 - “(b) to the extent to which the payment is not a fully-imputed dividend, the post-treaty tax rate for the dividend that, in the absence of this section, would apply if no imputation credits were attached to the payment. 25
- “Defined in this Act: company, direct voting interest, dividend, fully-imputed dividend, imputation credits, non-resident, non-resident passive income, NRWT, pay, post-treaty tax rate”. 30
- 87 Section RM 5 repealed**
Section RM 5 is repealed.
- 88 Definitions**
- (1) This section amends section YA 1.
 - (2) The definition of **bonus issue** is replaced by the following: 35

- “**bonus issue**,—
- “(a) means the issue of shares in a company, or the giving of credit for or forgiveness of an amount unpaid on any share in a company, if the company receives no consideration for the issue, crediting, or forgiveness other than the shareholder choosing not to receive an amount as an alternative to the issue: 5
- “(b) includes the issue of shares under a profit distribution plan”.
- (3) In the definition of **deductible output tax**, in paragraph (a)(iii), “of that Act; and” is replaced by “of that Act:” and the following is inserted: 10
- “(iv) section 21I(1) to (3) of that Act; and”.
- (4) In the definition of **dividend**, paragraph (b) is replaced by the following: 15
- “(b) in the RWT rules, does not include a dividend of the kind listed in section RE 2(5) (Resident passive income) and modified by section RE 2(6), as applicable:”.
- (5) In the definition of **employee**, paragraph (c)(i), “(3)” is replaced by “(3), (3B)”. 20
- (6) In the definition of **employer**,—
- (a) in paragraph (b)(iib), “to the extent that paragraph (db) of the definition of **employee** does not apply” is omitted:
- (b) in paragraph (c)(i), “(3)” is replaced by “(3), (3B)”. 25
- (7) In the definition of **employment income**, “employment)” is replaced by “employment), and includes salary or wages or other income to which section RD 3(2) to (4) (PAYE income payments) applies”. 30
- (8) In the definition of **flat-owning company**, “and section HA 6 (Corporate requirements)” is replaced by “, section HA 6 (Corporate requirements), and the definition of **look-through company**”. 30
- (9) In the definition of **hire purchase agreement**, paragraph (a)(i) is replaced by the following: 35
- “(i) an agreement under which goods are let or hired with an option to purchase:”.

- (10) In the definition of **hire purchase agreement**, in paragraph (d), “(a) or (b)” are replaced by “(a)(i) or (a)(ii)”.
- (11) The definition of **income statement** is repealed.
- (12) The definition of **non-filing taxpayer**, paragraph (a), is replaced by the following: 5
- “**(a)** a person who—
- “**(i)** meets the requirements of **section 33AA(1) or 33C** of the Tax Administration Act 1994; and
- “**(ii)** does not choose to make a return of income under **section 33AA(4)** of that Act; or”. 10
- (13) In the definition of **pre-1990 forest land emissions unit**, paragraph (b) is replaced by the following:
- “**(b)** to another person (the **appointee**), as a person appointed under section 73 of that Act or as a person representing iwi that are claimants under a Treaty of Waitangi settlement, and— 15
- “**(i)** transferred by the appointee to the person, as a person (the **claimant**) who at the time of the transfer to the appointee is a claimant under a Treaty of Waitangi settlement involving the pre- 20
- 1990 forest land or as an agent for the claimant; and
- “**(ii)** held continuously by the person, as the agent or the claimant, from the transfer by the appointee.”. 25
- (14) The following is inserted in the appropriate alphabetical position:
- “**profit distribution plan** means a scheme comprising 1 or more steps undertaken by a company by which it— 30
- “**(a)** notifies all shareholders that shares are to be issued on a particular date; and 30
- “**(b)** gives those shareholders an option to have some or all of the shares issued to them repurchased by the company”.
- (15) In the definition of **relative**, in paragraph (a), in the words before the subparagraphs, “rule),” is replaced by “rule) and 35
- the definition of **look-through company**,”.
- (16) In the definition of **relative**, after paragraph (b), the following is inserted:

- “(bb) in the definition of **look-through company**, means a person connected with another person by any of the means described in paragraph (a)(i) to (iv):”.
- (17) In the definition of **schedular income**, paragraph (h) is repealed. 5
- (18) In the definition of **taxable bonus issue**, the following is added after paragraph (d):
“(e) a bonus issue that is a share issued under a profit distribution plan”.
- (19) **Subsections (4) and (7)** apply for the 2008–09 and later income years. 10
- (20) **Subsections (9) and (10)** do not apply for a tax position that is inconsistent with **subsections (9) and (10)** and that is taken in a tax return filed before the date on which the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill was introduced. 15
- (21) **Subsections (15) and (16)** apply for income years beginning on or after the date on which the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act **2011** receives the Royal assent. 20
- (22) **Subsections (11) and (12)** apply for the 2014–15 and later tax years.
- 89 Reverse takeovers**
In section YC 18(6), “as determined under section” is replaced by “determined by applying section” in each place where it appears. 25
- 90 Corporate reorganisations not affecting economic ownership**
In section YC 18B(2)(c), “the **initial percentage**” is replaced by “the **initial percentage**”. 30
- 91 Apportionment of income from sea transport**
In section YD 6(4), “section DW 3 (Non-resident general insurers, shippers, and film renters)” is replaced by “section DW 3 (Non-resident general insurers and shippers)”.

92 Section YD 7 repealed

Section YD 7 is repealed.

93 Apportionment of premiums derived by non-resident general insurers

In section YD 8(3)(a), “section DW 3 (Non-resident general insurers, shippers, and film renters)” is replaced by “section DW 3 (Non-resident general insurers and shippers)”. 5

94 Schedule 1—Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits

(1) In Part A, clause 1, “clauses 2 to 8” is replaced by “clauses 2 to 9”. 10

(2) In Part A, the following is added after clause 8:

9 Investment income from portfolio investment entities

The basic rate of income tax for a person who is an investor in a PIE on each dollar of income attributed by the PIE is the rate set out in schedule 6 as notified by the person to the PIE.

(3) **Subsections (1) and (2)** apply for the 2008–09 and later income years.

95 Schedule 6—Prescribed rates: PIE investments and retirement scheme contributions 15

In schedule 6, table 1, row 8 is replaced by the following:

8	For a person who is a zero-rated investor or an investor treated under section HM 61 as zero-rated.	0.000
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96 Schedule 28—Requirements for complying fund rules

(1) In schedule 28, clause 7, “2%” is replaced by “3%”.

(2) **Subsection (1)** applies for payments of salary or wages for 20 pay periods beginning on or after 1 April 2013.

97	Schedule 29—Portfolio investment entities: listed investors	
	In schedule 29, part A, the following is added:	
10	Quayside Holdings Limited.	
98	Schedule 32—Recipients of charitable or other public benefit gifts	5
(1)	In schedule 32,—	
(a)	after the entry for “Alhay Buhay Foundation Trust”, an entry for “Aotearoa Development Cooperative” is inserted:	
(b)	after the entry for “Cyclone Val Relief Fund”, an entry for “Deepavali Charitable Trust” is inserted:	10
(c)	after the entry for “Operation Vanuatu Charitable Trust”, an entry for “Orphans of Nepal” is inserted:	
(d)	after the entry for “Save the Children New Zealand (and its branches)”, an entry for “School Aid: Global Partnerships Though Schools” is inserted.	15
(2)	Subsection (1) applies for the 2013–14 and later income years.	
 Part 3 Amendments to Tax Administration Act 1994		
		20
99	Tax Administration Act 1994	
	This Part amends the Tax Administration Act 1994.	
100	Interpretation	
(1)	This section amends section 3.	25
(2)	The definition of income statement is repealed.	
(3)	The definition of petroleum permit is replaced by the following:	
	“ petroleum permit , in section 91 of this Act, means—	
“(a)	a petroleum permit under section OB 1 of the Income Tax Act 2004:	30
“(b)	a replacement permit under section OB 1 of that Act”.	

- (4) In the definition of **petroleum permit**,—
- (a) in **paragraph (a)**, “OB 1 of the Income Tax Act 2004” is replaced by “YA 1 of the Income Tax Act 2007”;
 - (b) in **paragraph (b)**, “OB 1” is replaced by “YA 1”.
- (5) In the definition of **tax position**, paragraph (l) is repealed. 5
- (6) The definition of **taxpayer’s tax position** is replaced by the following:
“**taxpayer’s tax position** means a tax position taken by a taxpayer in or for a tax return or for a due date”.
- (7) **Subsection (3)** applies for the 2005–06 and later income 10
years. However, **subsection (3)** does not apply to a person in relation to a tax position taken by the person—
- (a) in the period from 1 April 2005 to the date of introduction of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill; and 15
 - (b) relating to the treatment of a petroleum permit or replacement permit; and
 - (c) relying on the definition of **petroleum permit** as it was before the amendment made by **subsection (3)**.
- (8) **Subsection (4)** applies for the 2008–09 and later income 20
years.
- 101 Construction of certain provisions**
Section 4A(1)(ca) is repealed.
- 102 Taxpayer’s tax obligations**
Section 15B(h) and (i) are repealed. 25
- 103 Keeping of business and other records**
- (1) In section 22(2),—
- (a) in paragraph (c), “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution”: 30
 - (b) in the words following paragraph (fb) and before paragraph (g), “in New Zealand” is omitted:
 - (c) in paragraph (l), “employer’s superannuation contribution” is replaced in each place where it appears by “employer’s superannuation cash contribution”: 35

- (d) in the words after paragraph (m), “in New Zealand” is omitted and the proviso is repealed.
- (2) After section 22(2), the following is inserted:
- “(2BA) A taxpayer required by subsection (2) to keep and retain a record must keep and retain the record— 5
- “(a) in English, or in a language in which the Commissioner authorises the taxpayer under **subsection (8)** to keep the record or the type of record; and
- “(b) at a place in New Zealand, or—
- “(i) at a place outside New Zealand where the Commissioner authorises the taxpayer under **subsection (8)** to keep the record or the type of record: 10
- “(ii) at the place where the record is kept by a person authorised by the Commissioner under **subsection (8)** to keep records for taxpayers that include the taxpayer.” 15
- (3) After section 22(7), the following is added:
- “(8) The Commissioner may, upon application in writing by the taxpayer or person, authorise for the purposes of **subsection (2BA)**,— 20
- “(a) a taxpayer to keep and retain a record or type of record—
- “(i) in a language other than English:
- “(ii) at a place outside New Zealand:
- “(b) a person to hold, for taxpayers, records in electronic form— 25
- “(i) at places in or outside New Zealand; and
- “(ii) meeting the requirements of section 25 of the Electronic Transactions Act 2002 for each taxpayer and record of the taxpayer. 30
- “(9) The Commissioner may, for an authorisation under **subsection (8)(b)** of a person,—
- “(a) impose reasonable conditions on the authorisation:
- “(b) reasonably vary the conditions on the authorisation:
- “(c) withdraw the authorisation, upon request by the person or after giving reasonable notice of the withdrawal: 35
- “(d) give public notice of an action under **subsection (8)(b)** or this subsection, in a publication chosen by the Commissioner.”

104 Keeping of returns where information transmitted electronically

Section 23(1) is replaced by the following:

- “(1) Where information contained in a taxpayer’s return has been transmitted by electronic means in the prescribed electronic format in accordance with section 36, the taxpayer shall retain or cause to be retained—
- “(a) the return in the form of—
- “(i) a signed hard-copy transcript of the information transmitted: 10
- “(ii) an electronic form meeting the requirements of section 25 of the Electronic Transactions Act 2002; and
- “(b) for a period of—
- “(i) 7 years after the end of the income year to which the return relates; or 15
- “(ii) a greater period that the Commissioner requires under section 22 for other records of the taxpayer, if the Commissioner gives the taxpayer notice of a further retention period under section 22(5).” 20

105 RWT withholding certificates

(1) Section 25(10)(e) is replaced by the following:

“(e) is made available electronically to the recipient or to a person authorised to act on behalf of the recipient and the recipient or the authorised person agrees to having the certificate made available in this way.” 25

(2) **Subsection (1)** applies to RWT withholding certificates provided on or after 1 April 2002 that relate to interest or specified dividends paid in the 2001–02 and subsequent income years.

106 New section 33AA inserted

30

(1) After section 33, the following is inserted:

“33AA Exceptions to requirement for return of income

“(1) A natural person is not required to furnish a return of income for a tax year if, for the corresponding income year, the person—

35

“(a) derives no assessable income other than—

- “(i) income of a type referred to in **subsection (2)**, including a total of \$200 or less of amounts referred to in **subsection (3)**; and
- “(ii) a total of \$200 or less of income of a type not referred to in **subsection (2)**; and 5
- “(b) derives no income from employment for which an amount of tax that is withheld or deducted is determined under a special tax code certificate issued under section 24F; and
- “(c) derives no schedular payment, except if— 10
 - “(i) the schedular payment is an amount or proportion of an amount for which the Commissioner has made a determination under section RD 8(3) of the Income Tax Act 2007:
 - “(ii) the schedular payment is income that is a 15
 - personal service rehabilitation payment for a claimant under the Accident Compensation Act 2001:
 - “(iii) the total income of the person is \$200 or less; and
- “(d) derives no beneficiary income, except if the total income of the person is \$200 or less; and 20
- “(e) is at all times—
 - “(i) a New Zealand resident:
 - “(ii) a non-resident deriving no income with a source in New Zealand other than non-resident passive 25
 - income referred to in section RF 2(3) of the Income Tax Act 2007; and
- “(f) is not a provisional taxpayer; and
- “(g) is a cash basis person; and
- “(h) has no tax loss balance or tax loss component, other than 30
 - a tax loss component under section LE 2 of the Income Tax Act 2007; and
- “(i) has no loss balance; and
- “(j) has not carried forward to the tax year a tax credit under section LE 3 of the Income Tax Act 2007; and 35
- “(k) at no time holds an RWT exemption certificate under section 32E; and
- “(l) is not required under section 44 to furnish a return of income; and

- “(m) is not considered by the Commissioner to be a person who should furnish a return of income.
- “(2) The types of income relevant to **subsections (1)(a)(i) and (ii)** for a person and an income year are—
- “(a) income from employment that is subject to the PAYE rules: 5
- “(b) interest or a dividend that is subject to the RWT rules:
- “(c) interest or a dividend that does not have a New Zealand source:
- “(d) a taxable Maori authority distribution: 10
- “(e) a personal service rehabilitation payment for a claimant under the Accident Compensation Act 2001.
- “(3) The amounts relevant to **subsection (1)(a)(i)** for a person and an income year are—
- “(a) an amount of income for which the obligations under the PAYE rules, of the employer or PAYE intermediary making the payment, are not met: 15
- “(b) an amount of income from which the combined tax and earner-related payment is not withheld correctly:
- “(c) an amount of interest or a dividend that is resident passive income to which section RE 3(1)(c) of the Income Tax Act 2007 applies, other than interest for which an RWT withholding certificate was not required under section 25(7), and from which RWT is withheld at a rate other than— 20
- “(i) 0.175, if the person’s annual gross income is more than \$14,000 and not more than \$48,000; or
- “(ii) 0.300, if the person’s annual gross income is more than \$48,000 and not more than \$70,000; 30
- or
- “(iii) 0.330, if the person’s annual gross income is more than \$70,000:
- “(d) an amount of income from employment that is an extra pay from which tax is withheld at a rate other than— 35
- “(i) 0.175, if the person’s annual gross income is more than \$14,000 and not more than \$48,000; or

- “(ii) 0.300, if the person’s annual gross income is more than \$48,000 and not more than \$70,000; or
“(iii) 0.330, if the person’s annual gross income is more than \$70,000: 5
- “(e) an amount of income from employment that is secondary employment earnings from which tax is withheld at a rate other than—
- “(i) 0.175, if the person’s annual gross income is more than \$14,000 and not more than \$48,000; 10
or
“(ii) 0.300, if the person’s annual gross income is more than \$48,000 and not more than \$70,000; or
“(iii) 0.330, if the person’s annual gross income is 15
more than \$70,000:
- “(f) a taxable Maori authority distribution if the person’s annual gross income is more than \$48,000:
- “(g) an amount of interest, a dividend, or a taxable Maori authority distribution if the person is required to pay 20
financial support in the tax year under the Child Support Act 1991:
- “(h) an amount of interest or a dividend that does not have a New Zealand source and is not resident passive income to which section RE 3(1)(c) of the Income Tax Act 2007 25
applies:
- “(i) an amount of salary or wages from employment as an election day worker, if the worker has used the ‘EDW’ tax code:
- “(j) an amount of salary or wages from employment as casual agricultural employee, if the worker has used the ‘CAE’ tax code. 30
- “(4) A person who is not required to furnish a return of income for a tax year may choose to furnish a return of income for the tax year if the person also furnishes a return of income for each 35
tax year, of the 4 immediately preceding tax years,—
- “(a) beginning on or after 1 April 2014; and
“(b) for which the person—

- “(i) is not required to furnish a return of income, except under this subsection; and
“(ii) has not previously furnished a return of income.”
- (2) **Subsection (1)** applies for the 2014–15 and later tax years.
- 107 Annual returns of income not required** 5
Section 33A(1)(b)(via) is repealed.
- 108 Section 33A repealed**
(1) Section 33A is repealed.
(2) **Subsection (1)** applies for the 2014–15 and later tax years.
- 109 Return not required for certain providers of personal services** 10
(1) In section 33C(d), “section 33A(1)” is replaced by “**section 33AA(1)**”.
(2) **Subsection (1)** applies for the 2014–15 and later tax years.
- 110 Commissioner may approve furnishing of return information by electronic means** 15
Section 36(3)(a) to (ba) are replaced by the following:
“(a) the taxpayer or registered person shall retain or cause to be retained the information in—
“(i) a hard-copy transcript: 20
“(ii) an electronic form meeting the requirements of section 25 of the Electronic Transactions Act 2002; and
“(b) if no electronic form under **paragraph (a)(ii)** of a return is retained, and the return is not an employer 25
monthly schedule or annual reconciliation statement under section 57B, the hard-copy transcript must be signed by the taxpayer or registered person, or their agent, under section 40 and held by the taxpayer or registered person on behalf of the Commissioner; and”. 30
- 111 Annual returns by persons who receive family assistance credit**
(1) Section 41(4) is replaced by the following:

-
- “(4) Whether or not the person derived income in the tax year, the person must furnish to the Commissioner a return for the tax year, in the form prescribed by the Commissioner, providing—
- “(a) details of each family assistance credit paid to the person in the tax year; and 5
 - “(b) the information relevant to the calculation of the person’s family scheme income for the tax year; and
 - “(c) other information required by the Commissioner.”
- (2) Section 41(5) is repealed.
- (3) **Subsections (1) and (2)** apply for the 2014–15 and later tax 10 years.
- 112 Income tax returns and assessments by executors or administrators**
- Section 43(4) and (5) are repealed.
- 113 ESCT statements provided by employers 15**
- (1) In the heading to section 47, “**employers**” is replaced by “**employers and others**”.
- (2) In section 47(1) “employer or PAYE intermediary withholds in a period an amount of ESCT from an employer’s superannuation contribution” is replaced by “employer, person, or PAYE 20 intermediary withholds in a period an amount of ESCT from an employer’s superannuation cash contribution”.
- 114 Part 3A repealed**
- Part 3A is repealed.
- 115 Summary of instalments paid 25**
- Section 80KM(3)(b) is repealed.
- 116 Notices of proposed adjustment required to be issued by Commissioner**
- Section 89C(1) is repealed.
- 117 Taxpayers and others with standing may issue notices of proposed adjustment 30**
- Section 89D(2B) is repealed.

118 Commissioner to make private rulings on request

After section 91E(3), the following is inserted:

- “(3B) Despite subsection (1), the Commissioner may decide to not make a private ruling, to the extent to which it would be a ruling on how section GA 1 of the Income Tax Act 2007 applies or would apply.” 5

119 Disclosure requirements

After section 91ED(1), the following is inserted:

- “(1B) In the case of an application for a private ruling that relates to how either sections GC 6 to GC 14 or YD 5 of the Income Tax Act 2007 applies, or would apply, the applicant must state in a notice, signed by them and sent to the Commissioner at the same time as the application described in subsection (1), that— 10
- “(a) they have examined the application; and 15
- “(b) to the best of their knowledge and belief, the information disclosed for the application is comprehensive.”

120 Section 92AA repealed

Section 92AA is repealed.

121 New section 92AC 20

After section 92AB, the following is inserted:

“92AC Assessment of income tax

If a person is assessable with income tax for a tax year,—

- “(a) the Commissioner may make an assessment for the tax year of— 25
- “(i) the amount on which, in the Commissioner’s judgement, income tax ought to be imposed; and
- “(ii) the amount of that income tax; and
- “(b) the person is liable to pay the income tax assessed by the Commissioner except to the extent that the person establishes, in proceedings challenging the assessment, that— 30
- “(i) the assessment is excessive:
- “(ii) the person is not chargeable with income tax.”

- 122 Assessment of ESCT**
 In section 98(1),—
 (a) “employer” is replaced in each place where it appears
 by “employer or person”:
 (b) “employer’s superannuation contribution” is replaced 5
 by “employer’s superannuation cash contribution”.
- 123 Assessment where default made in furnishing returns**
 Section 106(1A) to (1C) are repealed.
- 124 Time bar for amendment of income tax assessment** 10
 Section 108(1A) is repealed.
- 125 Evidence of returns and assessments**
 In section 110(1), “return, income statement, or assessment”
 is replaced by “return or assessment”.
- 126 Commissioner to give notice of assessment to taxpayer** 15
 (1) Section 111(1)(ba) and (bb) are repealed.
 (2) Section 111(7) is repealed.
- 127 Definitions**
 In section 120C(1), in the definition of **date interest starts**,
 paragraph (b)(iii) is repealed.
- 128 Section 141JA repealed** 20
 Section 141JA is repealed.
- 129 Absolute liability offences**
 Section 143(4) is repealed.
- 130 Knowledge offences** 25
 In section 143A(5)(c)(iii), “employer’s superannuation contri-
 bution” is replaced by “employer’s superannuation cash con-
 tribution”.
- 131 Taxpayer may apply for financial relief**
 After section 177(1), the following is inserted:

“(1B) For the purposes of subsection (1)(a), when assessing whether recovery would place the taxpayer in serious hardship, the Commissioner must consider the taxpayer’s financial position at the date on which the application for financial relief is made.” 5

132 Write-off of tax by Commissioner

Section 177C(5) is replaced by the following:

“(5) If the Commissioner writes off outstanding tax for a taxpayer who has a tax loss, the Commissioner must extinguish all or part of the taxpayer’s tax loss, by— 10

“(a) dividing the amount written off by 0.33 and reducing the tax loss by that amount, if the taxpayer is not a company; or

“(b) dividing the amount written off by 0.28 and reducing the tax loss by that amount, if the taxpayer is a company.” 15

133 Secure credit or debit card payment and fees

In section 226C(3), “amount.” is replaced by “amount, plus any GST.”

Part 4

Amendments to Goods and Services Tax Act 1985 20

134 Goods and Services Tax Act 1985

This Part amends the Goods and Services Tax Act 1985.

135 Interpretation

In section 2(1), in the definition of **land**, paragraph (b)(iii) is replaced by the following: 25

“(iii) an interest in land (but not the transfer of an interest in land) in circumstances where the supply is made periodically, and 25% or less of the total consideration specified in the agreement, in addition to any regular payments, is paid or payable under the agreement in advance of, or contemporaneously with, the supply being made”. 30

136 Meaning of input tax

- (1) Section 3A(2)(b) is replaced by the following:
- “(b) the goods—
- “(i) are not supplied by a supplier who is a non-resident; and 5
- “(ii) have previously been supplied to a registered person who has entered them for home consumption under the Customs and Excise Act 1996, whether the person is registered at the time the goods are entered for home consumption or later; and”. 10
- (2) In section 3A(3C), “to which section 21B applies” is replaced by “meeting the requirements of section **21B(1)(a)(i)** and (b)”. 10
- (3) Section 3A(4) is repealed.

137 Meaning of term supply

- (1) After section 5(24), the following is added: 15
- “(25) For the purposes of this Act, a fee charged for the late payment of an account is treated as being consideration for a supply of services in the course or furtherance of a taxable activity.”
- (2) **Subsection (1)** applies for taxable periods ending on or after 1 April 2003. However, **subsection (1)** does not apply for a person and a fee charged by them for a taxable period ending on or before 1 April 2012 if the person has, before the date of introduction of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill, adopted a regular practice of not charging GST on a late payment fee, relying on the provisions of the Goods and Services Tax Act 1985 as they were before the amendment made by **subsection (1)**. 20 25

138 Imposition of goods and services tax on supply

In section 8(4B)(b)(ii), “90%” is replaced by “95%”.

139 Time of supply

- In section 9(2)(h),— 30
- (a) “first day” is replaced by “last day”:
- (b) “90%” is replaced by “95%”.

140 Accounting basis

(1) After section 19(3), the following is inserted:

“(3B) Despite subsection (3), a liquidator, receiver, or administrator (as defined in section 239B of the Companies Act 1993) of a registered person who accounts for tax payable on a payments basis may not apply to change the registered person’s accounting basis to an invoice basis.” 5

(2) **Subsection (1)** applies in relation to an application for a change to a registered person’s accounting basis received on or after the date of Royal assent of this Act. 10

141 Calculation of tax payable

(1) Section 20(3C) is replaced by the following:

“(3C) For the purposes of subsection (3), and if subsection (3D) does not apply,—

“(a) input tax under section 3A(1)(a) or (c) on a supply of goods or services may be deducted only to the extent to which the goods or services are used for, or are available for use in, making taxable supplies: 15

“(b) input tax under section 3A(1)(b) on a supply of goods may be deducted only to the extent to which the goods are used for, or are available for use in, making taxable supplies other than— 20

“(i) the delivery of the goods to a person in New Zealand:

“(ii) arranging or making easier the delivery of the goods to a person in New Zealand.” 25

(2) In section 20(3J)(a)(iii), “goods” is replaced by “goods or services”.

142 Goods and services tax incurred relating to determination of liability to tax 30

In section 20A(2), in the words after paragraph (d)(ii), “for the principal purpose of making taxable supplies” is replaced by “for making taxable supplies”.

143 Adjustments for apportioned supplies

After section 21(4), the following is added: 35

“(5) In determining the extent of percentage actual use and percentage intended use of a motor vehicle, a registered person may refer to a logbook as provided for in sections DE 6 to DE 11 of the Income Tax Act 2007.”

144 When adjustments required 5
In section 21A(c), “section 21(2)(c)” is replaced by “section 21(2)(c) or (d)”.

145 Adjustments when person becomes registered after acquiring goods and services

(1) Section 21B(1)(a) is replaced by the following: 10

“(a) before becoming a registered person, a person acquires—

“(i) goods or services on which tax has been charged under section 8(1):

“(ii) goods entered by them for home consumption under the Customs and Excise Act 1996 on which tax has been levied under section 12(1): 15

“(iii) secondhand goods—

“(A) that are supplied to the person by way of sale; and 20

“(B) that have always been situated in New Zealand or have had tax levied on them as described in **subparagraph (ii)**; and

“(C) the supply of which is not a taxable supply; and”. 25

(2) Section 21B(4) is repealed.

146 Concurrent uses of land

In section 21E(1), “when a registered person uses all or part of an area of land during an adjustment period for making concurrent taxable and non-taxable supplies” is replaced by “when a registered person simultaneously uses the same area of land during an adjustment period for making concurrent taxable and non-taxable supplies”. 30

147 Definitions and requirements for apportioned supplies and adjustment periods

After section 21G(7), the following is inserted:

- “(7B) If a person disposes, or is treated as disposing, of an asset before the last required adjustment period under subsection (4), then for the purposes of subsection (2)(a)(ii) and (b)(ii), the current adjustment period is treated as—
- “(a) ending immediately before the date of the disposal; and
- “(b) the final adjustment period.”

148 Transitional accounting rules

- (1) In section 21H(1), “sections 21A to 21H” are replaced by “sections 21 to 21H”.
- (2) After section 21H(2), the following is inserted:
- “(2B) For goods or services that were acquired before 1 April 2011, for which no adjustment was made or required under the old apportionment rules before 1 April 2011, and that are not referred to in section 21HB(1), this section applies modified as follows:
- “(a) if input tax was deducted under section 20(3) in relation to the goods or services, the person must apply the old apportionment rules in relation to the supply:
- “(b) if no input tax was deducted under section 20(3) in relation to the goods or services, the person must apply the new apportionment rules set out in sections 21 to 21G and **subsection (2C)**.
- “(2C) For the purpose of **subsection (2B)(b)**, the first adjustment period is treated as beginning on the date of acquisition of the goods or services and ending on the date that is the first balance date falling after the later of—
- “(a) the date on which the goods or services were first used for making taxable supplies:
- “(b) the date on which the person becomes a registered person.”
- (3) **Subsection (2)** applies for supplies made on or after 1 April 2011. However, **subsection (2)** does not apply for a person in relation to a tax position taken by them—

- (a) in the period between 1 April 2011 and the date of introduction of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill; and
- (b) relating to an adjustment made under either the old apportionment rules or the new apportionment rules; and 5
- (c) relying on the provisions of the Goods and Services Tax Act 1985 as they were before the amendment made by **subsection (2)**.

149 Tax invoices

In section 24(7B), “section 60B(3) to (5)” is replaced by “section 60B(3), (4), and (6)”. 10

150 Group of companies

In section 55(1)(a)(iii), “multi-rate PIE” is replaced by “multi-rate PIE or a look-through company”.

151 Nominated recipients of supplies 15

- (1) Section 60B(5) is repealed.
- (2) In section 60B(6), “subsections (2) to (5)” is replaced by “subsections (2) to (4)”.
- (3) **Subsections (1) and (2)** apply for supplies made on or after 1 April 2011. However, **subsections (1) and (2)** do not apply 20 for a person in relation to a tax position taken by them—
 - (a) in the period between 1 April 2011 and the date of introduction of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill; and
 - (b) relating to an input tax deduction claimed by the person; 25 and
 - (c) relying on the provisions of the Goods and Services Tax Act 1985 as they were before the amendments made by **subsections (1) and (2)**.

152 Liability in relation to supplies of land 30

- (1) In section 78F(3), “provided by the recipient” is replaced by “provided under subsection (2)”.
- (2) Section 78F(5) is replaced by the following:

- “(5) For the purposes of section 60B and a contract for a supply that wholly or partly consists of land, when the person who is to receive the supply under the contract (**person B**) nominates another person (**person C**) as the recipient of the supply, the requirements of subsection (2) are met if— 5
- “(a) person B provides the required information as it relates to their expectation of the circumstances of person C:
- “(b) person C provides the required information.”
- (3) In section 78F(7), “the date of settlement.” is replaced by “the date of settlement. If the agent does not have a registration number, their tax file number may be provided in its place.” 10

Part 5
Amendments to other Acts and regulations

Amendments to KiwiSaver Act 2006 15

153 KiwiSaver Act 2006

Sections 154 to 159 amend the KiwiSaver Act 2006.

154 Contribution rate

- (1) In section 64(1)(a), in the words before the subparagraphs, “2%” is replaced by “3%”. 20
- (2) After section 64(1)(a)(ii), the following is inserted:
- “(iii) the employee is on a 2% contribution rate immediately before the first pay period that starts on or after 1 April 2013 because they chose 2% under subsection (2); or” 25
- (3) In section 64(2), “2%” is replaced by “3%”.
- (4) **Subsections (1) to (3)** apply for payments of salary or wages for pay periods that start on or after 1 April 2013.

155 Treatment of unremitted deductions in holding account

In section 78, “section 73(1)” is replaced by “section 73(1)(a)”.

- 156 How and when interest is paid on on-payments**
 In section 88, “at the same time that the amount of contribution is on-paid to the provider” is replaced by “within 3 months of when the amount of contribution is on-paid to the provider”.
- 157 Compulsory employer contribution amount: general rule** 5
 (1) Section 101D(4)(b) is replaced by the following:
 “(b) 2%, if the payment of gross salary or wages is made for a pay period that starts on or before 31 March 2013, excluding a pay period to the extent to which paragraph (a) applies to it: 10
 “(c) 3%, if the payment of gross salary or wages is made for a pay period that is in a year starting on or after 1 April 2013, excluding a pay period that **paragraph (b)** applies to.”
- (2) **Subsection (1)** applies for payments of salary or wages for 15
 pay periods that start on or after 1 April 2013.
- 158 Crown contribution**
 In the heading to section 226, “**contribution**” is replaced by “**contribution: kick-start contributions**”.
- 159 New section 238** 20
 After section 237, the following is added:
 “**238 Protection from non-compliance: Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2011**
 If an effect of the enactment of **sections 96, 154, and 157** of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act **2011** (the **Act**) for an issuer of a security is their non-compliance with an enactment related to securities, that non-compliance is ignored, if it starts before the date (the **end date**) that is 2 months after the day (the **assent day**) on which the Act receives the Royal assent and does not continue on or after the end date, or if it relates to— 25 30
 “(a) a prospectus that is registered under the Securities Act 1978 on or before assent day:
 “(b) an investment statement under the Securities Act 1978 that is dated on or before assent day.” 35

*Amendments to Income Tax Act 2004***160 Income Tax Act 2004****Sections 161 to 168** amend the Income Tax Act 2004.**161 Meaning of expenditure on account of an employee**

(1) Section CE 5(1), other than the heading, is replaced by the following: 5

“(1) **Expenditure on account of an employee** means a payment made by an employer relating to expenditure incurred by an employee or to be incurred by an employee.”(2) **Subsection (1)** applies for the 2005–06 and later income years. 10**162 Expenditure on account, and reimbursement, of employees**(1) In section CW 13(1), “**Expenditure on account of an employee**” is replaced by “**Expenditure on account of an employee**, being a payment to which section CE 5 (Meaning of expenditure on account of an employee) applies, that is”. 15(2) **Subsection (1)** applies for the 2005–06 and later income years.**163 New heading and section DB 31B inserted** 20

(1) After section DB 31 of the Income Tax Act 2004, the following is inserted:

*“Unsuccessful software development***“DB 31B Expenditure in unsuccessful development of software***“When this section applies* 25

“(1) This section applies when a person incurs expenditure in the development of software if—

“(a) the person incurs the expenditure with the main intention that the software be used in the person’s business; and 30

“(b) the development of the software is abandoned before the software is fit to be used in the person’s business; and

“(c) the person would have been entitled to a deduction for an amount of depreciation loss for the software if the software had been made fit for use in the person’s business.	
“ <i>Deduction</i>	5
“(2) The person is allowed a deduction for the expenditure incurred in the development of the software to the extent to which no deduction has been allowed for the expenditure under another provision of this Act or under another Act.	
“ <i>Timing of deduction</i>	10
“(3) The deduction is allocated to the income year in which the development of the software is abandoned.	
“ <i>Link with subpart DA</i>	
“(4) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.	15
“Defined in this Act: capital limitation, deduction, general limitation, general permission, income year”.	
(2) Subsection (1) applies for the 2007–08 and later income years.	20
164 Some definitions	
(1) In section DC 14(1), in the definition of employee , paragraph (a) is replaced by the following:	
“(a) means a person that—	
“(i) is employed by a company:	25
“(ii) is not a corporation sole, a body corporate, or an unincorporated body:”.	
(2) In section DC 14(1), in the definition of employee ,—	
(a) in paragraph (b)(ii), “the company; or” is replaced by “the company”:	30
(b) paragraph (b)(iii) is repealed.	
(3) Subsections (1) and (2) apply for the 2005–06 and later income years.	
165 Application of this subpart	
(1) Section EC 1(1) is replaced by the following:	35

- “When this subpart applies*
- “(1) This subpart applies to the valuation of property when a person who owns or carries on a business holds livestock for the purposes of sale or exchange in the ordinary course of carrying on the business.” 5
- (2) **Subsection (1)** applies for the 2005–06 and later income years. However, **subsection (1)** does not apply to a person in relation to a tax position taken by the person—
- (a) in the period from 1 April 2005 to 31 May 2011; and
- (b) relating to the valuation of livestock; and 10
- (c) relying on the provisions of subpart EC as they were before the amendment made by **subsection (1)**.
- 166 Spreading forward of deductions for repairs to fishing boats**
- (1) In section EJ 2(1), “Part 10 of the Maritime Transport Act 1994” is replaced by “Part 21 of the Maritime Rules made under the Maritime Transport Act 1994”. 15
- (2) In section EJ 2(6), in the definition of **fishing boat**, “a fishing boat under Part 4 of the Fisheries Act 1983” is replaced by “a fishing vessel under section 103 of the Fisheries Act 1996”. 20
- (3) **Subsections (1) and (2)** apply for the 2005–06 and later income years.
- 167 Portfolio entity tax liability and rebates of portfolio tax rate entity for period**
- (1) After section HL 20(9), the following is inserted: 25
- “(9B) For the purposes of subsection (9) and the determination of a person’s prescribed investor rate, the person’s taxable income does not include an amount that—
- “(a) arises because their portfolio investor rate is lower than their prescribed investor rate; and 30
- “(b) is treated as taxable income because section CX 44D does not apply.”
- (2) Section HL 20(13) is repealed.
- 168 Definitions**
- (1) This section amends section OB 1. 35

- (2) In the definition of **hire purchase agreement**, paragraph (a) is replaced by the following:
 - “(a) means an agreement under which goods are let or hired with an option to purchase; and”.
- (3) **Subsection (2)** does not apply for a tax position that is inconsistent with **subsection (2)** and that is taken in a tax return filed before the date on which the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill was introduced. 5

Amendments to Income Tax Act 1994

169 Income Tax Act 1994 10
Section 170 amends the Income Tax Act 1994.

170 Certain repairs to fishing boats

- (1) In section DO 2(1), “Part 4 of the Shipping and Seamen Act 1952” is replaced by “Part 10 of the Maritime Transport Act 1994”. 15
- (2) In section DO 2(1), “Part 10 of the Maritime Transport Act 1994” is replaced by “Part 21 of the Maritime Rules made under the Maritime Transport Act 1994”.
- (3) In section DO 2(2), in the definition of **fishing boat**, “the Fisheries Act 1983;” is replaced by “the Fisheries Act 1983 or section 103 of the Fisheries Act 1996;”. 20
- (4) **Subsection (1)** applies for the 1995–96 to 1997–98 income years.
- (5) **Subsection (2)** applies for the 1998–99 and later income years. 25
- (6) **Subsection (3)** applies for the 2001–02 and later income years.

*Amendments to Income Tax (Depreciation
Determinations) Regulations 1993*

171 Income Tax (Depreciation Determinations) Regulations 1993 30
Sections 172 to 175 amend the Income Tax (Depreciation Determinations) Regulations 1993.

172 Fees

- (1) In regulation 9(1)(a), “\$50” is replaced by “\$150 plus any GST”.
- (2) In regulation 9(1)(b),—
- (a) “\$30” is replaced by “\$75 plus any GST”. 5
- (3) Regulation 9(1)(c) and (d) are replaced by the following:
- “(c) a departmental consultation reimbursement fee equal to the amount of fees, less GST, paid by the Commissioner to consultants such as valuers, engineers, and architects in obtaining advice as to the estimated useful life or estimated residual value of the property to which the application relates (not being fees to which **paragraph (d)** applies), plus any GST: 10
- “(d) an additional consultation reimbursement fee, equal to the amount of fees, less GST, paid by the Commissioner to the relevant consultant, plus any GST, where the applicant— 15
- “(i) requests, in writing to the Commissioner, that a consultant carry out further work on the application: 20
- “(ii) requests a conference on the application and a consultant paid by the Commissioner attends the conference on the nomination of either the applicant or the Commissioner.”
- (4) After regulation 9(1), the following is inserted: 25
- “(1B) An applicant for a determination of a provisional rate under section 91AAG of the Act is liable to pay for the application an additional consultation reimbursement fee equal to the amount of fees, less GST, paid by the Commissioner to the relevant consultant, plus any GST, if— 30
- “(a) the Commissioner declines to issue a determination, or issues a determination that is unfavourable to the applicant; and
- “(b) the applicant, after the Commissioner’s decision,— 35
- “(i) requests, in writing to the Commissioner, that a consultant carry out further work on the application but the further work does not cause the Commissioner to issue a determination favourable to the applicant:

- “(ii) requests a conference on the application and a consultant paid by the Commissioner attends the conference on the nomination of either the applicant or the Commissioner but the conference does not cause the Commissioner to issue a determination favourable to the applicant.” 5
- (5) In regulation 9(2), “subclause (1)(d)” is replaced by “subclause (1)(d) or **(1B)**”.
- 173 Payment of fees**
- (1) In regulation 10(1), “paragraphs (b) to (d) of regulation 9(1)” is replaced by “regulation 9(1)(b) to (d) or **(1B)**”. 10
- (2) In regulation 10(2), “paragraphs (b) to (d) of regulation 9(1)” is replaced by “regulation 9(1)(b) to (d) or **(1B)**”.
- 174 Regulation 11 replaced**
- Regulation 11 is replaced by the following: 15
- “**11 Waiver of fees**
- The Commissioner may waive all or part of a fee payable under these regulations if the Commissioner considers it is fair and reasonable in the circumstances to do so, having regard to the nature of the issue that is the subject of the application, the level of skill and experience required in the consideration of the application, the fees paid by the Commissioner to consultants in the application, and any other relevant factors.” 20
- 175 Regulation 12 revoked**
- Regulation 12 is revoked. 25
- Amendments to Income Tax (Determinations)
Regulations 1987*
- 176 Income Tax (Determinations) Regulations 1987**
- Sections 177 and 178** amend the Income Tax (Determinations) Regulations 1987. 30
- 177 Publication of determinations**
- In regulation 10, “in the *Gazette*” is replaced by “, in a publication chosen by the Commissioner.”.

178 Regulation 13 replaced

Regulation 13 is replaced by the following:

“13 Waiver of fees

The Commissioner may waive all or part of a fee payable
under these regulations if the Commissioner considers it is fair 5
and reasonable in the circumstances to do so, having regard to
the nature of the issue that is the subject of the application, the
level of skill and experience required in the consideration of
the application, and any other relevant factors.”

*Amendments to Tax Administration (Binding
Rulings) Regulations 1999* 10

179 Tax Administration (Binding Rulings) Regulations 1999
Sections 180 and 181 amend the Tax Administration (Bind-
ing Rulings) Regulations 1999.

180 Fees 15

In regulation 3(1),—

- (a) in paragraph (a), “\$310” is replaced by “\$280 plus any
GST”; and
- (b) in paragraph (b)(i), “\$155” is replaced by “\$140 plus
any GST”; and 20
- (c) paragraph (b)(ii) is revoked.

181 Regulation 7 revoked

Regulation 7 is revoked.