

Taxation (International Investment and Remedial Matters) Bill

Government Bill

As reported from the Finance and
Expenditure Committee

Commentary

Recommendation

The Finance and Expenditure Committee has examined the Taxation (International Investment and Remedial Matters) Bill and recommends that it be passed with the amendments shown.

Introduction

This bill would change how the Income Tax Act 2007 applies to gains of New Zealand residents from income interests in overseas entities, or foreign investment funds (FIFs),¹ and gains of foreign residents

¹ A foreign investment fund is the name given for any foreign entity that is not controlled by a New Zealand shareholder or a small group of New Zealand shareholders.

from income interests in New Zealand companies. The bill contains three main initiatives:

- extending the active income exemption to investors with non-portfolio interests in FIFs²
- introducing a zero rate of approved issuer levy on bonds
- modifying the thin capitalisation rules for firms with high-value intangible assets.

This commentary covers the principal amendments that we recommend to this bill. It does not cover minor or technical amendments.

Active income exemption

Active business test accounting standards requirement

We recommend amendments to clauses 29(4) and (5) that would allow taxpayers to apply the active business test based on accounts prepared in accordance with the United States' generally accepted accounting principles standards. Under the bill as introduced, the active business test could only be applied based on accounts that conform to a New Zealand equivalent to an international financial reporting standard or to an international financial reporting standard. The United States does not require companies to prepare accounts according to international financial reporting standards, so many companies that operate primarily in the United States prepare accounts under the United States' generally accepted accounting principles.

We considered whether accounts prepared in accordance with other countries' generally accepted accounting principles should also be accepted as a basis for these financial statements. We were advised that most other countries have either adopted international financial reporting standards or have standards that are close to international financial reporting standards. The number of different sets of generally accepted accounting principles that exist means it would be difficult to capture them comprehensively and to monitor them all for continued consistency with international financial reporting standards. The amount of time it would take to do this, versus the small risk of the active income exemption being lost in cases where it should

² New Zealand investors in a FIF are divided into two categories: portfolio investors (who own less than 10 percent of the FIF) and non-portfolio investors (who have a 10 to 50 percent interest in the FIF).

be available, means such a change would not be justified. We were also advised that some sets of generally accepted accounting principles may not correctly identify passive income, meaning significant amounts of passive income could escape tax. We therefore have not recommended allowing the use of accounts prepared under generally accepted accounting principles from countries other than the United States.

Access to the attributable FIF income method

We recommend the insertion of new clause 26(3), which would allow investors who have a less than 10 percent interest in a FIF to access the active income exemption if they fit certain criteria. The criteria would be that the foreign company be a controlled foreign company (CFC),³ the shares would not be widely traded, and the investor would not be a listed company or managed fund.

Under the bill as introduced, investors with a less than 10 percent interest in a FIF would not be able to access the active income exemption, as the Inland Revenue Department initially thought that these investors would not be able to obtain enough information to do this. Previously, these investors could use the branch equivalent method, which this bill would repeal. As some of these investors did use the branch equivalent method, this proposed amendment would give them the choice as to whether they access the active income exemption.

Exemption for royalty and interest payments

We recommend an amendment to clause 29(4) that would extend the exemption on interest, rent, and royalty payments to include payments from a parent company to a controlled subsidiary and payments between two sister companies that are controlled by the same FIF holding company.

Under the bill as introduced, the FIF rules would have exempted interest, rent, and royalty payments from a subsidiary FIF to a parent FIF (but not in the other cases mentioned above). The rationale for these exemptions is to ensure taxpayers are not penalised when

³ A controlled foreign company is a foreign company that is controlled by a New Zealand shareholder or a small group of New Zealand shareholders.

a holding company is used to control an active business in the same jurisdiction. It is not suitable to adopt the wording from the CFC rules, as this would allow an exemption for payments between two companies that operated independently from each other.

Opting out of the minimum threshold exemption

We recommend the insertion of new clauses 8(1C) and 15(1C) that would enable natural persons to disregard the \$50,000 minimum threshold for attributing interests in FIFs, below which the FIF rules do not apply. This would allow natural persons with interests that fall below the threshold to apply the FIF rules, simplifying compliance for some shareholders.

To prevent arbitrage arising from taxpayers switching between the FIF rules and dividend-only methods, we recommend that once a taxpayer has opted out of the minimum-value threshold they would be required to continue to apply the FIF rules. Only if the taxpayer ceases to hold attributing interests in a FIF for four complete tax years could the minimum-value threshold then apply to any future FIF interests.

Revaluing inherited former grey shares

We recommend an amendment to clause 41, to delete new section EX 67B(1)(b)(i) of the principal Act, so that the requirement that inherited grey list shares be revalued would apply only if the shares were inherited at a nil cost. This would mean that the shares would not be revalued if they were inherited at the cost of the person from whom the taxpayer inherited the shares. This is consistent with the treatment of inheritances from close family members and of inheritances received prior to October 2005.

We also recommend the insertion of proposed new section EX 67B(2B) so that tax on revaluation gains would be limited to the difference between the market value at the time of inheritance and the market value at the time of a deemed sale, when new section EX 67B of the Income Tax Act applies. We have been informed that the operation of new section EX 67B will be clarified in the tax information bulletin.

Remedial matters

There are a significant number of technical amendments made in the bill that relate to the 2009 reform of the CFC rules.

Insurance CFCs with reinsurance claim income

We recommend the insertion of new clause 140(1A) so that income from reinsurance claims would be disregarded when applying the active income test for insurance CFCs. Under the existing CFC rules, an insurance CFC can qualify as an active business if it meets a requirement that “all or nearly all” of its income comes from premiums from certain types of insurance contracts and from investments that are commensurate with these contracts. The existing rules do not give consideration to the fact that a large part of an insurer’s income can come in the form of reinsurance claims for liabilities that they have reinsured.

Attributable (passive) telecommunications income

We recommend the insertion of new clause 19(4B) to replace the limitations imposed on telecommunications income to exempt it from New Zealand tax under CFC rules. Certain telecommunications income is exempt from New Zealand tax under CFC rules because a service is unavoidably performed in New Zealand when a CFC connects a call from its country to New Zealand. This concession is at present limited to cases in which a CFC does not use its own equipment or staff, or those of an associated CFC, to perform the service in New Zealand.

Our proposed amendment would replace these limitations with requirements that the person performing the service in New Zealand is not the CFC, is subject to New Zealand tax on income they receive from performing the service, and performs the service as part of a substantial telecommunications business in New Zealand. This proposed amendment should maintain protection of the New Zealand tax base while accommodating commercial arrangements that existed before the enactment of the recent CFC rules.

Royalty payments exemption

We recommend the insertion of new clause 19(2C) so that third party royalty payments paid in relation to property owned by a

New Zealand resident would be treated as “active”, even if those payments passed through an upper-tier and lower-tier CFC before being returned to New Zealand. This proposed amendment would be necessary as the current drafting of section EX 20B(5)(d) of the principal Act takes into account only the payment that is made between the upper-tier and lower-tier CFCs; it does not provide for the initial payment made by the third party to the lower-tier CFC. As such, that third party payment would be considered as “passive income” and would be subject to attribution.

Exemption for new resident’s superannuation schemes

We recommend the insertion of new clause 24B so that the intended policy outcome in the principal Act regarding the exemption from attribution for rights held in a foreign employment-related superannuation scheme would be achieved. The exemption is intended to apply to contributions made while a taxpayer is non-resident, and during the first four income years after becoming resident, as well as ongoing gains on those contributions. A person should only need to calculate their FIF income arising from interests in a foreign superannuation scheme if they continued to make contributions after the end of the fourth full income year since becoming resident. However, the current drafting of section EX 42 of the principal Act does not take into account fluctuations in the value of those exempt contributions that occur after the end of the fourth full income year. This means that a portion of a person’s foreign superannuation interest can be non-attributable one year and attributable the next year, even if they have not made any further contributions.

Associated persons—bond issuers and bond holders

We recommend the insertion of new clause 125(B) and an amendment to clause 142 so that bond issuers and bond holders do not become associated simply by being trustees and beneficiaries in a trust that has a principal purpose of enforcing rights under the bond. At present bond issuers are required to deduct non-resident withholding tax on interest payments to non-resident bond-holders, rather than paying the approved issuer levy, which is a lower rate. The amendments we recommend to these clauses should enable such bond issuers to be able to pay the approved issuer levy.

Drafting of CFC and FIF rules

We understand that the FIF rules were drafted in their current manner due to the time that was available, but we consider these should be rewritten as part of a future tax bill so that there are separate sets of rules for CFCs, non-portfolio FIFs, and portfolio FIFs. The current non-portfolio FIF rules are based on the existing CFC provisions, with the rules providing departures from the treatment of CFCs. This means that individuals have to refer to two sets of rules to navigate the non-portfolio FIF rules.

Approved Issuer Levy

New Zealand Labour members have concerns regarding the removal of the Approved Issuer Levy on payments of interest on securities meeting certain requirements as notified under the Act. The New Zealand Labour members' concerns relate to a further erosion of the tax base associated with financial transactions at a time of falling government revenue. We were advised by a number of submitters that the proposals outlined in the bill will not help increase liquidity, reduce interest rates or add depth to capital markets. In addition, New Zealand Labour members are concerned that in some cases the current tax system already effectively contains a lower tax burden on off-shore sources of capital relative to the tax on domestic savings, thereby providing an undesirable incentive for funds to be sourced off-shore rather than be saved domestically. New Zealand Labour Party members believe that further work is required to improve the neutrality of the tax treatment of capital across domestic and international sourcing.

Appendix

Committee process

The Taxation (International Investment and Remedial Matters) Bill was referred to us on 9 November 2010. The closing date for submissions was 28 January 2011. We received and considered 14 submissions from interested groups and individuals. We heard six submissions.

We received advice from the Inland Revenue Department, the Treasury, and our specialist tax advisor, Therese Turner.

Committee membership

Craig Foss (Chairperson)

Amy Adams (Acting Chairperson)

David Bennett

Brendon Burns

Hon David Cunliffe

Hon Sir Roger Douglas

Aaron Gilmore

Hon Shane Jones (until 9 February 2011)

Rahui Katene

Peseta Sam Lotu-Iiga

Hon Trevor Mallard (from 9 February 2011)

Stuart Nash

Dr Russel Norman

**Taxation (International Investment and
Remedial Matters) Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Peter Dunne

Taxation (International Investment and Remedial Matters) Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the **Taxation (International Investment and Remedial Matters) Act 2010**.

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 71** is treated as coming into force on 1 April 2008.
- (3) **Section 126(20)** is treated as coming into force on 30 June 2009.
- (4) **Sections 19(3) to (5), (7), and (9), 19(2C) to (4B), (7), and (9), 20, 21, 22, 33(1), (3), and (4), 43(1) and (4), 45(3), (5), and (7), 47(1), (3), (5), and (7), 48, 49(1) and (2), 57, 58, 64, 66, 70(1) to (3), (6), (7), and (9), 74, 99, 101, 103, 112, 114, 116, 126(3), (30), (31), (34B), and (35), 129, 136, and 140** are treated as coming into force on 1 July 2009. 15
- (4B) **Section 125B** is treated as coming into force on 1 April 2010.
- (4C) **Section 141(1)** is treated as coming into force on 7 September 2010.
- (5) **Section 141(2)** is treated as coming into force on 1 October 2010. 20
- (6) **Section 126(16) and (17)** are treated as coming into force on 27 October 2010.
- (6) **Section 126(16)** is treated as coming into force on 27 October 2010.

- (7) **Sections 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19(1), (2), (6), and (8), 19(1) to (2B), (6), and (8), 19B to 19E, 20B, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33(2) and (5), 33(2), (2B), and (5), 34, 35, 36, 37, 38, 39, 40, 42, 43(2), (3), and (5), 44, 45(1), (2), (4), and (6), 46, 47(2), (4), (6), and (8), 49(1B), (1C), and (3), 49B, 50, 51, 52, 53, 54, 55, 56, 60, 61, 62, 65, 67, 68, 69, 70(4), (5), (8), and (10), 72, 73, 75, 76(1) and (3), 77(1), (3), and (5), 78(1), (3), and (5), 79(1), (3), and (5), 80(1), (3), and (4), 82(1), (3), (5), (6), and (8), 84(2), (4), and (7), 85, 86, 88, 89, 90, 91, 92, 93, 94, 97, 106, 107, 108, 109, 110, 121, 122, 123, 124, 125, 126(2), (4), (6), (7), (9), (10), (11), (15), (18), (19), (21) to (23), (25) to (29), (33), (34), and (36), 130, 131, 133(2) and (5), 134, 135, 137, and 138(2) and (4)** come into force on 1 July 2011.
- (8) **Sections 59, 63, 67B, 76(2) and (4), 77(2), (4), and (6), 78(2), (4), and (6), 79(2), (4), and (6), 80(2) and (5), 81, 82(2), (4), (7), and (9), 83, 84(1), (3), (5), and (6), 87, 95, 96, 98, 100, 102, 104, 105, 111, 113, 115, 117, 118, 119, 120, 126(5), (8), (12) to (14), (24), (32), and (37), 127, 128, 133(1), (3), and (4), 138(1) and (3), and 139** come into force on 1 July 2012.
- (9) **Section 17** comes into force on 1 October 2012.

Part 1

Amendments to Income Tax Act 2007

3 Income Tax Act 2007

This Part amends the Income Tax Act 2007.

4 Elections to make bonus issue into dividend

(1) In section CD 8(1)(a)(ii), “or CW 11 (Dividend of conduit tax relief holding company)” is omitted.

(2) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

5 Foreign investment fund income

(1) Section CD 36(2) is replaced by the following:

- “Exclusion for interests in FIFs resident in Australia*
- “(2) Subsection (1)(b)(iv) does not apply if the person’s interest in the company is included, at the beginning of the income year in which the payment is made, in a direct income interest of 10% or more in a FIF that, at the beginning of the income year,— 5
- “(a) meets the requirements of **section EX 35(b)(i) to (iii)** (Exemption for interest in FIF resident in Australia); and
- “(b) does not have its liability for income tax reduced by an exemption, allowance, or relief referred to in **section EX 35(c)(i) or (ii).**” 10
- (2) In section CD 36, in the list of defined terms, “grey list company” is omitted.
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011. 15
- 6 Prevention of double taxation of share cancellation dividends**
- (1) In section CD 53(3), “to CW 11” is replaced by “and CW 10”.
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2011. 20
- 7 When attributed CFC income arises**
- (1) After section CQ 2(1)(b), the following is inserted:
“(bb) the person is not a portfolio investment entity; and”.
- (2) In section CQ 2(2), in the words before the paragraphs, “Branch equivalent method” is replaced by “Attributable FIF income method”. 25
- (3) In section CQ 2(2)(b), “branch equivalent method” is replaced by “attributable FIF income method”.
- (4) In section CQ 2, in the list of defined terms,— 30
- (a) “branch equivalent method” is omitted:
- (b) “attributable FIF income method” and “portfolio investment entity” are inserted.
- (5) **Subsections (1) to (3)** apply for income years beginning on or after 1 July 2011.

8 When FIF income arises

(1) Section CQ 5(1)(c)(v) is replaced by the following:

“(v) the exemption in **section EX 35** (Exemption for interest in FIF resident in Australia):”.

(1B) In section CQ 5(1)(c)(xiv), “exception); and” is replaced by “exception):” and the following is added: 5

“(xv) an exemption given by sections EX 50, EX 18A(2)(b)(i), and EX 21B (which relate to the attributable FIF income method and FIFs corresponding to non-attributing active CFCs); and”. 10

(1C) Section CQ 5(1)(d) and (e) are replaced by the following:

“(d) if the person is a natural person and not acting as a trustee,—

“(i) the total cost, calculated under section EX 68 (Measurement of cost), of attributing interests in FIFs that the person holds at any time in the year when the person is a New Zealand resident is more than \$50,000: 15

“(ii) the person includes, in a return for the year, FIF income or loss from an attributing interest in a FIF: 20

“(iii) the person has, in the return for 1 of the preceding 4 income years (the **earlier year**), included FIF income or loss from attributing interests in FIFs with a total cost of \$50,000 or less, calculated under section EX 68, at all times in the earlier year when the person is a New Zealand resident; and 25

“(e) if the person is acting as trustee of a trust that meets the requirements of subsection (5),— 30

“(i) the total cost, calculated under section EX 68, of attributing interests in FIFs that the person holds at any time in the year is more than \$50,000:

“(ii) the person includes, in a return for the year, FIF income or loss from an attributing interest in a FIF: 35

“(iii) the person has, in the return for 1 of the preceding 4 income years (the **earlier year**), included FIF

income or loss from attributing interests in FIFs with a total cost of \$50,000 or less, calculated under section EX 68, at all times in the earlier year; and”.

- (2) In section CQ 5(2), in the words before the paragraphs, “accounting profits method or branch equivalent method” is replaced by “attributable FIF income method”. 5
- (3) In section CQ 5, in the list of defined terms,—
- (a) “accounting profits method” and “branch equivalent method” are omitted: 10
- ~~(b) “attributable FIF income method” is inserted.~~
- (b) “attributable FIF income method” and “loss” are inserted.
- ~~(4) **Subsections (1) and (2)** apply for income years beginning on or after 1 July 2011.~~ 15
- (4) **Subsections (1) to (2)** apply for income years beginning on or after 1 July 2011.

9 Dividend derived from foreign company

- ~~(1) In section CW 9(2)(a), the words before the subparagraphs are replaced by “a direct income interest that does not meet the requirements of **section EX 35(a) to (c)** (Exemption for interest in FIF resident in Australia) and is excluded from being an attributing interest by—”. 20~~
- (1) In section CW 9(2)(a), the words before the subparagraphs are replaced by “a direct income interest that meets the requirements of neither section EX 34 (CFC rules exemption) nor **section EX 35** (Exemption for interest in FIF resident in Australia) and is excluded from being an attributing interest by—”. 25
- ~~(2) In section CW 9(3), “multi-rate PIE” is replaced by “portfolio investment entity”. 30~~
- (2) Section CW 9(3) is replaced by the following:
“*Non-application to certain dividends*
- “(3) This section does not apply to a dividend—
- “(a) derived by a portfolio investment entity;
- “(b) excluded by section CD 36(2) (Foreign investment fund income) from the effect of section CD 36(1).” 35
- (3) In section CW 9, in the list of defined terms,—

- (a) “multi-rate PIE” and “portfolio tax rate entity” are omitted:
- (b) “portfolio investment entity” is inserted.
- (4) **Subsections (1) and (2)** apply for income years beginning on or after 1 July 2011. 5
- 10 Section CW 11 repealed**
- (1) Section CW 11 is repealed.
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2011.
- 11 Dividends derived by qualifying companies** 10
- (1) In section CW 14, “Sections CW 10 and CW 11 do” is replaced by “Section CW 10 does”.
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2011.
- 12 When attributed CFC loss arises** 15
- (1) After section DN 2(1)(b), the following is inserted:
“(bb) the person is not a portfolio investment entity; and”.
- (2) In section DN 2, in the list of defined terms, “portfolio investment entity” is inserted.
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011. 20
- 13 Ring-fencing cap on deduction**
- (1) In section DN 4(1)(b), “branch equivalent method” is replaced by “attributable FIF income method”.
- (2) In section DN 4, in the list of defined terms,— 25
- (a) “branch equivalent method” is omitted:
- (b) “attributable FIF income method” is inserted.
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

14 Foreign investment fund loss

- (1) In section DN 5(2), “branch equivalent method” is replaced by “attributable FIF income method” in each place where it appears.
- (2) In section DN 5, in the list of defined terms,— 5
 (a) “branch equivalent method” is omitted;
 (b) “attributable FIF income method” is inserted.
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

15 When FIF loss arises 10

- (1) Section DN 6(1)(c)(v) is replaced by the following:
 “(v) the exemption in **section EX 35** (Exemption for interest in FIF resident in Australia):”.
- (1B) In section DN 6(1)(c)(xiv), “exception); and” is replaced by “exception):” and the following is added: 15
“(xv) an exemption given by sections EX 50, EX 18A(2)(b)(i), and EX 21B (which relate to the attributable FIF income method and FIFs corresponding to non-attributing active CFCs); and”. 20
- (1C) Section DN 6(1)(d) and (e) are replaced by the following:
“(d) if the person is a natural person and not acting as a trustee,—
“(i) the total cost, calculated under section EX 68 (Measurement of cost), of attributing interests in FIFs that the person holds at any time in the year when the person is a New Zealand resident is more than \$50,000: 25
“(ii) the person includes, in a return for the year, FIF income or loss from an attributing interest in a FIF: 30
“(iii) the person has, in the return for 1 of the preceding 4 income years (the **earlier year**), included FIF income or loss from attributing interests in FIFs with a total cost of \$50,000 or less, calculated under section EX 68, at all times in the earlier 35

- year when the person is a New Zealand resident;
and
- “(e) if the person is acting as trustee of a trust that meets the requirements of subsection (4),—
- “(i) the total cost, calculated under section EX 68, of attributing interests in FIFs that the person holds at any time in the year is more than \$50,000: 5
- “(ii) the person includes, in a return for the year, FIF income or loss from an attributing interest in a FIF: 10
- “(iii) the person has, in a return for 1 of the preceding 4 income years (the earlier year), included FIF income or loss from attributing interests in FIFs with a total cost of \$50,000 or less, calculated under section EX 68, at all times in the earlier year; and”. 15
- (2) In section DN 6(2), “accounting profits method or branch equivalent method” is replaced by “attributable FIF income method”.
- (3) In section DN 6, in the list of defined terms,— 20
- (a) “accounting profits method” and “branch equivalent method” are omitted:
- (b) “attributable FIF income method” is inserted:
- (b) “attributable FIF income method”, “FIF income”, and “loss” are inserted. 25
- ~~(4)~~ **Subsections (1) and (2)** apply for income years beginning on or after 1 July 2011.
- (4) Subsections (1) to (2) apply for income years beginning on or after 1 July 2011.
- 16 Ring-fencing cap on deduction: branch equivalent method** 30
- (1) In the heading to section DN 8, “branch equivalent method” is replaced by “attributable FIF income method”.
- (2) In section DN 8(1), “branch equivalent method” is replaced by “attributable FIF income method” in each place where it appears. 35
- (3) In section DN 8, in the list of defined terms,—

- (a) “branch equivalent method” is omitted:
- (b) “attributable FIF income method” is inserted.
- (4) **Subsections (1) and (2)** apply for income years beginning on or after 1 July 2011.

- 17 Section DX 3 repealed** 5
 - (1) Section DX 3 is repealed.
 - (2) **Subsection (1)** applies for the 2013–14 and later income years.

- 18 Section EX 14 replaced**
 - (1) Section EX 14 is replaced by the following: 10

“EX 14 Attribution: 10% threshold, not PIE

“Persons with attributed CFC income or loss

“(1) A person has attributed CFC income or loss from a CFC only if the person—

 - “(a) has an income interest in the CFC of 10% or more for the relevant accounting period; and 15
 - “(b) is not a portfolio investment entity.

“Portfolio investment entity

“(2) A portfolio investment entity that would have attributed CFC income or loss from a CFC in the absence of **subsection (1)(b)** has FIF income or loss from the CFC under the FIF rules. 20

“Defined in this Act: accounting period, attributed CFC income, CFC, FIF income, FIF rules, income interest, loss, PIE, portfolio investment entity”.

(2) **Subsection (1)** applies for income years beginning on or after 1 July 2011. 25

- 19 Attributable CFC amount**
 - (1) ~~In section EX 20B(3)(a), the words before the subparagraphs are replaced by “a dividend that is paid in relation to rights that are a direct income interest in a foreign company; do not meet the requirements of **section EX 35(a) to (c)**; and are excluded from being an attributing interest by—”.~~ 30
 - (1) In section EX 20B(3)(a), the words before the subparagraphs are replaced by “a dividend that is paid in relation to rights that are a direct income interest in a foreign company, meet 35

the requirements of neither section EX 34 nor **section EX 35**, and are excluded from being an attributing interest by—”.

(2) Section EX 20B(3)(m)(ii) is replaced by the following:

“(ii) owned by the CFC or by a ~~CFC~~ or FIF that is associated with the CFC; and” 5

(2B) In section EX 20B(3)(n), “subsection (11).” is replaced by “subsection (11):” and the following is added:

“(o) a dividend that is excluded by section CD 36(2) (Foreign investment fund income) from the effect of section CD 36(1).” 10

(2C) Section EX 20B(5)(d)(i) to (iii) are replaced by the following:

“(i) paid to the CFC by a person not associated with the CFC under section YB 2, or by a CFC associated with the CFC under section YB 2 that has received a royalty payment from such a person or a royalty payment arising from such a royalty payment; and 15

“(ii) from property owned by a New Zealand resident who is resident in no other country under all applicable double tax agreements; and 20

“(iii) from property licensed to the CFC, or to a CFC associated with the CFC under section YB 2, (the licensee) by the New Zealand resident for an arm’s length amount determined under section GC 13 for the arrangement between the licensee and the New Zealand resident.” 25

(3) Section EX 20B(7)(a) is replaced by the following:

“(a) ~~from land in a country or territory with which the CFC has links that meet the requirements of **subsection (16)**:~~ 30

“(a) from land in a country or territory with which the CFC has a taxed CFC connection:”.

(4) Section EX 20B(11)(a) is replaced by the following:

“(a) the service is the transmission, emission, or reception of information between New Zealand and a country or territory with which the CFC has ~~links that meet the requirements of **subsection (16)**~~ a taxed CFC connection; and”. 35

(4B) Section EX 20B(11)(c) and (d) are replaced by the following:

“(c) the service is performed by a person, other than the CFC, who—

“(i) is resident in New Zealand, and is resident in no other country under all applicable double tax agreements: 5

“(ii) has a fixed establishment in New Zealand that is a permanent establishment under all applicable double tax agreements; and

“(d) the service is performed by the person as part of a business in New Zealand of providing telecommunication services in New Zealand— 10

“(i) carried on through the person’s fixed establishment, if the person is not resident in New Zealand; and 15

“(ii) from which the person derives assessable income of more than \$5,000,000 per annum.”

(5) After section EX 20B(15), the following is added:

“Required relationship between CFC and country or territory

“(16) The relationship between a CFC and a country or territory (the **host country**) meets the requirements of this subsection if— 20

“(a) the CFC is resident in the host country under section YD 3 (Country of residence of foreign countries); and

“(b) there is no other country or territory for which the CFC is— 25

“(i) a resident under the domestic law of the country or territory:

“(ii) liable to income tax because of the CFC’s domicile, residence, place of incorporation, or centre of management: 30

“(iii) treated as a resident under an agreement with the host country that would be a double tax agreement if it were an agreement between New Zealand and the host country; and

“(c) the CFC has no presence outside the host country that is a fixed establishment or permanent establishment under an agreement, between another country or territory and the host country, that would be a double tax agreement 35

- if it were between New Zealand and the host country; and
- “(d) the CFC is liable in the host country to tax on its income because of the CFC’s domicile, residence, place of incorporation, or centre of management, or there is another CFC (the **parent CFC**) that—
- “(i) wholly owns the CFC under the laws of New Zealand and the host country; and
- “(ii) has a relationship with the host country meeting the requirements of **paragraphs (a) to (c)**; and
- “(iii) because of the parent CFC’s domicile, residence, place of incorporation, or centre of management, is liable in the host country to tax on its income in the same period that the CFC would be liable on its income if it were a company liable for tax.”
- (6) In section EX 20B, in the list of defined terms, “attributable FIF income method” is inserted.
- (7) In section EX 20B, in the list of defined terms, “double tax agreement” and “fixed establishment” are inserted.
- (7) In section EX 20B, in the list of defined terms, “taxed CFC connection” is inserted.
- (8) **Subsections (1) and (2)** apply for income years beginning on or after 1 July 2011.
- (8) **Subsections (1) to (2B)** apply for income years beginning on or after 1 July 2011.
- (9) **Subsections (3) to (5)** apply for income years beginning on or after 1 July 2009.
- (9) **Subsections (2C) to (4B)** apply for income years beginning on or after 1 July 2009.
- 19B Net attributable CFC income or loss**
- (1) Section EX 20C(6)(a)(ii) is replaced by the following:
- “(ii) that are distributions relating to fixed-rate foreign equity or deductible foreign equity distributions of the CFC and are paid by the CFC to a company resident in New Zealand, to another CFC, or to a FIF for which the interest holder uses the attributable FIF income method.”

- (2) Section EX 20C(6)(c)(i) is replaced by the following:
- “(i) under which the CFC provides funds to another CFC associated with the CFC under section YB 2 (Two companies) or to a FIF for which the interest holder uses the attributable FIF income method and that is associated with the CFC under section YB 2; and” 5
- (3) Section EX 20C(7)(b)(i) is replaced by the following:
- “(i) held by a company that is a New Zealand resident, a CFC, or a FIF for which the interest holder uses the attributable FIF income method; and” 10
- (4) Subsections (1) to (3) apply for income years beginning on or after 1 July 2011.

19C Adjustment of fraction for excessively debt funded CFC

- (1) Section EX 20D(6)(b) and (c) are replaced by the following: 15
- “(b) fixed-rate foreign equity that is issued by the CFC and held by a company that is a New Zealand resident, a CFC, or a FIF for which the interest holder uses the attributable FIF income method:
 - “(c) shares issued by the CFC in relation to which the CFC makes deductible foreign equity distributions to a company that is a New Zealand resident, a CFC, or a FIF for which the interest holder uses the attributable FIF income method.” 20
- (2) Section EX 20D(7)(b)(i) is replaced by the following: 25
- “(i) under which the CFC provides funds to another CFC that is associated with the CFC under section YB 2 (Two companies) or to a FIF for which the interest holder uses the attributable FIF income method and that is associated with the CFC under section YB 2; and” 30
- (3) Section EX 20D(10), other than the heading, is replaced by the following:
- “(10) The formula for the CFC’s fraction is—

attributable foreign company assets

total foreign company assets.

(4) Section EX 20D(12) and (13) are replaced by the following:

“Attributable foreign company assets

“(12) **Attributable foreign company assets** is the total value of assets, consolidated under generally accepted accounting practice for the accounting period, of all the interest holder’s CFCs and of all the FIFs for which the interest holder uses the attributable FIF income method, to the extent to which each asset is—

“(a) used for the purpose of deriving an attributable CFC amount or an amount that is included in net attributable FIF income or loss; and

“(b) not used for the purpose of deriving an amount other than an amount referred to in **paragraph (a)**.

“Total foreign company assets

“(13) **Total foreign company assets** is the total value of assets, consolidated under generally accepted accounting practice for the accounting period, of all the interest holder’s CFCs and of all the FIFs for which the interest holder uses the attributable FIF income method.”

(5) In section EX 20D, in the list of defined terms, “attributable FIF income method”, “net attributable FIF income”, and “loss” are inserted.

(6) **Subsections (1) to (4)** apply for income years beginning on or after 1 July 2011.

19D Relative debt-asset ratio for CFC

(1) Section EX 20E(5)(b) and (c) are replaced by the following:

“(b) fixed-rate foreign equity issued by a member of the group and held by a company that is a New Zealand resident, a CFC, or a FIF for which the interest holder uses the attributable FIF income method:

“(c) equity interests issued by a member of the group in relation to which the member makes deductible foreign equity distributions to a company that is a New Zealand

resident, a CFC, or a FIF for which the interest holder uses the attributable FIF income method.”

- (2) In section EX 20E, in the list of defined terms, “attributable FIF income method” is inserted.
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011. 5

19E **Attributable CFC amount and net attributable CFC income or loss: calculation rules**

- (1) Section EX 21(31), other than the heading, is replaced by the following: 10
- “(31) Subsection (30) does not apply if another party to the lease is a New Zealand resident, a CFC, or a FIF for which the taxpayer uses the attributable FIF income method.”
- (2) In section EX 21, in the list of defined terms, “attributable FIF income method” is inserted. 15
- (3) **Subsections (1) and (2)** apply for income years beginning on or after 1 July 2011.

20 **Non-attributing active CFCs**

- (1) After section EX 21B(3), the following is added: 20
- “*Single test for each CFC*”
- “(4) In determining whether CFCs are non-attributing active CFCs for an accounting period under a test in section EX 21D or EX 21E, an interest holder must not use the result of a test applied to a test group that includes a CFC if the person uses for the period a result of the same or a different test applied to the CFC, alone or as part of a different test group.” 25
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2009.

20B **Applicable accounting standards for section EX 21E**

- (1) Section EX 21C(9)(c)(i) is replaced by the following: 30
- “(i) fraudulent activity by the interest holder, the CFC, a company in the CFC’s test group, or the auditor.”

- (2) In section EX 21C, in the list of defined terms, “company” is inserted.
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

21 Non-attributing active CFC: default test 5

(1) Section EX 21D(1)(a) is replaced by the following:

“(a) each subject to the laws of the same country or territory and having a relationship with the country or territory meeting the requirements of **subsection (10)**; and

“(a) each subject to the laws of the same country or territory and having a taxed CFC connection with the country or territory; and”. 10

(2) After section EX 21D(9), the following is added:

“Required relationship between CFC and country or territory

“(10) The relationship between a CFC and a country or territory (the **host country**) meets the requirements of this subsection if— 15

“(a) the CFC is resident in the host country under section YD 3 (Country of residence of foreign countries); and

“(b) there is no other country or territory for which the CFC is— 20

“(i) a resident under the domestic law of the country or territory;

“(ii) liable to income tax because of the CFC’s domicile, residence, place of incorporation, or centre of management; 25

“(iii) treated as a resident under an agreement with the host country that would be a double tax agreement if it were an agreement between New Zealand and the host country; and

“(c) the CFC has no presence outside the host country that is a fixed establishment or permanent establishment under an agreement, between another country or territory and the host country, that would be a double tax agreement if it were between New Zealand and the host country; and 30

“(d) the CFC is liable in the host country to tax on its income because of the CFC’s domicile, residence, place 35

- of incorporation, or centre of management, or there is another CFC (the **parent CFC**) that—
- “(i) wholly owns the CFC under the laws of New Zealand and the host country; and
 - “(ii) has a relationship with the host country meeting the requirements of **paragraphs (a) to (c)**; and 5
 - “(iii) because of the parent CFC’s domicile, residence, place of incorporation, or centre of management, is liable in the host country to tax on its income in the same period that the CFC would be liable on its income if it were a company liable for tax.” 10
- (3) In section EX 21D, in the list of defined terms, “double tax agreement” and “fixed establishment” are inserted.
- (3) In section EX 21D, in the list of defined terms, “taxed CFC connection” is inserted. 15
- (4) **Subsections (1) and (2)** apply for income years beginning on or after 1 July 2009.
- (4) **Subsection (1)** applies for income years beginning on or after 1 July 2009.
- 22 Non-attributing active CFC: test based on accounting standard** 20
- (1) Section EX 21E(2)(b) is replaced by the following:
- “(b) each company is subject to the laws of the same country or territory and has a relationship with the country or territory meeting the requirements of **subsection (14)**; and 25
 - “(b) each company is subject to the laws of the same country or territory and has a taxed CFC connection with the country or territory; and”.
- (2) After section EX 21E(9)(c), the following is inserted: 30
- “(cb) gain or loss from a financial asset that is a financial arrangement or agreement referred to in section EX 20B(12):”.
- (3) After section EX 21E(10)(a), the following is inserted:
- “(ab) income from rent:” 35
- (4) After section EX 21E(13), the following is added:

- “Required relationship between CFC and country or territory*
- “(14) The relationship between a CFC and a country or territory (the **host country**) meets the requirements of this subsection if—
- “(a) the CFC is resident in the host country under section YD 3 (Country of residence of foreign countries); and 5
 - “(b) there is no other country or territory for which the CFC is—
 - “(i) a resident under the domestic law of the country or territory;
 - “(ii) liable to income tax because of the CFC’s domicile, residence, place of incorporation, or centre of management; 10
 - “(iii) treated as a resident under an agreement with the host country that would be a double tax agreement if it were an agreement between New Zealand and the host country; and 15
 - “(c) the CFC has no presence outside the host country that is a fixed establishment or permanent establishment under an agreement, between another country or territory and the host country, that would be a double tax agreement if it were between New Zealand and the host country; and 20
 - “(d) the CFC is liable in the host country to tax on its income because of the CFC’s domicile, residence, place of incorporation, or centre of management, or there is another CFC (the **parent CFC**) that— 25
 - “(i) wholly owns the CFC under the laws of New Zealand and the host country; and
 - “(ii) has a relationship with the host country meeting the requirements of **paragraphs (a) to (c)**; and 30
 - “(iii) because of the parent CFC’s domicile, residence, place of incorporation, or centre of management, is liable in the host country to tax on its income in the same period that the CFC would be liable on its income if it were a company liable for tax.” 35
- (5) In section EX 21E, in the list of defined terms, “double tax agreement” and “fixed establishment” are inserted.
- (5) In section EX 21E, in the list of defined terms, “taxed CFC connection” is inserted.

~~(6) Subsections (1) to (4) apply for income years beginning on or after 1 July 2009.~~

(6) Subsections (1) to (3) apply for income years beginning on or after 1 July 2009.

23 CFC rules exemption 5

(1) In section EX 34(b), “falls.” is replaced by “falls; and” and the following is added:

“(c) the person is not a portfolio investment entity.”

(2) In section EX 34, in the list of defined terms, “portfolio investment entity” is inserted. 10

(3) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

24 Section EX 35 replaced

(1) Section EX 35 is replaced by the following:

“EX 35 Exemption for interest in FIF resident in Australia 15

A person’s rights in a FIF in an income year are not an attributing interest if,—

“(a) at all times in the year, the rights are a direct income interest of 10% or more; and

“(b) at all times in the year, the FIF is— 20

“(i) resident in Australia; and

“(ii) under Australian law, subject to income tax on its income or treated as part of the head company of a consolidated group subject to income tax on its income; and 25

“(iii) treated as being resident in Australia under all agreements between the government of Australia and the governments of other territories that would be a double tax agreement if between the government of New Zealand and the government of the other country or territory; and 30

“(c) the FIF’s liability for income tax for the income year is not reduced by—

“(i) an exemption from income tax for income derived from business activities carried on outside Australia: 35

- “(ii) a special allowance, relief, or exemption with respect to offshore banking units; and
- “(d) at all times in the year, the person is none of the following:
- “(i) a portfolio investment entity: 5
- “(ii) a superannuation scheme:
- “(iii) a unit trust:
- “(iv) a life insurer:
- “(v) a group investment fund.
- “Defined in this Act: attributing interest, direct income interest, double tax agreement, FIF, group investment fund, income tax, income year, life insurer, portfolio investment entity, resident in Australia, superannuation scheme, unit trust”.
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2011. 15
- 24B New resident’s accrued superannuation entitlement exemption**
- (1) In section EX 42(1)(a), “subsections (2) to (4)” is replaced by “subsection (2)”.
- (2) Section EX 42(2) is replaced by the following: 20
- “Requirements for accrual of rights
- “(2) The rights must have accrued—
- “(a) when the person is not a New Zealand resident:
- “(b) during a period for which the person is a New Zealand resident that— 25
- “(i) begins when the person becomes a New Zealand resident; and
- “(ii) ends before the first day of the fifth income year following the income year in which the person becomes a New Zealand resident: 30
- “(c) as a result of rights that satisfy **paragraph (a) or (b).**”
- (3) Section EX 42(3) and (4) are repealed.
- 25 Six calculation methods**
- (1) In the heading to section EX 44, “Six” is replaced by “Five”.
- (2) Section EX 44(1)(a) is repealed. 35
- (3) Section EX 44(1)(b) is replaced by the following:
- “(b) the attributable FIF income method; or”.

- (4) In section EX 44, in the list of defined terms,—
- (a) “accounting profits method” and “branch equivalent method” are omitted;
- (b) “attributable FIF income method” is inserted.
- (5) **Subsections (1) to (3)** apply for income years beginning on 5
or after 1 July 2011.

26 Limits on choice of calculation methods

- (1) Section EX 46(2) is repealed.
- (2) Section EX 46(3) is replaced by the following: 10
- “*Attributable FIF income method*”
- ~~“(3) A person may use the attributable FIF income method to calculate FIF income or loss from an attributing interest in a FIF for an accounting period only if,—~~
- ~~“(a) at all times in the accounting period,—~~
- ~~“(i) the FIF is a company; and 15~~
- ~~“(ii) the person is not a portfolio investment entity; and~~
- ~~“(iii) the interest is a direct income interest of 10% or more; and~~
- ~~“(b) the person can provide to the Commissioner, if requested, sufficient information to enable the Commissioner to check the calculations required by section EX 50. 20~~
- “(3) A person may use the attributable FIF income method to calculate FIF income or loss from an attributing interest in a FIF for an accounting period only if the person can provide to the Commissioner, if requested, sufficient information to enable the Commissioner to check the calculations required by section EX 50 and,— 25
- “(a) at all times in the accounting period,— 30
- “(i) the FIF is a company; and
- “(ii) the item ‘income interest’ given by section EX 50(4) for the person and the FIF is 10% or more; and
- “(iii) the person is not a portfolio investment entity; 35
- “(b) the FIF is a CFC and the person cannot determine the market value of the attributing interest at the beginning of the accounting period except by independent valu-

- ation and neither the person nor a person who has a direct income interest of 10% or more in the FIF is—
- “(i) a listed company:
 - “(ii) a group investment fund:
 - “(iii) a portfolio investment entity: 5
 - “(iv) a superannuation scheme:
 - “(v) a unit trust:
 - “(vi) a trustee of a trust with a beneficiary described in 1 or more of **subparagraphs (i) to (iv).**”
- (3) Section EX 46(4) is repealed. 10
- (4) Section EX 46(5) is replaced by the following:
“Deemed rate of return method
- “(5) A person may use the deemed rate of return method to calculate FIF income or loss from an attributing interest in a FIF only if the person is required by section EX 47 to use the deemed rate of return method for the interest.” 15
- (5) Section EX 46(6)(c) is repealed.
- (6) Section EX 46(7) is repealed.
- (6B) In section EX 46(8), “Despite subsection (7), a person” is replaced by “A person”. 20
- (7) Section EX 46(9)(a) is repealed.
- (8) In section EX 46, in the list of defined terms,—
(a) “branch equivalent method” is omitted;
(b) “attributable FIF income method” is inserted.
- (9) **Subsections (1) to (7)** apply for income years beginning on or after 1 July 2011. 25
- 27 Default calculation method**
- (1) Section EX 48(2) is replaced by the following:
“Default choice
- “(2) The person is treated as having chosen to use, for the period,— 30
“(a) the fair dividend rate method if it is practical to use it;
and
“(b) the cost method if it is not practical to use the fair dividend rate method.”
- (2) In section EX 48, in the list of defined terms, “accounting profits method”, “comparative value method”, and “deemed rate of return method” are omitted. 35

- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

28 Section EX 49 repealed

- (1) Section EX 49 is repealed.
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2011. 5

29 Branch equivalent method

- (1) The heading to section EX 50 is replaced by “**Attributable FIF income method**”.
- (2) In section EX 50(1),— 10
- (a) “**branch equivalent method**” is replaced by “**attributable FIF income method**”:
- (b) in the formula, “branch equivalent” is replaced by “net attributable FIF”.
- (3) Section EX 50(3) is replaced by the following: 15
- “*Net attributable FIF income or loss*
- ~~“(3) Net attributable FIF income or loss is the amount for the FIF and the accounting period calculated by applying—~~
- ~~“(a) sections EX 18A to EX 21E, EX 24, and EX 25, as modified by **subsection (4B)**, as if the FIF were a CFC for which the person were calculating the net attributable CFC income or loss for the accounting period; and~~ 20
- ~~“(b) subsections (5) and (6).”~~
- “(3) Net attributable FIF income or loss is the amount for the FIF and the accounting period found by applying— 25
- “(a) sections EX 18A to EX 21E, EX 24, and EX 25, as modified by **subsection (4B)**, as if the FIF were a CFC and the person’s attributing interests in the FIF were income interests in the CFC; and 30
- “(b) subsections (5) and (6).”
- (4) After section EX 50(4), the following is inserted:
- “*Modifications to method of calculating net attributable CFC income or loss*
- “(4B) The net attributable FIF income or loss of a FIF is calculated as if— 35

- “(a) section EX 20B(5)(c)(i) required that the royalty be paid by a foreign company meeting the requirements of **section EX 50(4C)**:
- “(ab) **section EX 20B(5)(d)** were omitted:
- “(b) section EX 20B(7)(c) required that the rent be paid by a foreign company meeting the requirements of **section EX 50(4C)**: 5
- “(c) section EX 20B(12)(a) required that the financial arrangement or agreement be an agreement by the CFC to lend money to a foreign company meeting the requirements of **section EX 50(4C)**: 10
- “(cb) section EX 21C(2)(a) required—
- “(i) the interest holder or other person to have accounts that include the accounts of the CFC, including by proportionate consolidation under NZIAS 31: 15
- “(ii) the interest holder or other person to have accounts that include dividends and net fair value changes in relation to the CFC under NZIAS 39, or include amounts recognised under the equity method in NZIAS 28 or NZIAS 31, and the CFC to have accounts that are prepared under United States generally accepted accounting principles and meet the requirements of section EX 21C(8) for accounts prepared under those principles in the United States of America: 20 25
- “(cc) section EX 21C(3)(a) required—
- “(i) the interest holder or other person to have accounts that include the accounts of the members of the test group, including by proportionate consolidation under NZIAS 31: 30
- “(ii) the interest holder or other person to have accounts that include dividends and net fair value changes in relation to the members under NZIAS 39, or include amounts recognised under the equity method in NZIAS 28 or NZIAS 31, and the members to have accounts that are prepared under United States generally accepted accounting principles and meet the requirements 35

of section EX 21C(8) for accounts prepared under those principles in the United States of America:

- “(cd) section EX 21C(4)(a) required—
- “(i) the interest holder or other person to have accounts that include the accounts of the CFC, including by proportionate consolidation under the IFRSE corresponding to NZIAS 31: 5
- “(ii) the interest holder or other person to have accounts that include dividends and net fair value changes in relation to the CFC under the IFRSE corresponding to NZIAS 39, or include amounts recognised under the equity method in the IFRSE corresponding to NZIAS 28 or NZIAS 31, and the CFC to have accounts that are prepared under United States generally accepted accounting principles and meet the requirements of section EX 21C(8) for accounts prepared under those principles in the United States of America: 10 15
- “(ce) section EX 21C(5)(a) required— 20
- “(i) the interest holder or other person to have accounts that include the accounts of the members of the test group, including by proportionate consolidation under the IFRSE corresponding to NZIAS 31: 25
- “(ii) the interest holder or other person to have accounts that include dividends and net fair value changes in relation to the members under the IFRSE corresponding to NZIAS 39, or include amounts recognised under the equity method in the IFRSE corresponding to NZIAS 28 or NZIAS 31, and the members to have accounts that are prepared under United States generally accepted accounting principles and meet the requirements of section EX 21C(8) for accounts prepared under those principles in the United States of America: 30 35
- “(d) section EX 21D(1)(a) required that none of the other companies in the test group be a CFC:

- “(e) section EX 21D(1)(b) required that the CFC hold a voting interest of more than 50% in each of the other companies in the test group:
- “(f) section EX 21D(3)(b) were omitted:
- “(g) section EX 21E(2)(b) required that none of the other companies in the test group be a CFC: 5
- “(h) section EX 21E(2)(c) required that the CFC hold a voting interest of more than 50% in each of the other companies in the test group:
- “(i) section EX 21E(2)(d) were omitted: 10
- “(j) section EX 21E(4)(c) were omitted:
- “(k) ~~section EX 21E(9)(a) required that an amount in the category be a dividend that is not included in the attributable CFC amount for the accounting period under section EX 20B(3)(a) to (c) and is not excluded by **section EX 50(7B)(b)** from being additional FIF income or loss under section EX 50(6).~~ 15
- “(k) the references in section EX 21E(7)(f) and (g) to ‘NZIAS 39’ were to ‘whichever is appropriate of NZIAS 39, an equivalent IFRSE, and an equivalent standard or principle included in United States generally accepted accounting principles’: 20
- “(l) section EX 21E(9)(a) required that an amount in the category be a dividend that is—
- “(i) not included in the attributable CFC amount for the accounting period under section EX 20B(3)(a) to (c); and 25
- “(ii) paid by a company other than 1 from which the person does not have additional FIF income or loss under subsection (6) because of the application of **subsection (7B)(b)**: 30
- “(m) the references in section EX 21E(10)(c) and (d) to ‘NZIAS 39’ were to ‘whichever is appropriate of NZIAS 39, an equivalent IFRSE, and an equivalent standard or principle included in United States generally accepted accounting principles’: 35
- “(n) the references in section EX 21E(12)(d) to ‘NZIAS 39’ were to ‘whichever is appropriate of NZIAS 39, an equivalent IFRSE, and an equivalent standard or prin-

principle included in United States generally accepted accounting principles’:

“(o) the reference in section EX 21E(12)(g) to ‘NZIAS 32’ were a reference to ‘whichever is appropriate of NZIAS 32, an equivalent IFRSE, and an equivalent standard or principle included in United States generally accepted accounting principles’. 5

“Requirements for foreign company making payments to FIF

“(4C) A foreign company making payments to a FIF meets the requirements of this subsection if— 10

“(a) the foreign company is a non-attributing active CFC under section EX 21B(2) or would be a non-attributing active CFC under section EX 21B(2) if it were a CFC in the absence of sections EX 20B(5)(c)(i), EX 20B(7)(c), and EX 20B(12)(a); and 15

“(a) the person uses the attributable FIF income method for the foreign company; and

“(ab) the foreign company, if it were a CFC, would be a non-attributing active CFC under section EX 21B(2) in the absence of section EX 20B(5)(c)(i), (7)(c), and (12)(a); and 20

“(b) the FIF holds a voting interest of more than 50% in the foreign company; and

“(b) a group of persons holds total voting interests of more than 50% in the FIF and in the foreign company; and 25

*“(c) the FIF and the foreign company are resident in the same country (the **host country**) under section YD 3 (Country of residence of foreign countries); and*

“(c) the FIF and the foreign company each have a taxed FIF connection with the same country or territory. 30

“(d) there is no other country or territory for which the FIF or the foreign company is—

“(i) a resident under the domestic law of the country or territory;

“(ii) liable to income tax because of domicile, residence, place of incorporation, or centre of management; 35

“(iii) treated as a resident under an agreement with the host country that would be a double tax

- agreement if it were an agreement between New Zealand and the host country; and
- “(e) the FIF and the foreign company each have no presence outside the host country that is a fixed establishment or permanent establishment under an agreement, between another country or territory and the host country, that would be a double tax agreement if it were between New Zealand and the host country; and 5
- “(f) the FIF and the foreign company are each liable in the host country to tax on their respective incomes because of their domicile, residence, place of incorporation, or centre of management, or there is a FIF (the **parent FIF**) that— 10
- “(i) wholly owns the FIF or foreign company under the laws of New Zealand and the host country; and 15
- “(ii) has a relationship with the host country meeting the requirements of **paragraphs (c) to (e)**; and
- “(iii) because of the parent FIF’s domicile, residence, place of incorporation, or centre of management, is liable in the host country to tax on its income in the same period that the FIF or foreign company would be liable on its income if it were a company liable for tax.” 20
- (4B) In section EX 50(5)(a), “branch equivalent income or loss” is replaced by “net attributable FIF income or loss”. 25
- (5) After section EX 50(7), the following is inserted:
“Exception to subsection (6)
- “(7B) A person does not have additional FIF income or loss under subsection (6) from a FIF with an interest in a foreign company if— 30
- “(a) the foreign company meets the test for a non-attributing active CFC under section EX 21B(2) and the person—
- “(i) would be able to use the attributable FIF income method for the foreign company if the person held the FIF’s interest in the foreign company: 35
- “(ii) is able to include the foreign company in the same test group as the FIF under section EX 21D or EX 21E:

- “(b) the FIF would meet the test for a non-attributing active CFC under section EX 21B(2)(b) if the following amounts relating to the interest in the foreign company reported in the accounts of the FIF, or in the consolidated accounts of the FIF’s test group under section EX 21E, were included in the item ‘added passive’ under section EX 21E(5) and (8) for the FIF or the test group: 5
- “(i) amounts recognised in the profit and loss accounts under the equity method under NZIAS 28 or NZIAS 31: 10
- “(ii) amounts recognised in the income statement under proportionate consolidation under NZIAS 31: 15
- “(iii) dividends and holding gains recognised in the profit and loss accounts under NZIAS 39: 15
- “(b) the FIF would meet the test for a non-attributing active CFC under section EX 21B(2)(b) if the following amounts relating to the interest in the foreign company reported in the accounts of the FIF, or in the consolidated accounts of the FIF’s test group under section EX 21E, were included in the items added passive and reported revenue under section EX 21E(5), (8), and (10) for the FIF or the test group: 20
- “(i) amounts recognised in profit and loss under the equity method under whichever is appropriate of NZIAS 28, NZIAS 31, an equivalent IFRSE, and an equivalent standard or principle in the generally accepted accounting principles in the United States of America: 25
- “(ii) amounts recognised in profit or loss under proportionate consolidation under whichever is appropriate of NZIAS 31, an equivalent IFRSE, and an equivalent standard or principle in the generally accepted accounting principles in the United States of America: 30
- “(iii) dividends and net fair value changes recognised in profit or loss in relation to investments accounted for under whichever is appropriate of 35

NZIAS 39, an equivalent IFRSE, and an equivalent standard or principle in the generally accepted accounting principles in the United States of America:

- “(c) the interest in the foreign company would be excluded by section EX 35 from being an attributing interest if the interest were held by the person.” 5
- (6) In section EX 50(9)(d), “branch equivalent method” is replaced by “attributable FIF income method”.
- (7) In section EX 50, in the list of defined terms,— 10
- (a) “branch equivalent income” and “branch equivalent method” are omitted:
- (b) ~~“attributable FIF income method”, “net attributable CFC income”, “net attributable FIF income”, “non-attributing active CFC”, “NZIAS 28”, “NZIAS 31”, “NZIAS 39”, and “voting interest”~~ are inserted: 15
- (b) “attributable FIF income method”, “net attributable CFC income”, “net attributable FIF income”, “non-attributing active CFC”, “NZIAS 28”, “NZIAS 31”, “NZIAS 39”, “taxed FIF relationship”, and “voting interest” are inserted. 20
- (8) **Subsections (1) to (6)** apply for income years beginning on or after 1 July 2011.
- 30 Comparative value method** 25
- (1) Section EX 51(7), other than the heading, is replaced by the following: 25
- “(7) Subsection (8) applies to a person who calculates under subsection (1) an amount of FIF loss for an attributing interest in a FIF (the **affected interest**) that is not a non-ordinary share described in section EX 46(10).” 30
- (2) In section EX 51, in the list of defined terms, “direct income interest” is omitted.
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011.
- 31 Fair dividend rate method: usual method** 35
- (1) Section EX 52(5)(b) is replaced by the following:

- “(b) are not, at the beginning of the income year, included in a direct income interest of 10% or more in a FIF that, at the beginning of the year,—
- “(i) meets the requirements of **section EX 35(b)(i) to (iii)**; and 5
- “(ii) does not have its liability for income tax reduced by an exemption, allowance, or relief referred to in **section EX 35(c)(i) or (ii)**.”
- (2) In section EX 52, in the list of defined terms, “direct income interest” is inserted. 10
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011.
- 32 Fair dividend rate method for unit-valuing funds and others by choice**
- (1) Section EX 53(5)(b) is replaced by the following: 15
- “(b) are not, at the beginning of the income year, included in a direct income interest of 10% or more in a FIF that, at the beginning of the year,—
- “(i) meets the requirements of **section EX 35(b)(i) to (iii)**; and 20
- “(ii) does not have its liability for income tax reduced by an exemption, allowance, or relief referred to in **section EX 35(c)(i) or (ii)**.”
- (2) In section EX 53, in the list of defined terms, “direct income interest” is inserted. 25
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011.
- 33 Additional FIF income or loss if CFC owns FIF**
- (1) In section EX 58(1)(b), “branch equivalent income” is replaced by “net attributable CFC income”. 30
- (2) In section EX 58(4)(c), “branch equivalent method” is replaced by “attributable FIF income method”.
- (2B) Section EX 58(5) is replaced by the following:
- “*Exceptions*
- “(5) Despite subsection (4), the CFC’s FIF income or loss does not include— 35

- “(a) any amount actuarially determined to be attributable to policyholders in the CFC or another company as a result of applying section EX 21(25) and (26) to the CFC:
- “(b) any amount from an interest that would be excluded under section EX 35 from being an attributing interest if held by the person instead of the CFC.” 5
- (3) In section EX 58, in the list of defined terms, “branch equivalent income” is omitted.
- (4) **Subsection (1)** applies for income years beginning on or after 1 July 2009. 10
- (5) **Subsection (2)** applies for income years beginning on or after 1 July 2011.
- (5) **Subsections (2) and (2B)** apply for income years beginning on or after 1 July 2011.
- 34 Codes: comparative value method, deemed rate of return method, fair dividend rate method, and cost method** 15
- (1) Section EX 59(1B) is replaced by the following:
“Exclusion for interests in FIFs resident in Australia
- “(1B) Subsection (1)(c) does not apply if the person’s interest in the company is included, at the beginning of the income year in which the payment is made, in a direct income interest of 10% or more in a FIF that, at the beginning of the income year,— 20
- “(a) meets the requirements of **section EX 35(b)(i) to (iii)**; and
- “(b) does not have its liability for income tax reduced by an exemption, allowance, or relief referred to in **section EX 35(c)(i) or (ii)**.” 25
- (2) In section EX 59, in the list of defined terms, “grey list company” is omitted.
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011. 30
- 35 Limits on changes of method**
- (1) Section EX 62(2)(a) is replaced by the following:
- “(a) in the case of the accounting profits method,—
- “(i) section EX 46(2) is repealed: 35

- “(ii) before the date of the repeal of section EX 46(2), that section prevents its continued use or it is impossible to obtain enough information to continue to use it.”.
- (2) Section EX 62(2)(b) is replaced by the following: 5
- ~~“(b) in the case of the attributable FIF income method, section EX 46(3) prevents its continued use or it is impossible to obtain enough information to continue to use it:”~~
- “(b) in the case of the attributable FIF income method, section EX 46(3)(a) or (b) prevents its continued use or it is impossible to obtain enough information to continue to use it.”. 10
- (3) Section EX 62(2)(c) is replaced by the following:
- “(c) in the case of the comparative value method,—
- “(i) section EX 46(6) prevents its continued use: 15
- “(ii) it is impossible to find out the end-of-year market value of the interest.”.
- (4) Section EX 62(2)(d) is repealed.
- (5) Section EX 62(2)(e) is replaced by the following:
- “(e) in the case of the deemed rate of return method, the person is required by section EX 47 to use the comparative value method.”. 20
- (6) Section EX 62(2)(g) is replaced by the following:
- “(g) in the case of the cost method, section EX 46(9) prevents its continued use.” 25
- (7) In section EX 62(3)(b)(ii), “branch equivalent method” is replaced by “attributable FIF income method”.
- (8) Section EX 62(6) is replaced by the following:
- “Changing to or from the attributable FIF income method*
- “(6) A person may make an election under subsection (3) to change to or from the attributable FIF income method if— 30
- “(a) they are changing from the branch equivalent method:
- “(b) this is the first time they have chosen to change to or from the attributable FIF income method for an attributing interest in the FIF, other than under **paragraph (a)**: 35
- “(c) subsection (7) allows them to make another election.”

- (9) In section EX 62(7), “branch equivalent method” is replaced by “attributable FIF income method” in each place where it appears.
- (10) After section EX 62(9), the following is added:
“Change to fair dividend rate method for first income year beginning on or after 1 July 2011” 5
- “(10) A person may change to the fair dividend rate method from the accounting profits method, the branch equivalent method, or the deemed rate of return method in the person’s return of income for the first income year beginning on or after 1 July 2011.” 10
- (11) In section EX 62, in the list of defined terms,—
 (a) “branch equivalent method” is omitted;
 (b) “attributable FIF income method” is inserted.
- (12) **Subsections (1) to (10)** apply for income years beginning on or after 1 July 2011. 15

36 Consequences of changes in method

- (1) Section EX 63(1)(a) and (b) are replaced by the following:
 “(a) from 1 of the 4 cost-based calculation methods (the comparative value method, the deemed rate of return method, the fair dividend rate method, or the cost method) to the attributable FIF income method; or 20
 “(b) from a look-through calculation method (the attributable FIF income method, the accounting profits method, or the branch equivalent method) to 1 of the 4 cost-based calculation methods.” 25
- (2) In section EX 63, in the list of defined terms, “attributable FIF income method” is inserted.
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011. 30

37 Migration of persons holding FIF interests

- (1) Section EX 64(5)(c) is replaced by the following:
 “(c) for the accounting period in which the change occurs, uses the attributable FIF income method to calculate FIF income or loss from the interest.” 35
- (2) In section EX 64, in the list of defined terms,—

- (a) “accounting profits method” and “branch equivalent method” are omitted:
- (b) “attributable FIF income method” is inserted.
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011. 5
- 38 Changes in application of FIF exemptions**
- (1) In section EX 65(3), “the accounting profits method or the branch equivalent method” is replaced by “the attributable FIF income method”. 10
- (2) In section EX 65(7), “the accounting profits methods or the branch equivalent method” is replaced by “the attributable FIF income method”. 10
- (3) In section EX 65, in the list of defined terms,—
- (a) “accounting profits method” and “branch equivalent method” are omitted: 15
- (b) “attributable FIF income method” is inserted.
- (4) **Subsections (1) and (2)** apply for income years beginning on or after 1 July 2011.
- 39 Entities emigrating from New Zealand**
- (1) In section EX 66(3), “accounting profits method or branch equivalent method” is replaced by “attributable FIF income method”. 20
- (2) In section EX 66, in the list of defined terms,—
- (a) “accounting profits method” and “branch equivalent method” are omitted: 25
- (b) “attributable FIF income method” is inserted.
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011.
- 40 Entities ceasing to be FIFs**
- (1) In section EX 66B(3), “accounting profits method or branch equivalent method” is replaced by “attributable FIF income method”. 30
- (2) In section EX 66B, in the list of defined terms,—
- (a) “accounting profits method” and “branch equivalent method” are omitted: 35

- (b) “attributable FIF income method” is inserted.
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

41 New section EX 67B inserted

After section EX 67, the following is inserted: 5

“EX 67B Revaluation of inherited interests in grey list companies

“When this section applies

“(1) This section applies when—

“(a) a person inherited, before 1 April 2007, an interest in a FIF that was a grey list company when the interest was inherited; and

“(b) ~~the cost of the interest for the person is equal to—~~

~~“(i) the cost of the interest for the person from whom the interest was inherited: 15~~

~~“(ii) zero.~~

“(b) the cost of the interest for the person is equal to zero.

“Treatment as disposal and reacquisition

“(2) The person is treated as having—

“(a) disposed of the interest immediately before this section applied to the person and the interest; and 20

“(b) reacquired the interest as soon as this section applied to the person and the interest; and

“(c) received for the disposal and paid for the reacquisition an amount equal to the market value of the interest at the time of the disposal. 25

“Cost of inherited interest for purposes of tax liability

“(2B) For determining a tax liability of the person arising from the disposal, the cost of the interest for the person at the time of the inheritance is treated as being the lesser of— 30

“(a) the market value of the interest at the time of the inheritance;

“(b) the market value of the interest at the time of the disposal.

“Payment of tax liability arising from revaluation

- “(3) A person who is liable to pay an amount of income tax (the **amount of tax**) because of a disposal in an income year, and related acquisition, treated as occurring under this section—
- “(a) may satisfy the liability by paying to the Commissioner— 5
- “(i) at least one third of the amount of tax in the income year following the income year in which the disposal is treated as occurring; and
- “(ii) at least one half of the balance of the amount of tax remaining owing after payment made under **subparagraph (i)**, in the second income year following the income year in which the disposal is treated as occurring; and 10
- “(iii) the balance of the amount of tax remaining owing after payments made under **subparagraphs (i) and (ii)**, in the third income year following the income year in which the disposal is treated as occurring: 15
- “(b) is not liable to pay any penalty or interest for which the person would otherwise be liable for an inaccuracy in an estimate, or shortfall in the payment, of provisional tax to the extent to which the inaccuracy or shortfall arises because of the disposals. 20
- “Defined in this Act: amount, Commissioner, dispose, FIF, grey list company, income tax, income year, market value, pay, provisional tax, tax”. 25

42 Change of FIF’s balance date

- (1) In section EX 69(1)(b), “accounting profits method or the branch equivalent method” is replaced by “attributable FIF income method”. 30
- (2) In section EX 69, in the list of defined terms,—
- (a) “accounting profits method” and “branch equivalent method” are omitted;
- (b) “attributable FIF income method” is inserted.
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011. 35

43 Commissioner’s default assessment power

- (1) Section EX 72(1)(c) is replaced by the following:
 - “(c) a person cannot obtain enough information to calculate their attributed CFC income or loss or FIF income or loss for a period.” 5
- (2) Section EX 72(3)(b) is replaced by the following:
 - “(b) the application of a rate of presumed increase of 10% or more, compounded annually, to the CFC’s net attributable CFC income or to the FIF’s net attributable FIF income, for a previous period.” 10
- (3) In section EX 72, in the list of defined terms,—
 - (a) “attributed repatriation” and “branch equivalent income” are omitted:
 - (b) “attributable FIF income method”, “net attributable CFC income” and “net attributable FIF income” are inserted. 15
- (4) **Subsection (1)** applies for income years beginning on or after 1 July 2009.
- (5) **Subsection (2)** applies for income years beginning on or after 1 July 2011. 20

44 What this subpart does

- (1) Section FE 1(1)(a) is replaced by the following:
 - “(a) to apportion certain interest expenditure between income ~~derived from~~ having a source in New Zealand and other income for a New Zealand taxpayer who has a disproportionately high level of debt funding in relation to their worldwide interest expenditure and who—
 - “(i) is controlled by a single non-resident:
 - “(ii) is a person (an **outbound entity**) with an income interest in a CFC or with an interest in a FIF that satisfies the requirements of **section EX 35** (Exemption for interest in FIF resident in Australia) or for which the person uses the attributable FIF income method: 30
 - “(iii) is a New Zealand resident who controls an outbound entity; and” 35

- (2) In section FE 1, in the list of defined terms, “attributable FIF income method” and “FIF” are inserted.
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

- 45 When this subpart applies** 5
- (1) Section FE 2(1)(e) is replaced by the following:
 - “(e) a company that is resident in New Zealand and has—
 - “(i) an income interest in a CFC:
 - “(ii) an interest in a FIF that satisfies the requirements of **section EX 35** (Exemption for interest in FIF resident in Australia):
 - “(iii) an interest in a FIF for which the person uses the attributable FIF income method:”.
 - (2) After section FE 2(1)(g)(i), the following is inserted:
 - “(ib) an interest in a FIF that satisfies the requirements of **section EX 35**:
 - “(ic) an interest in a FIF for which the person uses the attributable FIF income method:”.
 - (3) After section FE 2(4), the following is added:
 - “*New Zealand banking group of Crown-owned registered bank* 20
 - “(5) If the members of the New Zealand banking group of a registered bank are given by **section FE 36B**, the interests held by a member of the group for the purposes of **subsection (1)(e) and (f)** do not include interests held by an associated person who is not a member of the group.” 25
 - (4) In section FE 2, in the list of defined terms, “attributable FIF income method” and “FIF” are inserted.
 - (5) In section FE 2, in the list of defined terms, “New Zealand banking group” is inserted. 30
 - (6) **Subsections (1) and (2)** apply for income years beginning on or after 1 July 2011.
 - (7) **Subsection (3)** applies for income years beginning on or after 1 July 2009.

- 46 Interest apportionment for individuals** 35
- (1) Section FE 3(1)(a)(iii) is replaced by the following:

- “(iii) derive income, other than non-resident passive income, that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable:”.
- (2) Section FE 3(2)(a)(iii) is replaced by the following: 5
 “(iii) derive income, other than non-resident passive income, that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable:”.
- (3) In section FE 3(2)(b)(ii), “interest:” is replaced by “interest; and” and the following is added: 10
 “(iii) all FIFs in which the trustee or a member of the trustee’s New Zealand group has an interest that meets the requirements of **section EX 35** (Exemption for interest in FIF resident in Australia); 15
 and
 “(iv) all FIFs in which the trustee or a member of the trustee’s New Zealand group has an interest for which the person uses the attributable FIF income method:” 20
- (4) In section FE 3, in the list of defined terms, “attributable FIF income method”, “FIF”, “income”, “New Zealand tax”, and “non-resident passive income” are inserted.
- (5) **Subsections (1) to (3)** apply for income years beginning on or after 1 July 2011. 25
- 47 Thresholds for application of interest apportionment rules**
- (1) After section FE 5(1B)(a), the following is inserted:
 “(ab) the company or person is eligible to choose, and chooses, under **subsection (1BB)** to use the threshold test in **subsection (1D)**:” 30
- (2) Section FE 5(1B)(b) is repealed.
- (3) After section FE 5(1B), the following is inserted:
“Eligibility for optional threshold, apportionment method
 “(1BB) A company or person referred to in subsection (1B) that would otherwise be required to make an apportionment under section FE 6 may choose instead to be subject to the threshold 35

in **subsection (1D)** and to the apportionment method in **section FE 6B** only if—

- “(a) for each of the New Zealand group and the worldwide group, the amount (the **adjusted net profit**) given by **subsection (1BC)** is greater than zero; and 5
- “(b) for the New Zealand group, the deductions for interest allowed to the group under sections DB 6 to DB 9 (which relate to deductions for interest) exceed the income of the group that is interest; and
- “(c) for the worldwide group, treating the members as residents for the purposes of this paragraph, the deductions for interest allowed to the group under sections DB 6 to DB 9 exceed the income of the group that is interest; and 10
- “(d) for the worldwide group, the amount of the total group debt, calculated for the income year as if for the purposes of determining the group’s debt percentage under section FE 12, is equal to or more than 75% of the amount of total group assets, not including goodwill; and 15
- “(e) for the worldwide group, the proportion of the total group debt, calculated as for **paragraph (d)**, for which the lender is not associated with the group under subpart YB (Associated persons) is equal to or more than 80%. 20 25

“Formula for adjusted net profit

“(1BC) The adjusted net profit for a group is the amount calculated using the formula—

net – attributed + net interest + depreciation + amortisation.

“Definition of items in formula

- “(1BD) In the formula in **subsection (1BC)**,— 30
- “(a) **net** is the net profit or loss of the group before tax using generally accepted accounting practice, treating a net loss as a negative amount;
- “(b) **attributed**, for the worldwide group, is zero and, for the New Zealand group, is the income— 35

- “(i) under generally accepted accounting practice from an interest in a FIF or CFC described in section FE 2(1)(e) to (g); and
- “(ii) included in the calculation of the item net profit or loss and not included in the calculation of the item net interest: 5
- ~~“(e) **net interest** is the deductions for interest allowed to the group under sections DB 6 to DB 9, treating the members as residents for the purpose of calculating this item for a worldwide group, reduced by the income of the group that is interest: 10~~
- “(c) **net interest** is the deductions for interest allowed to the group under sections DB 6 to DB 9 from a financial arrangement providing funds to the group, treating the members as residents for the purpose of calculating this item for a worldwide group, reduced by the income of the group from a financial arrangement on arms-length terms providing funds to a person who meets the requirements of section FE 13(3): 15
- ~~“(d) **depreciation** is the depreciation for the group: 20~~
- “(d) **depreciation** is the depreciation for the group using generally accepted accounting practice: 20
- ~~“(e) **amortisation** is the amortisation for the group: 25~~
- “(e) **amortisation** is the amortisation for the group using generally accepted accounting practice.” 25
- (4) In section FE 5(1C)(c), “interest.” is replaced by “interest.” and the following is added:
- “(d) all FIFs in which the natural person or a member of the natural person’s New Zealand group has an interest that meets the requirements of **section EX 35** (Exemption for interest in FIF resident in Australia); and 30
- “(e) all FIFs in which the natural person or a member of the natural person’s New Zealand group has an interest for which the natural person or member uses the attributable FIF income method.” 35
- (5) After section FE 5(1C), the following is inserted:
- “*Elective threshold for excess debt entity*
- “(1D) A company or person that chooses to be subject to the threshold test in this subsection must apportion the interest expend-

iture for the income year under **section FE 6B** except if the ratio (the **interest-income ratio**) given by **subsection (1E)** for the company or person's New Zealand group is equal to or less than the lesser of—

- “(a) 110% of the interest-income ratio for the company or person's worldwide group: 5
 (b) 50%.

“Formula for group's interest-income ratio

“(1E) The interest-income ratio for a group is calculated using the formula— 10

$$\frac{\text{net interest}}{\text{adjusted net profit.}}$$

“Definition of items in formula

“(1F) In the formula in **subsection (1E)**,—

“(a) **net interest** is the deductions for interest allowed to the group under sections DB 6 to DB 9, treating the members as residents for the purpose of calculating this item for a worldwide group, reduced by the income of the group that is interest: 15

“(a) **net interest** is the deductions for interest allowed to the group under sections DB 6 to DB 9 from a financial arrangement providing funds to the group, treating the members as residents for the purpose of calculating this item for a worldwide group, reduced by the income of the group from a financial arrangement on arms-length terms providing funds to a person who meets the requirements of section FE 13(3): 20 25

“(b) **adjusted net profit** is the amount given for the group by **subsection (1BC)**.”

(6) In section FE 5, in the list of defined terms, “attributable FIF income method”, and “non-resident passive income” are inserted. 30

(7) **Subsections (1), (3), and (5)** apply for income years beginning on or after 1 July 2009.

(8) **Subsections (2) and (4)** apply for income years beginning on or after 1 July 2011.

48 New section FE 6B inserted

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

“FE 6B Alternative apportionment of interest by some excess debt entities

“Who this section applies to 5

“(1) This section applies to a company or person that is required by **section FE 5(1D)** to apportion its interest expenditure for an income year under this section.

“Formula

“(2) The company or person is treated under section CH 9 (Interest apportionment: excess debt entity) as deriving from New Zealand in the income year an amount of income calculated for the income year using the formula— 10

$$\text{net interest} \times \frac{\text{NZ group ratio} - \text{threshold ratio}}{\text{NZ group ratio}}$$

“Definition of items in formula

“(3) In the formula— 15

“(a) ~~net interest is the deductions for interest allowed to the company or person under sections DB 6 to DB 9 (which relate to deductions for interest) reduced by the income of the company or person that is interest:~~

“(a) is the deductions for interest allowed to the company or person under sections DB 6 to DB 9 (which relate to deductions for interest) from a financial arrangement providing funds to the company or person, reduced by the income of the company or person from a financial arrangement on arms-length terms providing funds to a person who meets the requirements of section FE 13(3): 20 25

“(b) **NZ group ratio** is the interest-income ratio given by **section FE 5(1E)** for the New Zealand group of the company or person:

“(c) **threshold ratio** is the lesser of— 30

“(i) 50%:

- “(ii) 110% of the interest-income ratio given by **section FE 5(1E)** for the worldwide group of the company or person.
- “Defined in this Act: company, deduction, income, income year, interest, New Zealand”.
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2009.
- 49 New section FE 12B inserted**
- (1) After section FE 12, the following is inserted:
- “FE 12B Calculations for group for test and apportionment using interest-income ratio**
- “Application of rules*
- “(1) The rules in this section apply to the calculation, for an entity’s New Zealand group or worldwide group, of the following amounts:
- “(a) deductions for interest allowed to the group under sections DB 6 to DB 9 (which relate to deductions for interest), for the purposes of **section FE 5(1BB)**;
- “(b) the income of the group that is interest, for the purposes of **section FE 5(1BB)**;
- “(c) the items in the formula for adjusted net profit in **section FE 5(1BC)**;
- “(d) the items in the formula for interest-income ratio in **section FE 5(1E)**.
- “Generally accepted accounting practice for consolidation*
- “(2) An amount calculated under these rules for an entity’s group must be calculated under generally accepted accounting practice for the consolidation of companies for the purposes of eliminating intra-group income, expenses, transactions, and balances.
- “Non-resident member of New Zealand group*
- “(3) If a member of a New Zealand group is not resident in New Zealand, the amounts for the member are not included in a consolidation except to the extent that the amounts relate to—
- “(a) the carrying on of business in New Zealand through a fixed establishment in New Zealand:

“(b) the derivation of income that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable.

“Defined in this Act: business, deduction, double tax agreement, fixed establishment, generally accepted accounting practice, income, interest, New Zealand, New Zealand tax, resident in New Zealand, source in New Zealand”.

(1B) **Section FE 12B(3)(b)** is replaced by the following:

“(b) the derivation of income, other than non-resident passive income, that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable.”

(1C) In section FE 12B, in the list of defined terms, “non-resident passive income” is inserted.

(2) **Subsection (1)** applies for income years beginning on or after 1 July 2009.

(3) **Subsection (1B)** applies for income years beginning on or after 1 July 2011.

49B Financial arrangements entered into with persons outside group

(1) Section FE 13(3)(a) is replaced by the following:

“(a) a non-resident who is not carrying on business through a fixed establishment in New Zealand and derives—

“(i) income that does not have a source in New Zealand:

“(ii) income with a source in New Zealand, all of which is non-resident passive income or has relief from New Zealand tax available under a double tax agreement; or”.

(2) In section FE 13, in the list of defined terms, “non-resident passive income” is inserted.

(3) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

50 Consolidation of debts and assets

(1) Section FE 14(3)(b) is replaced by the following:

“(b) derive income, other than non-resident passive income, that has a source in New Zealand and for which relief

from New Zealand tax under a double tax agreement is unavailable.”

- (2) In section FE 14, in the list of defined terms, “non-resident passive income” and “tax” are inserted.
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011. 5

51 Total group assets

(1A) In section FE 16(1B), in the words before the paragraphs, “income interest” is replaced by “income interest, or an investment in a FIF in which the entity or member has an interest meeting the requirements of **section EX 35** (Exemption for interest for FIF resident in Australia) or for which the person uses the attributable FIF income method”. 10

- (1) Section FE 16(1B)(a)(ii) is replaced by the following:
- ~~“(ii) the CFC derives income, other than non-resident passive income, that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable:~~ 15
- “(ii) the CFC or FIF derives income, other than non-resident passive income, that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable:”. 20
- (2) Section FE 16(1C)(b) is replaced by the following:
- ~~“(b) derive income, other than non-resident passive income, that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable.”~~ 25
- (3) ~~In section FE 16, in the list of defined terms, “non-resident passive income” and “tax” are inserted.~~ 30
- (3) In section FE 16, in the list of defined terms, “attributable FIF income method”, “FIF”, “non-resident passive income”, and “tax” are inserted.
- (4) ~~**Subsections (1) and (2)** apply for income years beginning on or after 1 July 2011.~~ 35
- (4) **Subsections (1A) to (2)** apply for income years beginning on or after 1 July 2011.

52 Banking group’s New Zealand net equity

- (1) Section FE 21(12)(a) is replaced by the following:
 - “(a) are held by a member or potential member of the group; and”.
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2011. 5

53 Identifying New Zealand parent

- (1) Section FE 26(2)(b)(ii) is replaced by the following:
 - “(ii) no single non-resident who is carrying on business in New Zealand through a fixed establishment in New Zealand or who derives income, other than non-resident passive income, that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable has an ownership interest in the entity of 50% or more; or”.
- (2) Section FE 26(3)(a)(iii) is replaced by the following:
 - “(iii) not resident in New Zealand but deriving income, other than non-resident passive income, that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable; and”.
- (3) Section FE 26(4)(a)(iii) is replaced by the following:
 - “(iii) not resident in New Zealand but deriving income, other than non-resident passive income, that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable; and”.
- (4) In section FE 26, in the list of defined terms, “non-resident passive income” and “tax” are inserted. 30
- (5) **Subsections (1) to (3)** apply for income years beginning on or after 1 July 2011.

54 Identifying members of New Zealand group

- (1) Section FE 28(1)(a)(iii) is replaced by the following:
 - “(iii) deriving income, other than non-resident passive income, that has a source in New Zealand and

- for which relief from New Zealand tax under a double tax agreement is unavailable; and”.
- (2) Section FE 28(2)(a)(iii) is replaced by the following:
- “(iii) deriving income, other than non-resident passive income, that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable; and”.
- (3) In section FE 28, in the list of defined terms, “non-resident passive income” and “tax” are inserted.
- (4) **Subsections (1) and (2)** apply for income years beginning on or after 1 July 2011.

55 Ownership interests in companies outside New Zealand group

- (1) Section FE 30(1)(c)(iii) is replaced by the following:
- “(iii) deriving income, other than non-resident passive income, that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable; and”.
- (2) Section FE 30(3)(b)(iii) is replaced by the following:
- “(iii) deriving income, other than non-resident passive income, that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable; and”.
- (3) In section FE 30, in the list of defined terms, “non-resident passive income” and “tax” are inserted.
- (4) **Subsections (1) and (2)** apply for income years beginning on or after 1 July 2011.

56 CFCs in worldwide group for natural persons or trustees described in section FE 2(1)(g)

- (1) Section FE 31C(1)(b) is replaced by the following:
- “(b) an interest, in an entity not part of the worldwide group A, that is—
- “(i) an income interest in a CFC:
- “(ii) an interest in a FIF that meets the requirements of **section EX 35** (Exemption for interest in FIF resident in Australia):

- “(iii) an interest in a FIF for which the natural person or trustee uses the attributable FIF income method.”
- (2) In section FE 31C, in the list of defined terms, “attributable FIF income method” and “FIF” are inserted.
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011. 5
- 57 Identifying members of New Zealand banking group**
- (1) In the heading to section FE 36 “**in usual case**” is added.
- (2) In section FE 36(1), “to which **section FE 36B** does not apply” is inserted after “registered bank”. 10
- (3) **Subsections (1) and (2)** apply for income years beginning on or after 1 July 2009.
- 58 New section FE 36B inserted**
- (1) After section FE 36, the following is inserted:
- “FE 36B Identifying members of New Zealand banking group: Crown-owned, no interest apportionment** 15
- “Entities included in group*
- “(1) The New Zealand banking group of a registered bank consists of the entities given by this section if—
- “(a) Her Majesty the Queen in right of New Zealand has a voting interest of 100% in the registered bank; and 20
- “(b) in the absence of this paragraph and sections EX 15, **FE 2(5)**, FE 38(b) and (d), and FE 41(1), none of the entities that would be part of the banking group under this section would be a person to whom the interest apportionment rules might apply under section FE 2. 25
- “Registered bank and person with direct voting interest of 100%”*
- “(2) The banking group includes—
- “(a) the registered bank: 30
- “(b) a person with a direct voting interest of 100% in the registered bank.

*“Resident member of financial reporting group under
Financial Reporting Act 1993*

“(3) A resident person is included in the banking group if the person,—

“(a) under the Financial Reporting Act 1993, is a member of the financial reporting group for which the registered bank is the reporting member: 5

“(b) would be a member of the financial reporting group referred to in **paragraph (a)** but for the relevant materiality thresholds. 10

“Defined in this Act: direct voting interest, New Zealand, New Zealand banking group, registered bank, resident”.

(2) **Subsection (1)** applies for income years beginning on or after 1 July 2009.

59 Some general rules for treatment of consolidated groups 15

(1) Section FM 6(3)(d) is repealed.

(2) **Subsection (1)** applies for income years beginning on or after 1 July 2012.

60 Eligibility rules

(1) In section FM 31(1)(c), “to CW 11” is replaced by “and CW 10”. 20

(2) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

61 Resident’s restricted amalgamations

(1) In section FO 3(1)(c), “to CW 11” is replaced by “and CW 10”. 25

(2) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

62 FIF income or loss: arrangements for measurement day concessions

(1) Section GB 16(1)(b)(ii) is repealed. 30

(2) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

- 63 Section GB 40 repealed**
- (1) Section GB 40 is repealed.
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2012.
- 64 Arrangements involving cancellation of conduit tax relief credits** 5
- (1) Section GZ 2(1)(b) is replaced by the following:
- “(b) the purpose of the arrangement is to produce a benefit—
- “(i) for a New Zealand resident that is not a CTR group member under section YD 9 (Residence of CTR company shareholders) or for a New Zealand resident that is a CTR group member under section YD 9 to the extent that it is treated under that section as resident in New Zealand; and 10
- “(ii) under a taxation law; and 15
- “(iii) relating to the CTR credits.”
- (2) In section GZ 2, in the list of defined terms, “CTR group member” and “resident in New Zealand” are inserted.
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2009. 20
- 65 Section GZ 2 is repealed**
- (1) Section GZ 2 is repealed.
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2011. 25
- 66 No CFC income interests or FIF direct income interests of 10% or more**
- (1) In section HA 8B(b), “attributing” is omitted.
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2009. 30
- 67 Dividends derived by qualifying companies**
- (1) In section HA 17(1)(b), “or CW 11 (Dividend of conduit tax relief holding company)” is omitted.

- (2) In section HA 17(2), “sections CW 10 and CW 11” is replaced by “section CW 10”.
- (3) **Subsections (1) and (2)** apply for income years beginning on or after 1 July 2011.
- 67B Foreign-sourced amounts: non-resident trustees** 5
- (1) Section HC 25(6)(c) is replaced by the following:
“(c) section OE 1 (General rules for persons with branch equivalent tax accounts):”.
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2012. 10
- 68 Partnerships are transparent**
- (1) Section HG 2(4)(c) is repealed.
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2011.
- 69 Ring-fencing cap on attributed CFC net losses** 15
- (1) In section IQ 2(1)(b), “branch equivalent method” is replaced by “attributable FIF income method”.
- (2) In section IQ 2, in the list of defined terms,—
- (a) “branch equivalent method” is omitted:
- (b) “attributable FIF income method” is inserted. 20
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011.
- 70 Attributed CFC net loss from tax year before first affected year**
- (1) Section IQ 2B(1), other than the heading, is replaced by the following: 25
- “(1) This section applies for a person and a country (the **jurisdiction**) when the person has an amount (the **available BE loss**) of attributed CFC net loss, or FIF net loss calculated using the branch equivalent method, that— 30
- “(a) relates to a tax year (the **loss year**) before the first tax year for which this section applies to the person; and
- “(b) relates to a CFC or FIF that is resident in the jurisdiction in the loss year; and

- “(c) is carried forward to a tax year (the **conversion year**) in which this section applies to the person.”
- (2) Section IQ 2B(2), other than the heading, is replaced by the following:
- “(2) In this section, subsection (3) gives the person an option that available BE loss for a jurisdiction not be carried forward and subsections (4) to (7) give, for whichever of the 4 possible alternative situations is relevant for the person,—
- “(a) the amount of the available BE loss (the **converted BE loss**) for the jurisdiction that is—
- “(i) treated as being converted into an amount referred to in **paragraph (b)** in the conversion year; and
- “(ii) not available to the person to be carried forward as available BE loss for the jurisdiction and a later tax year:
- “(b) the amount (the **equivalent CFC loss**) of attributed CFC net loss for the jurisdiction that, for the purposes of the rest of this subpart, is treated as arising on the last day of the conversion year.”
- (3) Section IQ 2B(8)(a)(i) is replaced by the following:
- “(i) corresponding to an income year beginning on or after 1 July 2011; and”.
- (4) In section IQ 2B(9), in the definition of **jurisdictional attributed income**, paragraph (a)(ii), “branch equivalent method” is replaced by “attributable FIF income method”.
- (5) In section IQ 2B(9), in the definition of **jurisdictional BE income**, paragraph (a)(ii), “branch equivalent method, the FIF income or loss” is replaced by “attributable FIF income method, the FIF income or loss calculated under the branch equivalent method”.
- (6) After section IQ 2B(10), the following is added:
- “*Conversion of income from accounts into New Zealand currency*
- “(11) If a person or wholly-owned group chooses under subsection (10) to use the profit or loss before taxation of a CFC given by accounts expressed in a currency other than New

- Zealand currency, the person or group must convert the profit or loss into New Zealand currency—
- “(a) by applying the close of trading spot exchange rate on the last day of the accounting period for the accounts; or 5
- “(b) applying the average of the close of trading spot exchange rates for the 15th day of each complete month that falls in the accounting period.”
- (7) In section IQ 2B, in the list of defined terms, “accounting period” and “close of trading spot exchange rate” are inserted. 10
- (8) In section IQ 2B, in the list of defined terms, “attributable FIF income method” is inserted.
- (9) **Subsections (1) to (3), and (6)** apply for income years beginning on or after 1 July 2009.
- (10) **Subsections (4) and (5)** apply for income years beginning on or after 1 July 2011. 15
- 71 Ring-fencing cap on FIF net losses**
- (1) Section IQ 3(1)(a) and (b) are replaced by the following:
- “(a) all attributed CFC income that they derive in the tax year in relation to a CFC resident in the same country in which the FIF that had the loss was resident at the time the loss arose; and 20
- “(b) all FIF income calculated under the branch equivalent method that they derive in the tax year in relation to a FIF resident in the same country in which the FIF that had the loss was resident at the time the loss arose.” 25
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 72 Group companies using attributed CFC net losses**
- (1) In section IQ 4(3)(a)(ii), “branch equivalent method” is replaced by “attributable FIF income method”. 30
- (2) In section IQ 4, in the list of defined terms,—
- (a) “branch equivalent method” is omitted;
- (b) “attributable FIF income method” is inserted.
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011. 35

73 When attributed CFC net loss becomes FIF net loss

- (1) In section IQ 9(3), “branch equivalent method” is replaced by “attributable FIF income method” in each place where it appears.
- (2) In section IQ 9, in the list of defined terms,— 5
 - (a) “branch equivalent method” is omitted;
 - (b) “attributable FIF income method” is inserted.
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

74 Credits from tax year before first affected year 10

- (1) Section LK 5B(1), other than the heading, is replaced by the following:

“(1) This section applies for a person and a country (the **jurisdiction**) when the person has a credit (the **available BE credit**) that— 15

“(a) relates to a tax year (the **credit year**) before the first tax year for which this section applies to the person; and

“(b) relates to a CFC or FIF that is resident in the jurisdiction in the credit year; and

“(c) is carried forward to a tax year (the **conversion year**) in which this section applies to the person.” 20

- (2) Section LK 5B(2), other than the heading, is replaced by the following:

“(2) In this section, subsection (3) gives the person an option that an available BE credit for a jurisdiction not be carried forward and subsections (4) to (7) give, for whichever of the 4 possible alternative situations is relevant for the person,— 25

“(a) the amount of the available BE credit (the **converted BE credit**) for the jurisdiction that is—

“(i) treated as being converted into an amount referred to in **paragraph (b)** in the conversion year; and 30

“(ii) not available to the person to be carried forward as available BE credit for the jurisdiction and a later tax year: 35

“(b) the amount (the **equivalent tax credit**) of a tax credit for the jurisdiction that, for the purposes of the rest of

- this subpart, is treated as arising on the last day of the conversion year.”
- (2B) Section LK 5B(8) is repealed.
- (2C) In section LK 5B, in the list of defined terms, “branch equivalent income” and “branch equivalent loss” are omitted. 5
- ~~(3)~~ **Subsections (1) and (2)** apply for income years beginning on or after 1 July 2009.
- (3) **Subsections (1) to (2B)** apply for income years beginning on or after 1 July 2009.
- 75 Section LQ 5 repealed** 10
- (1) Section LQ 5 is repealed.
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2011.
- 76 Memorandum accounts**
- (1) Section OA 2(1)(c) is repealed. 15
- (2) In section OA 2(1)(d), “subparts OE and OP” is replaced by “subpart OE”.
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011.
- (4) **Subsection (2)** applies for income years beginning on or after 1 July 2012. 20
- 77 Credits**
- (1) Section OA 5(4) is repealed.
- (2) Section OA 5(5), other than the heading, is replaced by the following: 25
- “(5) A credit is a **branch equivalent tax credit** if it is an amount, for a BETA person,—
- “(a) set out in section OA 7 or OE 19:
- “(b) described in a row of table O9: person’s branch equivalent tax credits.” 30
- (3) In section OA 5, in the list of defined terms, “CTR credit” is omitted.
- (4) In section OA 5, in the list of defined terms, “BETA company” and “consolidated BETA group” are omitted.

- (5) **Subsection (1)** applies for income years beginning on or after 1 July 2011.
- (6) **Subsection (2)** applies for income years beginning on or after 1 July 2012.

78 Debits 5

- (1) Section OA 6(4) is repealed.
- (2) Section OA 6(5), other than the heading, is replaced by the following:
 - “(5) A debit is a **branch equivalent tax debit** if it is an amount, for a BETA person,— 10
 - “(a) set out in any of sections OA 7 and OE 20 to OE 22:
 - “(b) described in a row of table O10: person’s branch equivalent tax debits.”
- (3) In section OA 6, in the list of defined terms, “CTR debit” is omitted. 15
- (4) In section OA 6, in the list of defined terms, “BETA company” and “consolidated BETA group” are omitted.
- (5) **Subsection (1)** applies for income years beginning on or after 1 July 2011.
- (6) **Subsection (2)** applies for income years beginning on or after 1 July 2012. 20

79 Opening balances of memorandum accounts

- (1) Section OA 7(2)(c) is repealed.
- (2) Section OA 7(2)(d) is replaced by the following:
 - “(d) for a branch equivalent tax account of a BETA person, the first day of the income year:” 25
- (3) In section OA 7, in the list of defined terms, “CTR account” is omitted.
- (4) In section OA 7, in the list of defined terms, “BETA company” and “consolidated BETA account” are omitted. 30
- (5) **Subsection (1)** applies for income years beginning on or after 1 July 2011.
- (6) **Subsection (2)** applies for income years beginning on or after 1 July 2012.

- 80 Shareholder continuity requirements for memorandum accounts**
- (1) Section OA 8(5) is repealed.
 - (2) Section OA 8(6)(c) and (g) are repealed.
 - (3) In section OA 8, in the list of defined terms, “CTR account” is omitted. 5
 - (4) **Subsection (1)** applies for income years beginning on or after 1 July 2011.
 - (5) **Subsection (2)** applies for income years beginning on or after 1 July 2012. 10
- 81 General treatment of credits and debits on resident’s restricted amalgamation**
- (1) In section OA 9(4), “GB 34, GB 40,” is replaced by “GB 34”.
 - (2) **Subsection (1)** applies for income years beginning on or after 1 July 2012. 15
- 82 When credits or debits due to amalgamating company but not recorded**
- (1) Section OA 10(1)(c) is repealed.
 - (2) Section OA 10(1)(d) is repealed.
 - (3) Section OA 10(3)(b) is repealed. 20
 - (4) Section OA 10(3), other than the heading, is replaced by the following:
 - “(3) Subsection (2) does not apply to a debit for loss of shareholder continuity in an imputation credit account arising under section OB 41 (ICA debit for loss of shareholder continuity) and described in table O2: imputation debits, row 14 (debit for loss of shareholder continuity).” 25
 - (5) In section OA 10(4), “subsection (1)(b), (c), and (e)” is replaced by “subsection (1)(b) and (e)”. 30
 - (6) In section OA 10, in the list of defined terms, “CTR account” is omitted. 30
 - (7) In section OA 10, in the list of defined terms, “branch equivalent tax account” is omitted.
 - (8) **Subsections (1), (3), and (5)** apply for income years beginning on or after 1 July 2011. 35

- (9) **Subsections (2) and (4)** apply for income years beginning on or after 1 July 2012.

83 Continuity of shareholding when group companies amalgamate

- (1) In section OA 14(6), “GB 34, GB 40,” is replaced by “GB 34”. 5
 (2) **Subsection (1)** applies for income years beginning on or after 1 July 2012.

84 When credits or debits due to consolidated group but not recorded

- (1) Section OA 15(1)(c) is repealed. 10
 (2) Section OA 15(3)(b) is repealed.
 (3) Section OA 15(3), other than the heading, is replaced by the following:
 “(3) Subsection (2) does not apply to a debit for loss of shareholder continuity in an imputation credit account arising under section OP 42 (Consolidated ICA debit for loss of shareholder continuity) and described in table O20: imputation debits of consolidated imputation groups, row 16 (debit for loss of shareholder continuity).” 15
 (4) In section OA 15, in the list of defined terms, “CTR account” 20 is omitted.
 (5) In section OA 15, in the list of defined terms, “branch equivalent tax account” is omitted.
 (6) **Subsections (1) and (3)** apply for income years beginning on or after 1 July 2012. 25
 (7) **Subsection (2)** applies for income years beginning on or after 1 July 2011.

85 Calculation of maximum permitted ratios

- (1) In section OA 18(1), in the words before the paragraphs, “a CTR credit,” is omitted. 30
 (2) Section OA 18(1)(d) and (e) are repealed.
 (3) In section OA 18, in the list of defined terms, “CTR credit” is omitted.

- (4) **Subsections (1) and (2)** apply for income years beginning on or after 1 July 2011.

86 General rules for companies with imputation credit accounts

- (1) In section OB 1(2)(iv), “to CW 11” is replaced by “and CW 10”.
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

87 ICA payment of tax

- (1) Section OB 4(3)(h) is repealed. 10
- (2) In section OB 4, in the list of defined terms, “branch equivalent tax account” is omitted.
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2012.

88 ICA credit on resident’s restricted amalgamation 15

- (1) Section OB 24(3)(c) is repealed.
- (2) In section OB 24, in the list of defined terms, “CTR account” and “CTR credit” are omitted.
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011. 20

89 ICA debit on resident’s restricted amalgamation

- (1) Section OB 53(3)(c) is repealed.
- (2) In section OB 53, in the list of defined terms, “CTR account” and “CTR debit” are omitted.
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011. 25

90 FDPA refund of FDP

- (1) Section OC 14(3), other than the heading, is replaced by the following:
- “(3) The company does not have a debit for the amount of a refund to the extent to which it refunds FDP paid before a debit arises 30

	under section OC 24 (table O4: FDP debits, row 13 (debit for loss of shareholder continuity)).”	
(2)	Subsection (1) applies for income years beginning on or after 1 July 2011.	
91	FDPA transfer to imputation credit account	5
(1)	Section OC 18(5) is repealed.	
(2)	In section OC 18, in the list of defined terms, “CTR company” is omitted.	
(3)	Subsection (1) applies for income years beginning on or after 1 July 2011.	10
92	Section OC 19 repealed	
(1)	Section OC 19 is repealed.	
(2)	Subsection (1) applies for income years beginning on or after 1 July 2011.	
93	FDP credits attached to dividends	15
(1)	Section OC 27(2) is repealed.	
(2)	In section OC 27, in the list of defined terms, “CTR company” is omitted.	
(3)	Subsection (1) applies for income years beginning on or after 1 July 2011.	20
94	Subpart OD repealed	
(1)	Subpart OD is repealed.	
(2)	Subsection (1) applies for income years beginning on or after 1 July 2011.	
95	General rules for companies and other persons with branch equivalent tax accounts	25
(1)	In the heading to section OE 1, “ companies and other ” is omitted.	
(2)	Section OE 1(1) and (3) are repealed.	
(3)	In section OE 1(4), “(which relate to the treatment of memorandum accounts)” is inserted after “OA 3”.	30

- (4) In section OE 1, in the list of defined terms, “BETA company” is omitted.
- (5) **Subsections (1) to (3)** apply for income years beginning on or after 1 July 2012.

- 96 Headings and sections OE 2 to OE 4 repealed** 5
 - (1) The headings before section OE 2 are repealed.
 - (2) Sections OE 2 to OE 4 are repealed.
 - (3) **Subsection (2)** applies for income years beginning on or after 1 July 2012.

- 97 Treatment of attributed CFC income and FIF income in this subpart** 10
 - (1) Section OE 5(a)(i) is replaced by the following:
 - “(i) under the attributable FIF income method; or”.
 - (2) In section OE 5, in the list of defined terms,—
 - (a) “accounting profits method” and “branch equivalent method” are omitted: 15
 - (b) “attributable FIF income method” is inserted.
 - (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

- 98 Section OE 5 replaced** 20
 - (1) Section OE 5 is replaced by the following:
 - “**OE 5 Treatment of attributed CFC income and FIF income in this subpart**

For the purposes of applying this subpart to a person, other than a company, with an attributing interest in a foreign investment fund (FIF),—

 - “(a) FIF income derived from the person’s interest is treated as attributed CFC income if the FIF income is calculated—
 - “(i) under the attributable FIF income method: 30
 - “(ii) under a method to which section EX 50(6) or EX 58 (which relate to the calculation of FIF income) applies; and
 - “(b) the FIF is treated as a CFC; and

- “(c) the interest in the FIF is treated as an income interest.
“Defined in this Act: attributable FIF income method, attributing interest, CFC, company, FIF, FIF income, foreign investment fund, income interest”.
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2012. 5
- 99 BETA payment of income tax on foreign income**
- (1) In section OE 6(1), the words before the formula are replaced by “A BETA company has a branch equivalent tax credit for the lesser of the amount by which the branch equivalent tax account is in debit and the amount calculated using the formula—”. 10
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2009.
- 100 Heading and section OE 6 repealed**
- (1) The heading before section OE 6 is repealed. 15
- (2) Section OE 6 is repealed.
- (3) **Subsection (2)** applies for income years beginning on or after 1 July 2012.
- 101 BETA payment of income tax**
- (1) Section OE 7(3), other than the heading, is replaced by the following: 20
- “(3) The company or company B may choose to apply under section BC 8 (Satisfaction of income tax liability) some or all of the debit balance to satisfy an income tax liability in relation to attributed CFC income that is allocated to an income year beginning before 1 July 2011. The election must be made before the end of the first income year beginning on or after 1 July 2011, for the company having the branch equivalent tax account with the debit balance, by recording a credit in that branch equivalent tax account.” 25
30
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2009.
- 102 Sections OE 7 and OE 8 repealed**
- (1) Sections OE 7 and OE 8 are repealed.

- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2012.

103 BETA refund of FDP

- (1) In section OE 9(1), “Subsections (2) and (3)” is replaced by “Subsections (2) to **(3B)**”. 5
- (2) After section OE 9(3), the following is inserted:
“*Limit on amount*
“(3B) The amount of the credit under subsection (1), after any reduction under subsection (3), is limited to the amount of the debit in the company’s branch equivalent tax account at the time of the refund.” 10
- (3) **Subsections (1) and (2)** apply for income years beginning on or after 1 July 2009.

104 Sections OE 9 to OE 16B repealed

- (1) Sections OE 9 to OE 16B are repealed. 15
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2012.

105 Table O7 repealed

- (1) Table O7 is repealed.
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2012. 20

106 Section OP 70 repealed

- (1) Section OP 70 is repealed.
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2011. 25

107 Headings and sections OP 78 to OP 80 repealed

- (1) The headings before section OP 78 are repealed.
- (2) Sections OP 78 to OP 80 are repealed.
- (3) **Subsection (2)** applies for income years beginning on or after 1 July 2011. 30

- 108 Heading and sections OP 83 to OP 87 repealed**
- (1) The heading before section OP 83 is repealed.
 - (2) Sections OP 83 to OP 87 are repealed.
 - (3) **Subsection (2)** applies for income years beginning on or after 1 July 2011. 5
- 109 Sections OP 89 to OP 94 repealed**
- (1) Sections OP 89 to OP 94 are repealed.
 - (2) **Subsection (1)** applies for income years beginning on or after 1 July 2011.
- 110 Heading, section OP 96, and tables O23 and O24 repealed** 10
- (1) The heading before section OP 96 is repealed.
 - (2) Section OP 96 and tables O23 and O24 are repealed.
 - (3) **Subsection (2)** applies for income years beginning on or after 1 July 2011.
- 111 Headings and sections OP 97 and OP 98 repealed** 15
- (1) The headings before section OP 97 are repealed.
 - (2) Sections OP 97 and OP 98 are repealed.
 - (3) **Subsection (2)** applies for income years beginning on or after 1 July 2012.
- 112 Consolidated BETA payment of income tax on foreign income** 20
- (1) In section OP 100(1), the words before the paragraphs are replaced by “A consolidated BETA group has a branch equivalent tax credit for an income year for the lesser of the amount by which the group’s branch equivalent tax account is in debit and the amount calculated using the formula—”. 25
 - (1) In section OP 100(1), the words before the formula are replaced by “A consolidated BETA group has a branch equivalent tax credit for an income year for the lesser of the amount by which the group’s branch equivalent tax account is in debit and the amount calculated using the formula—”. 30
 - (2) **Subsection (1)** applies for income years beginning on or after 1 July 2009.

- 113 Heading and section OP 100 repealed**
- (1) The heading before section OP 100 is repealed.
- (2) Section OP 100 is repealed.
- (3) **Subsection (2)** applies for income years beginning on or after 1 July 2012. 5
- 114 Consolidated BETA payment of income tax**
- (1) Section OP 101(2), other than the heading, is replaced by the following:
- “(2) The nominated company of the consolidated BETA group may choose to apply some or all of the debit balance to satisfy an income tax liability of the group or of group company B in relation to attributed CFC income that is allocated to an income year beginning before 1 July 2011. The election must be made before the end of the first income year beginning on or after 1 July 2011.” 10 15
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2009.
- 115 Sections OP 101 and OP 102 repealed**
- (1) Sections OP 101 and OP 102 are repealed.
- (2) **Subsection (1)** applies for income year beginning on or after 1 July 2012. 20
- 116 Consolidated BETA refund of FDP**
- (1) In section OP 103(1), “Subsections (2) and (3)” is replaced by “Subsections (2) to **(3B)**”.
- (2) After section OP 103(3), the following is inserted: 25
“Limit on amount
 “(3B) The amount of the credit under subsection (1), after any reduction under subsection (3), is limited to the amount of the debit in the group’s branch equivalent tax account at the time of the refund.” 30
- (3) **Subsections (1) and (2)** apply for income years beginning on or after 1 July 2009.

117	Sections OP 103 to OP 104B repealed	
(1)	Sections OP 103 to OP 104B are repealed.	
(2)	Subsection (1) applies for income years beginning on or after 1 July 2012.	
118	Heading and section OP 108B repealed	5
(1)	The heading before section OP 108B is repealed.	
(2)	Section OP 108B is repealed.	
(3)	Subsection (2) applies for income years beginning on or after 1 July 2012.	
119	Table O25 repealed	10
(1)	Table O25 is repealed.	
(2)	Subsection (1) applies for income years beginning on or after 1 July 2012.	
120	Section OZ 16 repealed	
(1)	Section OZ 16 is repealed.	15
(2)	Subsection (1) applies for income years beginning on or after 1 July 2012.	
121	Section OZ 17 repealed	
(1)	Section OZ 17 is repealed.	
(2)	Subsection (1) applies for income years beginning on or after 1 July 2011.	20
122	Resident passive income	
(1)	In section RE 2(5)(a)(i), “any of sections CW 9 to CW 11” is replaced by “either of sections CW 9 and CW 10”.	
(2)	Subsection (1) applies for income years beginning on or after 1 July 2011.	25
123	Certain dividends	
(1)	Section RF 8(1)(c) and (f) are repealed.	
(2)	In section RF 8, in the list of defined terms, “CTR additional dividend” and “fully credited for conduit tax relief” are omitted.	30

- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

124 When dividends fully imputed or fully credited

- (1) In section RF 9(1), “or conduit tax relief” is omitted.
- (2) Section RF 9(6) and (7) are repealed. 5
- (3) In section RF 9, in the list of defined terms, “fully credited for conduit tax relief” is omitted.
- (4) **Subsections (1) and (2)** apply for income years beginning on or after 1 July 2011.

125 Non-cash dividends 10

- (1) Section RF 10(3)(a) is replaced by the following:
“(a) **rate A** is the rate of tax set out in section RF 8:”.
- (2) In the formula in section RF 10(4), “(amount paid + credit amount)” is replaced by “amount paid”.
- (3) In section RF 10(5)(d), “withheld:” is replaced by “withheld.” 15
and paragraph (e) is repealed.
- (4) Section RF 10(7) is repealed.
- (5) In section RF 10, in the list of defined terms, “CTR additional dividend” and “fully credited for conduit tax relief” are omitted. 20
- (6) **Subsections (1) to (4)** apply for income years beginning on or after 1 July 2011.

125B Interest paid by approved issuers or transitional residents

- (1) Section RF 12(1)(a)(ii) is replaced by the following: 25
“(ii) is derived by a person not associated with the approved issuer except by being a beneficiary of a trust established for the main purpose of protecting and enforcing beneficiaries’ rights under the registered security; and”.
- (2) **Subsection (1)** applies for the 2010–11 and later income 30
years.

126 Definitions

- (1) This section amends section YA 1.

- (2) The definition of **accounting profits method** is repealed.
- (3) The definition of **associated non-attributing active CFC** is replaced by the following:
- “**associated non-attributing active CFC**, for a CFC, means a person who is associated with the CFC under section YB 2 (Two companies) if the person and the CFC meet the following requirements:
- “**(a)** the person is a non-attributing active CFC; and
- “**(b)** ~~the person and the CFC are each resident under section YD 3 (Country of residence of foreign countries) in the same country or territory (the **host country**); and~~
- “**(b)** the person and the CFC each have a taxed CFC connection with the same country or territory
- “**(c)** ~~neither of the person and the CFC is, in a country or territory other than the host country,=~~
- “**(i)** a resident under the domestic law of the country or territory:
- “**(ii)** liable to income tax because of domicile, residence, place of incorporation, or centre of management:
- “**(iii)** treated as a resident under an agreement with the host country that would be a double tax agreement if it were an agreement between New Zealand and the host country; and
- “**(d)** neither of the person and the CFC has a presence outside the host country that is a fixed establishment or permanent establishment under an agreement, between another country or territory and the host country, that would be a double tax agreement if it were between New Zealand and the host country; and
- “**(e)** each of the person and the CFC is liable in the host country to tax on its income because of domicile, residence, place of incorporation, or centre of management, or is wholly-owned under the laws of New Zealand and the host country by another CFC (the **parent CFC**) that—
- “**(i)** has a relationship with the host country meeting the requirements of **paragraphs (c) and (d)**; and

- ~~“(ii) because of the parent CFC’s domicile, residence, place of incorporation, or centre of management, is liable in the host country to tax on its income in the same period that the person or the CFC would be liable on its income if it were a company liable for tax”.~~ 5
- (4) The following definition is inserted in the appropriate alphabetical order:
“**attributable FIF income method** means the method of calculating FIF income or FIF loss in section EX 50 (Attributable FIF income method)” 10
- (5) The definition of **BETA company** is repealed.
- (6) The definition of **branch equivalent company** is repealed.
- (7) In the definition of **branch equivalent method**, “as that provision read immediately before being amended by **section 29** of the Taxation (International Investment and Remedial Matters) Act **2010**” is added. 15
- (8) The definition of **branch equivalent tax account** is replaced by the following:
“**branch equivalent tax account** means the account maintained by a BETA person under section OE 17(3) (Person choosing to become BETA person)” 20
- (9) In the definition of **calculation method**, “accounting profits method, the branch equivalent method” is replaced by “attributable FIF income method”. 25
- (10) The definition of **combined imputation and CTR ratio** is repealed.
- (11) In the definition of **consideration**, paragraph (b)(ii) is replaced by the following:
“(ii) section EX 21(11) (Attributable CFC amount and net attributable CFC income or loss: calculation rules)” 30
- (12) The definition of **consolidated BETA group** is repealed.
- (13) In the definition of **continuity provisions**, paragraph (i) is repealed. 35

- (14) In the definition of **credit account continuity provisions**, paragraph (b), “continuity); and” is replaced by “continuity)” and paragraph (c) is repealed.
- (15) The definitions of **CTR**, **CTR account**, **CTR additional dividend**, **CTR company**, **CTR credit**, **CTR debit**, **CTR group member**, **CTR holding company**, **CTR ratio**, and **CTRA** are repealed. 5
- (16) In the definition of **deductible foreign equity distribution**, paragraph (a) is replaced by the following:
 “(a) for which a deduction is allowed in the calculation of the income tax imposed by a country or territory other than New Zealand on the income of a person:” 10
- (17) ~~In the definition of **deductible foreign equity distribution**, paragraph (b)(ii) is replaced by the following:~~
~~“(ii) the other company or another person is allowed a deduction, in the calculation of the income tax imposed by a country or territory other than New Zealand on the income of the other company or person, for the amount paid to the foreign company”.~~ 15 20
- (18) The definition of **excess credit amount** is replaced by the following:
~~“**excess credit amount** means an amount calculated under section OC 29(5) (FDP credits and imputation credits attached to dividends) for a dividend with a combined imputation and GDP ratio~~
“**excess credit amount** means an amount calculated under section OC 29(5) (FDP credits and imputation credits attached to dividends) for a dividend with a combined imputation and FDP ratio”. 25 30
- (19) In the definition of **FIF net loss**, “branch equivalent method” is replaced by “attributable FIF income method”.
- (20) In the definition of **fixed-rate share**, in paragraph (a), “FE 6 (Apportionment of interest by excess debt entity),” is inserted before “GC 8”. 35
- (21) In the definition of **foreign attributed income**, paragraph (b) is replaced by the following:

- “(b) FIF income calculated under the attributed FIF income method”.
- (22) The definition of **foreign attributed loss offsets** is repealed.
- (23) The definition of **fully credited for conduit tax relief** is repealed. 5
- (24) In the definition of **international tax rules**, paragraph (a)(xii) is repealed.
- (25) In the definition of **lease**, paragraph (d), “(Branch equivalent income or loss: calculation rules)” is replaced by “(Attributable CFC amount and net attributable CFC income or loss: calculation rules)”. 10
- (26) In the definition of **loss**, paragraph (c) is replaced by the following:
 “(c) means a net attributable FIF loss when used in the expression ‘net attributable FIF income or loss’.”. 15
- (27) In the definition of **maximum permitted ratio**, “a CTR credit,” is omitted.
- (28) The following definitions are inserted in the appropriate alphabetical order:
 “**net attributable FIF income**, for a FIF and for an accounting period, means an amount of zero or more calculated for the accounting period under **section EX 50(3)** (Attributable FIF income method) 20
 “**net attributable FIF loss**, for a FIF and for an accounting period, means an amount of less than zero calculated for the accounting period under **section EX 50(3)** (Attributable FIF income method)”. 25
- (29) In the definition of **non-refundable tax credit**, paragraph (d) is repealed.
- (30) In the definition of **New Zealand banking group**, “section FE 36 (Identifying members of New Zealand banking group)” is replaced by “sections FE 36 and **FE 36B** (which identify the members of a New Zealand banking group)”. 30
- (31) The following definitions are inserted in the appropriate alphabetical order: 35
 “**NZIAS 28** means New Zealand Equivalent to International Accounting Standard 28 approved by the Accounting Stand-

ards Review Board and as amended from time to time, or an equivalent standard issued in its place

“NZIAS 31 means New Zealand Equivalent to International Accounting Standard 31 approved by the Accounting Standards Review Board and as amended from time to time, or an equivalent standard issued in its place”.

(32) In the definition of **residual income tax**, paragraph (d) is repealed.

(33) In the definition of **supplementary dividend holding company**, paragraph (e), “to CW 11” is replaced by “and CW 10”.

(34) In the definition of **taxation law**, “GZ 2 (Arrangements involving cancellation of conduit tax relief credits)” is omitted.

(34B) The following definitions are inserted in the appropriate alphabetical order:

“taxed CFC connection, for a CFC and a country or territory (the host country), means a relationship meeting the following requirements:

“(a) the CFC is resident in the host country under section YD 3 (Country of residence of foreign countries); and

“(b) there is no other country or territory for which the CFC is—

“(i) a resident under the domestic law of the country or territory:

“(ii) liable to income tax because of the CFC’s domicile, residence, place of incorporation, or centre of management:

“(iii) treated as a resident under an agreement with the host country that would be a double tax agreement if it were an agreement between New Zealand and the host country; and

“(c) the CFC has no presence outside the host country that is—

“(i) a fixed establishment:

“(ii) a permanent establishment under an agreement, between another country or territory and the host country, that would be a double tax agreement if it were between New Zealand and the host country; and

- “(d) the CFC is liable in the host country to tax on its income because of the CFC’s domicile, residence, place of incorporation, or centre of management, or there is another foreign company (the **parent company**) that—
- “(i) wholly owns the CFC under the laws of New Zealand and the host country; and 5
- “(ii) has a relationship with the host country meeting the requirements of **paragraphs (a) to (c)**; and
- “(iii) because of the parent company’s domicile, residence, place of incorporation, or centre of management, is liable in the host country to tax on the CFC’s income in the same period that the CFC would be liable on its income if it were a company liable for tax 10
- “**taxed FIF connection**, for a FIF and a country or territory (the **host country**), means a relationship meeting the following requirements: 15
- “(a) the FIF is resident in the host country under section YD 3 (Country of residence of foreign companies); and
- “(b) there is no other country or territory for which the FIF is— 20
- “(i) a resident under the domestic law of the country or territory:
- “(ii) liable to income tax because of the FIF’s domicile, residence, place of incorporation, or centre of management: 25
- “(iii) treated as a resident under an agreement with the host country that would be a double tax agreement if it were an agreement between New Zealand and the host country; and 30
- “(c) the FIF has no presence outside the host country that is—
- “(i) a fixed establishment:
- “(ii) a permanent establishment under an agreement, between another country or territory and the host country, that would be a double tax agreement if it were between New Zealand and the host country; and 35

- “(d) the FIF is liable in the host country to tax on its income because of the FIF’s domicile, residence, place of incorporation, or centre of management, or there is a foreign company (the **parent company**) that—
- “(i) wholly owns the FIF under the laws of New Zealand and the host country; and 5
- “(ii) has a relationship with the host country meeting the requirements of **paragraphs (a) to (c)**; and
- “(iii) because of the parent company’s domicile, residence, place of incorporation, or centre of management, is liable in the host country to tax on the FIF’s income in the same period that the FIF would be liable on its income if it were a company liable for tax”. 10
- (35) **Subsections (3), (20), (30), and (31)** apply for income years beginning on or after 1 July 2009. 15
- (35) **Subsections (3), (20), (30), (31), and (34B)** apply for income years beginning on or after 1 July 2009.
- (36) **Subsections (2), (4), (6), (7), (9) to (11), (15), (18), (19), (21) to (23), (25) to (29), (33), and (34)** apply for income years beginning on or after 1 July 2011. 20
- (37) **Subsections (5), (8), (12) to (14), (24), and (32)** apply for income years beginning on or after 1 July 2012.
- 127 Demutualisation of insurers**
- (1) In section YC 17(12)(b)(ii), “account.” is replaced by “account.” and subparagraph (iii) is repealed. 25
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2012.
- 128 Corporate reorganisations not affecting economic ownership** 30
- (1) In section YC 18B(3), “OE,” is omitted.
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2012.

129 Residence of CTR company shareholders

- (1) In section YD 9(1), “and section GZ 2 (Arrangements involving cancellation of conduit tax credits)” is added after “tax relief”.
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2009. 5

130 Heading and sections YD 9 to YD 11 repealed

- (1) The heading before section YD 9 is repealed.
- (2) Sections YD 9 to YD 11 are repealed.
- (3) **Subsection (2)** applies for income years beginning on or after 1 July 2011. 10

131 Schedule 25—Foreign investment funds

- (1) Schedule 25, part C is repealed.
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2011. 15

Part 2**Amendments to Tax Administration Act
1994****132 Tax Administration Act 1994**

Sections 133 to 141 amend the Tax Administration Act 1994. 20

133 Keeping of business and other records

- (1) In section 22(2)(f), “a BETA company,” is omitted.
- (2) In section 22(2)(k), “a CTR account and” is omitted.
- (3) In ~~section 22(7)~~section 22(7)(c), “and sections OP 97 to OP 108” is omitted. 25
- (4) **Subsections (1) and (3)** apply for records relating to income years beginning on or after 1 July 2012.
- (5) **Subsection (2)** applies for records relating to income years beginning on or after 1 July 2011. 30

134 Shareholder dividend statement to be provided by company

- (1) In section 29(1), in the words before the paragraphs, “an FDP credit, or a CTR credit” is replaced by “or an FDP credit”.
- (2) Section 29(1)(ia) is repealed. 5
- (3) **Subsections (1) and (2)** apply for income years beginning on or after 1 July 2011.

135 Section 30A repealed

- (1) Section 30A is repealed.
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2011. 10

136 New section 65B inserted

- (1) After section 65, the following is inserted:

“65B Information to be furnished with return by entity apportioning interest expenditure under section FE 6B 15

A company or person apportioning its interest expenditure under **section FE 6B** of the Income Tax Act 2007 for an income year must furnish to the Commissioner, no later than when the company or person is required to furnish a return of its income for the corresponding tax year, the following information in the form and by the means prescribed by the Commissioner: 20

 - “(a) notice to the Commissioner that the section has been applied; and
 - “(b) a reconciliation of adjusted net profit under **section FE 5(1BC)** of that Act to GAAP net profit; and 25
 - “(c) a reconciliation of goodwill to items presented in the GAAP balance sheet; and
 - “(d) further information that is required by the Commissioner.” 30
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2009.

137 Section 68A repealed

- (1) Section 68A is repealed.

- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2011.

138 Annual ICA return

- (1) Section 69(1)(e) is repealed.
- (2) Section 69(1)(f) is repealed. 5
- (3) **Subsection (1)** applies for returns relating to income years beginning on or after 1 July 2012.
- (4) **Subsection (2)** applies for returns relating to income years beginning on or after 1 July 2011.

139 Section 77 repealed 10

- (1) Section 77 is repealed.
- (2) **Subsection (1)** applies for returns relating to income years beginning on or after 1 July 2012.

140 Determination on insurer as non-attributing active CFC

- (1A) Section 91AAQ(4)(b) is replaced by the following: 15

“(b) produces income of the CFC or group, other than income from claims under reinsurance contracts, that is all or nearly all from—

“(i) premiums from insurance contracts, other than reinsurance contracts, covering risks arising in the country or territory in which the business of the CFC or group is located:

“(ii) proceeds from investment assets having a total value commensurate with the value of those insurance contracts.” 25

- (1) After section 91AAQ(5), the following is inserted:

“(5B) In a determination, the Commissioner may stipulate conditions that must be satisfied,—

“(a) in addition to the requirements of subsection (2), for a CFC to be a non-attributing active CFC: 30

“(b) in addition to the requirements of subsection (3), for the members of a group of CFCs to be non-attributing active CFCs.”

- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2009. 35

- (2) **Subsections (1A) and (1)** apply for income years beginning on or after 1 July 2009.

141 Remission for GST transitional taxable periods

- (1) In section 183AA(4)(b), “31 December 2010:” is replaced by “31 December 2010.” and paragraph (c) is repealed. 5
- (2) In section 183AA(4)(b), “31 December 2010.” is replaced by “31 December 2010:” and the following is added:
- “(c) a GST taxable period for which the taxpayer is required to make a return that includes an adjustment under section 78B of the Goods and Services Tax Act 1985 because of the change in the rate of goods and services tax on 1 October 2010.” 10

Part 3

Amendment to Stamp and Cheque Duties Act 1971

15

142 Section 86I replaced by new sections 86I and 86IB

Section 86I of the Stamp and Cheque Duties Act 1971 is replaced by the following:

“86I Application of approved issuer levy and zero-rating

For the purposes of the NRWT rules of the Income Tax Act 2007 and section 86J of this Act, and notwithstanding any provision of the NRWT rules of the Income Tax Act 2007, a payment of interest shall be treated as being paid by an approved issuer in respect of a registered security only where,—

- “(a) and to the extent that, payment is made by or on behalf of the approved issuer of approved issuer levy on the leviable value of the registered security at the time of the payment of interest—
- “(i) at the rate specified in section 86J of this Act; and
- “(ii) by the date specified in either section 86K or section 86KA, or by a later date upon the payment of any interest or penalties imposed under Parts 7 or 9 of the Tax Administration Act 1994 respectively; or

- “(b) the registered security meets the requirements of **section 86IB** and the approved issuer provides a statement to the Commissioner—
- “(i) showing the details prescribed by the Commissioner under section 86K(2) for a statement relating to payments of interest under such a registered security and provided to the Commissioner within the time given by **subparagraph (ii)**; and 5
- “(ii) by the time that would be required by section 86K(1)(b) for a payment of the levy in relation to the payment of interest, or by a later date for the statement if that date is set by the Commissioner in a notice given to the approved issuer. 10
- “**86IB Zero rate of approved issuer levy—requirements for securities** 15
- “(1) A registered security meets the requirements of this section if—
- “(a) the security is denominated in New Zealand dollars; and
- “(b) the issue of the security—
- “(i) was an offer to the public for the purposes of the Securities Act 1978; and 20
- “(ii) was not a private placement; and
- “(c) the security is not an asset-backed security; and
- “(d) the activities of the registrar and the paying agent for the security are carried on through a fixed establishment in New Zealand; and 25
- “(e) the security—
- “(i) ~~is listed on an exchange registered under the Securities Market Act 1988;~~
- “(i) is listed on an exchange registered under the Securities Markets Act 1988; 30
- “(ii) ~~is 1 of a number of securities meeting the requirements of **subsection (2)**;~~
- “(ii) is 1 of a number of securities meeting the requirements of **subsection (2)** that are traded in a market bringing together buyers and sellers of such securities. 35

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- “(2) A security meets the requirements of this subsection if, at or before the time of the payment of interest referred to in **section 86I** in respect of the registered security,—
- “(a) the security is 1 of a number of identical debt securities (the **class of securities**) that are registered securities; 5
and
- “(b) the group of persons who each hold a security included in the class of securities consists of 100 or more persons; and
- “(c) the issuer of the class of securities has reasonable 10
grounds for expecting that each of 100 or more persons in the group—
- ~~“(i) is not associated with the issuer and not associated with another member of the group; and~~
- “(i) is not associated with the issuer except by being 15
a beneficiary of a trust established for the main purpose of protecting and enforcing beneficiaries’ rights under the class of securities; and
- “(ib) is not associated with another member of the 20
group; and
- “(ii) is not part of an arrangement intended to temporarily increase the number of persons in the group; and
- “(d) no person or group of associated persons holds more than 10% by value of the class of securities.” 25

Legislative history

26 October 2010
9 November 2010

Introduction (Bill 227–1)
First reading and referral to Finance and
Expenditure Committee
