

# **Taxation (Relief, Refunds and Miscellaneous Provisions) Bill**

Government Bill

As reported from the Finance and Expenditure  
Committee

## **Commentary**

### **Recommendation**

The Finance and Expenditure Committee has examined the Taxation (Relief, Refunds and Miscellaneous Provisions) Bill and recommends that it be passed with the amendments shown.

### **Introduction**

The Taxation (Relief, Refunds and Miscellaneous Provisions) Bill (the bill) amends the Income Tax Act 1994, the Tax Administration Act 1994, the Goods and Services Act 1985, the Estate and Gift Duties Act 1968, the Student Loan Scheme Act 1992 and the Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001. The bill:

- implements a number of proposals regarding taxpayers in situations of hardship who are unable to meet their tax debts
- introduces rules governing the transfer of overpaid tax
- contains a number of tax simplification measures
- clarifies current law regarding which employer may claim a deduction for holiday pay paid to an employee when the employee is transferred between employers
- changes the taxation of unit trusts and “Category A” group investment funds

- provides for the preservation of tax losses and credits of a subsidiary company when the company is “spun out” by a parent company selling its interest in the subsidiary to its own shareholders
- removes a potential double impost of GST on warranty payments from non-registered offshore warrantors
- clarifies the current law to ensure pensions paid by partnerships to former partners are tax deductible
- ensures that bribes paid to foreign public officials are not tax deductible
- increases the depreciation rate for broodmares
- clarifies that GST-registered non-profit bodies are entitled to claim input tax credits for GST in relation to all their activities, except the making of exempt supplies
- makes a number of other amendments to the Revenue Acts.

During our consideration, the Minister of Revenue (the Minister) asked that we consider several proposed amendments to the bill. These amendments seek to:

- allow employers to request a reassessment of their fringe benefit tax liability based on a different calculation method
- ensure a person who has received income subject to a determination under regulation 7 of the Income Tax (Withholding Payments) Regulations 1979 is not required to request an income statement or file a tax return if they satisfy other non-filing requirements
- ensure a repurchase of shares in the New Zealand Dairy Board under the Dairy Industry Restructuring Act 2001 does not give rise to any tax liability
- amend the Income Tax Act 1994 to correct a drafting error in the Education Standards Act 2001 regarding the tax treatment of the New Zealand Teachers Council.

This commentary addresses the major issues we focused on and outlines the main amendments we recommend. We also recommend a number of technical amendments not covered in this report.

## Taxpayer relief

In August 2001, the Inland Revenue Department (the department) released a discussion document, *Taxpayer compliance, standards and penalties: a review*, which outlined a number of proposals relating to taxpayers who are unable to meet their tax debts. This bill legislates some of the proposals from that document. In particular, it provides that:

- the department's role is to maximise recovery of outstanding tax, provided the recovery is an efficient use of resources and the taxpayer is not placed in serious hardship
- instalment arrangements should be used for debt collection if the department can collect more through instalment arrangements than through bankruptcy or liquidation
- amounts not recovered are permanently written off and in general cannot be reinstated
- arrangements for payment of tax debts by instalment are subject to fairer rules
- "serious hardship" is clearly defined.

Currently, debts that have been written off may be reinstated. We received a submission requesting that debts that have been written off under current rules be deemed to be fully written off under the new rules. We do not agree with the submitter, as the current rules allow some debts to be written off under situations that do not exist under the new rules. It would be unfair to allow such debts to be permanently written off if they could not be written off under the new provisions. However, we recommend that the rules established in this bill be applied to tax debts that have previously been "written off" and then reinstated after 1 July 2002. This would ensure that any debts that are reinstated may be subject to the new rules if appropriate.

We recommend the bill be amended to clarify that only natural persons can suffer from serious hardship. The provisions could be interpreted as allowing other legal entities, such as companies, to suffer serious hardship. We understand such an interpretation was not the intention of the legislation.

We recommend paragraphs (d) and (f) in proposed new section 177B(2) (clause 78) be deleted. Paragraph (d) allows the Commissioner to decline to enter an instalment arrangement if the taxpayer is requesting an arrangement to stop the Commissioner from taking

action to recover outstanding tax. This provision relates to a proposal in the discussion document that the department suspend any recovery action once an application for an instalment arrangement is made. As this provision was never in the bill, a taxpayer cannot apply for an instalment arrangement to stop any recovery action taken. Paragraph (d) therefore has no effect and should be deleted. We understand the cost of implementing an action to recover tax is high, and suspending the recovery action would impose considerable cost on the department. We therefore consider it appropriate that any recovery action should remain in place while the application for an instalment arrangement is considered. Once the department agrees to an instalment arrangement, negotiations on conditions of the arrangement can include cancelling or suspending any recovery actions. It is intended that these negotiations should be flexible and could include considerations of this type.

Paragraph (f) allows the Commissioner to decline to enter an instalment arrangement if the taxpayer has previously made a request to enter into an instalment arrangement and the request has been declined. While we understand concerns that a taxpayer could make repeated applications once a first application is turned down, we consider the Commissioner could easily reject any repeat applications on the same grounds as the initial decision to decline the application. However, we are concerned this provision could prevent a taxpayer who has previously made an unsuccessful application from making a later application if their circumstances decline to a point of serious hardship after the first application. We therefore consider it appropriate to delete paragraph (f).

Currently, the bill does not allow the department to cancel an instalment arrangement if the taxpayer defaults, nor does it allow the department to renegotiate the arrangement for a two-year period. We are concerned that, should a taxpayer fail to meet their obligations under the arrangement, the department would be unable to overturn the instalment arrangements for up to two years. We recommend the bill be amended to allow the department to cancel an arrangement and take action to recover debt in circumstances where the taxpayer has failed to adhere to the arrangement. We note that the taxpayer remains free to renegotiate an arrangement with the department should their financial situation worsen.

We recommend amending the bill to clarify that the amount outstanding under an instalment arrangement and any other amounts

outstanding should be included in the department's proof of debt, should the taxpayer be bankrupted or liquidated. We note it is possible that the amount covered by the arrangement may not be included in the proof of debt if the taxpayer has been meeting their obligations under the arrangement, and we do not believe this is appropriate. Any amounts subject to the arrangement are already owed to the department, and should therefore be included in the proof of debt.

We note the bill requires the Commissioner to write off any outstanding tax that cannot be recovered if the taxpayer is bankrupt or liquidated, or if the taxpayer's estate is distributed. However, we recommend that an amount written off under this provision can be reinstated if further assets are identified. This ensures that any previously unknown assets, such as an additional bank account, identified after the write off can be used to pay off a further amount of tax debt, despite the fact that the debt has been written off.

We understand the department intends to establish consistency committees to review decisions regarding hardship and financial relief and ensure decisions about the application of the new hardship rules are made in a consistent manner.

The department informs us that many matters of detail are not addressed in the bill, but will be covered in "administrative guidelines" to be used when implementing the bill. We have requested a copy of the draft guidelines, but understand they have not yet been prepared. We intend to examine the draft Standard Practice Statements (that will form the basis of the administrative guidelines) when they are ready, to ensure they are consistent with the intent of the bill.

### **Transfers of overpaid tax**

The bill contains provisions that allow the department to transfer, on the request of a taxpayer, any overpaid tax to another period or type of tax owed by the same taxpayer, or to another taxpayer, instead of refunding the overpaid tax. It allows the transfer to occur on the date of overpayment if the transfer is within the accounts of the taxpayer, or between taxpayers who are one economic entity or share an income stream where income is allocated after an income year. If overpaid tax is transferred to other taxpayers, the transfer will occur on the later of the date after the return is filed or the date of the transfer request.

We recommend extending this provision to allow transfers of overpaid tax to meet student loan and child support obligations, and allowing the transfer of overpaid student loan obligations to other tax types. While student loans and child support obligations do not come under the definition of “tax” in the Tax Administration Act 1994, we believe it is appropriate to include them within the scope of these provisions. We also recommend allowing any credit use-of-money interest to be transferred to offset any tax liabilities, but that the effective date for the transfer should be the date the interest would be paid to the taxpayer if no transfer request was made.

The bill allows transfers to a relative within one degree of relationship to occur on the date of overpayment. We recommend the definition of “relative” should be expanded to include connection by blood relationship, marriage, a relationship in the nature of marriage, or adoption. This ensures that spouses, de facto couples or same sex partners will come within the definition.

We note the bill provides that the transfer of excess tax will occur on a date chosen by the taxpayer, provided it is no earlier than a specified date. We consider it is possible in some circumstances that a taxpayer may not specify a date for the transfer to occur, and it is desirable in such cases for the department to choose a default date for transfer. We recommend amending the bill to allow the department to transfer excess tax at a date the Commissioner considers appropriate if the taxpayer has not specified a date for transfer. This would allow the department considerable flexibility in choosing a date to minimise any subsequent manual adjustments. We are informed the dates chosen are likely to maximise credit use-of-money interest or minimise differential use-of-money interest. We understand default dates will be published in administrative guidelines after consultation with the Institute of Chartered Accountants of New Zealand. We note that taxpayers will be able to override the default date within the legislative framework.

We note provisions in the various Revenue Acts allow the Commissioner to use excess tax to satisfy an unpaid liability of the taxpayer, and this takes priority over transfers under this bill. However, we note the effective date the excess tax is transferred to meet the liability is not specified. We recommend the bill be amended to ensure such transfers can occur on the same date as any transfer under this bill would occur.

One submitter requested the new rules have retrospective effect. The chief impact of this would be to allow transfers of overpaid tax at provisional tax dates, rather than after balance date as under the current guidelines. The submitter was concerned at the large differential between the rates of use-of-money interest charged on underpayments and the rates paid to taxpayers for overpayments of tax. They note that some taxpayers are currently being charged simultaneous debit and credit interest with the high differential. We consider that, depending on the volume of requests made for retrospective application of the new rules, retrospectivity could significantly increase the department's administrative costs. Previous transfers would need to be unwound, with credit interest recalculated and retrieved, and penalties and debit interest recalculated and refunded. For these reasons we do not consider it appropriate that the new rules be given retrospective effect. However, we do recommend some small degree of retrospectivity, allowing taxpayers to elect that the new rules apply to excess tax arising from assessments on or after 1 April 2002. This will ensure the new rules are in force from the start of the new tax year, regardless of the date the bill is enacted.

### **Tax simplification**

The bill contains a number of measures intended to reduce compliance costs imposed on taxpayers.

One provision in the bill raises the use-of-money interest threshold from \$30,000 to \$35,000. This means that a provisional taxpayer who calculates their provisional tax using the previous year's residual income tax liability plus an uplift of five percent will not be subject to use-of-money interest if their residual income tax liability is less than \$35,000. Some submitters suggest the threshold should be increased to at least \$40,000 or \$45,000 to meet the level of inflation over the past eight years. We were advised that every \$5,000 increase in the threshold would effect 1,000 taxpayers and would cost \$1 million. The majority does not consider the threshold should be raised, and notes the amendments currently in the bill will already allow taxpayers to earn an extra \$12,820 before exceeding the threshold. National and ACT members believe that the threshold should be increased further as this would alleviate the compliance burden for a large number of taxpayers.

One submitter suggested the use-of-money interest threshold should be increased to \$50,000 as the 39 percent highest tax rate has made it

possible for people to exceed the threshold on lower incomes. We disagree with this submitter as increasing the threshold to such a level would allow the taxpayer to earn an extra \$51,282 before exceeding the threshold. This would create a risk of deferral of tax that would exceed compliance cost savings or reduction in risk to taxpayers.

### **Transfers of holiday pay**

Clauses 9 and 18 of the bill clarify the current law regarding the transfer of provisions of monetary remuneration (such as holiday pay) when an employee is transferred from one employer to another. This typically occurs when a business is sold or if an employee is transferred within a group of companies. Current law is unclear whether the first or second employer can claim the deduction on the remuneration paid to employees. We understand a recent decision of the Privy Council clarified that the second employer is not entitled to a deduction, as they are reimbursed for assuming remuneration obligations as part of the purchase price.<sup>1</sup> However, under current law it is difficult for the first employer to obtain a deduction, and compliance costs are incurred in the process. This bill clarifies current law by ensuring the first employer can claim the deduction.

We note these provisions come into force on the date of enactment. Some submitters recommended the provisions be backdated to the 1997-98 income year. We agree, and recommend these amendments should in part be retrospective. Where the first employer has filed a tax return in 1997-98 or subsequent income years relating to a period prior to the date of enactment, these provisions should apply. As these provisions clarify current law, it is advantageous that the provisions be backdated to ensure the correct policy is applied to such applications.

### **Spinouts**

Clause 56 preserves the tax losses and credits of a subsidiary company if the parent company sells its interest in the subsidiary to its own shareholders. Such a transaction is called a “spinout”, and results in the shareholders of the parent company holding shares in the former subsidiary, rather than the parent company holding the shares itself. Under current law, any tax losses and credits can be lost

<sup>1</sup> *Commissioner of Inland Revenue v New Zealand Forest Research Institute Ltd* [2000] 3 NZLR 1.

after the spinout, although from an economic view there is no change in ownership of the subsidiary as the companies retain the same shareholders.

For example, Company A owns Company B as a subsidiary, and Company B owns Company C. Company A can elect to be treated as the ultimate shareholder holding, on behalf of its small shareholders, all voting rights in Companies B and C. However, if the companies are spun out, Company A's shareholders would also hold all shares in Company B. In that case, Company B will be the ultimate shareholder with all voting rights in Company C. If Company C held tax losses or credits prior to the spinout, these would be lost under the new shareholding structure.

We note that the provisions in this bill are specific to spinout in one particular form. There are a large number of situations where spinout may occur, and this bill does not address most of these. It is not possible within current timeframes to broaden the bill to cover all situations of spinout. We understand the development of a broader regime of rules regarding spinout will be complex and will have to undergo the usual tax policy processes.

### **GST treatment of warranty payments from offshore warrantors**

The bill amends provisions relating to the GST treatment of warranty payments made by an offshore warrantor. This issue arose when the Suzuki case clarified the current law relating to warranty payments.<sup>2</sup> In that case, the overseas company (Suzuki) sold a number of new motor vehicles to Suzuki New Zealand, which then imported the vehicles into the country for sale. A warranty agreement covering the value of anticipated warranty repairs was included as part of the sale price of the vehicles and attracted GST on importation into New Zealand. When the vehicles required repairs under warranty, Suzuki provided payment to Suzuki New Zealand for the actual cost of the repairs. The Court of Appeal found that the warranty payments from Suzuki to Suzuki New Zealand were for services provided in New Zealand, and therefore attracted GST at the standard rate. This decision results in a double impost of GST, where GST is paid for the initial warranty agreement and again on the actual warranty payment.

<sup>2</sup> *Suzuki New Zealand Ltd v Commissioner of Inland Revenue*, 7/5/01, CA160/00.

The bill zero-rates supplies of goods and services under a warranty agreement when the importer provides a service of remedying a defect under warranty to the non-registered offshore warrantor, which pays consideration for the service. These amendments are limited to warranties that were included in the cost of the initial good and have therefore attracted GST at the time of import. This ensures such payments do not attract a double impost of GST.

A number of submitters argued these provisions should apply retrospectively back to the introduction of GST on 1 October 1986. The majority disagrees, and does not recommend retrospectivity in this instance. As a general rule, we note that retrospective legislation is inappropriate unless it does not contravene the rational and legitimate expectation of all parties. We note retrospective changes would reverse the judgment of the Court of Appeal in the Suzuki case as it applied to parties involved in the litigation. Where a fault in the legislation results in an incorrect outcome, it is usual to correct the faults prospectively. While taxpayers may have had a perception that GST is not payable on warranty payments, this was an incorrect view of the legislation. We also note there was no detailed policy consideration on the payment of GST on warranties, unlike retrospective changes in the Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001, where there had been substantial consultation prior to the introduction of GST on the appropriate treatment of the particular transactions. National and ACT members recommend that the changes to the GST treatment of warranty payments from offshore warrantors should be made retrospective, to be consistent with the purpose of the new legislation and the treatment of in-bound tourism operators in a previous bill.

We recommend broadening the scope of these provisions, to ensure that they cover other warranty arrangements. For example, we note that the offshore warrantor may not provide the payment to the importer, but may directly pay a third-party repairer for repair services provided to the eventual purchaser of the product. Such an arrangement would not be covered by the provisions as currently drafted, and would still be subject to a double impost of GST. We also note the provision of replacement parts or goods should be zero-rated as an essential element of the warranty. The appropriate provisions would zero-rate payments given by a non-resident warrantor to a registered business for the supply of goods or services under a warranty agreement, if the non-resident warrantor is unable to

recover any GST cost associated with the consideration payment and the warranty had previously attracted GST on import.

We note many warranty arrangements require the warranty holder to provide some payment for the repair cost. Such additional payments will not have previously attracted GST, and therefore should not be zero-rated. However, in such agreements any payment by the warrantor should still be zero-rated. We recommend the definition of “warranty” provided in clause 84(3) not contain the words “without further cost to the recipient”, as such a definition would exclude such arrangements. We also recommend amending the bill to insert the definition of “warranty” into section 2 of the Goods and Services Tax Act 1985.

### **Pension payments by partnerships**

Clauses 13 and 16 clarify that pensions paid by partnerships to former partners are tax deductible. Some submitters suggested that pensions paid under these provisions should be subject to PAYE. This would ensure that the pensioner, provided they have no other income or any other income is withheld at the correct rate, will not have to file an income tax return or comply with provisional tax rules relating to the tax payable on the pensions. This would substantively reduce the compliance costs arising from pension payments. Such a change would require changing the definition of “salary and wages” to include the pension payments. However, we note this would cause the pension payment to be subject to ACC levies, which does not seem to be appropriate for such payments. We therefore do not believe the current bill should apply PAYE to pensions. We understand the department intends to consider the appropriate approach to the problem with ACC payments before allowing pensions to be subject to PAYE.

Clauses 13 and 16 currently focus on continuing partnerships. We note it is possible that this might exclude a two-person partnership where one partner retires. If the remaining sole trader pays the former partner a pension, such an arrangement would be outside the provisions in this bill. We recommend amending the bill to allow tax deductions to sole traders where they pay a pension to a former partner.

### **Tax deductions for bribes**

Clause 19 inserts proposed new section DJ 22, which contains provisions ensuring that any bribe payments made to foreign public officials in the course of business are not tax deductible. The provisions are closely related to provisions in the Crimes Act 1961 making bribery payments a criminal offence, and a number of terms are given the meanings set out in that statute.

New section DJ 22(2) provides that the section applies even if the payment was not an offence under the laws of the foreign country where the public official is employed. We note this is inconsistent with the Crimes Amendment Act 2001, which provides that a payment is not a criminal offence if it was legal in the foreign country. We do not believe it appropriate for a payment to be non-deductible for tax purposes if the same payment is not a criminal offence under the Crimes Act 1961. We therefore recommend the bill make provision for payments that would be legal under the Crimes Act 1961 to be tax-deductible.

The Crimes Act 1961 makes it illegal to corruptly give, offer or agree to give a bribe. New section DJ 22 mirrors this provision. We note, however, that offering or agreeing to give a bribe would not entitle the taxpayer to a tax deduction. We therefore recommend the reference to “offers or agrees to give” a bribe be deleted.

We are not aware of any New Zealand residents that have either offered bribes to foreign public officials or sought a deduction for bribes made to foreign public officials. The provisions in this bill are not intended to remedy any known circumstances and are being enacted to meet obligations under the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, to which New Zealand became a signatory in December 2001.

### **Bloodstock depreciation rates**

The bill increases the depreciation rate for broodmares by allowing mares to be fully depreciated by age 11. Currently broodmares must be depreciated to age 15, but the average mare finishes breeding at age 11. This amendment ensures depreciation rates are consistent with the realities of bloodstock breeding.

We received a submission arguing for allowing an immediate 100 percent depreciation rate for stallions. The submitter also argues for

a five year 20 percent straight line depreciation rate for broodmares, with all broodmares to be written off in full by the age of 11, while any broodmares purchased aged 12 years or over should be written off in the year of purchase. We have considered these issues, but the majority does not recommend any amendment to the bill. The department has provided us with the data used to calculate the depreciation rates, and the majority is satisfied the current rates are appropriate. We understand the submitter has also received a copy of this data. We also note some of the changes sought by the submitter are outside the policy scope of the bill.

The National and ACT minority believes the Government should investigate further the depreciation of stallions. The committee was presented with evidence suggesting current tax treatment of stallions is placing the New Zealand bloodstock industry at a competitive disadvantage internationally.

### **Unit trusts and group investment funds**

We received a number of technical submissions on the legislation relating to the over-taxation problem for unit trusts and group investment funds. This problem is often referred to as the “negative dividend issue”. To a large extent these submissions have been accepted.

### **Ministerial requests**

We received a number of letters from the Minister requesting that we consider incorporating certain matters into the bill. We have considered these matters, and make the following recommendations.

### **Fringe benefit tax calculations**

The Minister recommended we consider changes to the rules regarding the calculation of fringe benefit tax liability. The rules governing fringe benefit tax (FBT) allow employers to choose the appropriate calculation rate for paying FBT. Employers can choose to either pay 64 percent flat rate on all fringe benefits, or use a multi-rate calculation to assess the level of FBT liability. We understand some employers have filed final quarter returns using the 64 percent flat rate and have then sought to have the returns reassessed with the multi-rate calculation.

The department uses discretion to amend assessments, but believes the legislation should be clarified to allow taxpayers to change their method of calculating their FBT liability within a limited time frame. We agree, and believe it appropriate to allow taxpayers to request a reassessment of their final FBT liability within two months of the date of the notice advising that an assessment for the final quarter or the income year has been made.

This issue came to light following problems when employers filed their returns for the 2000-01 or the 2001-02 year. To remedy these problems, we believe taxpayers should have two months from the date of enactment to request a reassessment of their final FBT liability for the 2000-01 or the 2001-02 year. This ensures that employers who may have believed their assessment could not be amended will have an opportunity to apply for a reassessment.

#### **School trustee honoraria**

The Minister requested we consider an amendment that would not require a person to request an income statement or file a tax return if that person received income subject to a determination under regulation 7 of the Income Tax (Withholding Payments) Regulations 1979 and satisfies other non-filing requirements. We understand this issue arises because school board trustees, who receive small payments as honoraria, are required to file tax returns and pay small levels of income tax, ACC premiums and levies on these payments. Given the administrative complexity caused by the payments, a regulation 7 determination was obtained, treating the payment as expenditure and not taxable income. However, a tax return would still be required for this payment, even though the tax liability on this income is zero. We recommend this amendment be incorporated into the bill, as it reduces complexity and compliance costs imposed on school trustees.

#### **Tax liability for dairy companies**

The Minister requested we consider an amendment to address a problem arising out of the Dairy Industry Restructuring Act 2001 (the DIR Act). We understand the DIR Act allows for New Zealand Dairy Board (Dairy Board) to repurchase shares in the Dairy Board held by Tatua Co-operative Dairy Company Limited (Tatua) and

Westland Co-operative Dairy Company Limited (Westland) in certain circumstances. We understand this issue may also affect Premier Co-operative Dairy Company (Premier).

If the shares had been sold to a third party, no tax liability would have arisen for Tatua and Westland. However, a repurchase of shares is treated as a dividend and subject to a tax liability. As the Dairy Board's available subscribed capital has been transferred to Fonterra Co-operative Group under the DIR Act, it is not possible to make a repurchase as a tax-free return of capital.

We understand it was the policy intent of the DIR Act that this transaction should not lead to a tax liability, and all parties involved in this issue have been consulted and agree with the change. We recommend the bill be amended to exempt any repurchase proceeds received by Tatua, Westland and Premier from the disposal of their Dairy Board shares from income tax. This will ensure that no tax liability arises from this repurchase transaction under the DIR Act.

#### **New Zealand Teachers Council**

We understand the Education Standards Act 2001, which established the New Zealand Teachers Council (the Teachers Council), contained a drafting error meaning the Teachers Council will not be treated as a public authority for income tax purposes. As this was not the policy intent of the Education Standards Act 2001, we recommend introducing into this bill an amendment to the Income Tax Act 1994 to ensure the Teachers Council is treated as a public authority. We understand this provision will remain in effect until the Education Act 1989 can be amended.

## **Appendix**

### **Committee process**

The Taxation (Relief, Refunds and Miscellaneous Provisions) Bill was referred to the committee on 11 December 2001. The closing date for submissions was 15 February 2002. We received and considered 18 submissions from interested groups and individuals. We heard 8 submissions. Hearing of evidence took 2 hours 45 minutes and consideration took 2 hours 57 minutes.

We received advice from the Inland Revenue Department and The Treasury.

### **Committee membership**

Mark Peck (Chairperson)

Hon Peter Dunne (Deputy Chairperson)

Hon David Carter

Clayton Cosgrove

David Cunliffe

Rod Donald

Rodney Hide

Luamanuvao Winnie Laban

Rt Hon Winston Peters

Dr the Hon Lockwood Smith

John Tamihere

John Wright

Annabel Young

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

**Struck out (unanimous)**

Subject to this Act,

Text struck out unanimously

**New (unanimous)**

Subject to this Act,

Text inserted unanimously

*(Subject to this Act,)*

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

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*Hon Dr Michael Cullen*

# Taxation (Relief, Refunds and Miscellaneous Provisions) Bill

Government Bill

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**Taxation (Relief, Refunds and  
Miscellaneous Provisions)**

<p>24A Accrual expenditure</p> <p>24B New section EF 1A inserted</p> <p>EF 1A Application of section EF 1 in respect of actual and contingent monetary remuneration on sale of business</p> <p>25 Forgiveness of debt</p> <p>26 Base price adjustment—exceptions</p> <p>27 Forgiveness of debt</p> <p>28 Valuation of bloodstock</p> <p>29 Pensions</p> <p>30 Rules for calculating New Zealand group debt percentage</p> <p>31 Rules for calculating worldwide group debt percentage</p> <p>32 Rules for determining consolidated foreign attributed income group debt percentage</p> <p>33 Treatment of various settlements</p> <p>34 Definitions of guardian, minor and relative</p> <p>35 Trustee income</p> <p>36 Agent to make returns and be assessed as principal</p> <p>37 Liability of principal not affected</p> <p>38 Rents, royalties, or interest derived by Maori trustee and not distributed</p> <p>39 Rebate in certain cases for housekeeper</p> <p>40 Rebate for gifts of money</p> <p>41 Determination of net income</p> <p>42 Calculation of family tax credit</p> <p>43 Credits in respect of tax paid in a country or territory outside New Zealand</p> <p>44 New section LC 14A inserted</p> <p>LC 14A Source of dividends</p> <p>45 Dividends from grey list companies</p> <p>46 Election to be a provisional taxpayer</p> <p>46A Refund of overpaid provisional tax</p> <p>47 Section heading to section MC 1 replaced</p> <p>47A Refund of excess tax</p> <p>48 Limits on refunds of tax</p> <p>48A New section MD 2A inserted</p> <p>MD 2A Limits on refunds of tax for certain qualifying unit trusts and group investment funds</p> <p>49 Credits arising to imputation credit account</p>	<p>50 Special debits arising to imputation credit account of unit trust or group investment fund</p> <p>51 New subpart MJ inserted</p> <p style="padding-left: 20px;">Subpart MJ—Supplementary available subscribed capital accounts</p> <p>MJ 1 Qualifying unit trust or group investment fund may elect to maintain supplementary available subscribed capital account</p> <p>MJ 2 Balance of supplementary available subscribed capital account</p> <p>MJ 3 Supplementary available subscribed capital account</p> <p>MJ 4 Supplementary available subscribed capital account—opening balance</p> <p>MJ 5 Credits arising to supplementary available subscribed capital account</p> <p>MJ 6 Debits arising to supplementary available subscribed capital account</p> <p style="padding-left: 20px;"><i>Liquidation of qualifying unit trust or group investment fund</i></p> <p>MJ 6A Special rule for certain qualifying unit trusts and group investment funds</p> <p style="padding-left: 20px;"><i>Credits and debits incorrectly recorded</i></p> <p>MJ 8 Correction by Commissioner of credits and debits</p> <p>51A Employer’s liability for fringe benefit tax</p> <p>51B Election to pay fringe benefit tax per quarter</p> <p>52 Multi-rate calculation for attributed fringe benefits</p> <p>52A Refunds of deductions</p> <p>52B Non-resident withholding tax deducted in error</p> <p>53 Liability to make deduction in respect of foreign withholding payment dividend</p> <p>54 Reduction in liability under conduit tax relief</p> <p>55 Definitions</p>
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**Taxation (Relief, Refunds and  
Miscellaneous Provisions)**

56	Modifications to measurement of voting and market value interests in case of continuity provisions	77	New Part XB inserted
56A	New section OD 5B inserted OD 5B Modifications to measurement of voting and market value interests in cases of continuity provisions and legislative conversion of companies of proprietors		<b>Part XB</b> <b>Transfers of excess tax</b>
57	Further definitions of associated persons		173K Application
58	Section OE 6 repealed		<i>Transfer rules</i>
59	References to particular regimes in former Act, etc		173L Transfer of excess tax within taxpayer's accounts
	<b>Part 2</b> <b>Amendments to Tax Administration Act 1994</b>		173M Transfer of excess tax to another taxpayer
60	Tax Administration Act 1994		173N Transfer of excess tax—rebates
61	Interpretation		173O Transfer of excess tax if no date specified by taxpayer
62	Resident withholding tax deduction certificates		<i>Application of transfer rules to excess provisional tax</i>
63	Annual returns of income not required		173P Transfer of excess provisional tax if provisional tax paid is more than taxpayer's provisional tax liability, determined before assessment
63A	Returns by person claiming house-keeper or charitable rebates		173Q Transfer of excess provisional tax if taxpayer estimates or revises estimate of residual income tax, determined before assessment
64	Income tax returns and assessments by executors or administrators		173R Transfer of excess tax if provisional tax is more than taxpayer's residual income tax, determined after assessment
65	Resident withholding tax deduction reconciliation statements		<i>Miscellaneous</i>
66	Disclosure of trust particulars		173S Transfers of interest on over-paid tax
67	Disclosure of interest in foreign investment fund		173T Application of excess tax if taxpayer has unsatisfied tax liability
68	Annual imputation return		173U Transfers of excess financial support
69	Content and notification of a public ruling	78	Sections 176 and 177 replaced
70	Application of a public ruling		176 Recovery of tax by Commissioner
71	Withdrawal of a public ruling		177 Taxpayer may apply for financial relief
72	Instalments of and due dates for provisional tax		177A Definition of serious hardship
73	Certain rights of objection not conferred		177B Instalment arrangements
74	Certain rights of challenge not conferred		177C Write-off of tax by Commissioner
75	Late payment penalty		177CA Proof of debt
76	New section 139BA inserted 139BA Imposition of late payment penalties when financial relief sought		
76A	Abusive tax position		

**Taxation (Relief, Refunds and  
Miscellaneous Provisions)**

79	New section 177D inserted 177D Relief to taxpayers to whom new start grants payable	88	Application to make single deduc- tion under section 21F
79A	New section 183AB inserted 183AB Cancellation of late pay- ment penalties imposed before 1 April 2002	89	Payment of tax relating to fringe benefits
		89A	Commissioner's right to withhold payments
			<i>Amendment to Estate and Gift Duties Act 1968</i>
		90	Estate and Gift Duties Act 1968
		91	Exemption for certain dispositions of relationship property
			<i>Amendment to Student Loan Scheme Act 1992</i>
		92	Student Loan Scheme Act 1992
		93	PAYE rules of Income Tax Act 1994 to apply to repayment deductions
			<i>Amendment to Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001</i>
		94	Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001
		95	Value of supply of goods and services

**The Parliament of New Zealand enacts as follows:**

- 1 Title**  
This Act is the **Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2001**.
- 2 Commencement**  
This Act comes into force on the date on which it receives the Royal assent.

**Part 1  
Amendments to Income Tax Act 1994**

- 3 Income Tax Act 1994**  
This Part amends the Income Tax Act 1994<sup>1</sup>.  
<sup>1</sup> 1994 No 164

**New (unanimous)**

**3A Exempt income—interest**

- (1) After section CB 1(1)(c), the following is inserted:
- “(d) interest payable under Schedule 4, clause 12 of the Dairy Industry Restructuring Act 2001 to an exiting company, as defined in section 5 of the Act, as a result of the buy-out of the company’s interests in the New Zealand Dairy Board.”.
- (2) **Subsection (1)** applies on and after 1 June 2001.

**3B New section CB 3A inserted**

- (1) After section CB 3, the following is inserted:
- “CB 3A Application of section CB 3 to New Zealand Teachers Council**
- Despite clause 18(4) of the Seventh Schedule to the Education Act 1989, for the purpose of section CB 3(a), the New Zealand Teachers Council is a public authority.”
- (2) **Subsection (1)** applies on and after 1 February 2002.

**3C Exempt income—dividends**

- (1) After section CB 10(5), the following is added:
- “(6) A dividend derived by an exiting company, as defined in section 5 of the Dairy Industry Restructuring Act 2001, as a result of the buy-out of the company’s interests in the New Zealand Dairy Board under Schedule 4 of the Act is exempt income.”
- (2) **Subsection (1)** applies on and after 1 January 2002.

**3D New section CD 3A inserted**

- (1) After section CD 3, the following is inserted:
- “CD 3A Monetary remuneration may be gross income of purchaser of business**
- If **section DF 10** applies in respect of a sale of a business to a purchaser who is not associated with the vendor and the provisions for actual and contingent monetary remuneration transferred to the purchaser are more than the amount actually paid

**New (unanimous)**

by the purchaser, the excess is gross income of the purchaser at the time generally accepted accounting practice recognises the actual or contingent provision as being reduced.”

- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.

**4 Exclusions from term dividends**

- (1) In section CF 3(14), in paragraph (b) of the definition of **ineligible capital amount**, the second reference to “acquired company” is replaced by “acquiring company”.

**Struck out (unanimous)**

- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.

**New (unanimous)**

- (2) **Subsection (1)** applies to the 1995–96 and subsequent income years.

**5 New section CF 7A inserted**

- (1) After section CF 7, the following is inserted:

“CF 7A **Treatment of certain dividends derived by (*unit trust managers*) managers of unit trusts and trustees of group investment funds**

- “(1) This section applies to a unit trust manager, (*a trustee or*) a person nominated by the unit trust manager (*or the trustee*), a trustee or a manager of a group investment fund that derives category A income, or a person nominated by the trustee or the manager of the group investment fund (in this section referred to as **the manager**), who—

“(a) acquires units from unit holders—

- “(i) in the ordinary course of their management activities in respect of the unit trust; and

- “(ii) in accordance with the terms on which the units were offered to potential unit holders; and
- “(b) derives a dividend from the redemption or other cancellation of units in the unit trust in the ordinary course of their management activities in respect of the unit trust.
- “(2) Despite section CF 6(1), in Parts B, C, E and F, the dividend derived does not include the amount of the imputation credit attached to the dividend to the extent that the dividend, exclusive of the imputation credit, recovers the price paid by the *(unit trust) manager (the trustee or the person nominated by the manager or the trustee)* to acquire the units.
- “(3) To the extent that **subsection (2)** applies, section FC 3 does not apply.
- “(4) In this section, an **imputation credit** includes a dividend withholding payment credit.”
- (2) **Subsection (1)** applies on and after 1 April 1996.
- (3) Despite **subsection (2)**, **subsection (1)** does not apply if a unit trust manager, a person nominated by the unit trust manager, a trustee or a manager of a group investment fund that derives category A income, (a trustee) or a person nominated by the (manager or the) trustee or the manager of the group investment fund has claimed a credit of tax for the imputation credit in a return of income or by using the disputes procedures of Part IVA of the Tax Administration Act 1994 before 6 November 2001.

## **6 Calculation and attribution of controlled foreign company repatriation**

- (1) In section CG 8(11), in item ‘a’, “principles of New Zealand” is replaced by “practice”.
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.

## **7 Branch equivalent income calculation**

- (1) In section CG 11(21)—
- (a) “BC 3,” is inserted before “DN 1”:
- (b) “IB 2, IB 3,” is omitted.
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.

**8 Use of alternative methods**

- (1) In section CG 17(6)(b), “principles” is replaced by “practice”.
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.

**Struck out (unanimous)****9 New section CH 4 added**

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

**“CH 4 Monetary remuneration payable may be gross income of purchaser of business**

If **section DF 10** applies in respect of a sale of a business to a purchaser who is not associated with the vendor and the provisions for actual and contingent monetary remuneration transferred to the purchaser are more than the amount actually paid by the purchaser, the excess is gross income of the purchaser at the time generally accepted accounting practice recognises the actual or contingent provision as being reduced.”

- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.

**10 Section CJ 6 replaced**

- (1) Section CJ 6 is replaced by:

**“CJ 6 Disposal of ownership interest in controlled petroleum mining entity not gross income**

Consideration derived by a person from the disposal of shares or trust interests in a controlled petroleum mining entity is not gross income of the person.”

- (2) **Subsection (1)** applies on and after 3 December 2001.

**New (unanimous)**

- (3) Despite **subsection (2)**, **subsection (1)** does not apply to the consideration derived by the vendor of shares or trust interests in a controlled petroleum mining entity if—
  - (a) a contract to dispose of the shares or trust interests in the controlled petroleum mining entity is entered into before 3 December 2001; and

**New (unanimous)**

- (b) the shares or trust interests are disposed of to a person who is not associated with the vendor; and
- (c) the shares or trust interests are transferred to the purchaser within a year of the date on which the contract is entered into.

**11 Section CJ 7 replaced**

- (1) Section CJ 7 is replaced by:

**“CJ 7 Application of certain petroleum mining provisions**

Except as otherwise expressly provided, sections CJ 3 to CJ 5 of this Act, and section 91 of the Tax Administration Act 1994, apply to gross income derived from the disposal of petroleum mining assets.”

- (2) **Subsection (1)** applies on and after 3 December 2001.

**New (unanimous)**

- (3) Despite **subsection (2)**, if **section 10(3)** of this Act applies, section CJ 7(1)(a) and CJ 7(2) of the Income Tax Act 1994, as it was before the section’s replacement by **section 11** of this Act, does not apply to consideration derived on and after 3 December 2001 from the disposal of the shares or trust interests.

**12 Exception for withdrawal when member ceases employment**

- (1) In section CL 8(2)(b), “either” is replaced by “each”.
- (2) **Subsection (1)** applies *(on and)* to a withdrawal from a superannuation fund on or after the date this Act receives the Royal assent.

**13 Certain deductions not allowed—superannuation contributions, bonuses, retiring allowances, etc**

- (1) After section DF 1(b), the following is added:
- “(c) any expenditure by way of a pension that is paid or payable to or for the benefit of a former partner of a

partnership, or any relative of a former partner, during or on occasion of the former partner's retirement.”

- (2) After section DF 1, the following is added as subsection (2):
- “(2) In **subsection (1)(c)**, a **former partner** includes a partner in a previous partnership that carried on the same business that is carried on by the partnership.”
- (3) **Subsections (1) and (2)** apply to the 2000–01 and subsequent income years.

#### **14 Pensions payable to former employees**

- (1) In section DF 4(1), “section FF 17” is replaced by “section FF 17(1)”.
- (2) **Subsection (1)** applies to the 2000–01 and subsequent income years.

#### **15 Retiring allowances payable to employees**

- (1) In section DF 5(1)—
- (a) “In an income year, a” is replaced by “A”;
- (b) “in that income year” is omitted.
- (2) After section DF 5(2), the following is added:
- “(3) This section does not apply to the extent that the taxpayer has accepted a liability, as contemplated by **section DF 10**, to make a lump sum payment as part of the purchase of the business.”
- (3) **Subsections (1) and (2)** apply on and after the date this Act receives the Royal assent.

#### **16 New sections DF 8A and DF 8B inserted**

- (1) After section DF 8, the following is inserted:
- “**DF 8A Deduction to partner of partnership for pension paid to former partner**
- “(1) In an income year, a taxpayer who is a partner in a partnership is allowed a deduction for their share of an amount paid as a pension to a former partner in a previous partnership, or to the surviving spouse of the former partner, if—
- “(a) the previous partnership in which the former partner was a partner carried on the same business that is carried on by the partnership paying the pension; and
- “(b) the former partner has retired from the previous partnership or their employment ended through retirement; and

- “(c) the former partner has a right to receive the pension under a deed for a fixed period or for life, or the former partner’s spouse has a right to receive the pension under a deed for a fixed period or for life, or until the spouse remarries; and
  - “(d) the pension is paid for the former partner’s past services in the previous partnership.
- “(2) **Subsection (1)** applies only to an amount that is reasonable in the particular circumstances of the case.
- “(3) **Subsection (1)** does not apply to a partnership which is engaged exclusively or principally in the investment of money or the holding of or dealing in shares, securities, investments or estates or interests in land.

**New (unanimous)**

“DF 8B **Deduction to certain taxpayers for pension paid to former partner**

- “(1) In an income year, a taxpayer who is in business on their own account and who was a partner in a partnership is allowed a deduction for the amount paid as a pension to a former partner in the partnership, or to the surviving spouse of the former partner, if—
- “(a) the partnership in which the former partner was a partner carried on the same business that is carried on by the taxpayer who is paying the pension; and
  - “(b) the former partner has retired from the partnership or their employment ended through retirement; and
  - “(c) the former partner has a right to receive the pension under a deed for a fixed period or for life, or the former partner’s spouse has a right to receive the pension under a deed for a fixed period or for life, or until the spouse remarries; and
  - “(d) the pension is paid for the former partner’s past services in the partnership.
- “(2) **Subsection (1)** applies only to an amount that is reasonable in the particular circumstances of the case.

**New (unanimous)**

“(3) **Subsection (1)** does not apply to a taxpayer whose business is engaged exclusively or principally in the investment of money or the holding of or dealing in shares, securities, investments, or estates or interests in land.”

- (2) **Subsection (1)** applies to the 2000–01 and subsequent income years.

**Struck out (unanimous)****17 New section DF 9 added**

- (1) After **section DF 8A** (as added by **section 16**), the following is added:

“DF 9 **No deduction for goods and services tax payable on fringe benefit**

A taxpayer, being a registered person to whom **section 23A** of the Goods and Services Tax Act 1985 applies, is not allowed a deduction for the goods and services tax payable on the taxable value of a fringe benefit.”

- (2) **Subsection (1)** applies to goods and services tax payable and included in fringe benefit tax returns due—
- on and after 31 May 2002, for an employer who pays fringe benefit tax on a quarterly or an annual basis; and
  - by the terminal tax date for the 2000–01 income year, for an employer who pays fringe benefit tax on an income year basis, and to subsequent fringe benefit tax returns required to be filed on an income year basis.

**18 New sections DF 10 and DF 11 inserted**

- (1) After **section DF 9** (as added by **section 17**), the following is inserted:

“DF 10 **Deduction allowed for actual and contingent monetary remuneration on sale of business**

“(1) This section applies to a taxpayer who sells a business, or part of a business, if some or all of the employees of the business become employees of the purchaser.

“(2) The taxpayer may deduct the provisions for (*actual and*) contingent monetary remuneration transferred to the purchaser in

respect of transferring employees (*if the taxpayer and the purchaser agree on the amount transferrable*).

- “(3) The taxpayer is allowed the deduction on the date that the business is sold.
- “(4) If the purchaser is a person associated with the taxpayer—
- “(a) **subsection (2)** does not apply; and
  - “(b) the purchaser may deduct the amount of actual and contingent monetary remuneration transferred in respect of transferring employees if the amount would have been deductible to the taxpayer had the business not been sold.
- “(5) If the provisions for actual and contingent monetary remuneration transferred are less than the amount actually paid by the purchaser, the purchaser is allowed a deduction for the amount of the difference.

**New (unanimous)**

- “(6) In this section—
- “(a) provisions for contingent monetary remuneration transferred by a taxpayer are treated as expenditure incurred by the taxpayer; and
  - “(b) actual and contingent monetary remuneration transferred by a taxpayer is treated as expenditure incurred by the purchaser.

**“DF 11 Deduction allowed for actual and contingent monetary remuneration on transfer of employees to associated person**

- “(1) This section applies if a taxpayer transfers employees of the taxpayer to a person associated with the taxpayer.
- “(2) The associated person may deduct the amount of actual and contingent monetary remuneration transferred in respect of transferring employees if the amount would have been deductible to the taxpayer had the employees not been transferred.
- “(3) In this section, actual and contingent monetary remuneration transferred by a taxpayer is treated as expenditure incurred by the associated person.”

- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.

**New (unanimous)**

- (3) Despite **subsection (2)**, in **subsection (1)**, new **section DF 10(1)** to **DF 10(3)** and **DF 10(6)(a)** applies to the 1997–98 and subsequent income years if a taxpayer has claimed a deduction in a return of income for the 1997–98 or a subsequent income year.

**19 New section DJ 22 inserted**

- (1) After section DJ 21, the following is inserted:

**“DJ 22 No deduction for bribes paid to public officials**

- “(1) This section applies if a person corruptly gives (*offers, or agrees to give*) a bribe to another person with intent to influence a public official to act, or fail to act, in his or her official capacity, whether or not the act or the failure to act is within the scope of the official’s authority, in order to—

“(a) obtain or retain business; or

“(b) obtain any improper advantage in the conduct of business.

- “(2) This section applies even if the bribe was given (*, offered or agreed to be given*) outside New Zealand (*and was not*) and it was, at the time it was given, (*offered or agreed to be given,*) an offence under the laws of the foreign country in which the principal office of the person, organisation or other body for whom the foreign public official is employed or otherwise provides services, is situated.

- “(3) A person is not allowed a deduction for the amount of the bribe given (*or offered*).

- “(4) **Subsection (3)** does not apply to an amount paid for the sole or primary purpose of ensuring or expediting the performance by a foreign public official of a routine government action and the value of the benefit is small.

- “(5) In this section—

“**benefit, foreign country** and **foreign public official** have the meanings set out in section 105C of the Crimes Act 1961

“**bribe** has the meaning set out in section 99 of the Crimes Act 1961

“**public official** means—

“(a) a member of Parliament or a Minister of the Crown; and

“(b) a judicial officer, a law enforcement officer or an official, as those terms are defined in section 99 of the Crimes Act 1961; and

“(c) a foreign public official

“**routine government action** has the meaning set out in section 105C of the Crimes Act 1961.”

- (2) **Subsection (1)** applies to bribes paid on and after the date this Act receives the Royal assent.

## 20 Section DM 6 replaced

- (1) Section DM 6 is replaced by:

“DM 6 **No deduction for cost of ownership interests in controlled petroleum mining entity**

A person is not allowed a deduction for the cost of shares or trust interests in a controlled petroleum mining entity.”

- (2) **Subsection (1)** applies on and after 3 December 2001.

### New (unanimous)

- (3) Despite **subsection (2)**, **subsection (1)** does not apply if **section 10(3)** applies.

## 21 Accounting for goods and services tax

### New (unanimous)

- (A1) In section ED 4(3)(a) and ED 4(4)(b), “section 21(1)” is replaced by “section 21”.

- (1) In section ED 4(7)(a), “**services, and taxable supply**” is replaced by “**and services**”.

### New (unanimous)

- (1A) **Subsection (A1)** applies on and after 10 October 2000.

- (2) **Subsection (1)** applies to the 2002–03 and subsequent income years.

**22 New section EE 2A inserted**

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

**“EE 2A Valuation of trading stock by certain taxpayers not required if closing stock estimated to be less than \$5,000**

“(1) This section applies to a taxpayer if the *(total value of the taxpayer’s (taxable supplies) turnover* for the 12 months ending with the month of the taxpayer’s balance date is not more than \$1,300,000.

“(2) A taxpayer may use the value of opening stock for an income year as the value of closing stock for the income year if the taxpayer reasonably estimates that the closing stock’s value is less than \$5,000.”

(2) **Subsection (1)** applies to the 2002–03 and subsequent income years.

**23 Cost of trading stock other than excepted financial arrangements**

(1) In section EE 5, “principles” is replaced by “practice” wherever it occurs.

(2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.

**24 Requirement to value closing stock consistently**

(1) In section EE 16(2), “principles” is replaced by “practice”.

(2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.

**New (unanimous)****24A Accrual expenditure**

(1) In section EF 1(5)(c), “or within such further period as is specified in subsection (6)” is omitted.

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

“(6A) For the purpose of subsection (5)(c), actual and contingent monetary remuneration is treated as being paid by a vendor of a business, or part of a business, if the vendor and the purchaser are not associated persons and agree, in writing, on the

**New (unanimous)**

amount transferrable and this amount is reflected in the consideration paid by the purchaser for the business, or part of the business.”

- (3) **Subsections (1) and (2)** apply on and after the date this Act receives the Royal assent.
- (4) Despite **subsection (3)**, **subsection (2)** applies to the 1997–98 and subsequent income years if a taxpayer, not being a purchaser, has claimed a deduction in a return of income for the 1997–98 or a subsequent income year.

**24B New section EF 1A inserted**

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

**“EF 1A Application of section EF 1 in respect of actual and contingent monetary remuneration on sale of business**

- “(1) For the purpose of section EF 1, the purchaser of a business, or part of a business, may account for actual and contingent monetary remuneration transferred on an employee by employee basis or on a group of employees basis.
  - “(2) The purchaser must account for the actual and contingent monetary remuneration transferred in the same way every income year.”
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.

**25 Forgiveness of debt**

- (1) In section EH 5(2), “, including a distribution of beneficiary income,” is inserted after “distribution”.
- (2) After section EH 5(2), the following is inserted:

**“Application**

- “(2A) Subsection (3) does not apply when a trustee of a trust (**trust A**) to which subsection (1)(b) applies makes a distribution to another trust (*and the other trust is one to which subsection (1)(b) applies*) (**trust B**) if—

**New (unanimous)**

“(a) trust B is a trust described in subparagraphs (i), (ii) or (iii) of subsection (1)(b); and

“(b) subsection (1)(b) would apply to trust B if, at the time the distribution is made, the creditor of trust A were a creditor of trust B, and the creditor had forgiven a debt owing by trust B.”

(3) After section EH 5(3), the following is inserted:

**“Distributed amounts not gross income for purpose of beneficiary income definition**

“(3A) *(Despite subsection (3))* If subsection (3) applies, the gross income derived by the trustee is not gross income for the purpose of the **beneficiary income** definition.”

(4) In section EH 5(3)(b) and EH 5(4), “creditors” is replaced by “the creditor”.

(5) In section EH 5, in the list of defined terms:

(a) “beneficiary income,” is inserted after “amount,”;

(b) “, trustee” is inserted after “qualified accruals rules”.

(6) **Subsections (1) to (5)** apply on and after the date this Act receives the Royal assent.

**26 Base price adjustment—exceptions**

(1) After section EH 46(3), the following is added:

**“Absolute assignments and defeasances with deferred consideration**

“(4) A person must not calculate a base price adjustment if the person assigns their rights under a financial arrangement absolutely or defeases their obligations under a legal defeasance and all or part of the consideration for the assignment or defeasance is deferred.”

(2) In section EH 46, in the list of defined terms—

(a) “, consideration” is added after “business”;

(b) “, person” is added after “New Zealand resident”.

(3) **Subsections (1) and (2)** apply on and after the date this Act receives the Royal assent.

**27 Forgiveness of debt**

- (1) In section EH 52(2), “, including a distribution of beneficiary income,” is inserted after “distribution”.
- (2) After section EH 52(2), the following is inserted:

**“Application**

“(2A) Subsection (3) does not apply when a trustee of a trust (**trust A**) to which subsection (1)(b) applies makes a distribution to another trust (*and the other trust is one to which subsection (1)(b) applies*) (**trust B**) if—

**New (unanimous)**

- “(a) trust B is a trust described in subparagraphs (i), (ii) or (iii) of subsection (1)(b); and
- “(b) subsection (1)(b) would apply to trust B if, at the time the distribution is made, the creditor of trust A were a creditor of trust B, and the creditor had forgiven a debt owing by trust B.”

- (3) After section EH 52(3), the following is inserted:
 

**“Distributed amounts not gross income for purpose of beneficiary income definition**

“(3A) (*Despite subsection (3),*) If subsection (3) applies, the gross income derived by the trustee is not gross income for the purpose of the **beneficiary income** definition.”
- (4) In section EH 52(3)(b) and EH 52(4), “creditors” is replaced by “the creditor”.
- (5) In section EH 52, in the list of defined terms—
  - (a) “beneficiary income,” is inserted after “amount,”:
  - (b) “, trustee” is inserted after “person”.
- (6) **Subsections (1) to (5)** apply on and after the date this Act receives the Royal assent.

**28 Valuation of bloodstock**

- (1) In section EM 1(1)(a), “subsection (4)” is replaced by “subsection (4)(a), (4)(b) or (4)(c)”.
- (2) After section EM 1(1)(a), the following is inserted:
 

“(ab) in relation to bloodstock that is a broodmare (*and to an income year beginning*) that exists on or after 1 April

2001, the first income year, being the income year in which 1 April 2001 falls or a subsequent income year, in which the broodmare (being a broodmare which at the end of that income year is 2 years of age or older) is—

- “(i) first used by the taxpayer for breeding purposes in the course of the conduct of the business by the taxpayer of breeding bloodstock; or
- “(ii) purchased with the intention of being used for breeding purposes by the taxpayer in the course of the conduct of the business by the taxpayer of breeding bloodstock; or
- “(iii) owned in the course of the conduct of the business of breeding bloodstock and that taxpayer has the intention of using that bloodstock for breeding purposes,—

the amount that remains after deducting from the cost price the specified writedown determined under **subsection (4)(d)** in relation to the broodmare:”.

- (3) In section EM 1(1)(b), “paragraph (a)” is replaced by “either **(paragraphs (a) or (ab) apply)** paragraph (a) or **paragraph (ab)**”.
- (4) In section EM 1(1)(c), “, **(ab)**” is inserted after “(a)”.
- (5) After section EM 1(4)(c), the following is inserted:
  - “(d) in relation to a broodmare, an amount calculated according to the formula:

$$\frac{x \times y}{11 - z}$$

where—

x is—

- (i) in the case of a broodmare that is bloodstock to which subsection (5)(a) and (5)(b) applies, 1.25;
- (ii) in any other case, 1; and

y is the cost price of the broodmare; and

z is either—

- (i) 8; or
- (ii) the age of the broodmare if its age at the end of the income year in which **subsection (1)(ab)** applies to the broodmare and to the taxpayer is 7 or less.”

- (6) **Subsections (1) to (5)** apply on and after the date this Act receives the Royal assent.

## 29 Pensions

- (1) In section FF 17, the following is added as subsections (2) and (3):
- “(2) **Subsection (3)** applies if part of the pension, otherwise payable by a partnership or a taxpayer to a former partner, is paid by the partnership or the taxpayer to a person other than the former partner in accordance with an agreement made between the former partner and the person under section 21 of the (*Matrimonial Property*) Property (Relationships) Act 1976 or in compliance with an order of the Court made under section 25 of that Act.
- “(3) **Sections DF 8A and DF 8B** (*applies*) apply in the same manner and to the same extent to the part of the pension so paid as it would have applied if the part had been paid by way of a pension to the former partner.”
- (2) **Subsection (1)** applies to the 2000–01 and subsequent income years.

## 30 Rules for calculating New Zealand group debt percentage

- (1) After section FG 4(3)(c), the following is inserted:
- “(ca) in the case of a specified lease or a finance lease that is not recognised as an asset under generally accepted accounting practice, the adjusted tax value of the lease asset; or”.
- (2) In section FG 4(3)(d), FG 4(4), FG 4(9) and FG 4(15), “principles of New Zealand” is replaced by “practice”.
- (3) In section FG 4(4), “subsection (3)(c)” is replaced by “either subsection (3)(c) or **subsection (3)(ca)**”.
- (4) **Subsections (1) and (3)** apply to measurement dates that occur on and after 3 December 2001.
- (5) **Subsection (2)** applies on and after the date this Act receives the Royal assent.

**31 Rules for calculating worldwide group debt percentage**

- (1) In section FG 5(4)(a), FG 5(8)(c)(i), FG 5(8)(d)(ii), FG 5(10)(b) and FG 5(11), “principles of New Zealand” is replaced by “practice”.
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.

**32 Rules for determining consolidated foreign attributed income group debt percentage**

- (1) In section FH 4(6)(b) and FH 4(6)(c), “principles of New Zealand” is replaced by “practice”.
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.

**33 Treatment of various settlements**

- (1) In section HH 3D(1)(c), “, being loans for less than market value,” is replaced by “*(are) relate to loans that are* for less than market value *(that) and the loans*”.
- (2) After section HH 3D(1), the following is inserted:  
“(1A) Subsection (1) does not apply if more than one settlement is made on a trust and none of the settlements are of the type referred to in section HH 3C.”
- (3) **Subsections (1)** and **(2)** apply to beneficiary income derived in relation to the 2001–02 and subsequent income years.
- (4) **Subsection (3)** does not apply if the trustee of a trust has filed a return of income for the 2001–02 income year before 3 December 2001 on the basis that section HH 3D, as enacted by section 20 of the Taxation (Beneficiary Income of Minors, Services-Related Payments and Remedial Matters) Act 2001, applied.

**34 Definitions of guardian, minor and relative**

- (1) After section HH 3F(2), the following is inserted:  
“(2A) In subsection (2), the balance date of the trust is the balance date for the income year in which the income, from which the distribution of beneficiary income is made, is derived.”
- (2) **Subsection (1)** applies to beneficiary income derived in relation to the 2001–02 and subsequent income years.

- (3) **Subsection (2)** does not apply if the trustee of a trust has filed a return of income for the 2001–02 income year before 3 December 2001 on the basis that section HH 3F(2), as enacted by section 20 of the Taxation (Beneficiary Income of Minors, Services-Related Payments and Remedial Matters) Act 2001, applied.

**35 Trustee income**

- (1) In section HH 4(2)(a), “or to any deduction by way of special exemption” is omitted.
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.

**36 Agent to make returns and be assessed as principal**

- (1) In section HK 1(2), “an exemption or” is replaced by “a”.
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.

**37 Liability of principal not affected**

- (1) In section HK 3(1), “, furnish returns” is inserted after “assessments”.
- (2) **Subsection (1)** applies to the 2002–03 and subsequent income years.

**38 Rents, royalties, or interest derived by Maori trustee and not distributed**

- (1) In section HK 14, “or to any deduction by way of special exemption” is omitted.
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.

**39 Rebate in certain cases for housekeeper**

- (1) In section KC 4(2), in the definition of **qualifying payments**, “or special exemption” is omitted.
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.

**40 Rebate for gifts of money**

- (1) After section KC 5(1)(bw), the following is inserted:

“(bx) Akha Rescue Ministry Charitable Trust”.

- (2) **Subsection (1)** applies to the 2002–03 and subsequent income years.

#### 41 Determination of net income

- (1) In section KD 1(1)(a), “sections CB 1(1)(a), CB 1(1)(c), CB 5(1)(f), CB 9(a) and CB 9(d)” is replaced by “sections CB 5(1)(f) and CB 9(a)”.

#### Struck out (unanimous)

- (2) After section KD 1(1)(b)(ii), the following is inserted:
- “(iii) the amount by way of depreciation in respect of a building; and  
“(iv) the amount allowed under section EI 3 or section EI 13; and”.

- (3) Section KD 1(1)(c), KD 1(1)(d), KD 1(1)(e)(iii), KD 1(1)(e)(iv) and KD 1(1)(e)(viii) is repealed.

- (4) Section KD 1(1)(e)(i) is replaced by:

“(i) any amount of income equalisation reserve deposit made *(before the 2003–04)* in relation to the 2002–03 or a previous income year (not being interest payable under section EI 2) that is refunded to the person in the 2003–04 or a subsequent income year under any of sections EI 4, EI 5, EI 7 and EI 9; and”.

- (5) In section KD 1(1)(e)(ii), “in the income year” is replaced by “in the 2002–03 or a prior income year” in both places where it occurs.

- (6) In section KD 1(1)(e)(v), “, excluding a deduction allowed by way of depreciation in the 2003–04 or a subsequent income year” is inserted after “income year”.

- (7) Section KD 1(1)(e)(vi) is replaced by:

“(vi) any amount of adverse event income equalisation reserve deposit made under section EI 11 *(before the 2003–04)* in relation to the 2002–03 or a previous income year (not being interest payable under section EI 12) that is refunded to the person in the 2003–04 or a subsequent income year under section EI 14, or under

either section EI 5 or section EI 7 as applied by section EI 15; and”.

- (8) **Subsections (1), (2) and (4) to (7)** apply to the 2003–04 and subsequent income years.
- (9) **Subsection (3)** applies on the first day of the 2003–04 income year.

#### **42 Calculation of family tax credit**

- (1) Section KD 3(4) is replaced by:
  - “(4) If a person has a spouse and is the principal caregiver during an eligible period, the person is allowed a credit of tax for the income year containing the eligible period of an amount calculated using the formula in subsection (5).”
- (2) **Subsection (1)** applies to the 2003–04 and subsequent income years.

#### **43 Credits in respect of tax paid in a country or territory outside New Zealand**

- (1) In section LC 1(5), “, CF 6, and OE 6” is replaced by “and CF 6”.
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.

#### **44 New section LC 14A inserted**

- (1) After section LC 14, the following is inserted:
  - “LC 14A **Source of dividends**  
If a company is not resident in New Zealand, and for the purposes of a law of another territory in relation to which a double tax agreement has been made is resident in that territory, and the law imposes foreign tax, a dividend paid by the company is treated as being derived from a source in that other territory for the purposes of the double tax agreement.”
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.

#### **45 Dividends from grey list companies**

- (1) In section LF 5(5), in the definition of **retained earnings**, “principles” is replaced by “practice”.

- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.

#### **46 Election to be a provisional taxpayer**

- (1) In section MB 2A(1)(a)(i), “or a non-standard income year” is inserted after “year”.

#### **New (unanimous)**

- (1A) After section MB 2A(1), the following is added:

“(2) **Subsection (3)** applies if a taxpayer has a non-standard income year and has filed a return of income for the 1998–99 or a subsequent income year between 10 October 2000 and the date the **Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2001** receives the Royal assent.

“(3) If a taxpayer has filed their return of income on the basis that section MB 2A(1)(a)(i) applied, as it was before the enactment of **section 46(1)** of the **Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2001**, the taxpayer may elect to be a provisional taxpayer for the income year for which the return was filed if the taxpayer has paid provisional tax of \$2,500 or more on or before the third instalment date in the non-standard income year that corresponds with the income year for which the return was filed.”

- (2) **Subsection (1)** applies to the 1998–99 and subsequent income years.

#### **New (unanimous)**

- (3) **Subsection (1A)** applies on and after the date this Act receives the Royal assent.

#### **46A Refund of overpaid provisional tax**

- (1) In section MB 8(1) and MB 8(2), “in accordance with a taxpayer’s, or their agent’s, request under **section 173T** of the Tax Administration Act 1994 or otherwise” is inserted after “earlier income year”.
- (2) **Subsection (1)** applies to the 2002–03 and subsequent income years.

**47 Section heading to section MC 1 replaced**

- (1) The section heading to section MC 1 is replaced by:  
“**Payment of terminal tax by provisional taxpayer**”.
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.

**New (unanimous)**

**47A Refund of excess tax**

- (1) In section MD 1(1), MD 1(2) and MD 1(3), “**MD 2A**,” is inserted after “MD 2,”.
- (2) In section MD 1(3), “or in accordance with a person’s, or their agent’s, request under **section 173T** of the Tax Administration Act 1994” is inserted after “determine”.
- (3) **Subsections (1)** and **(2)** apply to the 2002–03 and subsequent income years.

**48 Limits on refunds of tax**

- (1) After section MD 2(1), the following is inserted:  
“(1A) Despite subsection (1)(a), an imputation credit account company that furnishes its imputation return for an imputation year before the end of the next imputation year due to an extension of time for furnishing the imputation return may be refunded income tax in accordance with section MD 1 if the refund is not more than the credit balance of the company’s imputation credit account on the last day of the imputation year for which the imputation return was furnished.”
- (2) In section MD 2(3) and MD 2(4), “, **(1A)**” is inserted after “subsections (1)”.
- (3) In section MD 2(5) and MD 2(7)(b), “subsection (1) or subsection (2)” is replaced by “subsections (1), **(1A)** or (2)”.
- (4) After section MD 2(5), the following is inserted:  
“(5A) Despite subsection (5), the income tax not refunded may be credited on a provisional tax instalment date if residual income tax is treated as being payable on the date specified in Part VII of the Tax Administration Act 1994.”
- (5) **Subsections (1)** to **(3)** apply to a refund paid on or after 1 April 2002.

- (6) **Subsection (4)** applies on and after the date (*that*) this Act receives the Royal assent.

**New (unanimous)**

**48A New section MD 2A inserted**

- (1) After section MD 2, the following is inserted:

**“MD 2A Limits on refunds of tax for certain qualifying unit trusts and group investment funds**

If a qualifying unit trust or a group investment fund becomes entitled to a refund of income tax in accordance with section MD 1 and has a credit balance in its supplementary available subscribed capital account upon liquidation and a nil balance in its imputation credit account, the refund of income tax may not be more than the amount calculated according to the formula:

$$\text{credit balance} \times \text{maximum imputation ratio}$$

where—

credit balance	is the credit balance in the qualifying unit trust's, or the group investment fund's, supplementary available subscribed capital account; and
maximum imputation ratio	is the formula set out in section ME 8(1), as if the words 'in which the dividend is paid' in item a were read as 'in which the liquidation occurs'.

- (2) **Subsection (1)** applies to the 2002–03 and subsequent income years.

**49 Credits arising to imputation credit account**

- (1) Section ME 4(1)(a)(iii) is replaced by:

“(iii) in the case of a company that is a group investment fund deriving category B income, income tax paid in respect of the income:”.

- (2) After section ME 4(1)(d), the following is inserted:

“(da) the amount calculated according to the formula:  
credit balance  $\times$  maximum imputation ratio

where—

credit balance	is all or part of the credit balance of the supplementary available subscribed capital account that the qualifying unit trust or group investment fund elects to use under <b>section MJ (7) 6</b> ; and
maximum imputation ratio	is the formula set out in section ME 8(1), as if the words ‘in which the dividend is paid’ in item ‘a’ were read as ‘to which the election made under <b>section MJ (7) 6</b> relates’.”

- (3) After section ME 4(2)(c), the following is inserted:  
“(ca) in the case of a credit referred to in **paragraph (da)**, on the date that a debit arises in the qualifying unit trust’s or group investment fund’s supplementary available subscribed capital account under **section MJ 6**.”
- (4) **Subsection (1)** applies to the 1997–98 and subsequent income years.
- (5) **Subsections (2)** and **(3)** apply to the 2002–03 and subsequent imputation years.

**50 Special debits arising to imputation credit account of unit trust or group investment fund**

- (1) In section ME 41(2)—
  - (a) in paragraph (a), “, excluding imputation credits that have been included in a debit to the company’s or consolidated group’s imputation credit account arising under section ME 5(1)(i) in the income year, being imputation credits attached to dividends derived by the company or group company in the circumstances described in subsection (1)” is inserted after “the dividends”:
  - (b) in paragraph (b)—
    - (i) the formula is replaced by:
 
$$\frac{a \times c - d}{b}$$
    - (ii) at the end of item c, “year.” is replaced by “year; and” and the following is added:

“d is the amount of imputation credits attached to dividends that have been included in a debit to the company’s or consolidated group’s imputation credit account that arises under section ME 5(1)(i) in the income year, being imputation credits attached to dividends derived by the company or group company in the circumstances described in subsection (1).”

(2) **Subsection (1)** applies on and after 1 April 1996.

### 51 New subpart MJ inserted

(1) After subpart MI, the following is inserted:

“Subpart MJ—Supplementary available subscribed capital accounts

“MJ 1 **Qualifying unit trust or group investment fund may elect to maintain supplementary available subscribed capital account**

“(1) If a qualifying unit trust or a group investment fund that derives category A income issues shares on terms that their redemption will be subject to section CF 3(1)(b)(iv)(A), the qualifying unit trust or group investment fund may establish and maintain a supplementary available subscribed capital account on and after the date that the **Taxation (Relief, Refunds and Miscellaneous Provisions) 2001** receives the Royal assent (*(in this subpart, called the start date)*). In this subpart, the date on which a qualifying unit trust or a group investment fund establishes a supplementary available subscribed capital account is called the start date.

“(2) Despite **subsection (1)**, if **section MJ 4(1)** applies, and a qualifying unit trust or group investment fund makes an actual calculation for a period before an effective date or a notional calculation as at (a) an effective date that is within the period (described in that subsection), (the date after the date of the calculation is the start date) the start date is the day after the effective date of the calculation.

“MJ 2 **Balance of supplementary available subscribed capital account**

- “(1) The balance of a supplementary available subscribed capital account is the difference between the total amount of credits and the total amount of debits existing in the account.
- “(2) The account has a credit balance if credits are more than debits.

“MJ 3 **Supplementary available subscribed capital account**

- “(1) For each imputation year, a qualifying unit trust or a group investment fund must record the following in its supplementary available subscribed capital account:
- “(a) the opening balance:
  - “(b) credits arising under **section MJ 5** in the year:
  - “(c) debits arising under **section MJ 6** in the year.
- “(2) The opening balance of the account is—
- “(a) for the first imputation year in which the start date falls, nil; and
  - “(b) for subsequent imputation years, the closing balance of the account for the prior imputation year.

“MJ 4 **Supplementary available subscribed capital account—opening balance**

- “(1) This section applies to a qualifying unit trust or a group investment fund that exists at any time between the date that the **Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2001** receives the Royal assent and 31 March 2003 (both dates inclusive).
- “(2) Despite **section MJ 3(2)**, for the 2002–03 imputation year, a qualifying unit trust or a group investment fund may calculate the opening balance of its supplementary available subscribed capital account according to either—

**Struck out (unanimous)**

- “(a) an actual calculation of the total amount of available subscribed capital per share that is more than the total amount from the redemption of those shares; or

## New (unanimous)

“(a) an actual calculation of the total excess for any redemptions, being, for each redemption, the amount by which the available subscribed capital, as calculated under section CF 3(1)(b)(iv)(A), was more than the proceeds, calculated under section CF 2(1)(g) from the redemption, if the redemption occurred during the period beginning on the date on which the qualifying unit trust or group investment fund became an imputation credit account company and ending on the day before the start date; or

“(b) a notional calculation according to the formula:

$$\frac{\text{further income tax on liquidation} - \text{tax not available to impute dividends}}{\text{maximum imputation ratio}}$$

where—

further income tax on liquidation

is the further income tax that would be payable under section ME 9 if the qualifying unit trust or group investment fund were liquidated on the day before the start date, and it had paid all tax (including foreign dividend withholding payments) and imputed all dividends (including redemption dividends) at the maximum rate allowed; and

tax not available to impute dividends

is the amount of further income tax to be paid that arises due to the structural features of the taxation and imputation systems described in subsection (4); and

maximum imputation ratio

is the ratio calculated using the formula set out in section ME 8(1), as if the words ‘in which the dividend is paid’ in item ‘a’ were read as ‘in which the start date occurs’.

- “(3) In **subsection (2)(b)**, tax must be calculated under the item **further income tax on liquidation** based on an orderly realisation of assets in the ordinary course of business.
- “(4) For the purpose of **subsection (2)(b)**, the structural features of the taxation and imputation systems that would not allow a company that does not issue shares on terms subject to section CF 3(1)(b)(iv)(A) to fully impute a distribution made on the liquidation of the company include, for example, the tax effects of—
- “(a) non-taxable gains and losses, including exempt income but excluding dividends subject to section NH 1; and
  - “(b) imputation credits lost because of a breach in the continuity provisions; and
  - “(c) foreign tax credits; and
  - “(d) retained earnings generated before the qualifying unit trust or group investment fund established an imputation credit account.

“MJ 5 **Credits arising to supplementary available subscribed capital account**

- “(1) In an imputation year, a qualifying unit trust’s, or a group investment fund’s, supplementary available subscribed capital account may be credited *(to the extent that)* with the amount by which the available subscribed capital (per share is more than the amount from the redemption of the share if the redemption of the share was subject to section CF 3(1)(b)(iv)(A)), as calculated under section CF 3(1)(b)(iv)(A), is more than the proceeds, calculated under section CF 2(1)(g), from the redemption of shares in the qualifying unit trust or group investment fund.
- “(2) The credit arises on the date that the shares are redeemed.
- “(3) This section only applies to credits that arise in respect of redemptions that occur on or after the start date.

**“MJ 6 Debits arising to supplementary available subscribed capital account****Struck out (unanimous)**

- “(1) In an imputation year, a qualifying unit trust’s, or a group investment fund’s, supplementary available subscribed capital account must be debited with the amount elected to be recorded in the qualifying unit trust’s, or group investment fund’s, imputation credit account.
- “(2) The debit arises—
- “(a) on the last day of the imputation year in respect of which an election under **section MJ 7(1)** is made; or
  - “(b) immediately before the qualifying unit trust or group investment fund ceases to be an imputation credit account company if an election has been made under **section MJ 7(2)**.

**“MJ 7 Transfer of credit balance in supplementary available subscribed capital account to imputation credit account**

- “(1) A qualifying unit trust or a group investment fund that has a credit balance in its supplementary available subscribed capital account at *(the end of an)* any time in the imputation year may elect to use all or part of the balance for the purpose of recording credits in its imputation credit account to satisfy a debit balance in that account.
- “(2) A qualifying unit trust or a group investment fund that has a credit balance in its supplementary available subscribed capital account may, immediately before it ceases to be an imputation credit account company, elect to use all or part of the balance for the purpose of recording credits in its imputation credit account to satisfy a debit balance in that account.

**Struck out (unanimous)**

- “(3) An election is made by debiting the supplementary available subscribed capital account and crediting the imputation credit account.

**New (unanimous)**

- “(3) An election is made by—
- “(a) debiting the available subscribed capital account with the amount of the credit balance so elected; and
  - “(b) crediting the imputation credit account with the amount allowed by **section ME 4(1)(da)**.
- “(4) The debit arises—
- “(a) on the date on which an election is made under **subsection (1)**;
  - “(b) immediately before the qualifying unit trust or group investment fund ceases to be an imputation credit account company if an election is made under **subsection (2)**.

*“Liquidation of qualifying unit trust or group investment fund*

**“MJ 6A Special rule for certain qualifying unit trusts and group investment funds**

- “(1) If a qualifying unit trust or a group investment fund is liquidated and has never established a supplementary available subscribed capital account, the qualifying unit trust or the group investment fund may, upon liquidation, establish a supplementary available subscribed capital account and calculate an opening balance in accordance with **section MJ 4(2)**.
- “(2) If **subsection (1)** applies, **section MJ 3** does not apply and the opening balance is treated as the closing balance of the account.

*“Credits and debits incorrectly recorded*

**“MJ 8 Correction by Commissioner of credits and debits**

- “(1) If the Commissioner considers that a credit or a debit in a qualifying unit trust’s, or group investment fund’s, supplementary available subscribed capital account is incorrectly recorded or determines that a debit or a credit has not been recorded at all, the Commissioner must determine the correct debit or credit amount and the date on which the debit or credit should be recorded.

- “(2) As soon as is convenient after a determination is made, the Commissioner must give notice of the determination of incorrect entry to the qualifying unit trust or group investment fund.
- “(3) Unless the qualifying unit trust or group investment fund establishes in proceedings challenging the determination that the Commissioner is wrong, the account must be corrected accordingly.
- “(4) The notice may be included in a notice of assessment under section 111(1) of the Tax Administration Act 1994.
- “(5) Failure to give notice does not invalidate the Commissioner’s determination.”
- (2) **Subsection (1)** applies to the 2002–03 and subsequent imputation years.

**New (unanimous)**

**51A Employer’s liability for fringe benefit tax**

- (1) After section ND 1(3), the following is added:
- “(4) An employer who has elected to pay fringe benefit tax under subsection (1)(b)(ii) may request the Commissioner to amend the fringe benefit tax liability calculated by providing the Commissioner with the necessary information to amend the fringe benefit liability so that it is calculated under subsection (1)(b)(i).
- “(5) An employer who has elected to pay fringe benefit tax under subsection (1)(c)(ii) may request the Commissioner to amend the fringe benefit tax liability calculated by providing the Commissioner with the necessary information to amend the fringe benefit liability so that it is calculated under subsection (1)(c)(i).
- “(6) An employer must provide the information to the Commissioner during the 2 months that occur after the date of the notice advising that an assessment for the final quarter, or the year, has been made.”
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.
- (3) Despite **section ND 1(6)** of the Income Tax Act 1994, an employer who pays fringe benefit tax on a quarterly basis may

**New (unanimous)**

provide the information to the Commissioner during the 2 months that occur after the date this Act receives the Royal assent if the employer has been given a notice of assessment for the final quarter of the 2000–01 or the 2001–02 income year before the date on which that Act receives the Royal assent.

- (4) Despite **section ND 1(6)** of the Income Tax Act 1994, an employer who pays fringe benefit tax on either an annual or an income year basis may provide the information to the Commissioner during the 2 months that occur after the date this Act receives the Royal assent if the employer has been given a notice of assessment for the 2000–01 or the 2001–02 income year before the date on which that Act receives the Royal assent.

**51B Election to pay fringe benefit tax per quarter**

- (1) In section ND 2(4), “under this section” is inserted after “election”.
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.

**52 Multi-rate calculation for attributed fringe benefits**

- (1) In section ND 5(1), in the item **tax on cash remuneration**, “section KC 1” is replaced by “section KC 1, applied as if the employee were resident in New Zealand for the full income year for the purpose of that section,”.
- (2) **Subsection (1)** applies to a fringe benefit provided or granted by an employer—
- (a) on or after 1 April (2001) 2000, for an employer who pays fringe benefit tax on a quarterly or an annual basis; and
  - (b) during the 2000–01 or a subsequent income year, for an employer who pays fringe benefit tax on an income year basis.

## New (unanimous)

**52A Refunds of deductions**

- (1) In section NF 7(5), “in accordance with a taxpayer’s, or their agent’s, request under **section 173T** of the Tax Administration Act 1994 or otherwise” is inserted after “pay the amount due”.
- (2) **Subsection (1)** applies to the 2002–03 and subsequent income years.

**52B Non-resident withholding tax deducted in error**

- (1) In section NG 16(4), “in accordance with a taxpayer’s, or their agent’s, request under **section 173T** of the Tax Administration Act 1994 or otherwise” is inserted after “pay the amount due”.
- (2) **Subsection (1)** applies to the 2002–03 and subsequent income years.

**53 Liability to make deduction in respect of foreign withholding payment dividend**

- (1) After section NH 1(2), the following is added:  
“(3) In section NH 1(2)(a), dividends paid by a foreign company exclude dividends that would be exempt income under section CB 4 if section CB 10 did not apply.”
- (2) **Subsection (1)** applies to the 1997–98 and subsequent income years.

**54 Reduction in liability under conduit tax relief**

- (1) In section NH 7(1), in the item “DWP”, “foreign” is omitted.
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.

**55 Definitions**

- (1) This section amends section OB 1.
- (2) In the definition of **after-income tax earnings**, “principles of New Zealand” is replaced by “practice” (*in both places where it occurs*) and “principles” is replaced by “practice”.

- (3) The definition of **common market value interest** is replaced by:  
 “**common market value interest** is defined in section IG 1(5) for the purpose of that section and in **section OD 5(6E)** for the purpose of **section OD 5(6D)**”.
- (4) The definition of **common voting interest** is replaced by:  
 “**common voting interest** is defined in section IG 1(5) for the purpose of that section and in **section OD 5(6E)** for the purpose of **section OD 5(6D)**”.
- (5) In paragraph (b) of the definition of **consideration**, “DM 3, and DM 6” is replaced by “and DM 3”.
- (6) In paragraph (b) of the definition of **controlled petroleum mining company**, “principles” is replaced by “practice”.
- (7) In the definition of **controlled petroleum mining holding company**, “principles” is replaced by “practice”.
- (8) In the definition of **controlled petroleum mining holding trust**, “principles” is replaced by “practice”.
- (9) In paragraph (b) of the definition of **controlled petroleum mining trust**, “principles” is replaced by “practice”.

**New (unanimous)**

- (9A) In the definition of **disposition of property**, “definition of **superannuation contribution**” is replaced by “definitions of **settlor** and **superannuation contribution**”.
- (10) In the definition of **distribution** in paragraph (d), “beneficiary;—” is replaced by “beneficiary; and” and the following is inserted:  
 “(e) for the purpose of **sections EH 5** and **EH 52**, the extent to which the trustee of the trust makes a settlement to, or for the benefit of, or on the terms of, another trust, and the sums, amounts, or property of the settlement were from amounts forgiven and treated as paid in circumstances described in either **section EH 5(1)** or **section EH 52(1);—**”.

**Struck out (unanimous)**

- (11) In the definition of **disposition of property**, “definition of **superannuation contribution**” is replaced by “definitions of **settlor** and **superannuation contribution**”.
- (12) In the definition of **foreign tax**, “sections CF 6 and OE 6” is replaced by “section CF 6”.
- (13) The definition of **generally accepted accounting principles** is repealed.
- (14) After the definition of **general power of appointment**, the following is inserted:  
 “**generally accepted accounting practice** has the meaning set out in section 3 of the Financial Reporting Act 1993, as if that section applied for the purpose of the Income Tax Act 1994”.
- (15) In the definition of **market value interest**—
- (a) in paragraph (a), “except as provided in **paragraph (ab)**,” is inserted before “means”:
  - (b) after paragraph (a), the following is inserted:  
 “(ab) in **section OD 5(6E)**, means, in relation to a person, a company, and a time, the percentage market value interest that the person is deemed to hold in the company by virtue of section OD 4, as modified by section **OD 5(6F)**.”
- (16) In the definition of **mining venture**, “in sections DN 1, DN 5, IB 2, and IB 3” is replaced by “in the definition of **schedular gross income** and in sections DN 1 and DN 5”.

**New (unanimous)**

- (16A) In the definition of **net loss**, “and reduced by the amount written off by the Commissioner under **section 177C(4)** of the Tax Administration Act 1994,” is inserted after “section BC 6”.
- (17) In paragraph (b)(ii) of the definition of **new provisional taxpayer**, “\$30,000” is replaced by “\$35,000”.
- (18) In paragraph (b) of the definition of **nominee**, “and OD 4(3)” is replaced by “, OD 4(3) (*and OD 5(6A)*), **OD 5(6A)** and **OD 5(6F)**”.

- (19) In the definition of **non-filing taxpayer**—  
(a) in the words before paragraph (a), “natural” is omitted:

**Struck out (unanimous)**

- (b) in paragraph (a), “section 33A(1)” is replaced by  
“section 33A of the Tax Administration Act 1994”.

**New (unanimous)**

- (b) in paragraph (a), “, is not a natural person listed in  
paragraphs (a) to (o) of section 33A(2) of that Act,” is  
inserted after “applies”.

- (20) In the definition of **petroleum licence**, “DM 6” is replaced by  
“DM 4”.
- (21) In the definition of **resident mining operator**, “IH 4” is  
replaced by “IH 5”.
- (22) In paragraph (a) of the definition of **settlor**, “in paragraph (b)  
of the definition of **settlement**, as that paragraph applies to  
sections HH 3C and HH 3D, and” is inserted before “in sec-  
tions HH 3C and HH 3D”.

**New (unanimous)**

- (22A) In paragraph (b) of the definition of **shareholder-employee**,  
“and in section OF 2” is replaced by “, section OF 2 and in  
**section 177A** of the Tax Administration Act 1994”.

**Struck out (unanimous)**

- (23) In the definition of **taxable supply**, “section ED 4, has the  
meaning assigned by section ED 4(7)” is replaced by “**sections**  
ED 4 and **EE 2A**, has the meaning set out in section 2 of the  
Goods and Services Tax Act 1985”.

- (24) In the definition of **voting interest**—  
(a) in paragraph (a), “except as provided in **paragraph (ab)**,”  
is inserted before “means”:  
(b) after paragraph (a), the following is inserted:

“(ab) in **section OD 5(6E)**, means, in relation to a person, a company, and a time, the percentage voting interest that the person is deemed to hold in the company by virtue of section OD 3, as modified by **section OD 5(6F)**.”

- (25) **Subsections (2), (6) to (12), (14), (16), ((17),) (19)(b), (20) and (21)** apply on and after the date this Act receives the Royal assent.
- (26) **Subsections (3), (4), (15), (18) and (24)** apply on and after 1 March 2002.
- (27) **Subsection (5)** applies on and after 3 December 2001.

**New (unanimous)**

(27A) Despite **subsection (27)**, **subsection (5)** does not apply if **section 10(3)** applies.

- (28) **Subsection (13)** applies on the date this Act receives the Royal assent.

**New (unanimous)**

(28A) **Subsections (16A) and (22A)** apply on and after 1 July 2002.

- (29) **Subsection (17)** applies to the 2003–04 and subsequent income years.
- (30) **Subsection (19)(a)** applies on and after 1 April 1999.
- (31) **Subsection (22)** applies to the 2001–02 and subsequent income years.

**Struck out (unanimous)**

(32) **Subsection (23)** applies to the 2002–03 and subsequent income years.

**56 Modifications to measurement of voting and market value interests in case of continuity provisions**

- (1) After section OD 5(6), the following is inserted:
- “(6A) **Subsection (6B)** applies if shares in a company (**company B**) are transferred or issued to shareholders of another company (**company A**) or to a nominee of a shareholder of company A,

or are retained by company A as a nominee of a shareholder of company A, and—

“(a) before the transfer (or issue), issue or retention—

“(i) company A is treated as holding voting or market value interests in another company (**company C**) under section OD 5(6)(b); and

“(ii) company A holds all voting interests, and if a market value circumstance exists, all market value interests in company B, calculated as if sections OD 3(3)(d) and OD 4(3)(d) did not apply to deem company A’s interests to be held by others; and

**Struck out (unanimous)**

“(iii) company A is a limited attribution company at all relevant times; and

**New (unanimous)**

“(ab) at the time of the transfer, issue or retention, company A is a limited attribution company; and

“(b) after the transfer (or issue), issue or retention—

“(i) company B is treated as holding voting or market value interests in company C under section OD 5(6)(b); and

“(ii) company B is a limited attribution company at all relevant times.

“(6B) Despite sections OD 3(3)(d) and OD 4(3)(d) (*and OD 5(6)(b)*), company B is treated as holding voting or market value interests in company C, being interests which company A held in company C (*and calculated as if sections OD 3(3)(d) and OD 4(3)(d) did not apply to deem company A’s interests to be held by others*) under section OD 5(6)(b)—

“(a) for the periods before the transfer (or issue), issue or retention that company A held interests in company C; and

“(b) for the purpose of applying the continuity provisions on and after the date of transfer (*or issue*), issue or retention; and

**Struck out (unanimous)**

“(c) to the extent that there is a group of persons who hold common interests in company A and company B immediately after the transfer or issue.

**New (unanimous)**

“(c) to the extent that, immediately after the transfer, issue or retention, there is a group of persons who hold common interests in company A and company B, calculated as if the only shares in company A and company B were those that are treated as being held by company A and company B under section OD 5(6)(b).

**Struck out (unanimous)**

“(6C) In **subsection (6A)**, at all relevant times means—

“(a) in **paragraph (a)(iii)**—

“(i) in relation to the offset of a loss under Part I, the time between the first day of the period in which the loss is incurred and the date of transfer or issue:

“(ii) in relation to a credit subject to the continuity provisions, the time between the date the credit arose and the date of transfer or issue; and

“(b) in **paragraph (b)(ii)**—

“(i) in relation to the offset of a loss under Part I, the time between the date of transfer or issue and the last day of the period in which the loss is offset:

“(ii) in relation to a credit subject to the continuity provisions, the time between the date of transfer or issue and the date the credit is cancelled by a subsequent debit.

**New (unanimous)**

“(6C) In **subsection (6A)(b)(ii)**, **at all relevant times** means—

- “(a) in relation to the offset of a loss under Part I, the time between the date of transfer, issue or retention and the last day of the period in which the loss is offset:
- “(b) in relation to a credit subject to the continuity provisions, the time between the date of transfer, issue or retention and the date the credit is cancelled by a subsequent debit.

“(6D) In **subsection (6B)**, **common interests** means—

- “(a) if a market value circumstance does not exist in respect of company A or company B, the common voting interest:
- “(b) if a market value circumstance exists in respect of company A but not in respect of company B, the lower of the common voting interest in company A and company B and the market value interest in company A:
- “(c) if a market value circumstance exists in respect of company B but not in respect of company A, the lower of the common voting interest in company A and company B and the market value interest in company B:
- “(d) if a market value circumstance exists in respect of both company A and company B, the lower of the common market value interest and common voting interest in both companies A and B.

“(6E) In **subsection (6D)**—

“**common market value interest** of a person in relation to company A and company B is the market value interest held by the person in each company measured by either—

- “(a) the percentage market value interest of the person in each company if the percentages are the same in each case; or
- “(b) the lowest percentage market value interest of the person in each company if the percentages differ

“**common voting interest** of a person in relation to company A and company B is the voting interest held by the person in each company measured by either—

- “(a) the percentage voting interest of the person in each company, if the percentages are the same in each case; or
- “(b) the lowest percentage voting interest of the person in each company if the percentages differ.
- “(6F) For the purpose of measuring common interests, sections OD 3(3)(b), OD 3(3)(d), OD 4(3)(b) and OD 4(3)(d) do not apply to deem a nominee’s or a company’s voting or market value interest in company A or company B to be held by another person if the person would be treated as holding a voting or market value interest of less than 10% in company A or company B by virtue of those sections applying.”
- (2) In section OD 5(7)(a), “and (6)” is replaced by “, (6), **(6A)**, **(6B)** and **(6F)**”.
- (3) **Subsections (1)** and **(2)** apply in relation to a transfer (*or issue*), issue or retention of shares on and after 1 March 2002.

**New (unanimous)**

**56A New section OD 5B inserted**

- (1) After section OD 5A, the following is inserted:
- “OD 5B Modifications to measurement of voting and market value interests in cases of continuity provisions and legislative conversion of companies of proprietors**
- “(1) This section applies to modify sections OD 3, OD 4 and OD 5 for the purpose of the application of the continuity provisions if a company of proprietors is established by a statute of a legislature outside New Zealand and the company of proprietors becomes a company as a result of another statute.
- “(2) **Subsection (3)** applies if—
- “(a) a person acquires a voting interest or a market value interest in a company on the conversion of a company of proprietors; and
- “(b) immediately before the conversion, the person was a proprietor of the company of proprietors and solely by virtue of being a proprietor, the person acquired the interest in the company.
- “(3) Subject to section OD 5(5), on and after the date of the acquisition—

**New (unanimous)**

- “(a) the company of proprietors is treated as having been a company with shareholders at all times before the conversion; and
- “(b) the person is treated as having held the voting interest or market value interest at all times before the conversion.”
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.

**57 Further definitions of associated persons**

- (1) In section OD 8(1)—
- (a) “CJ 6,” is omitted;
- (b) “DM 1 to DM 10” is replaced by “DM 1 to DM 5, DM 7 to DM 10”.
- (2) In section OD 8(1)(h), “CB 4(1)(k)” is replaced by “DJ 17”.
- (3) **Subsection (1)** applies on and after 3 December 2001.

**New (unanimous)**

- (3A) Despite **subsection (3)**, **subsection (1)** does not apply if **section 10(3)** applies.
- (4) **Subsection (2)** applies on and after the date this Act receives the Royal assent.

**58 Section OE 6 repealed**

- (1) Section OE 6 is repealed.
- (2) **Subsection (1)** applies on the date this Act receives the Royal assent.

**59 References to particular regimes in former Act, etc**

- (1) In section OZ 1(1), in the definition of **PAYE rules**, “Parts IC and NC and sections GC 18, LD 1, LD 4, and LD 5” is replaced by “Part NC and sections BC 2, GC 18 and LD 1”.
- (2) In section OZ 1(3)(h), “IB 2, IB 3,” is omitted.
- (3) **Subsections (1)** and **(2)** apply on and after the date this Act receives the Royal assent.

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

**60 Tax Administration Act 1994**

This Part amends the Tax Administration Act 1994<sup>2</sup>.

<sup>2</sup> 1994 No 166

**61 Interpretation**

- (1) This section amends section 3(1).

**Struck out (unanimous)**

- (2) The definition of **abusive tax position** is replaced by:  
“**abusive tax position** is defined in—  
“(a) section 141D(7) for the purpose of Part IX; and  
“(b) **section 177C** for the purpose of that section”.

**New (unanimous)**

- (2) In the definition of **abusive tax position**, “and **section 177C**” is inserted after “Part IX”.

**Struck out (unanimous)**

- (3) After the definition of **entitlement card**, the following is inserted:  
“**evasion or a similar act** is defined in **section 177C** for the purpose of that section”.
- (4) After the definition of **family certificate of entitlement**, the following is inserted:  
“**family trust** is defined in **section 173M(5)** for the purpose of that section”.

**New (unanimous)**

(4A) After the definition of **original return date**, the following is inserted:

“**outstanding tax**, in **sections 139BA, 176, 177, 177A, 177B** and **177C**, means tax that is payable before or after a due date”.

(5) After the definition of **reject**, the following is inserted:

“**relative** is defined in **section 173M(5)** for the purpose of that section”.

(6) The definition of **separated person** is repealed.

(7) In the definition of **tax**—

(a) after paragraph (c), the following is inserted:

**Struck out (unanimous)**

“(ca) for the purpose of **Part XB**, also includes a rebate referred to in section 41A:”:

**New (unanimous)**

“(ca) for the purpose of **Part XB**, includes—

“(i) financial support, as defined in section 2(1) of the Child Support Act 1991; and

“(ii) a repayment obligation, as defined in section 2 of the Student Loan Scheme Act 1992; and

“(iii) a rebate referred to in section 41A:”.

(b) in paragraph (d), “and 177” is replaced by “, **177, and 177A to 177D**”.

(8) **Subsections (2), (3) (4A) and (7)(b)** apply on and after 1 July 2002.

(9) **Subsections (4), (5) and (7)(a)** apply to the 2002–03 and subsequent income years.

(10) **Subsection (6)** applies on 1 July 2002.

**62 Resident withholding tax deduction certificates**

(1) In section 25(1), “in such form as the Commissioner may approve and containing” is replaced by “that contains”.

- (2) Section 25(6) is replaced by:
- “(6) A resident withholding tax deduction certificate must include the following:
- “(a) a statement as to whether the resident withholding income is interest or specified dividends:
  - “(b) the date on which the deduction was made, or if there is more than one deduction, the year in which the deductions were made:
  - “(c) the amounts of resident withholding tax income and resident withholding tax deductions:

**New (unanimous)**

“(d) the resident withholding tax rate applied to the resident withholding tax income.”

**Struck out (unanimous)**

- (3) Section 25(6A) is repealed.
- (4) In section 25(7)(a) and 25(7)(b), “\$20” is replaced by “\$50”.
- (5) In section 25(10)(d), “business.” is replaced by “business; or” and the following is added:
- “(e) is sent electronically to the recipient or to a person authorised to act on behalf of the recipient and the recipient or the authorised person agree to receiving the certificate this way.”
- (6) **Subsections (1), (2) and (5)** apply to resident withholding certificates provided on or after 1 April 2002 that relate to interest or specified dividends paid in the 2001–02 and subsequent income years.

**Struck out (unanimous)**

- (7) **Subsection (3)** applies on 1 April 2002.
- (8) **Subsection (4)** applies to the 2002–03 and subsequent income years.

**63 Annual returns of income not required**

- (1) In section 33A(1)(a), the words before subparagraph (i) are replaced by:

“(a) had gross income that was derived only from—”.

- (2) At the end of section 33A(1)(a)(iii), “and” is replaced by “or” and the following is inserted:

“(iv) a source or sources other than those listed in subparagraphs (i) to (iii) and the total amount derived is \$200 or less; and”.

**New (unanimous)**

- (2A) Section 33A(2)(d) is replaced by:

“(d) received a withholding payment, not being an amount or proportion of a withholding payment in respect of which the Commissioner has made a determination under regulation 7 of the Income Tax (Withholding Payments) Regulations 1979; or”.

- (3) Section 33A(2)(l) is repealed.  
(4) **Subsection (1)** applies on and after the date this Act receives the Royal assent.  
(5) **Subsection (2)** applies to the 2002–03 and subsequent income years.

**New (unanimous)**

- (5A) **Subsection (2A)** applies to returns of income for the 2001–02 and subsequent income years.

- (6) **Subsection (3)** applies on the first day of the 2002–03 income year.

**New (unanimous)**

**63A Returns by person claiming housekeeper or charitable rebates**

- (1) After section 41A(5), the following is inserted:

**New (unanimous)**

- “(6) A taxpayer with a standard balance date or an early balance date may apply for a refund for an income year after 1 April next following the end of the taxpayer’s income year. Late balance date taxpayers may apply for a refund for an income year on or after the first day of the taxpayer’s next accounting year.”
- (2) In section 41A(6AA), “The” is replaced by “Despite **subsection (6)**, the”.
- (3) **Subsections (1)** and **(2)** apply to the 2001–02 and subsequent income years.

**64 Income tax returns and assessments by executors or administrators**

- (1) Section 43(4) is replaced by:
- “(4) The executor or administrator of a deceased taxpayer must request the Commissioner to issue an income statement if the taxpayer would have been a person to whom section 33A(5) refers if the taxpayer had remained alive and the Commissioner has not issued an income statement.
- “(5) The executor or administrator of a deceased taxpayer may request the Commissioner to issue an income statement if the taxpayer would have been a person to whom section 33A(1) applied if the taxpayer had remained alive.”
- (2) **Subsection (1)** applies to the 2002–03 and subsequent income years.

**65 Resident withholding tax deduction reconciliation statements**

- (1) Section 51(2) is replaced by:
- “(2) The Commissioner may require the following information in relation to a deduction of resident withholding tax:
- “(a) the full name, address and tax file number of the person (the payer); and
- “(b) the full name and last known address of the recipient unless, after making reasonable inquiries, the payer is unable to obtain those details; and

- “(c) the tax file number of the recipient, if known to the payer; and
- “(d) whether the resident withholding income is interest or specified dividends; and
- “(e) the date on which the deduction was made, or if there is more than one deduction, the year in which the deductions were made; and
- “(f) the amounts of resident withholding tax income and resident withholding tax deductions; and

**New (unanimous)**

“(fa) the resident withholding tax rate applied to the resident withholding tax income; and

“(g) further information that the Commissioner considers relevant.

“(2A) If the person has paid interest or specified dividends to another person (the recipient) and has not deducted resident withholding tax because the recipient holds a valid certificate of exemption, the Commissioner may require the following information:

- “(a) the full name and last known address of the recipient; and
- “(b) the total interest or specified dividends paid to the recipient; and
- “(c) the recipient’s tax file number, except if the recipient is, at the time of payment, a person to whom any of paragraphs (a) to (d) of section NF 9(1) of the Income Tax Act 1994 applies; and
- “(d) further information that the Commissioner considers relevant.

“(2B) Information that may be required under **subsection (2)** or **subsection (2A)** must be provided in a form approved by the Commissioner.”

- (2) In section 51(3), “or **subsection (2A)**” is inserted after “subsection (2)”.
- (3) **Subsections (1)** and **(2)** apply to resident withholding certificates provided on or after 1 April 2002 that relate to interest or specified dividends paid in the 2001–02 and subsequent income years.

**66 Disclosure of trust particulars**

- (1) Section 59(3) is replaced by:
  - “(3) The trustee of every trust must in every case make a return of all income derived by the trustee as trustee of the trust, and each return is treated as being separate and distinct from any return made by the trustee in respect of another trust or in the trustee’s own right.”
- (2) **Subsection (1)** applies to the 1997–98 and subsequent income years.

**67 Disclosure of interest in foreign investment fund**

- (1) In section 61, in the section heading “**foreign company or**” is inserted after “**in**”.
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.

**68 Annual imputation return**

- (1) After section 69(1)(f), the following is inserted:
  - “(fa) where the company is a qualifying unit trust or a group investment fund that derives category A income—
    - “(i) the opening and closing balances of the trust’s or fund’s supplementary available subscribed capital account for the imputation year:
    - “(ii) the amount and source of all credits and debits that have arisen in the trust’s or fund’s supplementary available subscribed capital account in accordance with **sections MJ 5** and **MJ 6** of the Income Tax Act 1994:”.
- (2) **Subsection (1)** applies to the 2002–03 and subsequent income years.

**69 Content and notification of a public ruling**

- (1) Section 91DA(1)(e) is replaced by:
  - “(e) either—
    - “(i) the period or income year for which the ruling applies; or
    - “(ii) in the case of a ruling issued for an indefinite period, the date or income year from which the ruling applies.”

- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.

**70 Application of a public ruling**

- (1) Section 91DC(1)(b) and 91DC(1)(c) is replaced by:
- “(b) for an arrangement that is specified in the ruling; and
  - “(c) for an arrangement that is entered into either—
    - “(i) during the period or income year for which the ruling applies; or
    - “(ii) in the case of a ruling issued for an indefinite period, on or after the date, or on or after the first day of the income year, from which the ruling applies; and
  - “(d) either—
    - “(i) for the period or income year specified in the ruling; or
    - “(ii) in the case of a ruling issued for an indefinite period, for an indefinite period.”
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.

**71 Withdrawal of a public ruling**

- (1) Section 91DE(4) is replaced by:
- “(4) If the Commissioner withdraws a public ruling, the ruling does not apply to an arrangement entered into after the date of withdrawal.
  - “(4A) If the Commissioner withdraws a public ruling, the ruling continues to apply—
    - “(a) to an arrangement to which it previously applied that was entered into before the date of withdrawal; and
    - “(b) either—
      - “(i) for the remainder of the period or income year specified in the ruling; or
      - “(ii) in the case of a ruling issued for an indefinite period, for 3 years after the date stated in the notice of withdrawal.”
- (2) Section 91DE(5)(c) is replaced by:
- “(c) either—
    - “(i) the original period or income year for which the ruling applied; or

“(ii) in the case of a ruling issued for an indefinite period, the original date or income year from which the ruling applied; and”.

- (3) **Subsections (1) and (2)** apply on and after the date this Act receives the Royal assent.

## **72 Instalments of and due dates for provisional tax**

- (1) In section 120K(4)(b), “\$30,000” is replaced by “\$35,000”.
- (2) **Subsection (1)** applies to the 2003–04 and subsequent income years.

## **73 Certain rights of objection not conferred**

- (1) In section 125(j)(iii)—
- “IB 1,” is omitted;
  - “92A” is inserted after “89,”.
- (2) In section 125(j)(iv), “**177A to 177D**,” is inserted after “**176, 177**,”.
- (3) **Subsection (1)** applies on and after the date this Act receives the Royal assent.
- (4) **Subsection (2)** applies on and after 1 July 2002.

## **74 Certain rights of challenge not conferred**

- (1) In section 138E(1)(e)(iii)—
- “IB 1,” is omitted;
  - “92A,” is inserted after “89,”.
- (2) In section 138E(1)(e)(iv), “**177A to 177D**,” is inserted after “**176, 177**,”.
- (3) **Subsection (1)** applies on and after the date this Act receives the Royal assent.
- (4) **Subsection (2)** applies on and after 1 July 2002.

## **75 Late payment penalty**

### **New (unanimous)**

- (A1) In section 139B(2B), “, or section (2) as it was before the enactment of section 51(1) of the Taxation (Beneficiary

**New (unanimous)**

Income of Minors, Services-Related Payments and Remedial Matters) Act 2001” is inserted after “this subsection”.

(A2) In section 139B(3B)(a), “and complies with all of their obligations under the instalment arrangement” is omitted.

(1) In section 139B(3B)(b), “and has received the tax deducted in accordance with the requirements of a notice issued as a result of the Commissioner exercising those powers” is inserted after “subsection (2A)(a)”.

(2) Section 139B(3B) is replaced by:

“(3B) The part of an initial late payment penalty imposed under subsection (2A)(b) is not to be added if the Commissioner has exercised powers available under section 157 of this Act or section 43 of the Goods and Services Tax Act 1985 or any similar tax law before the end of the 6th day after the day on which an initial late payment penalty is imposed under subsection (2A)(a) and has received the tax deducted in accordance with the requirements of a notice issued as a result of the Commissioner exercising those powers.”

(3) In section 139B(5A)(b), “and has received the tax deducted in accordance with the requirements of a notice issued as a result of the Commissioner exercising those powers” is inserted after “tax law”.

(4) Section 139B(5A) is replaced by:

“(5A) An incremental late payment penalty is not to be added if, for a month during which the tax to pay remains unpaid, the Commissioner has exercised powers available under section 157 of this Act or section 43 of the Goods and Services Tax Act 1985 or any similar tax law and has received the tax deducted in accordance with the requirements for the month of a notice issued as a result of the Commissioner exercising those powers.”

(5) In section 139B(6), “and **section 139BA**” is inserted after “this section”.

(6) **(Subsection (1) applies)** **Subsections (A1) and (1)** apply to late payment penalties imposed on and after 1 April 2002.

**New (unanimous)**

(6A) **Subsections (A2) and (3)** apply to instalment arrangements entered into on and after 1 April 2002.

(7) **Subsections (2), (4) and (5)** apply on and after 1 July 2002.

**Struck out (unanimous)**

(8) **Subsection (3)** applies to instalment arrangements entered into on and after 1 April 2002.

**76 New section 139BA inserted**

(1) After section 139B, the following is inserted:

**“139BA Imposition of late payment penalties when financial relief sought**

“(1) If a taxpayer has outstanding tax and contacts the Commissioner seeking financial relief before the due date, the Commissioner must impose the late payment penalty under section 139B(2A)(a) on unpaid tax but must not impose the late payment penalty under section 139B(2A)(b).

“(2) If a taxpayer has outstanding tax and contacts the Commissioner seeking financial relief on or after the due date, the Commissioner must not impose an incremental late payment penalty on unpaid tax on and after the date of the request.

“(3) **Subsections (1) and (2)** apply until the earlier of—

“(a) the date that the Commissioner makes a decision on giving financial relief; and

“(b) the last day of the response period allowed by **section 177(3)** if the taxpayer does not provide the information sought or respond to a counter offer.

“(4) If an instalment arrangement is entered into, an incremental late payment penalty is not to be added if, for a month during which the tax to pay remains unpaid, the taxpayer complies with all of their obligations under the arrangement.

**New (unanimous)**

“(4A) If an instalment arrangement is cancelled on the basis of false or misleading information provided by the taxpayer, the Commissioner must impose those late payment penalties not imposed as if the instalment arrangement had not been entered into.

“(5) If financial relief is not given, the Commissioner must impose those late payment penalties not imposed as if the request for financial relief had not been made.”

(2) **Subsection (1)** applies on and after 1 July 2002.

**New (unanimous)**

**76A Abusive tax position**

(1) In section 141D(7), “and **section 177C**” is inserted after “this Part”.

(2) **Subsection (1)** applies on and after 1 July 2002.

**77 New Part XB inserted**

(1) After Part XA, the following is inserted:

**“Part XB  
“Transfers of excess tax**

**“173K Application**

“(1) This Part applies if tax has been paid in excess of the amount properly payable—

“(a) to the extent that the tax paid in excess by or on behalf of a taxpayer is refundable and after the date the tax was paid, and before it is transferred under this Part, has not been applied to satisfy a tax liability or other amount due:

“(b) to allow the Commissioner to transfer all or part of the excess at the taxpayer’s request.

“(2) For the purpose of the Inland Revenue Acts—

“(a) tax transferred by the transferor is treated as a refund to the transferor on the date of transfer; and

- “(b) tax transferred to the transferee is treated as tax paid by the transferee on the date of transfer, except for the purpose of imposing a shortfall penalty under Part IX.

**New (unanimous)**

“*Transfer rules*”

“173L **Transfer of excess tax within taxpayer’s accounts**

- “(1) A taxpayer or their agent may request that the Commissioner transfer all or part of the excess to another period or another tax type of the taxpayer.
- “(2) The taxpayer may choose the date on which all or part of the excess is transferred, being—
- “(a) in the case of a GST refund, a day after the end of the taxable period in which the refund arose;
- “(b) in the case of tax deducted on the taxpayer’s behalf, a day after the end of the (*income*) accounting year in which the deduction occurred;
- “(c) in any other case, a date that occurs on or after the date the excess tax is paid.
- “(3) Despite **subsection (2)(b)**, a taxpayer who has an early balance date may, in the case of tax deducted on the taxpayer’s behalf, only choose a day after the end of the year in which the deduction occurred.

“173M **Transfer of excess tax to another taxpayer**

- “(1) A taxpayer or their agent may request that the Commissioner transfer all or part of the excess to another taxpayer.
- “(2) A request may be made for a transfer between a taxpayer and—
- “(a) a company in the same group of companies; or
- “(b) a shareholder employee of the taxpayer; or

**New (unanimous)**

“(ba) a company in which the taxpayer is a shareholder employee; or

- “(c) a partner in the same partnership; or
- “(d) a relative; or

- “(e) a trustee of a family trust of which the taxpayer is a beneficiary; or
- “(f) another taxpayer not listed in **paragraphs (a) to (e)**.
- “(3) A taxpayer, being a trustee of a family trust, may request a transfer to a beneficiary of the trust.
- “(4) The taxpayer may choose the date on which all or part of the excess is transferred, being—
  - “(a) if **subsection (2)(a) to (2)(e)** or **subsection (3)** applies, a date allowed by **section 173L**;
  - “(b) if **subsection (2)(f)** applies, the later of the following dates:
    - “(i) a date that occurs on or after the date of the request; and
    - “(ii) a date that occurs after the date that the relevant return is filed for the period in which the excess arose.
- “(5) In this section—
  - “**family trust** means a trust that is established primarily to benefit—
    - “(a) a natural person for whom the settlor has natural love and affection; or
    - “(b) an organisation or a trust whose income is exempt under section CB 4(1)(c) or CB 4(1)(e); or
    - “(c) a natural person that satisfies **paragraph (a)** and an organisation or a trust that satisfies **paragraph (b)**

**Struck out (unanimous)**

“**relative** means, in relation to a person, another person within one degree of relationship.

**New (unanimous)**

“**relative** means, in relation to a person, another person connected with the person by blood relationship, marriage or adoption.

- “(6) For the purpose of the **relative** definition—
  - “(a) persons are connected by blood relationship if one is the child of the other:

**New (unanimous)**

- “(b) persons are connected by marriage if one person is married to the other or the persons are in a de facto relationship:
- “(c) persons are connected by adoption if one has been adopted as the child of the other.
- “(7) For the purpose of **subsection (6)(b)**, **de facto relationship** has the meaning set out in section 2D of the Property (Relationships) Act 1976 as if the reference to ‘this Act’ in section 2D(1) and 2D(4) of that Act were a reference to ‘the Tax Administration Act 1994’.

**“173N Transfer of excess tax—rebates**

Despite **sections 173L** and **173M**, if a taxpayer makes a request to transfer a refund arising from a rebate referred to in section 41A, the taxpayer may choose only the later of the following dates:

- “(a) a date that occurs on or after the date of the request; and
- “(b) a date that occurs after the date on which the taxpayer applies for a refund under section 41A.

**New (unanimous)****“173O Transfer of excess tax if no date specified by taxpayer**

- “(1) If a taxpayer or their agent requests a transfer under this Part but does not choose the date on which the excess is transferred, the Commissioner may transfer the excess on a date on which the Commissioner considers appropriate.
- “(2) Even if the Commissioner transfers the excess on a date on which the Commissioner considers appropriate, the taxpayer or their agent may subsequently choose a date allowed by **sections 173L** and **173M**, and request that the Commissioner transfer the excess on that date.

**New (unanimous)**

*“Application of transfer rules to excess provisional tax*

**“173P Transfer of excess provisional tax if provisional tax paid is more than taxpayer’s provisional tax liability, determined before assessment**

- “(1) This section applies in respect of excess provisional tax if—
- “(a) a taxpayer or their agent requests a transfer allowed by **section 173L, section 173M(2)(a) to 173M(2)(e), or section 173M(3)**; and
  - “(b) on the date that the Commissioner actions the request, the taxpayer has paid more provisional tax for an income year than the provisional tax payable by that date; and
  - “(c) the request is actioned before an assessment is made under Part VI.

- “(2) The excess provisional tax that may be transferred on a particular date (**date A**) is calculated according to the formula:

$$\text{provisional tax paid} - \text{refunds} - \text{provisional tax liability}$$

where—

provisional tax paid is the provisional tax paid for an income year on or before date A, including:

- (a) voluntary payments made under section MB 6 of the Income Tax Act 1994; and
- (b) tax transferred to the taxpayer:

refunds are the refunds of the provisional tax that are paid to the taxpayer on or before date A, including transfers by the taxpayer or offsets by the Commissioner against unpaid tax:

provisional tax liability is the provisional tax payable by date A.

- “(3) The Commissioner must not transfer an amount on date A if, as a result, the taxpayer would not satisfy their provisional tax liability in respect of the income year on a date (date B) that

## New (unanimous)

falls after date A, unless the taxpayer requests a transfer back to their account to satisfy their provisional tax liability on date B.

**“173Q Transfer of excess provisional tax if taxpayer estimates or revises estimate of residual income tax, determined before assessment**

- “(1) This section applies in respect of excess provisional tax if—
- “(a) a taxpayer or their agent requests a transfer allowed by **section 173L**, **section 173M(2)(a)** to **173M(2)(e)**, or **section 173M(3)**; and
- “(b) on the date that the Commissioner actions the request, the taxpayer—
- “(i) has paid provisional tax for an income year based on an estimate of their residual income tax and, as a result of a revised estimate for the year, the taxpayer has paid more provisional tax than the revised estimate for the year; or
- “(ii) pays provisional tax for an income year in accordance with section MB 2(1)(a) or section MB 2(1)(b) of the Income Tax Act 1994 and, as a result of estimating their residual income tax for the year, the taxpayer has paid more provisional tax than the estimated residual income tax for the year; and
- “(c) the request is actioned before an assessment is made under Part VI.
- “(2) The excess provisional tax that may be transferred on a particular date (**date A**) is calculated according to the formula:

$$\text{provisional tax paid} - \text{refunds} - \text{estimated RIT}$$

where—

provisional tax paid is the provisional tax paid for an income year on or before date A, including:

- (a) voluntary payments made under section MB 6 of the Income Tax Act 1994; and

**New (unanimous)**

refunds	(b) tax transferred to the taxpayer: are the refunds of the provisional tax that are paid to the taxpayer on or before date A, including transfers by the taxpayer or offsets by the Commissioner against unpaid tax:
estimated RIT	is the taxpayer's estimated residual income tax or revised estimated residual income tax that would be due by date A for the purpose of calculating interest under Part VII, calculated as if the estimated residual income tax or revised estimated residual income tax were residual income tax and section 120K(4) did not apply.

“(3) The Commissioner must not transfer an amount on date A if, as a result,—

- “(a) a taxpayer to whom **subsection (1)(b)(i)** applies would not have paid, on a date (**date B**) that falls after date A, the amount of their revised estimated residual income tax that would have been due on date B under Part VII, calculated as if the revised estimated residual income tax were residual income tax and section 120K(4) did not apply, unless the taxpayer requests a transfer back to their account on or before date B; or
- “(b) a taxpayer to whom **subsection (1)(b)(ii)** applies would not have paid, on a date (date B) that falls after date A, the amount of their estimated residual income tax that would have been due on date B under Part VII, calculated as if the estimated residual income tax were residual income tax and section 120K(4) did not apply, unless the taxpayer requests a transfer back to their account on or before date B.

“(4) The amount that may be transferred under **subsection (2)** may not be more than—

## New (unanimous)

- “(a) if **subsection (1)(b)(i)** applies, the net provisional tax paid less the revised estimated residual income tax for the income year:
- “(b) If **subsection (1)(b)(ii)** applies, the net provisional tax paid less the estimated residual income tax for the income year.

“173R **Transfer of excess tax if provisional tax is more than taxpayer’s residual income tax, determined after assessment**

- “(1) This section applies in respect of excess tax if—
- “(a) a taxpayer or their agent requests a transfer allowed by **section 173L, section 173M(2)(a) to 173M(2)(e), or section 173M(3)**; and
- “(b) on the date that the Commissioner actions the request, the taxpayer has paid more provisional tax than the taxpayer’s residual income tax for an income year.
- “(2) The excess provisional tax that may be transferred on a particular date (**date A**) is calculated according to the formula:

$$\text{provisional tax paid} - \text{refunds} - \text{residual income tax}$$

where—

- |                      |  |
|----------------------|--|
| provisional tax paid | is the provisional tax paid for the income year on or before date A, including:  |
|                      | (a) voluntary payments made under section MB 6 of the Income Tax Act 1994; and   |
|                      | (b) tax transferred to the taxpayer:   |
| refunds              | are the refunds of the provisional tax that are paid to the taxpayer on or before date A, including transfers by the taxpayer or offsets by the Commissioner against unpaid tax: |

**New (unanimous)**

residual income tax is the taxpayer's residual income tax that would be due by date A for the purpose of calculating interest under Part VII, calculated as if section 120K(4) did not apply.

- “(3) The Commissioner must not transfer an amount on date A if, as a result, the taxpayer would be liable to pay interest on unpaid tax under Part VII or would have a late payment penalty imposed under Part IX in respect of their provisional tax payments for the income year on a date (**date B**) that falls after date A, unless the taxpayer requests a transfer back to their account so as to prevent interest or a late payment penalty being imposed on date B in respect of their provisional tax payments.
- “(4) The amount that may be transferred under **subsection (2)** may not be more than the net provisional tax paid for an income year less the residual income tax for the year.

*“Miscellaneous*

**“173S Transfers of interest on overpaid tax**

- “(1) If the Commissioner is liable to pay interest to a taxpayer under Part VII, a taxpayer or their agent may request the Commissioner to transfer all or part of the interest to another period, another tax type of the taxpayer or to another taxpayer.
- “(2) The Commissioner may only transfer the interest on the date that it would have been payable under Part VII, as if a transfer request had not been made.

**“173T Application of excess tax if taxpayer has unsatisfied tax liability**

If a taxpayer has excess tax and the Commissioner applies all or part of the excess in satisfaction of tax or another amount due, the taxpayer or their agent may request the Commissioner to apply all or part of the excess on a date allowed by **section 173L**.

**New (unanimous)****“173U Transfers of excess financial support**

Despite **sections 173L** and **173M**, a taxpayer may not request a transfer under this Act of excess financial support, as defined in section 2(1) of the Child Support Act 1991.”

- (2) **Subsection (1)** applies to—
- (a) tax paid in excess, being tax on income derived in the 2002–03 and subsequent income years(; *and*);

**New (unanimous)**

- (ab) tax paid in excess, if—
- (i) the excess arises from an assessment made on or after 1 April 2002 and before the date that this Act receives the Royal assent; and
- (ii) the taxpayer notifies the Commissioner that **Part XB** of the Tax Administration Act 1994 should apply to the excess:

- (b) tax paid in excess, if the excess arises from an assessment made on or after the date that this Act receives the Royal assent(; *and*);
- (c) tax deducted on behalf of another taxpayer and paid on or after 1 April 2002(; *and*);
- (d) a dividend withholding payment paid on or after 1 April 2002(; *and*);
- (e) an application for a refund made under section 41A of the Tax Administration Act 1994 on or after the date that this Act receives the Royal assent(; *and*);
- (f) goods and services tax paid in excess, being goods and services tax payable on supplies made in taxable periods beginning on or after 1 April 2002(; *and*);
- (g) gift duty, cheque duty, totalisator duty, lottery duty, gaming machine duty or casino duty paid in excess, being duty paid on or after 1 April 2002.

**78 Sections 176 and 177 replaced**

- (1) Sections 176 and 177 are replaced by:

**“176 Recovery of tax by Commissioner**

- “(1) The Commissioner must maximise the recovery of outstanding tax from a taxpayer.
- “(2) Despite **subsection (1)**, the Commissioner may not recover outstanding tax to the extent that—
- “(a) recovery is an inefficient use of the Commissioner’s resources; or
  - “(b) recovery would place a taxpayer, being a natural person, in serious hardship.

**“177 Taxpayer may apply for financial relief**

- “(1) A taxpayer, or a person on a taxpayer’s behalf, applies for financial relief by either—
- “(a) making a claim, in writing, setting out why recovery of outstanding tax would place the taxpayer in serious hardship; or
  - “(b) requesting to enter into an instalment arrangement with the Commissioner by telephone or in writing.
- “(2) Upon receiving a request, the Commissioner may—
- “(a) accept the taxpayer’s request; or
  - “(b) seek further information from the taxpayer; or
  - “(c) make a counter offer; or
  - “(d) decline the taxpayer’s request.
- “(3) A taxpayer has ~~(10)~~ 20 working days, or a longer period allowed by the Commissioner, to provide the information sought or to respond to a counter offer.

**New (unanimous)**

- “(4) If the Commissioner receives information or a response from a taxpayer outside the time period allowed under **subsection (3)**, the receipt of the information or the response will be treated as a new request for financial relief.

**“177A Definition of serious hardship**

- “(1) In this section and sections **176, 177, 177B** and **177C**, **serious hardship**, in relation to a taxpayer, being a natural person,—
- “(a) includes significant financial difficulties that arise because of—

- “(i) the taxpayer’s inability to meet minimum living expenses according to normal community standards; or
- “(ii) the cost of medical treatment for an illness or injury of the taxpayer or the taxpayer’s dependant; or
- “(iii) a serious illness suffered by the taxpayer or the taxpayer’s dependant; or
- “(iv) the cost of education for the taxpayer’s dependant; and
- “(b) does not include significant financial difficulties that arise because—
  - “(i) the taxpayer is obligated to pay tax; or
  - “(ii) the taxpayer may become bankrupt; or
  - “(iii) the taxpayer’s, or the taxpayer’s dependant’s, social activities and entertainment may be limited; or
  - “(iv) the taxpayer is unable to afford goods or services that are expensive or of a high quality or standard according to normal community standards.

**Struck out (unanimous)**

- “(2) In **subsection (1), dependant** means, in relation to the taxpayer, a person within one degree of relationship.
- “(3) The Commissioner may take into account whether the recovery of outstanding tax would place a shareholder who owns, or two shareholders who jointly own, 50% or more of the shares in a company in serious hardship.

**New (unanimous)**

- “(3) The Commissioner may take into account whether the recovery of outstanding tax would place—
  - “(a) a shareholder who owns, or two shareholders who jointly own, 50% or more of the shares in a company in serious hardship; or
  - “(b) a shareholder-employee of a close company in serious hardship.

**New (unanimous)**

“(4) For the purpose of **subsection (3)**, **close company** means a company that satisfies paragraph (a) of the definition of **close company** in section OB 1 of the Income Tax Act 1994.

**“177B Instalment arrangements**

“(1) The Commissioner must not enter into an instalment arrangement with a taxpayer to the extent that the arrangement would place the taxpayer in serious hardship.

“(2) The Commissioner may decline to enter into an instalment arrangement if—

“(a) to do so would not maximise the recovery of outstanding tax from the taxpayer; or

“(b) the Commissioner considers that the taxpayer is in a position to pay all of the outstanding tax immediately; or

“(c) the taxpayer is being frivolous or vexatious; or

**Struck out (unanimous)**

“(d) the taxpayer is requesting an instalment arrangement to stop the Commissioner taking action to recover the outstanding tax; or

“(e) the taxpayer has not met their obligations under a previous instalment arrangement.

**Struck out (unanimous)**

“(f) the taxpayer has previously made a request to enter into an instalment arrangement and the request has been declined.

“(3) A taxpayer may renegotiate an instalment arrangement at any time.

“(4) The Commissioner may renegotiate an instalment arrangement at any time after the end of 2 years from the date on which the instalment arrangement was entered.

- “(5) The renegotiation of an instalment arrangement is treated as if it were a new request for financial relief.
- “(6) The Commissioner may cancel an instalment arrangement if *(it was entered into on the basis of false or misleading information provided by the taxpayer)*—

**New (unanimous)**

- “(a) it was entered into on the basis of false or misleading information provided by the taxpayer; or
- “(b) the taxpayer is not meeting their obligations under the arrangement.

**“177C Write-off of tax by Commissioner**

- “(1) *(Subject to **section 176(2)**,)* The Commissioner may write off outstanding tax that cannot be recovered.
- “(2) The Commissioner must write off outstanding tax that cannot be recovered in the following situations:
- “(a) bankruptcy;
- “(b) liquidation;
- “(c) a taxpayer’s estate has been distributed.
- “(3) Despite **subsection (1)**, the Commissioner must not write off outstanding tax (inclusive of any shortfall penalties), if *(the)* a taxpayer *(was)* is liable to pay, in relation to the outstanding tax, a shortfall penalty for an abusive tax position or evasion or a similar act.

**New (unanimous)**

- “(3A) Despite **subsection (2)**, the Commissioner may reinstate all or part of the outstanding tax written off if the Commissioner receives, by operation of law, additional funds in respect of a taxpayer after the taxpayer becomes bankrupt, is liquidated or if additional funds due to the taxpayer’s estate are discovered after the taxpayer’s estate has been distributed.

- “(4) If the Commissioner writes off outstanding tax for a taxpayer who has a net loss, the Commissioner must extinguish all or

part of the taxpayer's net loss, *(at the rate of 33%, in proportion to the amount written off)* by dividing the amount written off by 33% and reducing the net loss by that amount.

- “(5) For the purpose of **subsection (4)**, a taxpayer's net loss is measured on the date the Commissioner writes off outstanding tax.
- “(6) The Commissioner may reverse a write-off if—

**Struck out (unanimous)**

- “(a) outstanding tax is written off on the grounds of serious hardship, and the taxpayer for whom the debt was written off declares bankruptcy within a year of the outstanding tax being written off; or

**New (unanimous)**

- “(a) outstanding tax is written off on the grounds of serious hardship, and the taxpayer for whom the debt was written off—
- “(i) declares bankruptcy within a year of the outstanding tax being written off; or
- “(ii) is subject to bankruptcy proceedings brought by a creditor within a year of the outstanding tax being written off; or
- “(ab) outstanding tax is written off on the grounds of serious hardship, and the taxpayer for whom the debt was written off is a company which, within a year of the outstanding tax being written off, is, or is in the course of being, liquidated; or
- “(b) the outstanding tax was written off due to false or misleading information provided by the taxpayer.
- “(7) If the Commissioner enters into an instalment arrangement that provides for some outstanding tax to be written off, the Commissioner may not reverse the write-off even if, during the term of the instalment arrangement, the taxpayer does not meet the instalment arrangement's terms.

**Struck out (unanimous)**

“(8) In this section—

“**abusive tax position** means a tax position that—

“(a) at the time at which the taxpayer’s tax position is taken, involves the taking of an unacceptable interpretation of a tax law; and

“(b) viewed objectively, the taxpayer takes—

“(i) in respect of, or as a consequence of, an arrangement that is entered into with a dominant purpose of avoiding tax, whether directly or indirectly; or

“(ii) that has a dominant purpose of avoiding tax, whether directly or indirectly, and does not relate to an arrangement described in **subparagraph (i)**

“**evasion or a similar act** means the actions described in section 141E(1).

**New (unanimous)**

“177CA **Proof of debt**

“(1) This section applies if—

“(a) a taxpayer has entered into an instalment arrangement with the Commissioner; and

“(b) the taxpayer is a person who has become bankrupt, or a company which is in the course of being liquidated.

“(2) Any amount outstanding under the instalment arrangement must be included in the Department’s proof of debt.”

(2) **Subsection (1)** applies to tax that is outstanding on and after 1 July 2002.

(3) **Subsection (2)** does not apply—

(a) to tax that is outstanding on and after 1 July 2002 and subject to an instalment arrangement that is entered into before 1 July 2002; *(and)* or

(b) if the Commissioner has advised the taxpayer, in writing before 1 July 2002, that the outstanding tax has been written off.

**New (unanimous)**

- (4) **Subsection (3)(b)** does not apply to outstanding tax that is written off before 1 July 2002 if the Commissioner reverses the write-off of the tax on or after 1 July 2002.

**79 New section 177D inserted**

- (1) After **section 177C** (as inserted by **section 78**), the following is inserted:

**“177D Relief to taxpayers to whom new start grants payable**

- “(1) This section applies to a taxpayer to whom a new start grant is payable.

- “(2) The Commissioner must grant relief—

“(a) to the taxpayer, or to a person or an entity associated with the taxpayer, to the extent that the Commissioner thinks it appropriate having regard to the matters referred to in section EZ 9(3) of the Income Tax Act 1994; and

“(b) from the payment of unpaid tax that relates to an income tax liability that would have arisen if the taxpayer’s only gross income were derived from—

“(i) the farming business for which the new start grant was paid; or

“(ii) land used in carrying on the farming business; or

“(iii) the sale of the farm.

- “(3) If a new start grant is paid to a taxpayer in respect of an adverse event, the Commissioner must grant additional relief—

“(a) to the taxpayer; and

“(b) from the payment of unpaid tax deductions or amounts owing to the Commissioner under the PAYE rules if the unpaid tax deductions or amounts owing relate to source deduction payments made in respect of the farming business for which the new start grant was paid.”

- (2) **Subsection (1)** applies on and after 1 July 2002.

## New (unanimous)

**79A New section 183AB inserted**

(1) After section 183A, the following is inserted:

**“183AB Cancellation of late payment penalties imposed before 1 April 2002**

“(1) The Commissioner must cancel a taxpayer’s liability to pay—

“(a) 60% of an initial late payment penalty; or

“(b) an incremental late payment penalty.

“(2) The Commissioner must cancel a taxpayer’s liability under **subsection (1)** only if—

“(a) the tax to pay in respect of which the taxpayer would otherwise have had the liability is—

“(i) tax payable in one or more payments under an arrangement with the Commissioner; or

“(ii) tax in respect of which deductions are to be made and paid to the Commissioner under section 157 of this Act or section 43 of the Goods and Services Tax Act 1985 or any other similar tax law; and

“(b) the taxpayer complies with the taxpayer’s obligations under the arrangement; and

“(c) the liability would otherwise have arisen after—

“(i) the arrangement was entered into; or

“(ii) the Commissioner exercised powers available to the Commissioner under section 157 of this Act or section 43 of the Goods and Services Tax Act 1985 or any similar tax law.”

(2) **Subsection (1)** applies to arrangements entered into before 1 April 2002.

**Part 3****Amendments to other Inland Revenue Acts***Amendments to Goods and Services Tax Act 1985***80 Goods and Services Tax Act 1985**

**Sections 81 to 89** amend the Goods and Services Tax Act 1985<sup>3</sup>.

<sup>3</sup> 1985 No 141

**New (unanimous)**

**80A Interpretation**

- (1) In section 2, after the definition of **unincorporated body**, the following is inserted:
- “**warranty**, in respect of goods supplied, means an undertaking given under the supply agreement to remedy any defect in the goods that appears during a certain period of time after the goods are supplied or before a certain level of usage is reached”.
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.

**81 Meaning of input tax**

- (1) After section 3A(4), the following is inserted:
- “(4A) For the purpose of subsections (1) and (2), if a supply of goods and services acquired by a non-profit body is not acquired for the principal purpose of making exempt supplies, the supply is treated as being acquired for the principal purpose of making taxable supplies.”
- (2) **Subsection (1)** applies to supplies made on and after the date this Act receives the Royal assent.

**82 Meaning of term supply**

- (1) After section 5(19), the following is added:
- “(20) A supply of services to which **section 11A(1)(ma)** applies is treated as the only supply of services for the consideration provided by the warrantor.

**New (unanimous)**

- “(21) If goods and services are provided under warranty, the supply of the goods and services is treated as a supply of services for the purpose of **section 11A(1)(ma)**.”
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.

**83 Value of supply of goods and services**

- (1) In section 10(12)(f), “section 5(8)(c)(iii)” is replaced by “section 5(8)(b)(iii)”.
- (2) In section 10(12)(g), “section 5(8)(c)(iv)” is replaced by “section 5(8)(b)(iv)”.
- (3) **Subsections (1) and (2)** apply on and after 15 December 1995.

**84 Zero-rating of services**

- (1) After section 11A(1)(m), the following is inserted:

“(ma) the services relate to goods under warranty to the extent that the services are—

  - “(i) provided under the warranty; and
  - “(ii) supplied *(to)* for consideration that is given by a warrantor who is not resident in New Zealand, not a registered person and who is outside New Zealand at the time the services are performed; and
  - “(iii) in respect of goods that were subject to tax under section 12(1); or”.
- (2) In section 11A(3), “and (1)(l)” is replaced by “, (1)(l) and **(1)(ma)**”.

**Struck out (unanimous)**

- (3) After section 11A(3), the following is inserted:

“(3A) In **section 11A(1)(ma), warranty** in respect of goods supplied, means an undertaking given under the supply agreement to remedy any defect in the goods, without any further cost to the recipient, that appears during a certain period of time after the goods are supplied or before a certain level of usage is reached.”
- (4) **Subsections (1) (to (3)) and (2)** apply on and after the date this Act receives the Royal assent.

## 85 Exempt supplies

### Struck out (unanimous)

- (1) In section 14(3), “an enactment or” is inserted before “a contract”.

### New (unanimous)

- (1) In section 14(3)—
- (a) “, or a charge in the nature of interest,” is inserted after “default interest”:
  - (b) “or an enactment” is inserted after “goods and services”.

- (2) **Subsection (1)** applies on and after 10 October 2000.

## 86 Deductions from output tax for goods and services applied for making taxable supplies

- (1) Section 21F(3) is repealed.
- (2) **Subsection (1)** applies on 10 October 2000.

## 87 Timing of deduction under section 21F

- (1) After section 21G(1), the following is inserted:
- “(1A) Despite subsection (1), if section 21F(1) applies to goods that are capital assets with a cost of less than \$18,000, the person or the partnership referred to in section 21F(1) may make a single deduction in the taxable period during which the goods are applied for a purpose of making taxable supplies.”
- (2) **Subsection (1)** applies on and after 10 October 2000.

## 88 Application to make single deduction under section 21F

- (1) In section 21H(3)(b), “21F(1)” is replaced by “21G(1)”.
- (2) In section 21H(3)(e)(i), “section 21G” is replaced by “this section”.
- (3) **Subsections (1)** and **(2)** apply on and after 10 October 2000.

## 89 Payment of tax relating to fringe benefits

- (1) In section 23A, the following is added as subsection (2):

- “(2) Payment of the tax on the taxable value of the fringe benefit is treated as a payment of fringe benefit tax for the purposes of filing the fringe benefit return and Parts IVA, VI, VII, IX, X and XI of the Tax Administration Act 1994.”
- (2) **Subsection (1)** applies to tax paid on fringe benefits included in fringe benefit tax returns due—
- (a) on and after 31 May 2002, for an employer who pays fringe benefit tax on a quarterly or an annual basis; and
  - (b) by the terminal tax date for the 2000-01 income year, for an employer who pays fringe benefit tax on an income year basis, and to subsequent fringe benefit tax returns required to be filed on an income year basis.

**New (unanimous)**

**89A Commissioner’s right to withhold payments**

- (1) In section 46(6), in the portion between paragraphs (b) and (c), “in accordance with that person’s, or their agent’s, request under **section 173T** of the Tax Administration Act 1994 or otherwise” is inserted after “set off”.
- (2) **Subsection (1)** applies to goods and services tax paid in excess, being goods and services tax payable on supplies made in taxable periods beginning on or after 1 April 2002.

*Amendment to Estate and Gift Duties Act 1968*

**90 Estate and Gift Duties Act 1968**

**Section 91** amends the Estate and Gift Duties Act 1968<sup>4</sup>.

<sup>4</sup> 1968 No 35

**91 Exemption for certain dispositions of relationship property**

- (1) In section 75A(6), “95(5)” is replaced by “95”.
- (2) **Subsection (1)** applies on and after 1 August 2001.

*Amendment to Student Loan Scheme Act 1992*

**92 Student Loan Scheme Act 1992**

**Section 93** amends the Student Loan Scheme Act 1992<sup>5</sup>.

<sup>5</sup> 1992 No 141

**93 PAYE rules of Income Tax Act 1994 to apply to repayment deductions**

- (1) Section 25(2) of the Student Loan Scheme Act 1992 is amended by—
- (a) omitting the expression “IC 1, IC 2, IC 3”, and substituting the expression “BC 2”;
  - (b) omitting the expression “NC 17, and OB 4”, and substituting the expression “and NC 17”.
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.

*Amendment to Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001*

**94 Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001**

**Section 95** amends the Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001<sup>6</sup>.

<sup>6</sup> 2001 No 85

**95 Value of supply of goods and services**

- (1) In section 239(1), “before its replacement by section 90 of the Taxation (GST and Miscellaneous Provisions) Act 2000 and” is omitted.
- (2) **Subsection (1)** applies on and after 24 October 2001.

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**Legislative history**

3 December 2001	Introduction (Bill 179–1)
11 December 2001	First reading and referral to Finance and Expenditure Committee

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