

House of Representatives
Supplementary Order Paper

Tuesday, 5 April 2011

Taxation (Tax Administration and Remedial
Matters) Bill

Proposed amendments

Hon Peter Dunne, in Committee, to move the following amendments:

New clauses 3B and 3C

To insert, after *clause 3* (after line 7 on page 6), the following:

3B Attributed income of investors in multi-rate PIEs

In section CP 1(1), “section HM 36 (Calculating amounts attributed to investors)” is replaced by “sections HM 35, **HM 35C**, and HM 36 (which relate to the attribution of amounts to investors)”.

3C When FIF income arises

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

“Foreign investment PIEs

“(6) A person who has an attributing interest in a FIF as described in **section EX 29(6)** has FIF income if the requirements of subsection (1)(a), (d), (e), (f), and (g) are met in relation to the person and the amount.”

(2) In section CQ 5, in the list of defined terms, “foreign investment PIE” is inserted.

(3) **Subsection (1)** applies for the 2012–13 and later income years for a foreign investment PIE and a notified foreign investor when the PIE applies a variable investor rate to income attributed to the investor.

New clauses 4B and 4C

To insert, after *clause 4* (after line 14 on page 6), the following:

4B Attributed income of certain investors in multi-rate PIEs

(1) After section CX 56(1), the following is inserted:

“When this section also applies

“(1B) This section also applies when a foreign investment PIE attributes income to an investor who is, at the time of attribution,—

“(a) a notified foreign investor:

“(b) a transitional resident who has chosen a prescribed investor rate referred to in **schedule 6, table 1, row 10** (Prescribed rates: PIE investments and retirement scheme contributions).”

(2) In section CX 56(2)(b), “(Prescribed rates: PIE investments and retirement scheme contributions)” is omitted.

(3) In section CX 56(2)(b), “as applicable.” is replaced by “as applicable:” and the following is added:

“(c) a foreign investment PIE changes the treatment of a notified foreign investor, having been notified of a change in the investor status as described in **section HM 55E** (Changes of status of investors in foreign investment PIEs).”

(4) In section CX 56, in the list of defined terms, “foreign investment PIE” and “notified foreign investor” are inserted.

(5) **Subsections (1) and (3)** apply for the 2012–13 and later income years for a foreign investment PIE and a notified foreign investor when the PIE applies a variable investor rate to income attributed to the investor.

4C Distributions to investors in multi-rate PIEs

(1) In section CX 56B, the following is inserted after the section heading:

“Excluded income”.

(2) In section CX 56B, the following is inserted as subsection (2):
“Treatment as non-resident passive income

“(2) Despite subsection (1), an amount paid by a foreign investment PIE to a notified foreign investor in the PIE is not excluded income under this section to the extent to which it is treated under **section HM 44B** (NRWT calculation option) as non-resident passive income.”

(3) In section CX 56B, in the list of defined terms, “foreign investment PIE”, “non-resident passive income”, and “notified foreign investor” are inserted.

- (4) **Subsection (2)** applies for the 2012–13 and later income years for a foreign investment PIE and a notified foreign investor when the PIE applies a variable investor rate to income attributed to the investor.

New clause 6B

To insert, after *clause 6* (after line 15 on page 7), the following:

6B New section DB 54B

- (1) After section DB 54, the following is inserted:

“DB 54B Expenditure incurred by foreign investment PIEs

“When this section applies

- “(1) This section applies when a foreign investment PIE incurs expenditure or loss in deriving income attributable to a notified foreign investor in the PIE.

“No deduction

- “(2) The PIE is denied a deduction for the amount of the expenditure or loss.

“Relationship with section DB 7

- “(3) This section overrides section DB 7 (Interest: most companies need no nexus with income).

“Link with subpart DA

- “(4) This section overrides the general permission.

“Defined in this Act: amount, deduction, foreign investment PIE, general permission, income, loss, notified foreign investor”.

- (2) **Subsection (1)** applies for the 2012–13 and later income years for a foreign investment PIE and a notified foreign investor when the PIE applies a variable investor rate to income attributed to the investor.

New clauses 10B and 10C

To insert, after *clause 10* (after line 12 on page 8), the following:

10B Attributable CFC amount

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

“(o) attributed PIE income that, for a CFC, is not excluded income under section CX 56 (Attributed income of certain investors in multi-rate PIEs).”

- (2) In section EX 20B, in the list of defined terms, “attributed PIE income” and “excluded income” are inserted.

- (3) **Subsection (1)** applies for the 2012–13 and later income years for a foreign investment PIE and a notified foreign investor when the PIE applies a variable investor rate to income attributed to the investor.

10C Attributing interests in FIFs

- (1) After section EX 29(5), the following is added:
“*Foreign investment PIEs*”
- “(6) Despite subsection (1)(b), if the person holds rights in 1 of the categories described in subsections (2) to (4), and the FIF is an investor in a foreign investment PIE, the person has an attributing interest in the FIF, whether or not an exemption under sections EX 31 to EX 43 applies to those rights.”
- (2) In section EX 29, in the list of defined terms, “foreign investment PIE” is inserted.
- (3) **Subsection (1)** applies for the 2012–13 and later income years for a foreign investment PIE and a notified foreign investor when the PIE applies a variable investor rate to income attributed to the investor.

New clauses 15B to 15E

To insert, after *clause 15* (after line 34 on page 9), the following:

15B Outline of subpart and relationship with other Parts

After section HM 1(2)(i), the following is inserted:

“(ib) **section DB 54B** (Expenditure incurred by foreign investment PIEs):”.

15C What is a portfolio investment entity?

- (1) Section HM 2(2)(a) is replaced by the following:
“(a) a multi-rate PIE, or if the PIE chooses, a foreign investment PIE:”.
- (2) After section HM 2(3), the following is added:
“*Foreign investment PIEs*”
- “(4) The provisions of the PIE rules as they relate to multi-rate PIEs apply in the same manner to foreign investment PIEs, unless a provision expressly states otherwise.”
- (3) In section HM 2, in the list of defined terms, “foreign investment PIE” is inserted.

15D Intended effects for multi-rate PIEs and investors

- (1) After section HM 6(1)(a), the following is inserted:
“(ab) in relation to proceeds of the investments that are attributable to notified foreign investors in a foreign investment PIE, the PIE has a tax liability—
“(i) calculated using a tax rate that is appropriate having regard to the income source or investment type; and
“(ii) resembling the tax liability of the investor if they were to make the investment directly:”.

- (2) Section HM 6(2)(a) is replaced by the following:
 - “(a) the investor has no tax liability on income arising from proceeds for which the PIE has a tax liability, unless—
 - “(i) the investor has given the PIE a rate that is lower than the correct rate:
 - “(ii) the investor has been treated by a foreign investment PIE as a notified foreign investor for a period in which they do not in fact meet the requirements of **section HM 55D** for notified foreign investor status.”
- (3) In section HM 6, in the list of defined terms, “foreign investment PIE” and “notified foreign investor” are inserted.
- (4) **Subsections (1) and (2)** apply for the 2012–13 and later income years for a foreign investment PIE and a notified foreign investor when the PIE applies a variable investor rate to income attributed to the investor.

15E Requirements

In section HM 7(c), “section HM 71” is replaced by “section HM 71 or **HM 71B**”.

New clauses 16B to 16E

To insert, after *clause 16* (after line 11 on page 10), the following:

16B Rules for multi-rate PIEs

- (1) In section HM 31(1)(a), “the investor’s tax rate” is replaced by “the investor’s tax rates”.
- (2) After section HM 31(1), the following is inserted:

“Foreign investment PIEs

“(1B) For the provisions relating to the treatment of notified foreign investors in foreign investment PIEs, *see sections **HM 2(4), HM 33, HM 35C, HM 41(4), HM 44(1B), HM 44B, HM 47(2B), (4), and (6), HM 51, HM 53, HM 55B to HM 55H, HM 56, HM 60, HM 61(2), HM 64(4), HM 65(5), HM 71B, and HM 72.***”
- (3) In section HM 31, in the list of defined terms, “foreign investment PIE” and “notified foreign investor” are inserted.

16C Rules for and treatment of investors in multi-rate PIEs

- (1) After section HM 32(2), the following is added:

“Notified foreign investors
- “(3) An investor in a foreign investment PIE who notifies the PIE under **section HM 55D(2)** of their wish to become a notified foreign investor meets the requirements of subsection (1).”

- (2) In section HM 32, in the list of defined terms, “foreign investment PIE” and “notified foreign investor” are inserted.

16D Proxies for PIE investors

- (1) After section HM 33(2)(b), the following is inserted:
“(bb) for a foreign investment PIE and a notified foreign investor, the investor were a notified foreign investor in the proxy; and”.
- (2) After section HM 33(3)(d), the following is inserted:
“(db) for a foreign investment PIE, collect information required from the notified foreign investors and act generally on behalf of the PIE in relation to its notified foreign investors; and”.
- (3) In section HM 33, in the list of defined terms, “foreign investment PIE” and “notified foreign investor” are inserted.
- (4) **Subsections (1) and (2)** apply for the 2012–13 and later income years for a foreign investment PIE and a notified foreign investor when the PIE applies a variable investor rate to income attributed to the investor.

16E New section HM 35C

- (1) After section HM 35B, the following is inserted:
“HM 35C Determining amounts for notified foreign investors
“When this section applies
“(1) This section applies for the purposes of sections HM 35 to HM 47 when a foreign investment PIE determines its income tax liability and calculates an amount of attributed PIE income for a notified foreign investor in the PIE.
“Separate class of investors
“(2) For the purposes of the calculations, the PIE must treat all its notified foreign investors as a separate investor class.
“Taxable amounts
“(3) In section HM 35(5), in relation to an investor class that is made up of notified foreign investors, the taxable amount for an attribution period is equal to the assessable income of the PIE for the period for each particular income source or investment type of income of the class.
“Attributed amounts
“(4) For the purposes of section HM 36, in the calculation of an amount attributed to a notified foreign investor,—
“(a) the item **loss** in the formula in subsection (2) is treated as zero:
“(b) the item **expenses** in the formula in subsection (2) is treated as zero:

“(c) the item **credits for fees** in the formula in subsection (2) is treated as zero:

“(d) if the result given by the formula is negative, the result is treated as zero.

“Defined in this Act: amount, assessable income, attributed PIE income, attribution period, foreign investment PIE, income tax liability, investor class, notified foreign investor, taxable amount”.

- (2) **Subsection (1)** applies for the 2012–13 and later income years for a foreign investment PIE and a notified foreign investor when the PIE applies a variable investor rate to income attributed to the investor.

New clauses 18B to 18H

To insert, after *clause 18* (after line 32 on page 10), the following:

18B Options for calculation and payment of tax

- (1) After section HM 41(3), the following is added:

“Foreign investment PIEs

- “(4) Despite subsection (1)(c), a multi-rate PIE that chooses under **section HM 71B** to become a foreign investment PIE—

“(a) must not use the provisional tax calculation option in section HM 44 to calculate its income tax liability:

“(b) may choose to withhold an amount of tax under the NRWT rules in relation to a dividend that is derived from a company resident in New Zealand and is not fully imputed, to the extent to which some or all of the dividend is paid to a notified foreign investor, *see section HM 44B.*”

- (2) In section HM 41, in the list of defined terms, “company”, “dividend”, “foreign investment PIE”, “notified foreign investor”, “NRWT rules”, and “resident in New Zealand” are inserted.

- (3) **Subsection (1)** applies for the 2012–13 and later income years for a foreign investment PIE and a notified foreign investor when the PIE applies a variable investor rate to income attributed to the investor.

18C Provisional tax calculation option

- (1) After section HM 44(1), the following is inserted:

“When this section does not apply

- “(1B) Despite subsection (1), a multi-rate PIE that chooses under **section HM 71B** to become a foreign investment PIE must not apply this section to calculate and pay its income tax liability.”

- (2) In section HM 44, in the list of defined terms, “foreign investment PIE” is inserted.

18D New section HM 44B

(1) After section HM 44, the following is inserted:

“HM 44B NRWT calculation option

“When this section applies

“(1) This section applies when—

“(a) a multi-rate PIE that chooses under **section HM 71B** to become a foreign investment PIE—

“(i) derives a dividend that is not fully imputed from a company resident in New Zealand; and

“(ii) pays some or all of the amount of the dividend to a notified foreign investor in the PIE within 2 days of receiving it; and

“(b) the PIE chooses to calculate and pay its income tax liability in relation to the amount under subpart RF (Withholding tax on non-resident passive income).

“Excluding amount from calculation

“(2) In determining the net amount for notified foreign investors under sections HM 35 and HM 36, to the extent to which the amount relates to a dividend that is not fully imputed, the amount is not included in—

“(a) the item **assessable income** in section HM 35(3):

“(b) the item **income** in section HM 36(3).

“Non-resident passive income

“(3) The NRWT rules apply to the amount paid to the extent to which the amount is some or all of a dividend that is not fully imputed.

“Relationship with section CX 56B

“(4) Despite section CX 56B (Distributions to investors in multi-rate PIEs), the amount is not excluded income of the notified foreign investor.

“Defined in this Act: amount, company, dividend, excluded income, foreign investment PIE, imputation credit, income tax liability, multi-rate PIE, non-resident passive income, notified foreign investor, NRWT rules, pay, resident in New Zealand”.

(2) **Subsection (1)** applies for the 2012–13 and later income years for a foreign investment PIE and a notified foreign investor when the PIE applies a variable investor rate to income attributed to the investor.

18E Calculation of tax liability or tax credit of multi-rate PIEs

(1) After section HM 47(2), the following is inserted:

“Notified foreign investors

“(2B) For the purposes of subsection (2), for a notified foreign investor in a foreign investment PIE, the amount of the PIE’s tax liability for each investor is the sum of the amounts attributed

to the investor for each particular income source or investment type calculated using the formula in subsection (3).”

- (2) After section HM 47(4)(a)(i), the following is inserted:
 - “(ib) the tax rates applying under **schedule 6, table 1B** (Prescribed rates: PIE investments and retirement scheme contributions) for an amount attributed to a notified foreign investor in relation to each income source or investment type; or”.
- (3) After section HM 47(5), the following is added:

“Negative result and foreign investment PIEs
- “(6) If the result of the formula in subsection (3) is negative and the multi-rate PIE has chosen under **section HM 71B** to become a foreign investment PIE, no tax credit arises in relation to an amount attributed to an investor in the PIE who is, at the time of attribution, a notified foreign investor.”
- (4) In section HM 47, in the list of defined terms, “foreign investment PIE” and “notified foreign investor” are inserted.
- (5) **Subsections (1) to (3)** apply for the 2012–13 and later income years for a foreign investment PIE and a notified foreign investor when the PIE applies a variable investor rate to income attributed to the investor.

18F Use of foreign tax credits by PIEs

- (1) In section HM 51(1)(b), “zero-rated.” is replaced by “zero-rated.” and the following is added:

“(c) a notified foreign investor in a foreign investment PIE.”
- (2) In section HM 51, in the list of defined terms, “foreign investment PIE” and “notified foreign investor” are inserted.
- (3) **Subsection (1)** applies for the 2012–13 and later income years for a foreign investment PIE and a notified foreign investor when the PIE applies a variable investor rate to income attributed to the investor.

18G Use of tax credits other than foreign tax credits by PIEs

- (1) In section HM 53(1)(b)(ii), “zero-rated.” is replaced by “zero-rated.” and the following is added:

“(iii) a notified foreign investor in a foreign investment PIE, in relation to a credit that is an imputation credit.”
- (2) In section HM 53, in the list of defined terms, “foreign investment PIE”, “imputation credit”, and “notified foreign investor” are inserted.

- (3) **Subsection (1)** applies for the 2012–13 and later income years for a foreign investment PIE and a notified foreign investor when the PIE applies a variable investor rate to income attributed to the investor.

18H New heading and sections HM 55B to HM 55H

- (1) After section HM 55, the following heading and sections are inserted:

“Special rules for foreign investment PIEs

“HM 55B Modifications to entry rules for foreign investment PIEs

“What this section does

- “(1) This section provides modifications to the entry rules for a multi-rate PIE that chooses under **section HM 71B** to become a foreign investment PIE.

“Special requirements

- “(2) For an entity to become a foreign investment PIE, it must meet the entry rules set out in section HM 7, modified by the following paragraphs and **subsection (3)**:

“(a) the investment type of a foreign investment PIE must not be an interest in land in New Zealand, and section HM 11(a) does not apply:

“(b) a foreign investment PIE must not derive income from an interest in land in New Zealand, and section HM 12(a) does not apply to the extent to which the income is derived from property referred to in section HM 11 that is an interest in land in New Zealand:

“(c) a foreign investment PIE must not derive income from a lease of land in New Zealand, and section HM 12(b)(iv) does not apply:

“(d) a foreign investment PIE must not derive income from the disposal of an interest in land in New Zealand, and section HM 12(b)(v) does not apply to the extent to which the income is derived from a disposal of an interest in land in New Zealand:

“(e) a foreign investment PIE must not invest in a land investment company and section HM 13(1)(c) does not apply:

“(f) the provisional tax calculation option in section HM 44 must not be used to calculate the PIE’s income tax liability.

“When PIE derives only foreign-sourced and allowable amounts

- “(3) If a foreign investment PIE derives an amount referred to in **section HM 55F(2)(a)** and no other amount,—

- “(a) despite **subsection (2)(a) to (d)**, the requirements of sections HM 11 and HM 12 do not apply:
- “(b) the PIE meets the requirements of section HM 8 if it—
 - “(i) is a unit trust to which the Unit Trusts Act 1960 applies; and
 - “(ii) has a trustee who is resident in New Zealand.

“Defined in this Act: foreign investment PIE, group of companies, income, income tax liability, interest, land, land investment company, lease, multi-rate PIE, New Zealand, provisional tax, resident in New Zealand, trustee, unit trust

“**HM 55C Modified source rule**

Despite section YD 4(2) (Classes of income treated as having New Zealand source), income attributed to a notified foreign investor by a foreign investment PIE is not treated as having a source in New Zealand merely because the business of the PIE is carried on in New Zealand.

“Defined in this Act: business, foreign investment PIE, income, New Zealand, notified foreign investor

“**HM 55D Requirements for investors in foreign investment PIEs**

“*What this section does*

- “(1) This section applies to determine the treatment of a non-resident person who is an investor in a multi-rate PIE that chooses under **section HM 71B** to become a foreign investment PIE. This section overrides section HM 32(1).

“*Notification*

- “(2) If the person meets the requirements of **subsections (3) and (4)**, they may notify the PIE that they wish to be treated as a notified foreign investor.

“*Status requirements*

- “(3) The person must not be—
 - “(a) resident in New Zealand; or
 - “(b) a CFC; or
 - “(c) a non-resident trustee of a trust that is not a foreign trust.

“*Information requirements*

- “(4) The person must provide the PIE with the information set out in **section 28D(1)** of the Tax Administration Act 1994.

“*Non-residents’ rates*

- “(5) If the person does not meet the requirements of **subsections (3) and (4)**, the PIE must treat them as a non-resident person to whom **schedule 6, table 1, row 2** (Prescribed rates: PIE investments and retirement scheme contributions) applies.

“When status may be disregarded

- “(6) The Commissioner may advise a PIE to disregard notification by an investor under **subsection (2)** if the Commissioner considers on reasonable grounds that the person does not meet or no longer meets the requirements of **subsections (3) and (4)**. As soon as reasonably practicable after receiving the advice, the PIE must treat the investor as a non-resident person described in **subsection (5)**.

“Cancelling status

- “(7) A notified foreign investor who wishes to have their notified foreign investor status cancelled, must notify the PIE. The status may be cancelled at any time.

“Transitional residents

- “(8) Despite **subsection (3)(a)**, a transitional resident who is an investor in a foreign investment PIE to which **section HM 55F(3)** applies may choose the prescribed investor rate set out in **schedule 6, table 1, row 10**.

“Defined in this Act: CFC, Commissioner, foreign investment PIE, foreign trust, multi-rate PIE, non-resident, notified foreign investor, notify, resident in New Zealand, transitional resident, trustee

“HM 55E Changes in status of investors in foreign investment PIEs*“When subsection (2) applies*

- “(1) **Subsection (2)** applies when a person who is a notified foreign investor in a foreign investment PIE—
- “(a) becomes resident in New Zealand in a tax year; or
 - “(b) cancels their notified foreign investor status in a tax year under **section HM 55D(7)**.

“Non-residents

- “(2) For tax years after the tax year in which the person notifies the PIE of the change in their status, the person must include all PIE income that is attributed to them as a notified foreign investor in their return of income for the relevant tax year, and the income is not excluded income under section CX 56 (Attributed income of certain investors in multi-rate PIEs).

“When subsection (4) applies

- “(3) **Subsection (4)** applies when—
- “(a) a person—
 - “(i) is resident in New Zealand but becomes non-resident in a tax year; and
 - “(ii) is an investor in a foreign investment PIE; and
 - “(iii) after becoming non-resident, chooses to have notified foreign investor status under **section HM 55D(2)**:

“(b) a person who is a notified foreign investor cancels their status in a tax year under **section HM 55D(7)** and notifies the foreign investment PIE of the change in status.

“*Time for changing treatment*

“(4) The PIE must change the treatment of the person as soon as reasonably practicable. But, at the latest, the change must be made from the start of the following tax year.

“Defined in this Act: attributed PIE income, excluded income, foreign investment PIE, non-resident, notified foreign investor, resident in New Zealand, return of income, tax year

“**HM 55F Treatment of income attributed to notified foreign investors**

“*What this section does*

“(1) This section applies for a foreign investment PIE for the purposes of the calculations that must be made under sections HM 36 and HM 47 in relation to the income attributed to, or the income tax liability of, a notified foreign investor in the PIE.

“*Income*

“(2) For the purposes of this section, the PIE is treated as deriving either—

“(a) an amount that—

“(i) is a foreign-sourced amount:

“(ii) may include an allowable amount that meets the requirements of **section HM 55G**; or

“(b) an amount referred to in **paragraph (a)** and other amounts.

“*Deriving only foreign-sourced amounts*

“(3) If the PIE derives an amount referred to in **subsection (2)(a)** and no other amount, the PIE is not required to identify the income source or investment type, but may apply a prescribed investor rate of 0% under **schedule 6, table 1, row 9** (Prescribed rates: PIE investments and retirement scheme contributions) to all sources and types of income attributed to the investor.

“*Deriving amounts above threshold*

“(4) If the PIE derives an amount referred to in **subsection (2)(b)**, the PIE must, for all amounts attributed to the investor,—

“(a) identify the income source and investment type of each amount; and

“(b) apply the relevant prescribed investor rate set out in **schedule 6, table 1B** to the amount.

“Defined in this Act: amount, foreign investment PIE, foreign-sourced amount, income, income tax liability, notified foreign investor, prescribed investor rate

**“HM 55G Allowable amounts and thresholds for income with
New Zealand source**

For the purposes of **sections HM 55B, HM 55F, HM 55H,
and schedule 6** (Prescribed rates: PIE investments and re-
tirement scheme contributions) and for a foreign investment
PIE, the allowable amounts of income that have a source in
New Zealand and the thresholds applying to the amounts are—

- “(a) interest income from financial arrangements with a term
of 90 days or less, for which the total value of the finan-
cial arrangements must not be more than 5% of the total
value of the PIE’s investments:
- “(b) a dividend paid by a company resident in New Zealand,
for which the total value of all the shares held by the PIE
in companies resident in New Zealand must not be more
than 1% of the total value of the PIE’s investments:
- “(c) attributed PIE income that is—
 - “(i) a foreign-sourced amount:
 - “(ii) an amount described in **paragraph (a)**.

“Defined in this Act: amount, attributed PIE income, company, dividend, fi-
nancial arrangement, foreign investment PIE, foreign-sourced amount, income,
interest, New Zealand, resident in New Zealand

**“HM 55H Treatment when certain requirements for foreign
investment PIEs not met**

“When thresholds exceeded: PIE applying zero rates

- “(1) **Subsection (2)** applies for an income year when—
 - “(a) a foreign investment PIE—
 - “(i) derives an amount of income described in **sec-
tion HM 55F(2)(a)**; and
 - “(ii) applies a prescribed investor rate of 0% under
section HM 55F(3) for notified foreign in-
vestors in the PIE; and
 - “(b) on the last day of a quarter, a threshold set out in **sec-
tion HM 55G(a) and (b)** for allowable amounts of in-
come is exceeded; and
 - “(c) the failure is not remedied by the last day of the next
quarter.

“Variable rates

- “(2) The foreign investment PIE is treated from the first day of the
third quarter as a foreign investment PIE to which **section
HM 55F(4)** applies, and must apply to each amount of income
the variable investor rates under **schedule 6, table 1B** for all
income sources and investment types.

“When requirements not met: PIE applying variable rates

- “(3) **Subsection (4)** applies for an income year when—
 - “(a) a foreign investment PIE—

- “(i) derives an amount of income described in **section HM 55F(2)(b)**; and
 - “(ii) applies a variable investor rate under **section HM 55F(4)** for notified foreign investors in the PIE; and
 - “(b) on the last day of a quarter, the PIE does not meet—
 - “(i) the requirements of **section HM 55F(4)**;
 - “(ii) a requirement of **section HM 55B**; and
 - “(c) the failure is not remedied by the last day of the next quarter.
- “*Multi-rate PIE*
- “(4) The foreign investment PIE is treated from the first day of the third quarter as a multi-rate PIE that is not a foreign investment PIE.
 - “Defined in this Act: amount, foreign investment PIE, income, income year, multi-rate PIE, notified foreign investor, prescribed investor rate, quarter”.
 - (2) **Subsection (1)** applies for the 2012–13 and later income years for a foreign investment PIE and a notified foreign investor when the PIE applies a variable investor rate to income attributed to the investor.

Clause 19

New subclause (1B): to insert, after *subclause (1)* (after line 35 on page 10), the following:

- “(1B) In section HM 56(1), ‘table 1’ is replaced by ‘**tables 1 and 1B**’.”

New clauses 20B to 20G

To insert, after *clause 20* (after line 33 on page 11), the following:

20B Notified investor rates

- (1) In section HM 60(1), “an investor” is replaced by “an investor other than a notified foreign investor”.
- (2) In section HM 60, in the list of defined terms, “notified foreign investor” is inserted.

20C Certain exiting investors zero-rated

- (1) In section HM 61, the following is inserted after the section heading as a subsection heading:
 - “*When tax rate zero*”.
- (2) In section HM 61, the following is added as subsection (2):
 - “*Notified foreign investors*
- “(2) This section does not apply if the exiting investor is a notified foreign investor in a foreign investment PIE.”
- (3) In section HM 61, in the list of defined terms, “foreign investment PIE” and “notified foreign investor” are inserted.

- (4) **Subsection (2)** applies for the 2012–13 and later income years for a foreign investment PIE and a notified foreign investor when the PIE applies a variable investor rate to income attributed to the investor.

20D Use of investor classes’ losses

- (1) After section HM 64(3), the following is added:
“Foreign investment PIEs
- “(4) This section does not apply in relation to an investor who is a notified foreign investor in a foreign investment PIE.”
- (2) In section HM 64, in the list of defined terms, “foreign investment PIE” and “notified foreign investor” are inserted.

20E Use of land losses of investor classes

- (1) After section HM 65(4), the following is added:
“Foreign investment PIEs
- “(5) This section does not apply in relation to an investor who is a notified foreign investor in a foreign investment PIE.”
- (2) In section HM 65, in the list of defined terms, “foreign investment PIE” and “notified foreign investor” are inserted.

20F New section HM 71B

After section HM 71, the following is inserted:

“HM 71B Choosing to become foreign investment PIE

“What this section applies to

- “(1) This section applies to an entity that, at the time of the election referred to in **subsection (2)**,—
- “(a) meets the requirement of the entry rules in sections HM 8 to HM 17, and HM 20, to become a multi-rate PIE; and
- “(b) meets the requirements of the modifications set out in **section HM 55B**.

“Election to become foreign investment PIE

- “(2) The entity may choose to become a foreign investment PIE by advising the Commissioner of their election. If the entity is not an existing multi-rate PIE, the entity must notify the Commissioner under section 31B of the Tax Administration Act 1994.

“Defined in this Act: Commissioner, foreign investment PIE, multi-rate PIE, notify”.

20G When elections take effect

- (1) In section HM 72(1), “section HM 71 to become a PIE” is replaced by “section HM 71 or **HM 71B** to become a PIE or a foreign investment PIE, as applicable”.
- (2) In section HM 72, in the list of defined terms, “foreign investment PIE” is inserted.

Clause 22

New subclauses (3) and (4): to insert, after *subclause (2)* (after line 25 on page 12), the following:

- (3) After section IC 3(2C), the following is inserted:
“*When foreign investment PIEs included in group*
“(2D) For the purposes of subsection (2B)(b), a multi-rate PIE that chooses under **section HM 71B** (Choosing to become foreign investment PIE) to become a foreign investment PIE, must not be part of a group of companies that includes a land investment company.
“(4) In section IC 3, in the list of defined terms, ‘foreign investment PIE’ and ‘listed PIE’ are inserted. ”

New clauses 24B and 24C

To insert, after *clause 24* (after line 8 on page 14), the following:

24B Tax credits for multi-rate PIEs

- (1) After section LS 1(2)(a)(ii), the following is inserted:
“(iii) a notified foreign investor in a foreign investment PIE in relation to an imputation credit attached to a dividend derived by the PIE:”.
- (2) In section LS 1, in the list of defined terms, “foreign investment PIE” and “notified foreign investor” are inserted.
- (3) **Subsection (1)** applies for the 2012–13 and later income years for a foreign investment PIE and a notified foreign investor when the PIE applies a variable investor rate to income attributed to the investor.

24C Tax credits for investors in multi-rate PIEs

- (1) Section LS 2(1)(c), is replaced by the following:
“(c) the income is not excluded income because—
“(i) the test in section CX 56(1)(b) (Attributed income of certain investors in multi-rate PIEs) is not met:
“(ii) section CX 56(2)(b) or (c) applies.”
- (2) **Subsection (1)** applies for the 2012–13 and later income years for a foreign investment PIE and a notified foreign investor when the PIE applies a variable investor rate to income attributed to the investor.

Clause 36

New subclause (1B): to insert, after *subclause (1)* (after line 2 on page 23), the following:

- (1B) The following is inserted in its appropriate alphabetical order:
- “**foreign investment PIE** means a multi-rate PIE that—
 - “(a) meets the requirements of **sections HM 55B to HM 55H** (which relate to the particular requirements for and treatment of foreign investment PIEs); and
 - “(b) chooses under **section HM 71B** (Choosing to become a foreign investment PIE) to become a foreign investment PIE”.

New subclauses (2B) and (2C): to insert, after *subclause (2)* (after line 6 on page 23), the following:

- (2B) The following are inserted in their appropriate alphabetical order:
- “**notified foreign investor** means an investor in a foreign investment PIE who—
 - “(a) meets the requirements of **sections HM 55D(3) and (4)** (Requirements for investors in foreign investment PIEs); and
 - “(b) notifies the PIE under **section HM 55D(2)** that they wish to be treated as a notified foreign investor”.
- (2C) In the definition of **PIE rules**,—
- (a) after paragraph (a)(iii), the following is inserted:
“(iiib) **section CQ 5(6)** (When FIF income arises):”;
 - (b) in paragraph (a)(v), “and DB 54” is replaced by “to **DB 54B**”;
 - (c) after paragraph (a)(v), the following is inserted:
“(vb) **section EX 20B(3)(o)** (Attributable CFC amount):
“(vc) **section EX 29(6)** (Attributing interests in FIFs):”;
 - (d) in paragraph (a)(viii), “IC 3(2B)” is replaced by “IC 3(2B) to **(2D)**”;
 - (e) in paragraph (b), “28B” is replaced by “28B, **28D**”.

New clause 40B

To insert, after *clause 40* (after line 31 on page 24), the following:

40B Schedule 6—Prescribed rates: PIE investments and retirement scheme contributions

- (1) Schedule 6, table 1, row 2 is replaced by the following:

Row	Conditions	Prescribed rate
2	For a non-resident person other than a person described in row 7B or 9 .	0.280

- (2) In schedule 6, table 1, the following are inserted in their correct order in the table:

Row	Conditions	Prescribed rate
7B	For a non-resident person who is a notified foreign investor in a foreign investment PIE that derives an amount referred to in section HM 55F(2)(b) , see table 1B for the applicable rate for the amount of income.	variable
9	For a non-resident person who is a notified foreign investor in a foreign investment PIE that derives an amount referred to in section HM 55F(2)(a) and no other amount.	0.000
10	For a transitional resident who is an investor in a foreign investment PIE that derives an amount referred to in section HM 55F(2)(a) and no other amount.	0.000

- (3) After schedule 6, clause 1, table 1, the following is inserted:

“1B Foreign investment PIEs and notified foreign investors

“A foreign investment PIE must apply the prescribed investor rates set out in **table 1B** in relation to income attributed to notified foreign investors in the PIE when the PIE derives income that is an amount referred to in **section HM 55F(2)(b)**.”

Table 1B

Row	Amounts	Prescribed rate
1	To the extent to which it is not fully imputed, a dividend derived from a company resident in New Zealand attributed to an investor who does not reside in a country with which New Zealand has a double tax agreement.	0.3000
2	An amount other than an amount referred to in rows 1, and 3 to 5, that has a source in New Zealand.	0.2800
3	To the extent to which it is not fully imputed, a dividend derived from a company resident in New Zealand attributed to an investor who resides in a country with which New Zealand has a double tax agreement.	0.1500

4	An amount derived under a financial arrangement calculated under subpart EW when the amount has a source in New Zealand.	0.0144
5	A fully imputed dividend derived from a company resident in New Zealand.	0.0000
6	A foreign-sourced amount.	0.0000

(4) **Subsections (1) to (3)** apply for the 2012–13 and later income years for a foreign investment PIE and a notified foreign investor when the PIE applies a variable investor rate to income attributed to the investor.

New clauses 57B to 57D

To insert, after *clause 57* (after line 12 on page 30), the following:

57B New section 28D

After section 28C, the following is inserted:

“28D Information required from notified foreign investors

- “(1) In order to become a notified foreign investor in a foreign investment PIE, a non-resident person must provide the PIE with the following information:
- “(a) their full name:
 - “(b) their date of birth:
 - “(c) their home address in the country or territory where they reside for tax purposes:
 - “(d) the country code for the country or territory where they reside for tax purposes:
 - “(e) the equivalent of their tax file number in the country or territory where they reside for tax purposes, or a declaration if they are unable to provide this number:
 - “(f) their tax file number in New Zealand, if applicable.
- “(2) The Commissioner may add to or change the list of information requirements set out in **subsection (1)** from time to time.”

57C Notification requirements for PIEs

In section 31B(1),—

- (a) “section HM 71” is replaced by “section HM 71 or **HM 71B**”:
- (b) “a PIE” is replaced by “a PIE or a foreign investment PIE, as applicable”.

57D Notification requirements for multi-rate PIEs

- (1) In section 31C(5), “of that Act.” is replaced by “of that Act. However, this subsection does not apply in relation to a foreign investment PIE and a notified foreign investor.”

- (2) After section 31C(6), the following is added:
- “(7) A foreign investment PIE must ask a person who is a notified foreign investor in the PIE at least once a year to confirm that—
- “(a) their status requirements under **section HM 55D(3)** of the Income Tax Act 2007 are met; and
 - “(b) their information details required under **section 28D(1)** are unchanged.
- “(8) If the PIE receives no response to its request under **subsection (7)**, they may continue to treat the investor as a notified foreign investor, if that is their existing treatment.”
-

Explanatory note

This Supplementary Order Paper changes the *Taxation (Tax Administration and Remedial Matters) Bill*. The changes relate to the treatment of non-resident investment in portfolio investment entities and are intended to ensure that non-resident investors in PIEs are taxed in a similar way on their PIE income as if they invested directly. Certain multi-rate PIEs will be able to choose to become foreign investment PIEs and treat their notified foreign investors as having either a prescribed investment rate of 0% (if the PIE earns only foreign-sourced income), or a variable rate that depends on the income source or investment type of the income they earn (if they earn both foreign-sourced income and other amounts). *New clause 3B* amends *section CP 1 of the Income Tax Act 2007* to update the cross-references for the new foreign investment rules.

New clause 3C amends *section CQ 5 of the Income Tax Act 2007* to insert a new subsection related to the new foreign investment rules and FIF income.

New clause 4B amends *section CX 56 of the Income Tax Act 2007* to provide for the treatment of excluded income of certain foreign investors under the new foreign investment rules.

New clause 4C amends *section CX 56B of the Income Tax Act 2007* to provide for the treatment of excluded income of certain foreign investors under the new foreign investment rules.

New clause 6B inserts *new section DB 54B of the Income Tax Act 2007* to provide the denial of a deduction for expenditure or loss related to certain foreign investors under the new foreign investment rules.

New clause 10B amends *section EX 20B of the Income Tax Act 2007* related to the new foreign investment rules and CFC income.

New clause 10C amends *section EX 29 of the Income Tax Act 2007* related to the new foreign investment rules and FIF income.

New clause 15B amends *section HM 1 of the Income Tax Act 2007* to provide a cross-reference to a provision in the new foreign investment rules.

New clause 15C amends *section HM 2 of the Income Tax Act 2007* to provide a general rule for the interpretation of the new foreign investment rules.

New clause 15D amends section HM 6 of the Income Tax Act 2007 to outline the intended effects for foreign investment PIEs and their investors.

New clause 15E amends section HM 7 of the Income Tax Act 2007 to insert a cross-reference to a provision in the new foreign investment rules.

New clause 16B amends section HM 31 of the Income Tax Act 2007 to insert a roadmap provision for the new foreign investment rules in subpart HM.

New clause 16C amends section HM 32 of the Income Tax Act 2007 related to the new foreign investment rules and the tax rates applying for notified foreign investors.

New clause 16D amends section HM 33 of the Income Tax Act 2007 related to the new foreign investment rules and proxies for investors in foreign investment PIEs.

New clause 16E inserts new section HM 35C of the Income Tax Act 2007 to provide for the way amounts are calculated for notified foreign investors under the new foreign investment rules.

New clause 18B amends section HM 41 of the Income Tax Act 2007 related to the new foreign investment rules and the options that a foreign investment PIE has for calculating and paying tax.

New clause 18C amends section HM 44 of the Income Tax Act 2007 related to the new foreign investment rules to exclude PIEs that use the provisional tax calculation option.

New clause 18D inserts new section HM 44B of the Income Tax Act 2007 related to the new foreign investment rules, providing an option for a foreign investment PIE to calculate and pay tax under the NRWT rules for certain income.

New clause 18E amends section HM 47 of the Income Tax Act 2007 related to the new foreign investment rules and the calculation of tax liabilities and tax credits for certain foreign investors.

New clause 18F amends section HM 51 of the Income Tax Act 2007 to exclude certain foreign investors from the application of the provision.

New clause 18G amends section HM 53 of the Income Tax Act 2007 to exclude certain foreign investors from the application of the provision.

New clause 18H inserts new sections HM 55B to HM 55H of the Income Tax Act 2007 related to the new foreign investment rules and the modified entry and exit rules for foreign investment PIEs, the requirements for notified foreign investors, and the treatment and categorisation of income derived by foreign investment PIEs.

In clause 19, new subclause (1B) inserts a cross-reference related to the new foreign investment rules and prescribed investor rates.

New clause 20B amends section HM 60 of the Income Tax Act 2007 to exclude certain foreign investors from the application of the provision.

New clause 20C amends section HM 61 of the Income Tax Act 2007 to exclude certain foreign investors from the application of the provision.

New clause 20D amends section HM 64 of the Income Tax Act 2007 to exclude certain foreign investors from the application of the provision.

New clause 20E amends section HM 65 of the Income Tax Act 2007 to exclude certain foreign investors from the application of the provision.

New clause 20F inserts new section HM 71B of the Income Tax Act 2007 related to the new foreign investment rules and how a multi-rate PIE chooses to become a foreign investment PIE.

New clause 20G amends section HM 72 of the Income Tax Act 2007 to insert a cross-reference to the new foreign investment rules.

In clause 22, new subclauses (3) and (4) insert a new section IC 3(2D) related to the new foreign investment rules and groups of companies.

New clause 24B amends section LS 1 of the Income Tax Act 2007 to exclude certain foreign investors from the application of the provision.

New clause 24C amends section LS 2 of the Income Tax Act 2007 related to the new foreign investment rules and the treatment of tax credits related to excluded income.

In clause 36, which amends section YA 1 of the Income Tax Act 2007: new subclause (1B) inserts a definition of foreign investment PIE, as part of the amendments related to the new foreign investment rules; new subclause (2B) inserts a new definition of notified foreign investor as part of the amendments related to the new foreign investment rules, and new subclause (2C) amends the definition of PIE rules.

New clause 40B amends schedule 6, table 1 of the Income Tax Act 2007 related to the new foreign investment rules providing prescribed investor rates for certain foreign investors, and inserts a new clause 1B and table 1B providing the rates applying in relation to notified foreign investors and income from certain sources.

New clause 57B inserts new section 28D of the Tax Administration Act 1994 related to the information that a notified foreign investor must provide to the PIE for the purposes of the new foreign investment rules.

New clause 57C amends section 31B of the Tax Administration Act 1994 to insert a cross-reference to the new foreign investment rules.

New clause 57D amends section 31C of the Tax Administration Act 1994 related to the new foreign investment rules and the confirmation of details relating to notified foreign investors in foreign investment PIEs.