

House of Representatives
Supplementary Order Paper

Tuesday, 11 December 2012

Taxation (Livestock Valuation, Assets Expenditure,
and Remedial Matters) Bill

Proposed amendments

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

Clause 2

Subclause (2): replace “**106**” (line 8 on page 8) with “**105B, 106**”.

Subclause (4): replace “**12, 13, 25, 27, 32, 36, 37**” (line 12 on page 8) with “**10B, 12, 13, 25, 27, 31B, 32, 36, 36C, 36E, 36F, 37, 37B, 37C, 37D, 39D**”.

Subclause (4): replace “**and 58**” (line 13 on page 8) with “**58, and 67D**”.

Subclause (6): replace “**Section 23** is” (line 17 on page 8) with “**Sections 23 and 36D** are”.

New subclause (7B): after *subclause (7)* (after line 18 on page 8), insert:

(7B) **Section 36B** is treated as coming into force on 23 November 2010.

New subclause (9B): after *subclause (9)* (after line 22 on page 8), insert:

(9B) **Section 34E** is treated as coming into force on 1 October 2011.

Subclauses (12) to (14): replace *subclauses (12) to (14)* (lines 1 to 8 on page 9), with:

(12) **Sections 22 and 60** are treated as coming into force on 13 September 2012.

(12B) **Section 33B** is treated as coming into force on 27 September 2012.

(13) **Section 57(5)** is treated as coming into force on 1 October 2012.

(14) **Section 94** is treated as coming into force on 2 November 2012.

(14B) **Sections 12B, 34B, 57(1B), (19C), (19D), (23B), (25B), (25C), (25D), and (25E), 57B, 74(2) and (3), and 94B** are treated as coming into force on 31 December 2012.

Subclause (15): replace “**4, 6, 7, 9, 10, 15, 16, 17, 19, 24**” (line 9 on page 9) with “**4, 4B, 6, 7, 9, 10, 15, 16, 17, 17B, 19, 24, 25B, 32B**”.

Subclause (15): replace “**(20)**” (line 12 on page 9) with “**(19B), (20)**”.

Subclause (17): replace “**68**” (line 16 on page 9) with “**12C, 12D, 13B, 13C, 13D, 39B, 39C, 44B, 44C, 44D, 44E, 44F, 57(5B), (8B), (23C), (23D), and (23E), 67B, 67C, and 68**”.

New clauses 4B and 4C

After *clause 4* (after line 34 on page 9), insert:

4B Section CC 1B and CC 1C inserted

(1) After section CC 1, insert:

“CC 1B Consideration for agreement to grant, renew, extend, or transfer leasehold estate or licence

“When this section applies

“(1) This section applies when a person (the **payee**) derives an amount as consideration for the agreement by the payee to the grant, renewal, extension, or transfer of a right (the **land right**) that is a leasehold estate, or a licence to use land.

“Exception for payment to holder by transferee

“(2) This section does not apply to an amount derived—
“(a) by the payee as the holder of a land right; and
“(b) as consideration for the transfer of the land right to the person paying the amount.

“Income

“(3) The amount is income of the payee.

“Exception for tenant of residential premises

“(4) The amount is not income of the payee to the extent that the payee derives the amount as a tenant of residential premises.

“Defined in this Act: amount, income, land, leasehold estate, pay

“CC 1C Consideration for agreement to surrender leasehold estate or terminate licence

“When this section applies

“(1) This section applies when a person (the **payee**) derives an amount as consideration for the agreement by the payee to the surrender of a leasehold estate or the termination of a licence to use land, and the payee is—

“(a) the person who owns the estate in land from which the leasehold estate or licence is granted:

“(b) the person who owns the leasehold estate or licence.

“Income

“(2) The amount is income of the payee.

“Exception for tenant of residential premises

“(3) The amount is not income of a payee to the extent that the payee derives the amount as a tenant of residential premises.

“Defined in this Act: amount, income, land, leasehold estate, own”.

(2) **Subsection (1)** applies to an amount that is—

(a) derived on or after 1 April 2013; and

(b) not derived as consideration for the agreement, before 1 April 2013, to a lease of land or a licence to use land.

New clause 10B

After *clause 10* (after line 11 on page 12), insert:

10B Section CW 16 amended (Allowance of Governor-General and other benefits and privileges)

After section CW 16(b), insert as a list of defined terms “exempt income”.

New clauses 12B to 12D

After *clause 12* (after line 6 on page 13), insert:

12B New heading and section CW 65 (New Zealand Railways Corporation restructure: exempt income)

After section CW 64, insert:

“Restructuring under New Zealand Railways Corporation Restructuring Act 1990

“CW 65 New Zealand Railways Corporation restructure: exempt income

“Railways vesting and land-related payments

“(1) The following are exempt income of KiwiRail Holdings Limited and any company in which it directly or indirectly owns 100% of the shares (**wholly-owned subsidiary**):

“(a) an amount derived from the Railways vesting:

“(b) an amount derived by KiwiRail Holdings Limited or a wholly-owned subsidiary in relation to—

“(i) a disposal or grant of land, if that land is owned on 31 December 2012 by the Crown or New Zealand Railways Corporation:

“(ii) the termination or variation of a lease granted by the Crown or New Zealand Railways Corporation over land, if that land is owned on 31 December 2012 by the Crown or New Zealand Railways Corporation.

“Meaning of Railways vesting

- “(2) In this section, **Railways vesting** has the same meaning as in **section EZ 68** (Definitions).

“Defined in this Act: amount, company, dispose, exempt income, land, lease, Railways vesting, share”.

12C Section CX 2 amended (Meaning of fringe benefit)

In section CX 2(1)(b)(i), after “CX 9,” insert “**CX 9B**,”.

12D Section CX 9B inserted (Some parking for motor vehicles)

After section CX 9, insert:

“CX 9B Some parking for motor vehicles

“When fringe benefit may arise

- “(1) A fringe benefit may arise on a day when an employer makes a parking space available to an employee if—

“(a) the parking space is in an urban area specified by **subsection (5)** or by the Governor-General by Order in Council under **subsection (6)**:

“(b) the parking space is provided to the employer—

“(i) by a commercial car park operator; and

“(ii) for consideration of more than an amount specified by **subsection (5)** or by the Governor-General by Order in Council under **subsection (6)**:

“(c) the employee would be entitled to a greater amount of employment income should the employee choose, or have chosen, not to receive the benefit of the parking space.

“Fringe benefit from allocated parking space

- “(2) A fringe benefit of 1 parking space arises on a day when the employer makes available to the employee a parking space that is allocated to the sole use of the employee, if the use of the parking space is not restricted to a business or certificated vehicle.

“Fringe benefit from unallocated parking space

- “(3) A fringe benefit arises on a day, from the availability of a pool parking space for an employee, of—

“(a) 1 parking space, if the number of pool parking spaces is equal to or greater than the total number of pool parking users and **paragraphs (b) and (c)** do not apply; or

“(b) zero, if the employee is restricted to the use of a pool parking space for parking outside the hours between 6 am and 10 pm; or

“(c) zero, if the number of pool parking spaces is equal to or greater than the number of pool parking users and the

employee is restricted to the use of a pool parking space for parking a business or certificated vehicle; or

- “(d) a fraction of a parking space, if the number of pool parking spaces is less than the number of pool parking users and **paragraph (b)** does not apply, with the fraction calculated using the formula—

$$\frac{\text{parking ratio} \times (\text{day users} - \text{business})}{(\text{day users})}.$$

“*Definition of items in formula*

- “(4) In the formula—

“(a) **parking ratio** means—

“(i) 1, if the item **day users** is less than or equal to the number of pool parking spaces on the day; or

“(ii) the number of pool parking spaces on the day divided by the item **day users**, if **subparagraph (i)** does not apply:

“(b) **day users** means the number of pool users whose hours of employment on the day both begin and end in the period from 6 am to 10 pm:

“(c) **business** means the number of pool parking users who, on the day, are restricted to the use of a pool parking space for parking a business or certificated vehicle in the period from 6 am to 10 pm.

“*Urban areas and amounts charged for parking spaces*

- “(5) Subject to an Order in Council under **subsection (6)**,—

“(a) the urban areas referred to in **subsection (1)(a)** include—

“(i) the Central Area as defined in the Central Area Section of the Auckland Council District Plan—Operative Auckland City:

“(ii) the Central Area as defined in the Wellington City District Plan:

“(b) the amount of consideration referred to in **subsection (1)(b)** for the provision of a parking space by a commercial parking operator to the employer is \$210 per month.

“*Orders in Council*

- “(6) The Governor-General may from time to time, by Order in Council,—

“(a) add an urban area to the urban areas referred to in **subsection (1)(a)**:

“(b) remove an urban area from the urban areas referred to in **subsection (1)(a)**:

“(c) set or vary the boundaries of an urban area referred to in **subsection (1)(a)**:

“(d) set or vary an amount referred to in **subsection (1)(b)(ii)**.

“*Definitions*

“(7) In this Act, for an employer,—

“**business or certificated vehicle** means a motor vehicle that has a valid disabled parking permit, is a work-related vehicle, or is a car that the employer—

“(a) owns, or leases from a person other than an employee or person associated with an employee; and

“(b) makes available to more than 1 employee for business purposes during business hours; and

“(c) does not make available for the private use of the employee, other than for travel that arises incidentally to travel for business purposes and is not travel between the employee’s work place and the employee’s place of residence

“a **commercial car park operator** is a person who carries on a business of providing, for a fee, areas available for use by a member of the public in parking a motor vehicle for a continuous period of 6 hours or more within the period from 7 am to 7 pm

“**parking space** means an area for parking 1 motor vehicle

“**pool parking space** means a parking space that on the day is not allocated by the employer to—

“(a) the sole use of an employee; or

“(b) the sole use of persons other than an employee

“**pool parking user** means an employee of the employer who on the day may park a motor vehicle in a pool parking space.

“Defined in this Act: associated, business, business or certificated vehicle, commercial car park operator, employee, employer, employment, employment income, fringe benefit, motor vehicle, parking space, pool parking space, pool parking user, private use, work-related vehicle”.

New clauses 13B to 13D

After *clause 13* (after line 20 on page 13), insert:

13B Section CX 23 amended (Benefits provided on premises)

In section CX 23(1), words before paragraph (a), replace “accommodation” with “accommodation, parking for a motor vehicle”.

13C Section CX 25 amended (Benefits provided by charitable organisations)

(1) Replace section CX 25(2), other than the heading, with:

“(2) Subsection (1) does not apply, and the benefit provided is a fringe benefit, if a charitable organisation provides a benefit to an employee by way of short-term charge facilities and the

value of the benefit from the short-term charge facilities for the employee in a tax year is more than the lesser for the tax year of—

“(a) 5% of the employee’s salary or wages:

“(b) \$1,200.”

(2) Replace section CX 25(3)(a) and (b) with:

“(a) enables an employee to obtain goods or services that have no connection with the employer or its operations by—

“(i) buying or hiring the goods or services:

“(ii) charging the cost of the goods or services to an account:

“(iii) providing consideration other than money or money’s worth for the goods or services; and

“(b) places on the employer the liability for some or all of the payment or other consideration for the goods or services; and”.

(3) In section CX 25, list of defined terms, insert “employer”, “salary or wages”, and “tax year”.

13D Section CX 28B inserted (Parking for motor vehicles not within section CX 9B)

After section CX 28, insert:

“CX 28B Parking for motor vehicles not within section CX 9B

A benefit in the form of the availability of an area for parking a motor vehicle is not a fringe benefit except under **section CX 9B**.

“Defined in this Act: fringe benefit”.

New clause 17B

After *clause 17* (after line 24 on page 14), insert:

17B Sections DB 20B and DB 20C inserted

(1) After section DB 20, insert:

“DB 20B Consideration for agreement to grant, renew, extend, or transfer leasehold estate or licence

“When this section applies

“(1) This section applies when—

“(a) a person (the **payer**) incurs an amount of expenditure as consideration for the agreement by another person (the **payee**) to the grant, renewal, extension, or transfer of a right (the **land right**) that is a leasehold estate, or a licence to use land; and

“(b) the payer is the person who owns—

“(i) the land right:

“(ii) the estate in land from which the land right is granted; and

“(c) the payee is the person who is obtaining the land right.

“*Deduction*

“(2) The payer is allowed a deduction for the amount.

“*Relationship with subpart DA*

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

“Defined in this Act: amount, capital limitation, deduction, depreciable intangible property, estate, general limitation, general permission, land, leasehold estate, own

“DB 20C Consideration for agreement to surrender leasehold estate or licence

“*When this section applies*

“(1) This section applies when—

“(a) a person (the **payer**) incurs an amount of expenditure as consideration for the agreement by another person (the **payee**) to the surrender of a leasehold estate or the termination of a licence to use land; and

“(b) the payer is a person who owns the leasehold estate or licence or the estate in land from which the leasehold estate or licence is granted; and

“(c) the payee is a person who owns the leasehold estate or licence or the estate in land from which the leasehold estate or licence is granted.

“*Deduction*

“(2) The payer is allowed a deduction for the amount.

“*Relationship with subpart DA*

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

“Defined in this Act: amount, capital limitation, deduction, estate, general limitation, general permission, land, leasehold estate, own”.

(2) **Subsection (1)** applies to an amount that is—

(a) incurred on or after 1 April 2013; and

(b) not incurred as consideration for the agreement, before 1 April 2013, to a lease of land, or a licence to use land.

New clause 25B

After *clause 25* (after line 32 on page 43), insert:

25B Section EA 3 amended (Prepayments)

(1) After section EA 3(2)(d), insert:

- “(db) a leasehold estate, or licence to use land, to which **section EI 4B** (Consideration for agreement to grant, renew, extend, or transfer leasehold estate or licence) applies:”.
- (2) In section EA 3, list of defined terms, insert “land” and “leasehold estate”.

New clause 31B

After *clause 31* (after line 26 on page 48), insert:

31B Section EE 7 amended (What is not depreciable property?)

- (1) In section EE 7(a), replace “land” with “land other than depreciable intangible property”.
- (2) Replace section EE 7(e) with:
“(e) excepted financial arrangements other than depreciable intangible property:”.
- (3) In section EE 7, list of defined terms, insert “depreciable intangible property” and “land”.
- (4) **Subsections (1) and (2)** apply for the 2008–09 and later income years.

New clause 32B

After *clause 32* (after line 34 on page 48), insert:

32B Section EI 4B inserted (Consideration for agreement to grant, renew, extend, or transfer leasehold estate or licence)

- (1) After the heading following section EI 4, insert:
“EI 4B Consideration for agreement to grant, renew, extend, or transfer leasehold estate or licence
“When this section applies
“(1) This section applies when a person, in an income year, derives an amount that is income under **section CC 1B** (Consideration for agreement to grant, renew, extend, or transfer leasehold estate or licence), or incurs an amount of expenditure that is allowed as a deduction under **section DB 20B** (Consideration for agreement to grant, renew, extend, or transfer leasehold estate or licence), and the amount is incurred or derived—
“(a) in relation to a right (the **land right**) that is a leasehold estate or a licence to use land and may be terminated, or expires if not extended or renewed, after a period (the **spreading period**) beginning with the later of the commencement and the most recent renewal or extension; and
“(b) in relation to the spreading period.

- “Exception for amount of income under section CC 1 or CG 8*
- “(2) This section does not apply to an amount that is income under section CC 1 or CG 8 (which relate to income from land or capital contributions).
- “Timing of income and deductions for land right with spreading period*
- “(3) If the amount is incurred or derived—
- “(a) before the end of the spreading period, the amount is allocated in equal portions to each income year that—
- “(i) includes part of the spreading period; and
- “(ii) ends after the amount is incurred or derived; and
- “(iii) ends within 50 years from the beginning of the spreading period; and
- “(b) at or after the end of the spreading period, the amount is allocated to the income year in which it is incurred or derived.
- “Effect for income of person ceasing to have estate in land*
- “(4) If an amount of income would be allocated to a spreading period of a land right under **subsection (3)** for a person in the absence of this subsection, the amount is allocated to an income year (the **balance year**) ending before the end of the spreading period, if—
- “(a) at the beginning of the balance year, the person holds the land right, or the estate in land from which the land right is granted; and
- “(b) in the balance year, the person ceases to hold the land right, or the estate in land from which the land right is granted; and
- “(c) the amount would be allocated under **subsection (3)** to an income year—
- “(i) ending before, or including, the end of the spreading period; and
- “(ii) after the balance year.
- “Effect for deduction of person ceasing to have leasehold estate or licence*
- “(5) If an amount of a deduction would be allocated to a spreading period of a land right under **subsection (3)** for a person (the **affected person**) in the absence of this subsection, the amount is allocated to an income year (the **balance year**) ending before the end of the spreading period, if—
- “(a) at the beginning of the balance year, either or both of the land right and the estate in land from which the land right is granted are held by the affected person or a person associated with the affected person; and

- “(b) at the end of the balance year, neither of the land right and the estate in land from which the land right is granted are held by the affected person or a person associated with the affected person; and
- “(c) the amount would be allocated under **subsection (3)** to an income year—
 - “(i) ending before, or including, the end of the spreading period; and
 - “(ii) after the balance year.

“Relationship between subsections

- “(6) **Subsections (4) and (5)** override **subsection (3)**.

“Defined in this Act: amount, associated, deduction, estate, income, income year, land, leasehold estate, own”.

- (2) **Subsection (1)** applies to an amount that is—
 - (a) incurred or derived on or after 1 April 2013; and
 - (b) not incurred or derived as consideration for the agreement, before 1 April 2013, to a lease of land or a licence to use land.

New clause 33B

After *clause 33* (after line 2 on page 58), insert:

33B New section EW 32B inserted (Consideration in transfer or defeasance of short-term agreement for sale and purchase treated as financial arrangement)

- (1) After section EW 32, insert:

“EW 32B Consideration in transfer or defeasance of short-term agreement for sale and purchase treated as financial arrangement

“When this section applies

- “(1) This section applies for a short-term agreement for sale and purchase (the **agreement**) when—
 - “(a) a person (the **transferor**) with an interest in the agreement transfers the interest to, or makes a legal defeasance of the interest for the benefit of, another person (the **transferee**); and
 - “(b) a transferor or transferee (the **opting party**) chooses under section EW 8 to treat the agreement as a financial arrangement.

“Consideration

- “(2) For the opting party, the amount of consideration for the transfer or defeasance that is included in the calculation and allocation of an amount for each income year over the agreement’s term, and in the calculation of the base price adjustment for the agreement, is limited to the amount of consideration for the transfer or defeasance that relates to a sale or purchase,

under the agreement, occurring before the transfer or defeasance.

“Defined in this Act: amount, base price adjustment, consideration, financial arrangement, income, legal defeasance, short-term agreement for sale and purchase”.

- (2) **Subsection (1)** applies for a person and a short-term agreement for sale and purchase, except if the person takes a tax position for the short-term agreement for sale and purchase, relying on the provisions of subpart EW as they were before the amendment made by **subsection (1)**,—
- (a) in a return of income received by the Commissioner before 27 September 2012:
- (b) under a determination or binding ruling made by the Commissioner before 27 September 2012.

New clauses 34B to 34E

After *clause 34* (after line 8 on page 58), insert:

34B New heading and sections EZ 64 to EZ 68 inserted

After section EZ 63, insert:

*“Restructuring under New Zealand Railways
Corporation Restructuring Act 1990*

**“EZ 64 New Zealand Railways Corporation restructure:
purpose and initial amounts for tax purposes**

“Purpose

- “(1) The purpose of **this section, sections CW 65, EZ 65 to EZ 67, and YC 18C** (which relate to the New Zealand Railways Corporation restructure) is to ensure that the Railways vesting gives rise to no tax consequences other than those necessary to account for the vesting of the Railways assets and liabilities from a public authority to a state enterprise. The treatments of KiwiRail Holdings Limited, New Zealand Railways Corporation, and associated companies in those sections also applies for the purposes of the Tax Administration Act 1994.

“Depreciation

- “(2) For a Railways asset that is depreciable property, KiwiRail Holdings Limited calculates, on and after 31 December 2012, depreciation recovery income and deductions for amounts of depreciation loss as if KiwiRail Holdings Limited had acquired the asset on 31 December 2012 for the amount recorded in a schedule prepared by KiwiRail Holdings Limited for the purposes of this section.

“Financial arrangements: consideration

- “(3) KiwiRail Holdings Limited is treated as—

“(a) paying an amount of consideration, for a Railways asset that is a financial arrangement, equal to the amount recorded in KiwiRail Holdings Limited’s financial accounts for that arrangement on 31 December 2012:

“(b) being paid an amount of consideration, for a Railways liability that is a financial arrangement, equal to the amount recorded in KiwiRail Holdings Limited’s financial accounts for that arrangement on 31 December 2012.

“Financial arrangements: overrides

“(4) Sections EW 38, EW 42, and GB 21 (which relate to financial arrangements) do not apply for the Railways vesting.

“Defined in this Act: amount, assessable income, associate, company, consideration, depreciation loss, depreciable property, depreciation recovery income, financial arrangement, pay, public authority, Railways assets and liabilities, Railways vesting, state enterprise

“EZ 65 Expenditure or loss incurred, and amounts derived

“Expenditure or loss incurred, and amounts derived

“(1) KiwiRail Holdings Limited and New Zealand Railways Corporation are treated as the same person for the period prior to and including 31 December 2012 for the purpose of determining the following:

“(a) whether a deduction is allowed for an amount of expenditure or loss incurred by KiwiRail Holdings Limited in connection with the Railways assets or liabilities:

“(b) the amount of any deduction of KiwiRail Holdings Limited in connection with the Railways assets or liabilities:

“(c) whether an amount derived by KiwiRail Holdings Limited in connection with the Railways assets or liabilities is income:

“(d) the amount of any income of KiwiRail Holdings Limited in connection with the Railways assets or liabilities.

“Treatment of New Zealand Railways Corporation

“(2) For the purposes of **subsection (1)**, New Zealand Railways Corporation is treated as if it was a company that was not a public authority.

“Defined in this Act: amount, company, deduction, income, public authority, Railways assets and liabilities

“EZ 66 Prepayments*“Deduction*

- “(1) KiwiRail Holdings Limited has, for the 2012–13 income year, a deduction under section DB 50 (Adjustment for prepayments) for an unexpired portion that is connected with a Railways asset or liability, as described in **subsection (2)**.

“Unexpired portion

- “(2) For the purposes of **subsection (1)**, the **unexpired portion** is the unexpired portion that New Zealand Railways Corporation would have had by applying section EA 3(4) to (7) (Prepayments) on 30 December 2012 to an amount of expenditure incurred by New Zealand Railways Corporation in connection with a Railways asset or liability, treating—
- “(a) 30 December 2012 as the end of an income year; and
- “(b) New Zealand Railways Corporation as a taxpayer with a deduction for the expenditure, if that expenditure is described in section EA 3(1).

“Future application of section EA 3

- “(3) For the 2012–13 income year and later income years, section EA 3 applies to KiwiRail Holdings Limited as if it had been allowed a deduction for expenditure to which **subsection (1)** applies.

“Defined in this Act: deduction, income year, Railways asset, Railways liability, taxpayer

“EZ 67 Leased assets*“Allocation of expenditure*

- “(1) KiwiRail Holdings Limited calculates, for the 2012–13 income year, an expenditure allocation under section EJ 10 (Personal property lease payments) for a personal property lease payment that is connected with a Railways asset or liability as if 31 December were the start of the 2012–13 income year.

“Future application of section EJ 10

- “(2) For the 2013–14 income year and later income years, section EJ 10 applies to KiwiRail Holdings Limited as if, for the period up to and including 31 December 2012, New Zealand Railways Corporation and KiwiRail Holdings Limited were the same person.

“Defined in this Act: deduction, income year, personal property lease payment, Railways assets and liabilities

“EZ 68 Definitions

In sections **EZ 64 to EZ 67**,—

“**asset**,—

“(a) means property of any kind, whether or not situated in New Zealand, whether tangible or intangible, real or personal, corporeal or incorporeal, and whether or not subject to rights; and

“(b) includes—

“(i) land, including legal and equitable rights of occupation of land or buildings:

“(ii) buildings, vehicles, plant equipment, machinery, fixtures and fittings, and legal and equitable rights in them:

“(iii) choses in action and money:

“(iv) legal and equitable rights of any kind, and applications, objections, submissions, and appeals in respect of those rights:

“(v) intellectual property and applications pending for intellectual property:

“(vi) goodwill, and any business undertaking

“**legal and equitable rights** includes all rights, powers, privileges, interests, leases, licences, approvals, consents, designations, permissions, dispensations, authorisations, benefits, defences, immunities, claims, and equities of any kind, whether arising from, accruing under, created or evidenced by, or the subject of, an instrument or otherwise, and whether liquidated or unliquidated, actual, contingent, or prospective

“**liabilities** means liabilities, debts, charges, duties, and obligations of every description, whether present or future, actual or contingent, and whether payable or to be observed or performed in New Zealand or elsewhere

“**Railways assets and liabilities**, means assets and liabilities, or parts of assets and liabilities, as the case may be, specified in an Order in Council made under the New Zealand Railways Corporation Restructuring Act 1990, and **Railways assets** and **Railways liabilities** have corresponding meanings

“**Railways vesting** means the vesting of the Railways assets and liabilities in KiwiRail Holdings Limited on 31 December 2012 in accordance with the New Zealand Railways Corporation Restructuring Act 1990.

“Defined in this Act: asset, land, legal and equitable rights, liabilities, New Zealand, Railways assets and liabilities, Railways vesting”

34C Section FM 31 amended (Eligibility rules)

In section FM 31(1)(g), replace “subsections (5) and (6) do not” with “subsection (6) does not”.

34D Section FN 4 amended (Eligibility rules)

In section FN 4(1)(g), replace “subsections (4) and (5) do not” with “subsection (5) does not”.

34E Section GB 24 amended (Exemption for genuine contracts)

Replace section GB 24(2)(h) with:

- “(h) no part of the income or share of profits derived by the relative, or company of which the relative is a shareholder or director, is either a disposition without fully adequate consideration in money or money’s worth passing to the person making the disposition or a disposition that any part of does not have fully adequate consideration in money or money’s worth passing to the person making the disposition.”

New clauses 36B to 36F

After *clause 36* (after line 25 on page 58), insert:

36B Section HG 2 amended (Partnerships are transparent)

In section HB 2, in the list of defined terms, delete “rebate”.

36C Section HG 3 amended (General provisions relating to disposals)

After section HG 3(3), insert as a list of defined terms “entering partner, exiting partner, partner, partnership, return of income, small partnership”.

36D Section HM 19C amended (Modified rules for foreign investment variable-rate PIEs)

- (1) In section HM 19C(1), replace “HM 11(a) and (d)” with “HM 11(1)(a) and (b)”.
- (2) In section HM 19C(2), replace “HM 12(a) and (b)(v)” with “HM 12(1)(a) and (b)(v)”.

36E Section LA 6 amended (Remaining refundable credits: PAYE, RWT, and certain other items)

In section LA 6, in the compare note, delete “LH 1(6)”.

36F Section LH 17 amended (Some definitions)

In section LH 17, in the list of defined terms, insert “associated internal software developer”.

New clauses 37B to 37D

After *clause 37* (after line 2 on page 59), insert:

37B Section LP 2 amended (Tax credits for supplementary dividends)

In section LP 2(7), insert as a subsection heading “*Relationship with section OZ 12*”.

37C Section LP 5 amended (Application of benchmark dividend rules and imputation credit ratio)

In section LP 5(3), insert as a subsection heading “*Relationship with section OZ 12*”.

37D Section LP 8 amended (Relationship with exempt income rules)

In section LP 8(5), insert as a subsection heading “*Relationship with section OZ 12*”.

New clauses 39B to 39D

After *clause 39* (after line 10 on page 59), insert:

39B Section MB 7B inserted (Family scheme income from employment benefits—employees not controlling shareholders)

After section MB 7, insert:

“MB 7B Family scheme income from employment benefits—employees not controlling shareholders

“When this section applies

“(1) This section applies for the purpose of determining the amount that represents the family scheme income of a person to whom section MB 8 does not apply for an income year when the person has an employer who makes available—

“(a) an area for parking a motor vehicle for the person’s private use when, under the terms of the person’s employment, the employee would be entitled to a greater amount of employment income should the person choose, or have chosen, not to receive the benefit of the area for parking:

“(b) a motor vehicle for the person’s private use when, under the terms of the person’s employment, the person would be entitled to a greater amount of employment income should the person choose, or have chosen, not to receive the benefit of the motor vehicle:

“(c) a short-term charge facility as defined in section CX 25(3) (Benefits provided by charitable organisations).

“What is included in family scheme income

- “(2) The person’s family scheme income for the income year includes an amount equal to the total for the person and the income year of amounts, each of which is—
- “(a) the amount by which the employment income of the person would be greater in the absence of a benefit referred to in **subsection (1)(a) and (b)**:
- “(b) the value, including fringe benefit tax, of a fringe benefit provided to the person under a short-term charge facility referred to in **subsection (1)(c)**, if the total value of such fringe benefits, not including fringe benefit tax, provided in the income year is more than the lesser for the income year of—
- “(i) 5% of the employee’s salary or wages:
- “(ii) \$1,200.

“Defined in this Act: amount, employee, employer, employment, employment income, family scheme income, fringe benefit, fringe benefit tax, income year, motor vehicle, private use, salary or wages, short-term charge facility”.

39C Section MB 8 amended (Family scheme income from fringe benefits)

In section MB 8, replace the heading with “**Family scheme income from fringe benefits—controlling shareholders**”.

39D Section MD 16 amended (Calculation of parental tax credit abatement)

In section MD 16, delete the compare note.

New clauses 44B to 44F

After *clause 44* (after line 6 on page 60), insert:

44B Sections RD 33B and RD 33C inserted

After section RD 33, insert:

“RD 33B Parking for motor vehicles

“Value of fringe benefit arising from availability of parking space

- “(1) The daily value of a fringe benefit arising under **section CX 9B** (Some parking for motor vehicles) from the availability of a parking space to an employee is,—
- “(a) if the parking space is provided by a commercial car park operator, the part corresponding to 1 day, treating a month as having 30 days and a year as having 360 days, of the amount charged to the employer by the commercial car park operator for the parking space; or
- “(b) if **paragraph (a)** does not apply and a daily amount is set by a determination of the Commissioner under **section 91AAT** of the Tax Administration Act 1994

for the part of the city in which the parking space is provided, the amount set by the determination; or

- “(c) if **paragraphs (a) and (b)** do not apply and the employee would be, or would have been, entitled to an increase in the employee’s employment income, should the employee choose, or have chosen, not to receive the benefit of the parking space, the amount of that increase for 1 day after deduction of tax at the highest rate in schedule 1, part A, table 1 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits) applicable to the person in the income year.

“Value of fringe benefit arising from availability of fraction of parking space

- “(2) The value of a fringe benefit arising from the availability to an employee of a fraction, as determined under **section CX 9B(4)(c)**, of a parking space is calculated by multiplying the fraction by the value given by **subsection (1)** for a fringe benefit arising from the availability of 1 parking space.

“Use of results from parking test period

- “(3) An employer who chooses to have a parking test period under **section RD 33C** and obtain, for the application of **section CX 9B(4)**, daily average figures for the number of pool parking spaces, the number of pool parking users, the number of business or certificated vehicles, and the value of the item **day users**, must use the results for each day in the term given by that section.

“Relationship with section RD 41

- “(4) This section overrides section RD 41, except for an employer who is a commercial car park operator.

“Defined in this Act: amount, Commissioner, business or certificated vehicle, commercial car park operator, employee, employer, employment, employment income, fringe benefit, income year, motor vehicle, parking space, pool parking space, pool parking user, salary or wages, tax

“RD 33C Parking test period

“Recording details for test period

- “(1) To obtain for the application of **section CX 9B(4)** (Some parking for motor vehicles) for a day, the average number of pool parking spaces, the average number of pool parking users, the average number of business or certificated vehicles, and the average value of the item **day users**, an employer may choose to record the details of the use of parking spaces by employees for a test period.

“Minimum of 2 months for test period

- “(2) The test period must be a continuous period of 2 months or more—
- “(a) beginning on the first day of a quarter, if the employer pays FBT quarterly or annually; or
 - “(b) in an income year, if the employer pays FBT on an income year basis.

“Period showing pattern of use

- “(3) The employer must—
- “(a) choose a test period that shows, or is likely to show, a pattern of use of the parking spaces that fairly represents the use over the whole of the term given by **subsection (4)**; and
 - “(b) keep a daily record for the test period of—
 - “(i) the number of parking spaces; and
 - “(ii) the number of parking spaces allocated to individual employees who are entitled to use the allocated parking space for a motor vehicle other than a business or certificated vehicle; and
 - “(iii) the number of parking spaces allocated to individual employees who are restricted to using the allocated parking space for a business or certificated vehicle; and
 - “(iv) the number of parking spaces allocated to the sole use of persons other than an employee; and
 - “(v) the number of pool parking users; and
 - “(vi) the number of pool parking users who are entitled to use a pool parking space for a motor vehicle other than a business or certificated vehicle, and whose hours of employment on the day both begin and end in the period from 6 am to 10 pm; and
 - “(vii) the number of pool parking users who are not entitled to use a pool parking space for a motor vehicle other than a business or certificated vehicle, and whose hours of employment on the day both begin and end in the period from 6 am to 10 pm.

“Term of 3 years or shorter period advised to Commissioner

- “(4) The quantities (the **test quantities**) obtained for the application of **section CX 9B** from a test period apply for a term of 3 years, or for a shorter period chosen under **subsection (5)**, starting—
- “(a) on the first day of the test period, if the employer pays FBT quarterly; or
 - “(b) on the first day of the tax year in which the test period occurs, if the employer pays FBT annually; or

“(c) on the first day of the income year in which the test period occurs, if the employer pays FBT on an income year basis.

“Employer may end term

“(5) The employer may choose a term ending on a date that is the last day of a particular period (a **return period**) for which the employer makes a return for fringe benefit tax, and is before the end of the 3-year period referred to in **subsection (4)** for a test period, and the employer must not use the test quantities after that date.

“When test period no longer representative

“(6) The employer must not continue to use the test quantities after—

“(a) the end of a return period in which the value for the test period of the number of pool parking spaces or the number of pool parking users, whichever is the lesser for the test period, is exceeded for the return period by 10% of that value or more:

“(b) a date specified by the Commissioner in a notice informing the employer that the Commissioner considers the test quantities do not fairly represent the use of parking spaces.

“Defined in this Act: business or certificated vehicle, Commissioner, employee, employer, employment, FBT, fringe benefit tax, income year, motor vehicle, parking space, pool parking space, pool parking user, quarter, tax year”.

44C Section RD 39 amended (Benefits provided by charitable organisations)

(1) After section RD 39(1)(a), insert:

“(ab) the amount that the organisation pays for or towards consideration, other than money or money’s worth, for goods and services obtained by the employee under the short-term charge facility:”.

(2) In section RD 39(1)(b), after “goods and services”, insert “or obtaining other consideration for the goods and services”.

(3) In section RD 39(2)(c), after “no more than”, insert “the lesser of \$1,200 and”.

(4) In section RD 39(3), after “more than”, insert “the lesser of \$1,200 and”.

(5) In section RD 39(4), replace “paragraph (a) or (b)” with “of paragraph (a) and (b)”.

44D Section RD 47 amended (Attribution of certain fringe benefits)

(1) After section RD 47(1)(a), insert:

“(ab) making available an area for parking a motor vehicle for an employee’s private use under **section CX 9B** (Some parking for motor vehicles):”.

(2) In section RD 47, list of defined terms, insert “parking space”.

44E Section RD 48 amended (When attributed benefits provided to more than 1 employee)

(1) After the heading to section RD 48, as the heading to subsection (1), insert “*Attribution or pooling of benefits*”.

(2) After section RD 48(1), insert:

“*Exception for parking spaces*

“(2) For a fringe benefit arising under **section CX 9B** (Some parking for motor vehicles),—

“(a) subsection (1) does not apply:

“(b) the employer may pool, under section RD 53, a fringe benefit valued under **section CX 9B(3)(d)** if all the employees have the same or a similar entitlement to the fringe benefit.”

44F Section RD 54 amended (Value of and payments towards fringe benefits)

In section RD 54(2), replace “the amount paid” with “the lesser of the value of the benefit and the amount paid”.

Clause 57

New subclause (1A): before *subclause (1)* (before line 26 on page 61) insert:

(1A) Repeat the definition of **accident compensation payment for attendant care**.

New subclause (1B): after *subclause (1)* (after line 31 on page 61) insert:

(1B) In the definition of **asset**, in paragraph (b), replace “mining)” with “mining):”, and insert:

“(c) is defined in **section EZ 68** (Definitions) for the purposes of **sections EZ 64 to EZ 67** (which relate to New Zealand Railways Corporation restructure)”.

New subclause (5B): after *subclause (5)* (after line 25 on page 62) insert:

(5B) Insert, in appropriate alphabetical order:

“**business or certificated vehicle** is defined in **section CX 9B** (Some parking for motor vehicles)”.

New subclause (8B): after *subclause (8)* (after line 13 on page 63) insert:

(8B) Insert, in appropriate alphabetical order:

“**commercial car park operator** is defined in **section CX 9B** (Some parking for motor vehicles)”.

New subclauses (19B) to (19D): after subclause (19) (after line 24 on page 64) insert:

- (19B) In the definition of **land provisions**, after paragraph (b), insert:
 - “(bb) **section EI 4B** (Consideration for agreement to grant, renew, extend, or transfer leasehold estate or licence):”.
- (19C) Insert, in appropriate alphabetical order:
 - “**legal and equitable rights** is defined in **section EZ 68** (Definitions) for the purposes of **sections EZ 64 to EZ 67** (which relate to New Zealand Railways Corporation restructure)”.
- (19D) Insert, in appropriate alphabetical order:
 - “**liabilities** is defined in **section EZ 68** (Definitions) for the purposes of **sections EZ 64 to EZ 67** (which relate to New Zealand Railways Corporation restructure)”.

New subclauses (23B) to (23E): after subclause (23) (after line 33 on page 64) insert:

- (23B) In the definition of **ownership interest**, replace “section YC 18B (Corporate reorganisations” with “sections YC 18B and **YC 18C** (which relate to corporate restructurings”.
- (23C) Insert, in appropriate alphabetical order:
 - “**parking space** is defined in **section CX 9B** (Some parking for motor vehicles)”.
- (23D) Insert, in appropriate alphabetical order:
 - “**pool parking space** is defined in **section CX 9B** (Some parking for motor vehicles)”.
- (23E) Insert, in appropriate alphabetical order:
 - “**pool parking user** is defined in **section CX 9B** (Some parking for motor vehicles)”.

New subclauses (25B) to (25E): after subclause (25) (after line 8 on page 65) insert:

- (25B) Insert, in appropriate alphabetical order:
 - “**Railways assets** is defined in **section EZ 68** (Definitions) for the purposes of **sections EZ 64 to EZ 67** (which relate to New Zealand Railways Corporation restructure)”.
- (25C) Insert, in appropriate alphabetical order:
 - “**Railways assets and liabilities** is defined in **section EZ 68** (Definitions) for the purposes of **sections EZ 64 to EZ 67** (which relate to New Zealand Railways Corporation restructure)”.
- (25D) Insert, in appropriate alphabetical order:
 - “**Railways liabilities** is defined in **section EZ 68** (Definitions) for the purposes of **sections EZ 64 to EZ 67** (which relate to New Zealand Railways Corporation restructure)”.
- (25E) Insert, in appropriate alphabetical order:

“**Railways vesting** is defined in **section EZ 68** (Definitions) for the purposes of **sections CW 65, EZ 64 to EZ 67**, and **YC 18C** (which relate to the New Zealand Railways Corporation restructure)”.

New clause 57B

After *clause 57* (after line 22 on page 65), insert:

57B New section YC 18C inserted (Railways restructure not affecting Crown economic ownership)

After section YC 18B, insert:

“YC 18C Railways restructure not affecting Crown economic ownership

“When this section applies

“(1) This section applies for New Zealand Railways Corporation, KiwiRail Holdings Limited, and any company that, immediately after the Railways vesting, is in the same wholly-owned group as KiwiRail Holdings Limited for the purposes of the tests of ownership and control in:

“(a) Parts I and O (which relate to losses and memorandum accounts):

“(b) the consolidation rules:

“(c) the amalgamation rules.

“Loss balance, credit account, and restructuring continuity

“(2) Starting from when New Zealand Railways Corporation is first treated as having a notional single person under section YC 5, KiwiRail Holdings Limited is treated as—

“(a) existing and having the same notional single person under section YC 5 that KiwiRail Holdings Limited has immediately after the Railways vesting:

“(b) holding the ownership interests in other companies that New Zealand Railways Corporation held before the Railways vesting.

“No notice requirement for joining consolidated group

“(3) KiwiRail Holdings Limited may choose to join an existing consolidated group on and after 31 December 2012, despite section FM 38 (Notice requirements on forming or joining consolidated group).

“Effect of subsection (2)

“(4) **Subsection (2)** does not prevent a change in shareholders, notional single person, the holdings of ownership interests, or other circumstances occurring after the Railways vesting.

“Definitions

“(5) In this section,—

“**ownership interest** has the same meaning as in section YC 18(6)

“**Railways vesting** has the same meaning as in **section EZ 68** (Definitions).

“Defined in this Act: amalgamation rules, consolidation rules, consolidated group, ownership interest, Railways vesting, shareholder, wholly-owned group”.

New clauses 67B to 67D

After *clause 67* (after line 13 on page 68), insert:

67B Section 46F inserted (Statements for short-term charge facilities to employees)

After section 46E, insert:

“**46F Statements for short-term charge facilities to employees**

“(1) An employer who provides a short-term charge facility to an employee in a tax year must provide to the employee for the employee’s corresponding income year a statement—

“(a) giving the details required by **subsection (2)**; and

“(b) within the time required by **subsection (3)**.

“(2) The statement required by **subsection (1)** must include—

“(a) the total value of benefits (the **FBT benefit value**), including fringe benefit tax, received by the employee from short-term charge facilities in the income year; and

“(b) the total value of benefits (the **pre-FBT benefit value**), not including fringe benefit tax, received by the employee from short-term charge facilities in the income year; and

“(c) the amount under **section MB 7B(2)** of the Income Tax Act 2007 that, if exceeded by the pre-FBT benefit value, results in the FBT benefit value being included in the employee’s family scheme income for the income year; and

“(d) for each short-term charge facility provided to the employee—

“(i) the type of short-term charge facility:

“(ii) the period in the income year during which the short-term charge facility was available to the employee:

“(iii) the value, including fringe benefit tax, of the benefits received by the employee from the short-term charge facility in the period.

“(3) The statement required by **subsection (1)** must be provided to the employee by the 20 May that follows the income year.”

67C Heading and section 91AAT inserted (Determinations relating to value of fringe benefits from parking spaces)

After section 91AAS, insert:

“Determinations relating to fringe benefits

“91AAT Determinations relating to value of fringe benefits from parking spaces

- “(1) For the purposes of **sections CX 9B and RD 33B** of the Income Tax Act 2007, the Commissioner may determine the value of a fringe benefit arising from the availability to an employee of a parking space in an urban area defined in **section CX 9B(5)** of that Act or by an Order in Council under that section.
- “(2) In determining the value of a fringe benefit, the Commissioner must take into account the market rates of fees for hiring parking spaces in the urban area.
- “(3) A determination may be made for a period specified in the determination.
- “(4) A determination may provide for the extension, limitation, variation, cancellation, or revocation of an earlier determination.
- “(5) Within 30 days of issuing or changing a determination under this section, the Commissioner must publish a notice in a publication chosen by the Commissioner that—
- “(a) gives notice of the issue or change of the determination; and
 - “(b) states where copies of the determination can be obtained.”

67D Section 91C amended (Taxation laws in respect of which binding rulings may be made)

- (1) In section 91C(1)(f), in the words before the subparagraphs, replace “(a) to (eb)” with “(a) to (ec)”.
- (2) In section 91C(1)(f)(i), replace “(e) or (eb)” with “(e), (eb), or (ec)”.

Clause 74: new subclauses (2) and (3)

Insert, as *new subclauses (2) and (3)* (after line 27 on page 69):

- (2) In section 2(1), insert, in appropriate alphabetical order:
“**Railways assets and liabilities, Railways assets, and Railways liabilities** have the same meaning as in **section EZ 68** of the Income Tax Act 2007”.
- (3) In section 2(1), insert, in appropriate alphabetical order:
“**Railways vesting** has the same meaning as in **section EZ 68** of the Income Tax Act 2007”.

Clause 76: section 9(2)(e)(i)

In *section 9(2)(e)(i)*, replace “instant game played” (lines 27 and 28 on page 70) with “instant game that is a **New Zealand lottery** or **gambling** played”.

New clause 94B

After *clause 94* (after line 5 on page 80), insert:

94B New section 78G (Railways vesting: zero rating and timing of tax calculations and documents)

After section 78F, insert:

“78G Railways vesting: zero rating and timing of tax calculations and documents

- “(1) The Railways vesting is treated as being a taxable supply, on 31 December 2012, of the Railways assets and liabilities, that is charged with tax at the rate of 0%.
- “(2) For the purpose of calculating the amount of tax payable, or input tax deductible, on or after 31 December 2012 by KiwiRail Holdings Limited in respect of, or in relation to, a Railways asset or a Railways liability, KiwiRail Holdings Limited and New Zealand Railways Corporation are treated as if they were the same person in respect of the period up to and including 31 December 2012, subject to **subsection (1)**.
- “(3) If it is necessary for a tax invoice, a credit note, or a debit note (the **document**) to be issued by or to New Zealand Railways Corporation in respect of a supply made by or to New Zealand Railways Corporation on or before 31 December 2012, the document may be issued by or to KiwiRail Holdings Limited if the supply was in respect of or in relation to Railways assets and liabilities. New Zealand Railways Corporation and KiwiRail Holdings Limited are treated as if, in relation to that supply, they were the same person for the purposes of any requirement that New Zealand Railways Corporation holds, has previously been issued with, or has issued to a person, a tax invoice, a debit note, or a credit note for the supply.
- “(4) If a document purporting to be a tax invoice, a credit note, or a debit note (the **issued document**) is issued by or to New Zealand Railways Corporation in respect of a supply that is made by or to KiwiRail Holdings Limited on or after 31 December 2012, the issued document is treated as if it is a tax invoice, a credit note, or a debit note, as appropriate, that is issued by or to KiwiRail Holdings Limited, if the supply is in respect of or in relation to Railways assets and liabilities.”

New clause 105B

After *clause 105* (after line 26 on page 84), insert:

105B Section EE 7 amended (What is not depreciable property?)

- (1) Replace section EE 7(e) with:
- “(e) excepted financial arrangements other than depreciable intangible property.”

- (2) **Subsection (1)** applies for the 2005–06 and later income years.

New heading, clause 111, and schedule 1

After *clause 110* (after line 25 on page 86), insert:

Other remedial matters

111 Deletion of redundant LAQC legislation

The items in column 2 of schedule 1 are deleted or repealed from the locations in column 1 of schedule 1.

Schedule 1

s 111

Deletion of redundant LAQC legislation

Location	Delete / Repeal
section DS 4 of the Income Tax Act 2007	section DS 4(5)
section DS 4 of the Income Tax Act 2007, the list of defined terms	the words “loss-attributing qualifying company”
section FM 31 of the Income Tax Act 2007	section FM 31(5)
section FM 31 of the Income Tax Act 2007, the list of defined terms	the word “LAQC,”
section FN 4 of the Income Tax Act 2007	section FN 4(4)
section FN 4 of the Income Tax Act 2007, the list of defined terms	the word “LAQC,”
section FO 3(1) of the Income Tax Act 2007	section FO 3(1)(e)
section FO 3 of the Income Tax Act 2007	section FO 3(3)
section FO 3 of the Income Tax Act 2007, the list of defined terms	the word “LAQC,”
section GB 6(1)(c) of the Income Tax Act 2007	the words “and loss-attributing qualifying companies (LAQC)”

Location	Delete / Repeal
section GB 45(2) of the Income Tax Act 2007	section GB 45(2)(b)
section GB 45 of the Income Tax Act 2007, the list of defined terms	the word “LAQC,”
section GB 46(1)(c) of the Income Tax Act 2007	section GB 46(1)(c)
section GB 46(1)(e) of the Income Tax Act 2007	the words “, excluding an LAQC that has a tax loss from the arrangement for the income year,”
section GB 46(3)(b)(ii) of the Income Tax Act 2007	the words “who is not an LAQC and”
section GB 46(6)(a) of the Income Tax Act 2007	section GB 46(6)(a)(ii)
section GB 46 of the Income Tax Act 2007, the list of defined terms	the word “LAQC,”
section GB 47(2) of the Income Tax Act 2007	section GB 47(2)(c)
section GB 47 of the Income Tax Act 2007, the list of defined terms	the word “LAQC,”
section GB 48(1) of the Income Tax Act 2007	section GB 48(1)(a)
section GB 48 of the Income Tax Act 2007, the list of defined terms	the word “LAQC,”
Subpart HA of the Income Tax Act 2007, the heading	the words “and loss-attributing qualifying companies (LAQC)”
section HA 1 of the Income Tax Act 2007	section HA 1(3)
section HA 1(5) of the Income Tax Act 2007	the words “or a loss-attributing qualifying company”

**Proposed amendments to
Taxation (Livestock Valuation, Assets Expenditure,
and Remedial Matters) Bill**

Location	Delete / Repeal
section HA 1 of the Income Tax Act 2007, the list of defined terms	the words “loss-attributing qualifying company”
section HA 4(1) of the Income Tax Act 2007	the words “and LAQCs”
section HA 4 of the Income Tax Act 2007, the list of defined terms	the word “LAQC”
section HA 5(1) of the Income Tax Act 2007	the words “or an LAQC”
section HA 5 of the Income Tax Act 2007, the list of defined terms	the word “LAQC,”
section HA 6(2) of the Income Tax Act 2007	section HA 6(2)(c)
section HA 6 of the Income Tax Act 2007, the list of defined terms	the word “LAQC,”
section HA 11 of the Income Tax Act 2007, the list of defined terms	the word “LAQC,”
section HA 11B of the Income Tax Act 2007	section HA 11B
section HA 12 of the Income Tax Act 2007	section HA 12
section IA 7 of the Income Tax Act 2007	section IA 7(2)
section IA 7 of the Income Tax Act 2007, the list of defined terms	the words “LAQC, loss-attributing qualifying company,”
section MB 1 of the Income Tax Act 2007	section MB 1(4)
section MB 1 of the Income Tax Act 2007, the list of defined terms	the word “LAQC,”

Location	Delete / Repeal
section YA 1 of the Income Tax Act 2007, the definition of market value interest , paragraph (b)	the words “and loss attributing qualifying companies (LAQC)”
section YA 1 of the Income Tax Act 2007, the definition of shareholder , paragraph (c)	the words “and loss attributing qualifying companies (LAQC)”
section YA 1 of the Income Tax Act 2007, the definition of voting interest , paragraph (b)	the words “and loss attributing qualifying companies (LAQC)”
section YB 1 of the Income Tax Act 2007	section YB 1(5)
section YB 1 of the Income Tax Act 2007, the list of defined terms	the words “loss attributing qualifying company”

Explanatory note

Regulatory impact statement

Inland Revenue produced regulatory impact statements to help inform the main policy decisions taken by the Government relating to the contents of this Supplementary Order Paper (*SOP*).

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

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

Lease inducement payments and lease surrender payments

The *SOP* proposes to reform the rules in the Income Tax Act 2007 governing the treatment of lease inducement payments and lease surrender payments. The affected payments are made assessable income to the recipient and deductible expenditure to the payer.

A new timing rule allocates the income and deductions from a lease inducement payment evenly over the term of the interest in land to which the payment relates. An exception applies for deductions if the interest in land, and the estate in land from which the interest is granted, are both held in a later year (the *balance year*) by persons who are not the person or associated with the person for the purposes of the land provisions. The amount that has not been allocated to an earlier year is then allocated to the balance year. A similar exception applies for income, but does not depend on the interests held by associated persons.

Amendments to clause 2(15) provide appropriate commencement dates for the land-related payments changes.

Clause 4B inserts *new sections CC 1B and CC 1C of the Income Tax Act 2007*, which relate to amounts derived in relation to a leasehold estate in land or to a licence to use land. *New section CC 1B* provides that an amount is income of the person receiving the payment if the payment relates to the entry into an agreement for the grant, renewal, extension, or transfer of a leasehold estate or licence. An exception applies if the person derives the amount as a tenant of residential premises. *New section CC 1C* provides that an amount is income if it is derived as consideration for entering an agreement to surrender a leasehold estate in land or to terminate a licence to use land. An exception applies if the person derives the amount as a tenant of residential premises.

Clause 17B inserts *new sections DB 20B and DB 20C of the Income Tax Act 2007*, which relate to amounts incurred as expenditure in relation to a leasehold estate in land or to a licence to use land. *New section DB 20B* provides that an amount is a deduction of the person incurring the expenditure if the person owns the leasehold estate or licence, or the estate in land from which the leasehold estate or licence is granted, and the expenditure relates to the entry into an agreement to grant, renew, extend, or transfer the leasehold estate or licence to the person who derives the amount. *New section DB 20C* provides that an amount is a deduction if it is incurred as consideration for entry into an agreement to surrender a leasehold estate in land or to terminate a licence to use land.

Clause 25B amends *section EA 3 of the Income Tax Act 2007*, as a consequence of the insertion of *new section EI 4B*, which provides for the spreading of payments relating to consideration for the agreement to grant, renew, extend, or transfer a leasehold estate or licence to use land.

Clause 32B inserts *new section EI 4B of the Income tax Act 2007*, providing for the spreading of a person's income under *new section CC 1B* and expenditure under *new section DB 20B* relating to a leasehold estate in land or a licence to use land. The amount of the income or expenditure is allocated evenly over the period of the leasehold estate or licence remaining at the time of the income or expenditure, if that period is less than or equal to 50 years. If the period remaining is more than 50 years, the amount is allocated over the first 50 years of the period. If, in a year (the *balance year*) before the end of the term, neither the land from which the leasehold estate or licence is granted nor the leasehold estate or licence is owned by the person or an associated person, any part of a deduction that has not been allocated to an earlier year is allocated to the balance year. A similar provision applies for income that has not been allocated to an earlier year if the person does not own the land from which the leasehold estate or licence is granted or the leasehold estate or licence.

Clause 57(19B) amends *section YA 1 of the Income Tax Act 2007*, the definition of *land provision*, by inserting cross-references to *section EI 4B* so that the definition of *associated person* applying to that section is the version applicable to a land provision.

New Zealand Railways Corporation restructuring

In June 2012 the KiwiRail group announced a restructure of its balance sheet, to reflect a standard commercial valuation approach. Under the new structure, a new state-owned enterprise will own and operate the rail and Interislander businesses under the existing KiwiRail brand. Crown land held for rail purposes will be retained by the New Zealand Railways Corporation and made available for use by KiwiRail. This SOP contains several technical amendments to support this restructure, to ensure that the restructure does not impose additional tax liabilities, and to provide for the tax position of the new state-owned enterprise going forward.

New clause 2(14B) provides an appropriate commencement date for the restructuring provisions, on 31 December 2012.

New clause 12B inserts *new section CW 65 of the Income Tax Act 2007*, to ensure that the restructuring does not result in assessable income for KiwiRail Holding Limited.

New clause 34B inserts *new sections EZ 64 to EZ 68 of the Income Tax Act 2007*. *New section EZ 64* states the purpose of the New Zealand Railways Corporation restructure provisions, and provides the basic rules for depreciation and financial arrangements. *New section EZ 65* provides rules related to expenditure or loss incurred, and to amounts derived for the New Zealand Railways Corporation restructure. *New sections EZ 66 and EZ 67* provide rules for the treatment of prepayments and leased assets under the New Zealand Railways Corporation restructure. *New section EZ 68* provides relevant definitions of *asset, equitable and legal rights, liability, Railways assets and liabilities, Railways assets, Railways liabilities, and Railways vesting*.

New clause 57(1B), (19B), (19C), (23B), (25B), (25C), (25D), and (25E) amend *section YA 1 of the Income Tax Act 2007*, to insert references to definitions used for the New Zealand Railways Corporation restructure provisions, namely definitions of *asset, equitable and legal rights, liability, Railways assets and liabilities, Railways assets, Railways liabilities, and Railways vesting*.

New clause 57B inserts a *new section YC 18C of the Income Tax Act 2007*, to provide for continuity, amalgamation, and consolidation issues relating to the New Zealand Railways Corporation restructure.

New clause 74(2) and (3) amend *section 2(1) of the Goods and Services Tax Act 1985*, to provide definitions for the GST portion of the restructure provisions.

New clause 94B inserts a *new section 78G of the Goods and Services Tax Act 1985*, to zero-rate the restructure and ensure that GST documentation is in order post-restructure.

*Fringe benefits from availability of parking space to
employee*

Salary and wages are treated as employment income and are subject to withholding tax (*PAYE*), while most non-cash benefits received as a result of employment are treated as fringe benefits and are subject to fringe benefit tax (*FBT*). However, there is an exception in the *FBT* rules for a non-cash benefit provided on the

employer's premises. Most, but not all, benefits from the availability of parking spaces (*parking benefits*) are currently exempt from FBT because of this exemption. Difficult interpretative issues are raised by the need to distinguish between parking benefits provided on the employer's premises and parking benefits that are not. The exemption and distinction are not sensible when parking benefits are part of employment remuneration.

The SOP amendments remove the distinction between parking benefits provided on the employer's premises and parking benefits that are not. The SOP proposes a new set of rules determining when parking benefits are taxable under the FBT rules and the valuation of parking benefits for the FBT rules. The new rules are intended to concentrate on parking benefits which offer a significant benefit to the employee. The main focus is on parking benefits that are provided to employees for use by a private motor vehicle in an urban area. The relevant urban areas are described as the central business districts of Auckland and Wellington. Other areas may be added by Orders in Council. A parking benefit provided to an employee outside those defined areas is also included if the parking space is supplied by a commercial car park operator at a charge of more than an amount prescribed by the Act or by an Order in Council, or if the employee has explicitly chosen to receive the parking benefit as an alternative to an amount of employment income. The rules provide that an employee has a parking benefit equivalent to a fraction of the benefit from a single parking space if the employer makes available, for private use by a group of employees, a number of unallocated parking spaces that is less than the number of employees in the group.

The daily value of the benefit from the availability of 1 parking space for an employee is equal to the daily cost of the parking space for the employer, if the parking space is supplied by a commercial car park operator. Otherwise, the daily value of a parking space in an urban area referred to by the Act or an Order in Council is the value prescribed by a determination published by the Commissioner. If a parking space is supplied in neither of the preceding situations, the daily value of the benefit for the employee is the daily amount of employment income, after tax, that the employee has chosen not to take as an alternative to the parking space.

Amendment to clause 2(17) provides an appropriate commencement date for the changes.

Clause 12C amends *section CX 2 of the Income Tax Act 2007* by inserting a cross-reference to *section CX 9B*.

Clause 12D inserts new *section CX 9B of the Income Tax Act 2007*, which provides when a fringe benefit arises from the provision of an area (a *parking space*) to an employee for parking a motor vehicle.

Clause 13B amends *section CX 23 of the Income Tax Act 2007* to remove the provision of a parking area from the FBT exemption given for a benefit provided on the employer's premises.

Clause 13D inserts new *section CX 28B of the Income Tax Act 2007*, which provides that the provision to an employee of parking for a motor vehicle is not a fringe benefit, other than under *section CX 9B of the Income Tax Act 2007*.

Section 44B inserts new sections *RD 33B* and *RD 33C* of the *Income Tax Act 2007*. New section *RD 33B* of the *Income Tax Act 2007* provides for the valuation of the fringe benefit under section *CX 9B* of the *Income Tax Act 2007* from the provision of an area to an employee for private use in parking a motor vehicle. New section *RD 33C* of the *Income Tax Act 2007* provides for an employer to base returns on a representative test period.

Clause 44D amends section *RD 47* of the *Income Tax Act 2007*, to include a fringe benefit of an employee under section *CX 9B* of the *Income Tax Act 2007* in the fringe benefits that an employer must attribute to the employee. A new subsection (3) is added, allowing the employer to pool fringe benefits for parking spaces if all the employees have the same or a similar entitlement to the fringe benefit.

Clause 44E amends section *RD 48* of the *Income Tax Act 2007* so that an employer is not required to pool, under section *RD 53* of the *Income Tax Act 2007*, a fringe benefit with a value given by section *RD 33B* but may choose to pool a fringe benefit for the use of a parking space if all the employees have the same or a similar entitlement to the fringe benefit.

Clause 44F amends section *RD 54* of the *Income Tax Act 2007* so that the value of a fringe benefit cannot be reduced to a negative value by a contribution from the employee.

Clause 57(5B), (8B), (23C), (23D), and (23E) of the *Income Tax Act 2007* amend section *YA 1* by inserting definitions of *business or certificated vehicle*, *commercial car park operator*, *parking space*, *pool parking space*, and *pool parking user*, all of which are defined in section *CX 9B* of the *Income Tax Act 2007*.

Clause 67C inserts new section *91AAT* of the *Tax Administration Act 1994*, which authorises the Commissioner to make determinations giving the value of a fringe benefit arising from the provision of a parking space when the value is not given by another method.

Fringe benefits for employees of charitable organisations

Charitable organisations are generally exempt from FBT on non-cash benefits they provide to employees. The main exception to this exemption is to the extent to which the employee receives the benefit in connection with their employment in a business outside the organisation's benevolent, charitable, cultural, or philanthropic purpose. Another exception is where the charitable organisation provides a benefit to an employee by way of a short-term charge facility, and the value of the benefit is more than 5% of the employee's salary or wages for the tax year. The key concern behind this exception is that a short-term charge facility is a close equivalent to cash if it can be used to purchase items that have no connection with the organisation or its operations.

The SOP proposes 2 amendments to the provisions exempting charitable organisations from the FBT rules. Both amendments relate to the benefit by way of a short-term charge facility. The first amendment further limits, to a maximum of \$1,200, the annual value of the exemption for benefits to an employee from short-term charge facilities. The second amendment amends the definition of

short-term charge facility to include the provision of non-monetary consideration, such as a voucher, that can be exchanged for a supply of goods or services and for which the organisation is liable.

Amendment to clause 2(17) provides an appropriate commencement date for the changes.

Clause 13C amends *section CX 25 of the Income Tax Act 2007* to include in the definition of *short-term charge facility* the provision of consideration for goods or services when the consideration, such as a voucher, is not money or money's worth, and to set a maximum annual value of \$1,200 for the benefit for an employee from short-term charge facilities to not be a fringe benefit.

Clause 44C amends *section RD 39 of the Income Tax Act 2007*, adjusting the calculation of the value of a fringe benefit under *section CX 25 of the Income Tax Act 2007* from a short-term charge facility, as a consequence of the amendments to *section CX 25*.

Family scheme income

A person's family scheme income is used in determining the person's social assistance entitlements and obligations. It is based on the person's net income for the income year but includes various adjustments. The SOP proposes to include in a person's family scheme income:

- the amount of employment income that the person chooses not to take as an alternative to the use of a motor vehicle or parking space; and
- the value of goods and services, plus FBT, obtained by the person under a short-term charge facility provided by the person's employer.

An amendment to the *Tax Administration Act 1994* requires the employer to provide the person with a statement for an income year giving the amount of the benefits to the person from short-term charge facilities.

Amendment to clause 2(17) provides an appropriate commencement date for the changes.

Clause 39B inserts *new section MB 7B of the Income Tax Act 2007*, which provides that the family scheme income of an employee who is not a controlling shareholder includes the value of a benefit that is the use of a parking space or motor vehicle instead of employment income or the use of a short-term charge facility.

Clause 39C amends the heading to *section MB 8 of the Income Tax Act 2007*, to make it clear that the section applies to fringe benefits received by an employee who is a controlling shareholder.

Clause 67C inserts *new section 46F of the Tax Administration Act 1994*, which requires an employer to provide an employee with a statement giving the total value of benefits received by the employee in an income year from short-term charge facilities and the value of the benefits received for each short-term charge facility.

Transfers of short-term agreements for sale and purchase

The *financial arrangements rules* in the *Income Tax Act 2007* require taxpayers who are parties to a *financial arrangement* to treat the consideration received and consideration provided under the arrangement as being spread over the life of the arrangement and to account for the difference in an income year as income or expenditure. The parties to an *excepted financial arrangement* are not required to spread the exchange of consideration. *Short-term agreements for sale and purchase* are 1 of several types of arrangement that are usually treated as excepted financial arrangements but which a party is allowed to choose to treat as a financial arrangement. The purpose of the election is to reduce compliance costs arising from having to apply different tax treatments to categories of contract that are intermingled in a taxpayer's systems.

An unintended effect of allowing the choice of treatment may occur when a person (the *transferor*) who is a party to a short-term agreement for sale and purchase transfers the benefit of the agreement to, or makes a legal defeasance of the agreement for the benefit of, another (the *transferee*). A transferee may choose to treat the acquired agreement as a financial arrangement, obtaining a deduction for the consideration provided to the transferor by spreading it over the life of the agreement, although the amount is properly a capital expense. Similarly, a transferor disposing of the benefit of an onerous agreement may choose before the disposal to treat the agreement as a financial arrangement, obtaining a deduction for consideration provided as an incentive for the transferee to take on the benefit of the agreement. The bill proposes to prevent such deductions by adjusting the amount of consideration that a transferor or transferee of the benefit of a short term agreement for sale and purchase may spread over the life of the agreement. The adjustment includes in the calculation only the value of the consideration relating to a sale or purchase under the agreement that occurs before the benefit is transferred.

Remedial matters

This SOP proposes a number of drafting remedial changes, mainly to lists of defined terms, to cross-references, and to reader's aids.

Amendments to clause 2(4) and (5), and new clause 2(7B) provide appropriate commencement dates for the drafting remedial changes.

New clause 10B amends *section CW 16 of the Income Tax Act 2007*, to insert a list of defined terms as a reader's aid.

Clause 31B amends *section EE 7 of the Income Tax Act 2007*, adjusting 2 exclusions from being depreciable property—for land and for excepted financial arrangements. The amendments provide that land and excepted financial arrangements are not excluded from being depreciable property if they are classified as depreciable intangible property.

New clauses 34C and 34D remove redundant cross-references to loss-attributing qualifying company (LAQC) rules in *sections FM 31 and FN 4 of the Income Tax Act 2007*. LAQC rules have been replaced by new rules for look-through companies.

New clause 36B amends section HB 2 of the Income Tax Act 2007, to correct the list of defined terms.

New clause 36C amends section HG 3 of the Income Tax Act 2007, to insert a list of defined terms as a reader's aid.

New clause 36D amends section HM 19C of the Income Tax Act 2007, to correct two cross-references.

New clause 36E amends section LA 6 of the Income Tax Act 2007, to correct the compare note, as a reader's aid.

New clause 36F amends section LH 17 of the Income Tax Act 2007, to correct the list of defined terms, as a reader's aid.

New clauses 37B, 37C, and 37D amend section LP 2, LP 5 and LP 8 of the Income Tax Act 2007, to insert a heading in each.

New clause 39D amends section MD 16 of the Income Tax Act 2007, to delete the compare note.

New clause 57(1A) repeals the redundant definition of accident compensation payment for attendant care in section YA 1 of the Income Tax Act 2007.

New clause 67D amends section 91C of the Tax Administration Act 1994, to correct two cross-references.

Clause 105B amends section EE 7 of the Income Tax Act 2004 to limit the exclusion for types of excepted financial arrangement from being depreciable property. The amendment prevents excepted financial arrangements that are depreciable intangible property from being excluded, correcting an error made in rewriting the Income Tax Act.

New clause III and new schedule 1 make numerous amendments to remove redundant references to LAQCs.
