

# **Taxation (Base Maintenance and Miscellaneous Provisions) Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

This bill introduces a number of significant changes to current taxation law.

Amendments to the Income Tax Act 1994 and the Income Tax Act 2004 will limit the deductions of a registered bank in relation to interest incurred on loans that finance the operations of the bank and of companies in the same group as the bank. This is an important measure for protecting the Government's revenue base.

Other amendments introduce a temporary exemption, for six years, of income earned by foreign companies from offshore seismic surveys of possible petroleum fields and from offshore drilling of wells for petroleum. The amendments address a significant disincentive for effective development of New Zealand's natural resources.

Amendments also allow deductions for expenditure incurred by a business in avoiding, remedying, or mitigating detrimental effects to the environment from the discharge of contaminants. A taxpayer who is obliged to incur such expenditure upon ceasing business activities may receive deductions for payments made to an environmental restoration account while the taxpayer is in business. The taxpayer can then obtain a refund from the account after carrying out the required work.

Amendments to the Tax Administration Act 1994 limit the right of the Commissioner of Inland Revenue to require taxpayers and their tax advisors to provide documents that give instructions to a tax advisor or give tax advice to the taxpayer. The tax advisor must be a member of a group or organisation approved by the Commissioner.

The taxpayer must claim that the document is a tax advice document and provide information in the document that is not advice on tax law. The right of non-disclosure does not affect legal professional privilege.

The bill also contains a large number of remedial and consequential amendments. Some of these amendments have retrospective application. This is necessary to ensure that the intended policy of the provisions, as amended, applies to all taxpayers intended to be subject to that policy. Clauses with retrospective effect are identified in the clause-by-clause analysis.

Unless the contrary is indicated, all provisions come into force on the date that the bill receives the Royal assent.

## **Part 1**

### **Amendments to Income Tax Act 2004**

#### **Thin-capitalisation rules for foreign-owned banks**

Amendments are proposed to limit the extent to which foreign banks can debt fund their New Zealand operations and their offshore investment out of New Zealand.

The current thin-capitalisation rules measure debt, not including on-lent amounts, relative to assets. For a bank, this has not proven to be an effective measure for limiting the amount of debt it has in respect of its New Zealand business. The bill proposes a more effective way of ensuring excessive debt is not allocated to the New Zealand business is to determine the amount of equity supporting the New Zealand assets of the business. Amendments are proposed under which the net equity of a bank's New Zealand group is compared with a required level of equity based on the risk-weighted exposures of the group. Risk-weighted exposures are calculated from an evaluation of the relative risk of the assets of the group.

The rules apply to a bank that is registered with the Reserve Bank of New Zealand and to taxpayers in the bank's group. This group is determined as being those New Zealand resident entities or fixed establishments operating in New Zealand (generally branches) that consolidate for financial reporting purposes in any group that includes the registered bank. This means the inclusion of any New Zealand subsidiaries, sibling groups and New Zealand fixed establishments of the bank's ultimate overseas parent.

To measure a New Zealand banking group's equity for tax purposes, regulatory and accounting concepts of equity are drawn on. A banking group's equity includes: shareholders' or branch equity for accounting purposes; debt for accounting purposes that is treated as equity for tax; and interest-free funds from the overseas parent that are in the nature of equity. A banking group's equity does not include equity that is treated as debt for tax purposes.

Certain deductions are made from equity; many of these are required by the regulator when measuring the required level of capital for regulatory purposes. Deductions include certain capital gains and intangible assets, revaluation reserves, future tax benefits of tax losses recorded as assets, regulatory credit enhancements and capital advances to connected persons, certain offshore assets and cross-holdings of equity with associated parties.

The offshore assets deducted from equity include equity interests in most controlled foreign companies and foreign investment funds. This also includes a calculation of the level of investment generating overseas tax credits that are claimed in New Zealand by the bank's group.

The actual level of equity, after the deduction of the items above, is compared to the required level of equity.

The required level of equity is based on a requirement for the bank's New Zealand group to hold 4% of its New Zealand risk-weighted exposures (assets weighted for risk). Risk-weighted exposures include not only the banking group assets that are shown on the balance sheet, but also assets of the group that are not included in the balance sheet, such as derivatives. Identifiable assets in the balance sheet that are deducted from the New Zealand banking group's equity are also deducted from the assets that contribute to risk-weighted exposures.

If the banking group has in any measurement period less equity than the required level of equity, interest deductions are denied. The amount of deductions denied is based on the average cost of borrowing an amount equal to the deficient equity. The average cost of borrowing funds is determined from the financial statements of the group, using the actual interest expense for interest-bearing debt.

**Exemption from tax for drilling rigs and seismic ships involved in exploration for petroleum**

An amendment is proposed that, for a period of six years, will exempt income earned from the drilling of exploratory or development wells for petroleum in New Zealand and income earned from seismic survey work relating to petroleum in New Zealand. The activities must be carried out by non-resident companies, and must be confined to offshore petroleum fields. Currently, non-resident drilling rig operators and seismic ship operators have to pay tax on their New Zealand-sourced income unless they are exempt under domestic legislation or a double tax agreement applies. The amendment will apply to payments for drilling activities and seismic survey activities in New Zealand from 1 January 2004 to 31 December 2009.

**Business environmental expenditure**

Amendments are proposed to address concerns raised with regard to tax deductions available for business environmental expenditure (expenditure to avoid, remedy, or mitigate the detrimental effects of the discharge of contaminants).

*Section DJ 10* will be revised so that it sets out categories of deductible environmental expenditure and the rate at which an amortisation deduction is available to business taxpayers (where no other tax deduction is available). The default categories of expenditure will be: expenditure relating to an activity or improvement to land; and expenditure relating to restoration and monitoring. The default amortisation rates will be 100% for all of the categories of environmental expenditure apart from construction and improvement expenditure. The default amortisation rate for this category will be based on the lesser of 35 years (1/35) or the length of the applicable resource consent (1/life of resource consent).

The Commissioner of the Inland Revenue will also be able to set amortisation rates for individual categories of environmental expenditure relating to an activity or improvement to land. In determining the appropriate amortisation rate, the Commissioner shall have regard to the fact that for environmental expenditure, estimated useful life for tax purposes may be less than physical life. Estimated useful life may also be less than the life of the applicable resource consent.

A matching mechanism will be introduced so that site restoration and monitoring costs can be matched against prior business income. Taxpayers will be able to establish an environmental restoration account with the Inland Revenue. The establishment of an environmental restoration account will be voluntary. Over the life of a business (if the discharge of contaminants is resulting from operations) a cash deposit equivalent to the tax effect of the accounting restoration provision can be made into the fund. This deposit will give rise to a tax deduction so that the taxpayer's cash position is unchanged. Interest will be paid on deposits at 3% per annum. On incurring expenditure relating to restoration and monitoring, the taxpayer will be entitled to a refund from the environmental restoration account. This refund will give rise to taxable income which will be offset by tax deductions for restoration and monitoring expenditure.

Finally, the current distinction between industrial and non-industrial waste will be removed. *Section DJ 10* will be amended to remove the word "industrial".

The proposed amendments to *section DJ 10* (including the ability to establish an environmental restoration account) will apply for income years commencing and environmental expenditure incurred after the date the amending legislation is enacted. The removal of the distinction between industrial and non-industrial waste will be retrospective to protect taxpayers who have taken a wide interpretation of the term "industrial waste" (either in filing their tax returns or in raising a dispute with Inland Revenue). Taxpayers who have not taken a wide interpretation of the legislation will not be able to take advantage of the retrospective change.

### **Death and distributions**

New generic rules are proposed relating to the tax treatment of transfers of assets following a taxpayer's death, distributions by companies and trusts, including estates, and gifts. Current tax law in this area is unclear.

The general proposal is:

- a disposal of a taxpayer's assets and liabilities is deemed to occur on the date of death, at market value; and
- the distributor or executor is deemed to have acquired the assets at their market value; and

- “in-kind” distributions of assets and liabilities by companies and trusts (including estates) are treated as being dispositions and acquisitions at market value. Gifts are treated in the same way.

The combined effect of these rules on deceased estates is that there would generally be two market-value transfers: one at death and one on the subsequent distribution of the estate. However, there are exceptions to this result:

- If the only beneficiary in an estate is the spouse or de facto partner of the deceased, assets and liabilities are transferred at the book values that they have for tax purposes (this approach to valuation is known as roll-over relief).
- For simple, closely-held or charitable estates there is a single market-value transfer at death and roll-over relief applies for the distribution of the estate even if there is more than one beneficiary.
- Roll-over relief is available for forestry assets if the beneficiaries of the estate are close relatives of the deceased.

For the purpose of the exceptions, specific legacies are ignored.

These amendments do not, by themselves, cause assets and liabilities to be captured in the tax base. They merely provide certainty as to the appropriate tax treatment when assets are transferred and a cost base to the recipient.

A number of amendments address technical issues:

- The existing tax treatment of past transactions will be grandfathered where:
  - the tax base is protected by the position that was taken, either because the tax book values of the assets and liabilities were rolled over, or because a market value exercise was done; and
  - the beneficiaries of the trust or estate are limited to persons who receive specific legacies of assets that are not in the tax base, and close relations of the settlor(s).
- A special rule ensures that a taxpayer’s death does not in itself lead to an asset being brought into the tax base merely because the ten-year period for land held on capital account has not elapsed. No tax is payable if such land passes to an associated person and is held by that person for the balance of the ten years.

- A variation from the requirement to use market value applies to unexpired accrual expenditure, which is valued at cost.
- There is no use-of-money interest on a deceased's tax liability in the year of death, so long as all tax is paid by the due dates.

The amendments apply from the commencement of the 2005–06 income year.

### **Imputation credits and wholly owned groups**

Amendments are being proposed to ensure that the benefits of pre-paid tax payments made to impute dividends stay with the shareholders that received the imputation credits in the first place. They are targeted at wholly owned groups with accumulated losses in excess of \$1 million. On leaving a wholly owned group, to the extent a company has prepaid tax in excess of its imputation credit account balance or has a debit balance in its imputation credit account, if the excess prepaid tax or debit balance is not transferred to another member of the wholly owned group before sale, a further payment of income tax will be required. The further payment of income tax will not be creditable against any future income tax liability.

To buttress the targeted approach, amendments are also proposed to ensure that share splits cannot be treated as taxable bonus issues and that section GC 22, the anti-imputation-credit-streaming rule, can apply if there is either a tax credit or an account advantage. The amendments would apply generally.

As this is base maintenance, the amendments apply from the date of the introduction of the bill.

Remedial amendments are also proposed to ensure that all payments of income tax can create imputation credits regardless of whether the payer is a provisional taxpayer or not. These amendments apply from 1 April 1995, to confirm the validity of imputation credits generated from previous payments of income tax, regardless of the status of the taxpayer.

### **Excess imputation credits**

From the 2005–06 tax year, individuals and unincorporated bodies will no longer convert excess credits to a net loss at a standard rate but will instead carry forward a credit of tax to the subsequent tax year. This will ensure that the benefit of imputation credits is equal to the tax paid when they arose. Currently, the benefit of the credits

depends on the taxpayer's marginal tax rate at the time the net loss is applied to reduce income.

### **Tax status of the Cook Islands National Superannuation Fund**

The Cook Islands National Superannuation Fund is a compulsory national superannuation fund established by Cook Islands legislation. The Fund is governed by a trust deed and the Public Trust is the trustee of the Fund. There is concern that the current governance structure may give rise to unintended consequences under New Zealand's tax legislation. It is likely that the Fund will be deemed to be a New Zealand-resident company and therefore the Fund will be subject to New Zealand tax on its worldwide income at the rate of 33%. An amendment will ensure that the Fund is not liable to New Zealand income tax on its foreign-sourced income.

The amendment will apply retrospectively from 1 July 2001, when the Fund was established.

### **Tax depreciation rules**

The bill contains a number of amendments to the tax depreciation rules to improve their operation. The changes include:

- better aligning the depreciation treatment of patents with useful life by ensuring that when a patent is granted, the first allowable depreciation deduction includes depreciation for the period from the date the patent application was lodged to the date the patent was granted;
- improving the operation of the special tax depreciation rules by increasing the flexibility available to the Commissioner to issue special tax depreciation rates. A number of changes are proposed to:
  - clarify that the Commissioner may have regard to a range of factors in determining the estimated useful life of an asset;
  - allow the Commissioner to prescribe a special tax depreciation rate using a straight-line formula in addition to the currently legislated diminishing value formula;
  - allow the Commissioner to prescribe a special tax depreciation rate outside the six-month time limit if a taxpayer agrees to this;

- extend the special tax depreciation rules to apply to fixed-life intangible property;
- adding to the list of depreciable intangible property:
  - plant variety rights (granted under the Plant Variety Rights Act 1987);
  - the right to use plant variety rights;
- allowing deductions for losses arising from buildings destroyed or rendered useless for deriving income as the result of a qualifying event.

The changes will apply from the 2005–06 income year.

It is intended to propose related amendments to provisions in the Taxation (Venture Capital and Miscellaneous Provisions) Bill. Those provisions allow deductibility for losses (under sections DO 4, DO 5 and DP 3) arising from the destruction of certain farming land improvements as a result of the February and July storms. At a later stage, amendments will be proposed to expand the deductibility of losses on farming land improvements to those arising from a qualifying event as defined in the definition introduced by this bill. The intended amendments will be proposed with application from the 2005–06 income year.

## Part 2

### Amendments to Income Tax Act 1994

#### **Tax status of the Cook Islands National Superannuation Fund**

The Act will be amended to ensure that the Cook Islands National Superannuation Fund is not liable to New Zealand income tax on its foreign-sourced income in past years.

The amendment will apply retrospectively to 1 July 2001, when the Fund was established.

#### **Superannuation fund expense transfers**

A master superannuation fund will be permitted to elect in which income year (2000–01 or 2001–02) it may deduct certain expenses incurred by a member fund in the 2000–01 income year. This deals with a transitional anomaly that arose when the timing rule for the deduction was changed in 2001.

### **Part 3**

#### **Amendments to Tax Administration Act 1994**

##### **Non-disclosure right for tax advice documents**

A statutory non-disclosure right for tax advice provided by tax advisors to their clients is proposed. To qualify for the non-disclosure right, a person will need to be a client of a tax advisor who is a member of a group or organisation approved by the Commissioner of Inland Revenue.

The non-disclosure right will apply to communications between a tax advisor and a client for the dominant purpose of providing or receiving tax advice. It will be subject to exclusions relating to information of a factual nature, accounting and tax work papers, non-tax advice such as valuation and investment advice, matters relating to debt recovery and matters concerning illegal or wrongful acts. Information that is not covered by the non-disclosure right will need to be provided by way of a statutory declaration.

The proposed provisions will provide a degree of consistency with the current privilege enjoyed by a lawyer's client, who may refuse to disclose to Inland Revenue confidential communications with the lawyer. Legal professional privilege is not affected by the new right of non-disclosure.

The proposed provisions will apply to requests for information in respect of which the right of non-disclosure is claimed after the date of enactment.

##### **Excess imputation credits**

Two amendments follow from the new rule that some taxpayers will carry forward excess imputation credits rather than convert them to a net loss. A natural person who has carried forward a credit of tax will be required to file a tax return, and the requirement that the Commissioner extinguish net losses when writing off outstanding tax will be expanded so that credits carried forward must also be extinguished. The Commissioner will determine the order in which net losses and credits of tax are extinguished.

## Part 4

### Amendments to other Acts

#### *Amendments to Goods and Services Tax Act 1985*

#### **GST and the fire service levy**

An amendment is proposed to clarify that GST is chargeable in respect of fire services levies paid to the New Zealand Fire Service Commission.

The amendment will apply from 1 October 1986, the date that GST first applied to the supply of goods and services in New Zealand.

#### **Clause-by-clause analysis**

*Clause 1* gives the title of the Act.

*Clause 2* gives the commencement dates for the Act.

## Part 1

### Amendments to Income Tax Act 2004

*Clause 3* provides that *Part 1* amends the *Income Tax Act 2004* and that the clauses in *Part 1* apply for the 2005–06 and later tax years if they do not provide for a different application.

*Clause 4* inserts new *section CB 24B* which provides the formula for calculation of the amount of income of a person who receives a refund under *section EK 12* or a transfer under any of *sections EK 15, EK 16, and EK 20* in relation to an environmental restoration account.

*Clause 5* amends *section CC 9(2)(a)* consequential to the amendments to the depreciation rules.

*Clause 6* replaces *section CD 7(1)* consequential to the amendments to the imputation credit reforms.

*Clause 7* amends the list of defined terms in *section CG 4* to insert the omitted term “loss”.

*Clause 8* inserts new *section CW 45B* which provides that income derived by non-resident drilling operators from certain exploration and development activities relating to off-shore petroleum fields is exempt income.

*Clause 9* inserts a new *heading* and new *section CW 49B* which provides that foreign-sourced income derived by the Cook Islands

National Superannuation Fund is treated as income derived by a non-resident.

*Clause 10* inserts a new *heading* and new *section CX 43B* which excludes a refund under new *section EK 9* from the income of a person.

*Clause 11* repeals *section CZ 6(3)* consequential to the insertion of new *subpart FI*.

*Clause 12* amends *section DB 16(1)(b)* by inserting a cross-reference to *section DB 37* so that the provision is applied to expenditure in priority to the new business environmental expenditure rules.

*Clauses 13 and 14* amend *section DB 37* consequential to the new business environmental expenditure rules.

*Clause 13* amends *section DB 37(1)(b)* so that the provision applies to expenditure relating to the treatment of all waste, rather than the treatment of industrial waste. The amendment applies to expenditure incurred in the 2005–06 income year if the income year starts before 10 June 2005.

*Clause 14* replaces *section DB 37*. The new provision allows deductions for business environmental expenditure of a type that is listed in *part A* of new *schedule 6B* and not of a type that is listed in *part C* of new *schedule 6B*. The amendment applies to expenditure incurred in the 2005–06 income year if the income year starts on or after 10 June 2005.

*Clause 15* amends *section DP 10(1)(b)* consequential to the new business environmental expenditure rules.

*Clause 16* amends the heading to *subpart DQ* to add “and environmental restoration accounts scheme”.

*Clause 17* adds new *section DQ 4* which allows a deduction of the amount given in new *section EK 7*.

*Clause 18* repeals *section EC 4* consequential to the insertion of new *subpart FI*.

*Clause 19* amends *section EE 12(1)*, consequential to new *sections 91AD, 91AE, and 91AJ* of the Tax Administration Act 1994.

*Clause 20* amends *section EE 27(1)* consequential to the amendments to the depreciation rules.

*Clause 21* inserts new *section EE 27B* which allows depreciation in respect of certain patent rights for the period that begins with the

lodging of a complete application for the patent rights and ends with the grant of the patent rights.

*Clause 22* replaces *section EE 28* consequential to the amendments to the depreciation rules.

*Clause 23* repeals *section EE 40(7)* consequential to the insertion of new *subpart FI*.

*Clause 24* amends *section EE 41(2)* to allow a taxpayer to have a depreciation loss for a building that is destroyed, or made useless for the purpose of deriving income, by a qualifying event.

*Clause 25* inserts a new *section EE 52(4B)* consequential to the amendments to the depreciation rules.

*Clause 26* amends *section EH 5(4)* consequential to the insertion of new *subpart FI*.

*Clause 27* amends *section EH 19(2)* consequential to the insertion of new *subpart FI*.

*Clause 28* amends *section EH 50(2)* consequential to the insertion of new *subpart FI*.

*Clause 29* amends *section EH 67(4)* consequential to the insertion of new *subpart FI*.

*Clause 30* inserts new *subpart EK*, which prescribes the treatment of payments to, and refunds and transfers from, environmental restoration accounts.

*Clause 31* amends *section EW 29* by repealing *subsection (13)* and replacing “New Zealand resident, trustee” with “New Zealand resident” in the list of defined words.

*Clause 32* repeals *section EW 36(1)(b)(i)* consequential to the insertion of new *subpart FI*.

*Clause 33* repeals *section EW 39* consequential to the insertion of new *subpart FI*.

*Clause 34* repeals *section EW 41(1)(b)(i)* consequential to the insertion of new *subpart FI*.

*Clause 35* repeals *section EW 44* consequential to the insertion of new *subpart FI*.

*Clause 36* repeals *section EX 55* consequential to the insertion of new *subpart FI*.

*Clause 37* amends *section FB 3* consequential to the insertion of new *subpart FI*.

*Clause 38* amends the *heading of section FC 17* and replaces *section FC 17(1)(c)* relating to the treatment of insurers under a double tax agreement between New Zealand and the Netherlands.

*Clause 39* amends *section FG 2* consequential to the new thin-capitalisation rules for foreign-owned banks.

*Clause 40* replaces *section FG 3* consequential to the new thin-capitalisation rules for foreign-owned banks.

*Clause 41* amends *section FG 4* consequential to the new thin-capitalisation rules for foreign-owned banks.

*Clause 42* amends *section FG 8* consequential to the new thin-capitalisation rules for foreign-owned banks.

*Clause 43* inserts new *sections FG 8B to FG 8J* which contain the principal new thin-capitalisation rules for foreign-owned banks.

*Clause 44* replaces *section FH 1(1)* consequential to the new thin-capitalisation rules for foreign-owned banks.

*Clause 45* inserts new *subpart FI* which provides for the determination of a cost price in respect of prescribed disposals and resulting acquisitions of property, with related rules for special cases.

*Clause 46* amends *section GC 22(4)(b)* consequential to the amendments to the imputation credit reforms to ensure that the rule against the streaming of imputation credits applies if there is either a tax credit or an account advantage.

*Clause 47* inserts new *section GD 1(5)* consequential to the insertion of new *subpart FI*.

*Clause 48* replaces *section GD 14(3)(c)* consequential to the insertion of new *subpart FI*.

*Clause 49* amends *section HK 11* to ensure that directors and controlling shareholders of a company are liable for the unpaid tax (including civil penalties and use of money interest) owed by the company in the circumstances prescribed in the section.

*Clause 50* inserts a new *section LB 1(1)(hb)* consequential to the amendments to the imputation credit reforms.

*Clause 51* amends *section LB 2* so that if a person has excess imputation credits for an income year and is subject to a rate of tax that depends on the amount of the person's taxable income for the

income year, the credits are carried forward rather than converted to a net loss at a standard rate.

*Clause 52 repeals section LC 15.*

*Clause 53 repeals section MB 2(1)(aa) and (ab).*

*Clause 54 amends section ME 4(1) and (2) by adding several new paragraphs, consequential to the amendments to the imputation credit reforms.*

*Clause 55 amends section ME 5 by adding 2 new paragraphs, consequential to insertion of sections ME 9B and ME 9C, and correcting a cross-reference.*

*Clause 56 inserts new sections ME 9B and ME 9C to amend the rules relating to companies with imputation credit accounts that cease to be members of a wholly-owned group of companies.*

*Clause 57 amends section MG 5(1)(e) to correct a cross-reference.*

*Clause 58 amends section NF 9(1)(i) to correct a cross-reference.*

*Clause 59 amends section NH 3(4)(b) to correct a cross-reference.*

*Clause 60 amends section OB 1 with various commencement dates and application provisions. Subclause (2) a definition of civil penalty. Subclause (3) inserts a definition of contaminant based on a definition in section 2(1) of the Resource Management Act 1991. Subclause (4) replaces the definition of diminished value. Subclause (5) amends the definition of dispose. Subclause (6) inserts a cross-reference to the definition of environmental restoration account contained in section EK 24. Subclause (7) inserts a cross-reference to the definition of exploration and development activities contained in section CW 45B. Subclause (8) inserts a cross-reference to the definition of financial value contained in section FG 8F. Subclause (9) amends the definition of further income tax by inserting cross-references to new sections ME 9B and ME 9C. Subclause (10) inserts a cross-reference to the definition of group funding debt contained in section FG 8B. Subclause (11) inserts a reference to the definition of group quarter day contained in section FG 8B(5). Subclause (12) amends the definition of market value. Subclause (13) inserts cross-references to the definition of maximum account balance contained in section EK 24 and the definition of maximum payment contained in section EK 23. Subclause (14) inserts definitions of measurement day and measurement period containing cross-references to section FG 8E. Subclause (15) inserts a cross-reference to the definition of net equity threshold contained in*

*section FG 8H. Subclause (16)* amends the definition of *net loss* to correct a cross-reference and replace “written off” by “extinguished”. *Subclause (17)* inserts a cross-reference to the definition of *New Zealand banking group* contained in *section FG 8C*. *Subclause (18)* inserts a cross-reference to the definition of *New Zealand net equity* contained in *section FG 8G(1)*. *Subclause (19)* inserts a cross-reference to the definition of *notional offshore investment amount* contained in *section FG 8G(4)*. *Subclause (20)* inserts a cross-reference to the definition of *offshore permit area* contained in *section CW 45B*. *Subclause (21)* inserts a cross-reference to the definition of *patent application date* contained in *section EE 27B*. *Subclause (22)* inserts a definition of *plant variety rights*. *Subclause (23)* inserts a definition of *qualifying event*. *Subclause (24)* inserts a definition of *registered bank* based on a definition in the Reserve Bank of New Zealand Act 1989. *Subclause (25)* inserts a cross-reference to the definition of *regulatory value* contained in *section FG 8F*. *Subclause (26)* inserts a cross-reference to the definition of *reporting bank* contained in *section FG 8D*. *Subclause (27)* inserts a definition of *resource consent* based on a definition in the Resource Management Act 1991. *Subclause (28)* inserts cross-references to the definition of *ultimate owner* contained in *sections ME 9B and ME 9C* and the definition of *ultimate parent* contained in *section FG 8C*.

*Clause 61* amends the definition of *income tax* contained in *section OB 6(1)*, consequential to the amendments to *section HK 11* contained in *clause 49*.

*Clause 62* inserts a new *schedule 6B*, consequential to the business environmental expenditure rules.

*Clause 63* amends *schedule 17*, to include plant variety rights and rights to use plant variety rights as types of depreciable intangible property.

## Part 2

### Amendments to Income Tax Act 1994

*Clause 64* provides that *Part 2* amends the *Income Tax Act 1994*.

*Clause 65* inserts new *section CB 2(1)(g)*, exempting income derived by the Cook Islands National Superannuation Fund from an overseas source. The amendment is treated as commencing on 1 July 2001.

*Clause 66* inserts new *section CB 16* which provides that income derived by non-resident drilling operators from certain exploration and development activities relating to off-shore petroleum fields is exempt income, with application from 25 August 2004.

*Clause 67* inserts new *section DI 3(2B) and (2C)*, clarifying the transitional effects of a previous amendment to the section.

*Clause 68* amends *section DJ 10(1)* by replacing “industrial waste” with “waste”, with application to the 1995–96 and later income years on conditions provided in the clause.

*Clause 69* amends *section FG 2* consequential to the new thin-capitalisation rules for foreign-owned banks.

*Clause 70* replaces *section FG 3* consequential to the new thin-capitalisation rules for foreign-owned banks.

*Clause 71* amends *section FG 4* consequential to the new thin-capitalisation rules for foreign-owned banks.

*Clause 72* amends *section FG 8* consequential to the new thin-capitalisation rules for foreign-owned banks.

*Clause 73* inserts new *sections FG 8B to FG 8J* which contain the principal new thin-capitalisation rules for foreign-owned banks.

*Clause 74* replaces *section FH 1(1)* consequential to the new thin-capitalisation rules for foreign-owned banks.

*Clause 75* amends *section GC 22(4)(b)* consequential to the amendments to the imputation credit reforms to ensure that the rule against the streaming of imputation credits applies if there is either a tax credit or an account advantage.

*Clause 76* amends *section ME 4(1) and (2)* by adding several new paragraphs, consequential to the amendments to the imputation credit reforms.

*Clause 77* amends *section ME 5* by adding 2 new paragraphs, consequential to insertion of *sections ME 9B and ME 9C*, and correcting a cross-reference.

*Clause 78* inserts new *sections ME 9B and ME 9C* to amend the rules relating to companies with imputation credit accounts that cease to be members of a wholly-owned group of companies.

*Clause 79* amends *section NF 9(1)(i)* by inserting a cross-reference.

*Clause 80* amends *section OB 1. Subclause (2)* inserts a cross-reference to the definition of *exploration and development activities*

contained in *section CB 16(2)*. *Subclause (3)* inserts a cross-reference to the definition of *financial value* contained in *section FG 8F*. *Subclause (4)* amends the definition of *further income tax* by inserting cross-references to new *sections ME 9B and ME 9C*. *Subclause (5)* inserts a cross-reference to the definition of *group funding debt* contained in *section FG 8B*. *Subclause (6)* inserts a reference to the definition of *group quarter day* contained in *section FG 8B(5)*. *Subclause (7)* inserts definitions of *measurement day* and *measurement period* containing cross-references to *section FG 8E*. *Subclause (8)* inserts a cross-reference to the definition of *net equity threshold* contained in *section FG 8H*. *Subclause (9)* amends the definition of *net loss*, replacing “written off” with “extinguished”. *Subclause (10)* inserts a cross-reference to the definition of *New Zealand banking group* contained in *section FG 8C*. *Subclause (11)* inserts a cross-reference to the definition of *New Zealand net equity* contained in *section FG 8G(1)*. *Subclause (12)* inserts a cross-reference to the definition of *notional offshore investment amount* contained in *section FG 8G(4)*. *Subclause (13)* inserts a cross-reference to the definition of *offshore permit area* contained in *section CB 16(2)*. *Subclause (14)* inserts a definition of *registered bank* based on a definition in the Reserve Bank of New Zealand Act 1989. *Subclause (15)* inserts a cross-reference to the definition of *regulatory value* contained in *section FG 8F*. *Subclause (16)* inserts a cross-reference to the definition of *reporting bank* contained in *section FG 8D*. *Subclause (17)* amends the definition of *taxable bonus issue*, removing share splits from the types of issue included in the term. *Subclause (18)* inserts a cross-reference to the definition of *ultimate owner* contained in *sections ME 9B and ME 9C*. *Subclause (19)* inserts a cross-reference to the definition of *ultimate parent* contained in *section FG 8C*.

### Part 3

#### Amendments to Tax Administration Act 1994

*Clause 81* provides that *Part 3* amends the *Tax Administration Act 1994*.

*Clause 82* amends *section 3(1)*. *Subclause (2)* inserts a cross-reference to the definition of *approved advisor group* contained in *section 20B(5)*. *Subclause (3)* inserts a cross-reference to the definition of *information holder* contained in *section 20B(1)*. *Subclause (4)* inserts cross-references to the definition of *tax advice document*

contained in *section 20B(3)* and the definition of *tax advisor* contained in *section 20B(4)*. *Subclause (5)* inserts a cross-reference to the definition of *tax contextual information* contained in *section 20F(3)*.

*Clause 83* amends *section 17A(7)(b)* consequential to the amendments relating to the non-disclosure right for tax advice documents.

*Clause 84* inserts new *sections 20B to 20F* which provide the basis on which a person may decline to disclose to the Commissioner a document that is a tax advice document for a person.

*Clause 85* amends *section 33A(2)* consequential to the amendments to *section LB 2* of the Income Tax Act 2004.

*Clause 86* inserts new *section 36BC* which authorises the Commissioner to prescribe electronic formats for information to be provided under *subpart EK* of the Income Tax Act 2004.

*Clause 87* amends *section 36C(1)* by inserting a cross-reference to new *section 36BC*.

*Clause 88* amends *section 81(4)* by inserting *paragraph (q)* which relates to the Parental Leave and Employment Protection Act 1987.

*Clause 89* inserts new *section 81B* which authorises the Commissioner to supply information to an approved advisor group about an action or omission by a person who purports to be a member of an approved advisor group.

*Clause 90* inserts new *sections 85H and 85I* which prescribe the basis on which information may be exchanged between the Commissioner and the department responsible for the administration of the Parental Leave and Employment Protection Act 1987.

*Clause 91* amends *section 87(5)(a)(i)* consequential to the amendment in *clause 88*.

*Clause 92* amends *section 89E(1)(a)* by inserting a cross-reference.

*Clause 93* amends *section 9IAE* by widening the range of factors that the Commissioner may take into account in determining the estimated useful life of an asset.

*Clause 94* amends *section 9IAK* by giving an applicant for a determination the power to agree to an extension of time for a response by the Commissioner.

*Clause 95* inserts new *section 91AL* which authorises the Commissioner to make determinations for the purpose of *section DB 37* of the Income Tax Act 2004.

*Clause 96* repeals *section 91E(6)*.

*Clause 97* repeals *section 92(4)* with application for the 2005–06 and subsequent income years.

*Clause 98* amends *section 101(1)* by inserting a cross-reference.

*Clause 99* repeals *section 108(1B)* with application for the 2005–06 and subsequent income years.

*Clause 100* amends *section 120C* by adding *paragraph (f)* consequential to *section FI 5* of the Income Tax Act 2004.

*Clause 101* amends *section 140B(1)* by inserting a cross-reference.

*Clause 102* amends *section 141B(5) and (6)* so that they apply to a tax position taken by a taxpayer, rather than an interpretation of a tax law adopted by a taxpayer.

*Clause 103* repeals *section 146* with application to publications that would otherwise occur after the date on which the Act receives the Royal assent.

*Clause 104* amends *section 177C* consequential to the imputation credit amendments.

## Part 4

### Amendments to other Acts

#### *Amendments to Goods and Services Tax Act 1985*

*Clause 105* provides that *sections 106 to 110* amend the *Goods and Services Tax Act 1985*.

*Clause 106* inserts new *section 5(6AB)* to confirm that a levy paid to the New Zealand Fire Service is deemed to be a consideration for a supply of services, with application from 1 October 1986.

*Clause 107* amends *section 12(4)(d)(ii)* to correct a reference to an *input tax credit*.

*Clause 108* amends *section 25(2)(a)* to correct a reference to tax being charged by a supplier.

*Clause 109* replaces *section 26A*.

*Clause 110* inserts new *section 52(7)*, which provides that, for the purpose of the Commissioner's power to cancel the registration of a

person who is a non-resident, a taxable activity means a taxable activity carried on in New Zealand.

*Amendment to Taxation Review Authorities Act 1994*

*Clause 111* amends *section 13B(1)(b)* of the Taxation Review Authorities Act 1994 by removing a reference to *precedent* and inserting a description of the meaning of that term.

*Amendment to Privacy Act 1993*

*Clause 112* amends *Schedule 3* of the Privacy Act 1993 by inserting a reference to *section 85H* of the *Tax Administration Act 1994*.

**Schedule**

The *schedule* contains new *schedule 6B*, which is inserted in the *Income Tax Act 2004* by *clause 62*.

**Regulatory impact and compliance cost statement**

In developing tax law, a central objective is to ensure that costs associated with the functioning of the tax system are minimised. This objective must, however, be balanced by the needs to protect the tax base, treat taxpayers fairly, and ensure an efficient tax system. All the proposals in this bill are intended to improve the efficiency and equity of the tax system. Several proposals that deliver various levels of tax savings are also likely to increase tax-related compliance costs.

**Compliance cost statement**

The following proposals in the bill will reduce compliance costs:

*Exemption from tax for drilling rigs and seismic ships involved in exploration for oil or gas:* In addition to the relief from New Zealand income tax afforded by this proposal, the measures are also expected to result in a minor reduction in the compliance costs of those affected.

*Tax depreciation rules:* The proposed amendments are expected to improve the operation of the tax depreciation rules by clarifying and improving the operation of a number of provisions. Consequently, a reduction in compliance costs is expected.

The following proposals in the bill will not change compliance costs:

*Amendment to tax recovery provision:* An amendment to the tax recovery provision, section HK 11 of the Income Tax Act 1994, to clarify that the provision applies to civil penalties and use of money interest is not expected to have compliance costs implications.

*Cook Islands National Superannuation Fund:* The Cook Islands National Superannuation Fund is a compulsory national superannuation fund established by Cook Islands legislation. The Fund is governed by a trust deed and the Public Trust has been appointed the trustee of the Fund. This means that the Fund may be treated as a resident for tax purposes and therefore subject to New Zealand tax on its world-wide income. An amendment will treat the Fund as a non-resident and the Fund will only be liable for tax on income from investments in New Zealand. This is consistent with the taxation of other non-resident entities. The amendment will apply retrospectively to 1 July 2001, which is when the Fund was established.

*Death and Distributions:* Amendments to the Income Tax Act 2004, the Income Tax Act 1994, and the Tax Administration Act 1994 required to implement these clarifications are not expected to change tax compliance costs currently incurred in relation to these disposals of property.

*Excess imputation credits of individuals:* The proposed amendments are not expected to affect compliance costs.

*GST and the fire services levy:* An amendment to confirm the application of GST to the fire services levy is not expected to have compliance costs implications.

*GST deregistration:* An amendment to the Goods and Services Tax Act 1985 to enable cancellation of the GST registration of non-residents who do not carry on a taxable activity in New Zealand is not expected to have compliance cost implications.

*Imputation credit shopping:* These proposed amendments are not expected to change administration or compliance costs.

*Name publication rules:* An amendment to repeal section 146 of the Tax Administration Act 1994 is not expected to have compliance costs implications.

*Non-disclosure for accountants' tax advice:* The proposed amendments to the Tax Administration Act 1994 provide a balance between Inland Revenue's administration function and the ability

for taxpayers to communicate with their advisors on a confidential basis. The practical implications of the proposals are not significant given existing protocols that already limit Inland Revenue's access to tax advice.

*Paid parental leave:* An amendment to authorise certain information-matching with Department of Labour is not expected to have compliance costs implications.

*Superannuation fund expense rules:* The proposed amendment to clarify that a master superannuation fund may deduct certain costs to its member funds is not expected to have compliance cost implications.

The following proposals in the bill may increase compliance costs:

*Business environmental expenditure:* Participating in the restoration fund will benefit business taxpayers by allowing the matching of environmental expenses and income. This will result in a fairer tax system.

There may be a small increase in compliance costs for taxpayers who choose to participate in the restoration fund. However, the number of taxpayers who are likely to be affected by this increase is expected to be small and limited to large corporate taxpayers. Steps have been taken to reduce possible compliance costs as much as possible by making the proposals voluntary, requiring only one deposit each year, and ensuring taxpayers are able to use information already required for financial reporting purposes. This avoids the need for separate tax calculations.

*Thin-capitalisation rules for foreign-owned banks:* In addition to the extra tax that will be paid as a result of the proposals, registered banks and fixed establishments of registered banks controlled by non-residents will be required to perform a calculation that is not required at present — there are 12 banks that will have to do this. This calculation is not expected to be difficult because it draws on information that banks currently compile for regulatory and accounting purposes. The associated on-going costs are estimated to be small in relation to bank's normal tax compliance costs. Banks are also likely to incur one-off costs in unwinding offshore investments as part of the proposals.

### Consultation

Proposals contained in the bill were, with the exception of a number of minor remedial amendments, subject to the Generic Tax Policy Process. This is a robust consultative and tax policy development process focussed on tax policy development. For the majority of the measures in the bill, this process included the release of the following discussion documents or issues papers:

- *Repairs and maintenance to the tax depreciation rules* (an officials' issues paper)
- *Death and distributions* (an issues paper).

Specific consultation was undertaken with a number of professional groups, industry representatives and individual taxpayers, in each case according to their expertise or membership. These consultations included:

- Association of Superannuation Funds of New Zealand
  - Business New Zealand
  - Cook Islands Government
  - Corporate Taxpayer Group
  - Deloitte Touche Tohmatsu
  - Department of Labour
  - Earthquake Commission
  - Ernst Young
  - Fire Service Commission
  - Institute of Chartered Accountants of New Zealand
  - Insurance and Savings Institute of New Zealand
  - KPMG
  - Local Government New Zealand
  - Ministry of Economic Development
  - Ministry of Foreign Affairs and Trade
  - Ministry of Justice
  - New Zealand Law Society
  - New Zealand Oil and Gas Limited
  - Petroleum Exploration Association of New Zealand
  - PriceWaterhouseCoopers
  - Reserve Bank of New Zealand
  - The Government Actuary
  - The New Zealand Bankers Association
  - The Treasury
  - Twelve foreign-owned registered banks.
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*Hon Dr Michael Cullen*

## **Taxation (Base Maintenance and Miscellaneous Provisions) Bill**

Government Bill

### **Contents**

1	Title	13	Preventing pollution of environment
2	Commencement	14	Section DB 37 replaced
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	<b>Amendments to Income Tax Act 2004</b>		
3	Income Tax Act 2004	15	Cost of timber
4	New heading and section CB 24B inserted	16	Heading to subpart DQ
	<i>Environmental restoration</i>	17	New section DQ 4 added
	CB 24B Environmental restoration accounts		DQ 4 Environmental restoration accounts scheme
5	Royalties	18	Section EC 4 repealed
6	Elections to make bonus issue into dividend	19	Depreciation methods
7	Recovered expenditure or loss	20	Annual rate for fixed life intangible property
8	New section CW 45B inserted	21	New section EE 27B inserted
	CW 45B Non-resident company involved in exploration and development activities		EE 27B Annual rate for patents
9	New heading and section CW 49B inserted	22	Section EE 28 replaced
	<i>Cook Islands National</i>		EE 28 Special rate or provisional rate
	<i>Superannuation Fund</i>	23	Events for purposes of section EE 37
	CW 49B Cook Islands National Superannuation Fund	24	Effect of disposal or event
10	New heading and section CX 43B inserted	25	Meaning of annual rate
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**Taxation (Base Maintenance and  
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**Taxation (Base Maintenance and  
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**Amendments to Income Tax Act 1994**

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**Taxation (Base Maintenance and  
Miscellaneous Provisions)**

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

**1 Title**

This Act is the **Taxation (Base Maintenance and Miscellaneous Provisions) Act 2004**.

**2 Commencement**

- (1) This Act comes into force on the date on which it receives the Royal assent, except as provided in this section.
- (2) **Subsection 106** is treated as coming into force on 1 October 1986.
- (3) **Section 76(2) and (4)** is treated as coming into force on 1 April 1995.
- (4) **Section 65** is treated as coming into force on 1 July 2001.
- (5) **Section 80(9)** is treated as coming into force on 1 July 2002.
- (6) **Section 66** is treated as coming into force on 1 January 2004.
- (7) **Sections 69 to 74 and 80(3), (5) to (8), (10) to (12), (14) to (16), and (19)** are treated as coming into force on 1 July 2004.
- (8) **Section 80(2) and (13)** is treated as coming into force on 25 August 2004.
- (9) **Sections 75, 76(1) and (3), 77(1) and (3), 78, and 80(4), (17), and (18)** are treated as coming into force on **16 November 2004**.
- (10) **Sections 38, 45, 49, 52, 53, 55(2), 57, and 60(16)** come into force on 1 April 2005.
- (11) **Sections 4 to 37, 39 to 44, 46 to 48, 50, 51, 54, 55(1) and (3), 56, 58, 59, 60(1) to (15) and (17) to (28), 61 to 63, 85, 93, 94, 97, 99, and 104** come into force on 1 October 2005.

**Part 1**

**Amendments to Income Tax Act 2004**

**3 Income Tax Act 2004**

- (1) This Part amends the Income Tax Act 2004.
- (2) A section in this Part applies for the 2005–06 and later tax years if the section does not provide for a different application.

**4 New heading and section CB 24B inserted**

After section CB 24, the following is inserted:

*“Environmental restoration***“CB 24B Environmental restoration accounts***“Income from refund*

- “(1) A person who receives a refund for a tax year under **section EK 12** (Refund on request) derives for the person’s corresponding income year an amount of income calculated using the formula—

$$\frac{\text{refund}}{\text{tax rate.}}$$

*“Income from transfer from environmental restoration account*

- “(2) If there is a transfer from a person’s environmental restoration account under **section EK 15** (Transfer on request), **EK 16** (Transfer on death, bankruptcy, or liquidation), or **EK 20** (Environmental restoration account of amalgamating company), the person derives for the corresponding income year an amount of income calculated using the formula—

$$\frac{\text{transfer}}{\text{tax rate.}}$$

*“Definitions of items in formulas*

- “(3) The items in the formulas are defined in **subsections (4) to (6)**.

*“Refund*

- “(4) **Refund** is the amount of the refund.

*“Tax rate*

- “(5) **Tax rate** is the highest rate of income tax on taxable income that—

- “(a) is stated in schedule 1; and  
“(b) would apply to the person for the tax year if the person had sufficient taxable income.

*“Transfer*

- “(6) **Transfer** is the amount in the environmental restoration account that is transferred.

*“Income arising from renewal of resource consent*

- “(7) A person who incurs expenditure of a type listed in **schedule 6B, part A** (Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant) and not in **schedule 6B, part C** derives income under **subsection (8)** if—
- “(a) the deduction under **section DB 37** (Avoiding, remedying, or mitigating effects of discharge of contaminant) for the expenditure is determined by the period for which a resource consent is granted; and
  - “(b) the period of the grant of the resource consent is extended in a later income year or a new resource consent is granted.

*“Amount of income*

- “(8) The person derives for the income year in which the period of the resource consent is extended, or the new resource consent is granted, an amount of income equal to the greater of zero and the difference between—
- “(a) the total deduction under **section DB 37** (Avoiding, remedying, or mitigating effects of discharge of contaminant) for the person for the period from the grant of the resource consent to the beginning of the income year:
  - “(b) the total deduction for the expenditure that the person would have had under **section DB 37** for the period referred to in **paragraph (a)**, if the period of the extension or of the new resource consent had been included in the period of the resource consent at the time of the grant.

“Defined in this Act: corresponding income year, environmental restoration account, income, income tax, taxable income, tax year”.

## 5 Royalties

In section CC 9(2)(a), “patent,” is replaced by “patent, plant variety rights,”.

**6 Elections to make bonus issue into dividend**

Section CD 7(1) is replaced by the following:

- “(1) A bonus issue that is not a bonus issue in lieu is a dividend if—
- “(a) the bonus issue is not a share split under section 48(b) or (c) of the Companies Act 1993 or a similar division of a share in a company that is not registered under the Companies Act 1993; and
  - “(b) the company chooses under this section to treat the bonus issue as a dividend.”

**7 Recovered expenditure or loss**

In the list of defined terms in section CG 4, “, loss” is inserted after “income year”.

**8 New section CW 45B inserted**

The following is inserted after section CW 45:

**“CW 45B Non-resident company involved in exploration and development activities***“Exempt income*

- “(1) An amount of income derived by a non-resident company from exploration and development activities in an offshore permit area is exempt income if it is derived in the period that—
- “(a) starts on the beginning of the 2005–06 income year for the non-resident company; and
  - “(b) ends on 31 December 2009.

*“Some definitions*

- “(2) In this section,—

“**exploration and development activities** means the following activities undertaken for the purposes of identifying and developing exploitable petroleum deposits or occurrences in an offshore permit area:

- “(a) operating a ship to provide seismic survey readings of the earth’s crust:
- “(b) drilling an exploratory well or other well

“**offshore permit area** means an area of land that is—

- “(a) in New Zealand; and

- “(b) on the seaward side of the mean high-water mark; and
- “(c) a permit area or part of a permit area

“Defined in this Act: amount, exempt income, exploration and development activities, exploratory well, New Zealand, non-resident company, offshore permit area, permit area”.

**9 New heading and section CW 49B inserted**

After section CW 49, the following is inserted:

***“Cook Islands National Superannuation Fund***

**“CW 49B Cook Islands National Superannuation Fund**

A foreign-sourced amount derived by the Cook Islands National Superannuation Fund, as established by the National Superannuation Board under section 11(1)(a) of the Cook Islands National Superannuation Act 2000, is exempt income.

“Defined in this Act: exempt income, foreign-sourced amount”.

**10 New heading and section CX 43B inserted**

- (1) After section CX 43, the following is inserted:

***“Environmental restoration***

**“CX 43B Refund from environmental restoration account**

A refund to a person under **section EK 9** (Refund of payment if excess, lacking details, or after earlier payment or request for refund) is excluded income of the person.

“Defined in this Act: excluded income”.

- (2) **Subsection (1)** applies for a refund made to a person in an income year starting on or after **10 June 2005**.

**11 Commercial bills before 31 July 1986**

Section CZ 6(3) is repealed.

**12 Amounts paid for non-compliance and change in use**

- (1) Section DB 16(1)(b)(iv) is replaced by the following:

“(iv) in the absence of **section DB 37** (Avoiding, remedying, or mitigating effects of discharge of contaminant), no other provision of this Act would allow the lessor a deduction for the expenditure.”

- (2) **Subsection (1)** applies for expenditure incurred by a person in an income year starting on or after **10 June 2005**.

### 13 Preventing pollution of environment

- (1) In section DB 37(1)(b), “industrial waste” is replaced by “waste”.
- (2) **Subsection (1)** applies for expenditure incurred by a person in the 2005–06 income year if the income year starts before **10 June 2005**.

### 14 Section DB 37 replaced

- (1) Section DB 37 is replaced by the following:

**“DB 37 Avoiding, remedying, or mitigating effects of discharge of contaminant**

*“When this section applies*

- “(1) This section applies if a person—
- “(a) carries on a business in New Zealand; and
- “(b) the person incurs, in the business or in ending the operations of the business, expenditure that is—
- “(i) of a type listed in **schedule 6B** (Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant) and not in **schedule 6B, part C**; and
- “(ii) not incurred in relation to revenue account property; and
- “(c) no other provision allows a deduction for the expenditure.

*“Amount and timing of deduction*

- “(2) The person is allowed for an income year a deduction for the expenditure of,—
- “(a) if **paragraphs (b) and (c)** do not apply, an amount that is calculated using the formula—
- $$\text{rate} \times \text{diminished value}$$
- “(b) if the operations of the business for which the expenditure was incurred come to an end in the income year, the diminished value of the expenditure for the income year:

“(c) if an improvement on which the expenditure was incurred is destroyed, or is rendered useless for the purposes for which the expenditure was incurred, and **paragraph (b)** does not apply, the diminished value of the expenditure for the income year.

*“Definition of items in formula*

“(3) The items in the formula in **subsection (2)(a)** are defined in **subsections (4) and (5)**.

*“Rate*

“(4) **Rate** is—

“(a) 100%, if the expenditure is of a type listed in **schedule 6B, part A** (Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant) and the rate is not given by **paragraph (b) or (c)**:

“(b) the rate calculated for the income year using the formula in **subsection (6)** if—

“(i) the expenditure is of a type listed in **schedule 6B, part A**; and

“(ii) the expenditure is incurred in relation to an improvement or activity after the person applies for a resource consent that relates to the improvement or activity or, if no resource consent is required for the expenditure, after the person becomes committed to construct the improvement or carry on the activity; and

“(iii) no applicable rate is given by **paragraph (c)**:

“(c) the rate for the type of expenditure, the income year, and the person determined by the Commissioner under **section 91AL** of the Tax Administration Act 1994, if such a rate is determined.

*“Diminished value*

“(5) **Diminished value** is the diminished value of the expenditure for the income year.

*“Formula for rate for expenditure with assumed life*

“(6) The formula for a type of expenditure to which **subsection (4)(b)** applies is—

$$\frac{100\%}{\text{assumed life.}}$$

*“Definition of item in formula*

- “(7) In the formula in **subsection (6)**, **assumed life** for expenditure and an income year is—
- “(a) for expenditure associated with a business activity that does not require a resource consent, 35;
  - “(b) for expenditure associated with a business activity that requires a resource consent, the lesser of 35 and the number of the years that—
    - “(i) are part of the life of the resource consent under **subsection (8)** for the income year; and
    - “(ii) include or follow the time at which the expenditure is incurred.

*“Years in life of resource consent*

- “(8) For the purposes of **subsection (7)**, a year is part of the life of a resource consent—
- “(a) for an income year that ends within the period for which the resource consent is initially granted, if the year is included in the period for which the resource consent is initially granted;
  - “(b) for an income year that ends within the period of a renewal of the resource consent, or within the period of a replacement for the resource consent, if the year is included in the period that—
    - “(i) begins with the initial grant of the resource consent; and
    - “(ii) ends with the expiry of the renewal or replacement of the resource consent.

*“Link with subpart DA*

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

“Defined in this Act: amount, business, capital limitation, deduction, diminished value, general limitation, general permission, income year, New Zealand”.

- (2) **Subsection (1)** applies for expenditure incurred by a person in an income year starting on or after **10 June 2005**.

**15 Cost of timber**

- (1) Section DP 10(1)(b) is replaced by the following:
- “(b) in the absence of **section DB 37** (Avoiding, remedying, or mitigating effects of discharge of contaminant), no other provision of this Act would allow the person a deduction for the amount.”
- (2) **Subsection (1)** applies for expenditure incurred by a person in an income year starting on or after **10 June 2005**.

**16 Heading to subpart DQ**

In the heading to subpart DQ, “**and environmental restoration accounts scheme**” is added.

**17 New section DQ 4 added**

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

“DQ 4 **Environmental restoration accounts scheme**

*“Deduction for payment*

- “(1) A person is allowed a deduction of the amount given by **section EK 7** (Deduction for payment) if the person has made a payment to the Commissioner for an income year under **section EK 2** (Persons who may make payment to environmental restoration account) that is not refunded under **section EK 9** (Refund of payment if excess, lacking details, or after earlier payment or request for refund).

*“Timing of deduction*

- “(2) A deduction under **subsection (1)** is allocated to the income year given by **section EK 7** (Deduction for payment).

*“Deduction for transfer*

- “(3) A person is allowed a deduction for an income year of the amount given by **section EK 8** (Deduction for transfer) if in the income year the person receives—
- “(a) a transfer under **section EK 15** (Transfer on request) that is treated under **section EK 15(4)** as being a payment by the person:
- “(b) a transfer under **section EK 20** (Environmental restoration account of amalgamating company).

*“Timing of deduction*

- “(4) A deduction under **subsection (3)** is allocated to the income year given by **section EK 8** (Deduction for transfer).

*“Link with subpart DA*

- “(5) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

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

- (2) **Subsection (1)** applies for expenditure incurred by a person in an income year starting on or after **10 June 2005**.

**18 Section EC 4 repealed**

Section EC 4 is repealed.

**19 Depreciation methods**

In section EE 12(1), “loss.” is replaced by “loss, and includes a rate determined by the Commissioner under section 91AD, 91AE, or 91AJ of the Tax Administration Act 1994.”

**20 Annual rate for fixed life intangible property**

In section EE 27(1), “(not including an item of excluded depreciable property, for which a rate is set in section EZ 14 (Annual rate for excluded depreciable property: 1992–93 tax year)).” is replaced by “, not including—” and the following is added:

- “(a) an item of excluded depreciable property for which a rate is set in section EZ 14 (Annual rate for excluded depreciable property: 1992–93 tax year):
- “(b) a patent for which a rate is set in **section EE 27B**.”

**21 New section EE 27B inserted**

After section EE 27, the following is inserted:

**“EE 27B Annual rate for patents***“When this section applies*

- “(1) This section applies if—

- “(a) a complete application for a patent is lodged with the Intellectual Property Office of New Zealand; and

“(b) the patent is granted to a person in the 2005–06 or later income year of the person.

*“Income years for which usual rate applies*

“(2) The rate given by **subsection (3)** applies in an income year that begins—

“(a) after the date on which the patent is granted; and

“(b) before the date that is 240 months after the patent application date.

*“Usual rate*

“(3) The rate is calculated using the formula—

$$\frac{\text{months}}{\text{depreciation months}}.$$

*“Rate for first income year of use*

“(4) In the income year that includes the date on which the patent is granted, the rate is found by adding together the following rates:

“(a) the rate calculated using the formula—

$$\frac{\text{months before grant}}{\text{depreciation months}}$$

“(b) the rate calculated for the income year under **subsection (3)**.

*“When ownership of patent application changes*

“(5) If the patent is granted to a person who does not lodge the complete application for the patent, the rates calculated under **subsections (3) and (4)** for the person are affected by the period between the patent application date and the date on which the person acquires the application.

*“Definition of items in formulas in subsections (3) and (4)*

“(6) The items in the formulas in **subsections (3) and (4)** are defined in **subsections (7) to (9)**.

*“Months*

“(7) **Months** is the number of months in the income year—

“(a) in which the patent is used or available for use; and

- “(b) that begin on, or a whole number of months after, the date on which the application is granted; and
- “(c) that end on or before the date that is 240 months after the patent application date.

*“Depreciation months*

- “(8) **Depreciation months** is—
  - “(a) if **subsection (5)** does not apply, 240:
  - “(b) if **subsection (5)** applies, 240 reduced by the number of months that—
    - “(i) begin on, or a whole number of months after, the patent application date; and
    - “(ii) end on or before the date on which the person acquires the application.

*“Months before grant*

- “(9) **Months before grant** is the number of months that—
  - “(a) if **subsection (5)** does not apply—
    - “(i) begin on, or a whole number of months after, the patent application date; and
    - “(ii) end on or before the date on which the patent is granted:
  - “(b) if **subsection (5)** applies—
    - “(i) begin on, or a whole number of months after, the application is acquired; and
    - “(ii) end on or before the date on which the patent is granted.

*“Meaning of patent application date*

- “(10) In this section, **patent application date** means the date on which the complete application for the patent is lodged with the Intellectual Property Office of New Zealand.

“Defined in this Act: amount, income year, patent application date”.

**22 Section EE 28 replaced**

Section EE 28 is replaced by the following:

**“EE 28 Special rate or provisional rate**

*“Rate set for item of depreciable property*

- “(1) A special rate or a provisional rate is set for an item of depreciable property under sections 91AE to 91AH of the Tax Administration Act 1994.

*“No special rate for excluded depreciable property*

- “(2) A special rate may not be set for an item of excluded depreciable property.

*“No provisional rate for fixed life intangible property or excluded depreciable property*

- “(3) A provisional rate may not be set for an item of fixed life intangible property or an item of excluded depreciable property.

*“Defined in this Act: depreciable property, excluded depreciable property, fixed life intangible property, provisional rate, special rate”.*

**23 Events for purposes of section EE 37**

Section EE 40(7) is repealed.

**24 Effect of disposal or event**

- (1) In section EE 41(2), the second sentence is replaced by “This section does not apply if the item is a building unless the item has been destroyed or rendered useless for the purpose of deriving income as a result of an event that is a qualifying event.”
- (2) In the list of defined words in section EE 41, “income year” is replaced by “income, income year, qualifying event”.

**25 Meaning of annual rate**

After section EE 52(4), the following is inserted:

*“Patents*

- “(4B) The rate is the rate set by **section EE 27B** if the item is a patent and **section EE 27B** applies to the item and the person.”

**26 Main income equalisation account**

In section EH 5(4), in the words preceding paragraph (a), “Amounts” is replaced by “Despite **section FI 4** (Date on which disposal and resulting acquisition treated as occurring), amounts”.

**27 Refund on death**

In section EH 19(2) “The Commissioner” is replaced by “Despite **section FI 4** (Date on which disposal and resulting acquisition treated as occurring), the Commissioner”.

**28 Refund on death**

In section EH 50(2), “The Commissioner” is replaced by “Despite **section FI 4** (Date on which disposal and resulting acquisition treated as occurring), the Commissioner”.

**29 Thinning operations income equalisation account**

In section EH 67(4), in the words preceding paragraph (a), “Amounts” is replaced by “Despite **section FI 4** (Date on which disposal and resulting acquisition treated as occurring), amounts”.

**30 New subpart EK inserted**

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

“Subpart EK—Environmental restoration accounts

**“EK 1 Environmental Restoration Funds Account**

*“Account*

“(1) There is a Crown Bank Account called the Environmental Restoration Funds Account that is operated under the Public Finance Act 1989.

*“Payments from person paid into account*

“(2) Every payment a person makes to the Commissioner under **section EK 2**—

“(a) is public money; and

“(b) must be paid into the Environmental Restoration Funds Account.

“Defined in this Act: Commissioner

**“EK 2 Persons who may make payment to environmental restoration account**

*“Business required to restore environment*

A person may make a payment to the Commissioner for entry in the person’s environmental restoration account for an income year if the person—

- “(a) carries on a business in New Zealand; and
- “(b) expects to incur, for a later income year, expenditure that—
  - “(i) is not on revenue account property; and
  - “(ii) is of a type listed in **schedule 6B, part B** (Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant); and
  - “(iii) is of a type not listed in **schedule 6B, part C**; and
- “(c) makes a provision for such expenditure in financial statements that are—
  - “(i) prepared for external reporting purposes; and
  - “(ii) audited by an accountant who is a chartered accountant or has equivalent professional qualifications; and
  - “(iii) given by the accountant a standard audit opinion, without qualifications on matters relating to the effect of this subpart.

“Defined in this Act: business, Commissioner, environmental restoration account, income year, revenue account property

**“EK 3 Payments to environmental restoration account**

*“One payment for income year*

- “(1) A person must not make more than 1 payment under **section EK 2** for an income year.

*“No payment for income year after refund*

- “(2) A person must not make a payment for an income year after the person has applied for a refund for the income year.

*“Upper limit of payment*

- “(3) A person must not make a payment for an income year of more than the person’s maximum payment for the income year.

*“Lower limit of payment*

- “(4) A person must not make a payment for an income year of less than \$1,000.

*“Time for making payment*

- “(5) A payment made after the day that is 6 months after the end of an income year is not made for the income year unless—
- “(a) the Commissioner has allowed a longer period for the payment; and
  - “(b) the payment is made within the period allowed by the Commissioner.

“Defined in this Act: Commissioner, income year, maximum payment

**“EK 4 Environmental restoration account***“Person’s account*

- “(1) The Commissioner must keep an environmental restoration account in the name of every person who makes a payment to the Commissioner under **section EK 2**.

*“Payments in account*

- “(2) Every payment under **section EK 2** that a person makes to the Commissioner must be entered in the person’s environmental restoration account.

*“Amounts in account*

- “(3) The only amounts that may be entered in a person’s environmental restoration account are—
- “(a) payments made by the person to the Commissioner under **section EK 2**;
  - “(b) transfers made to the account under **subsection (6)**;
  - “(c) interest paid under **section EK 7**.

*“Amounts not available to others*

- “(4) Amounts entered in a person’s environmental restoration account may not, while they are in the account—
- “(a) be assigned or charged in any way;
  - “(b) pass by operation of law to, or into the custody or control of, someone else, except when the person is bankrupt or has been put into liquidation:

“(c) be assets for the payment of the person’s debts or liabilities, except when the person is bankrupt or has been put into liquidation:

“(d) be assets for the payment of the debts or liabilities of a dead person’s estate.

*“Amounts not available except for refunds or transfers*

“(5) An amount entered in a person’s environmental restoration account may not be removed from the environmental restoration account except by a refund under **section EK 9 or EK 12** or by a transfer under **subsection (6)**.

*“Transfers of amounts*

“(6) An amount may be transferred from the environmental restoration account of a person—

“(a) to an environmental restoration account of a person to whom the amount has been transferred under **section EK 15**:

“(b) to the Ministry for the Environment, if the amount has been transferred under **section EK 16**:

“(c) to an environmental restoration account of an amalgamated company to which the amount has been transferred under **section EK 20**.

*“Commissioner may close empty account*

“(7) The Commissioner may close an environmental restoration account of a person if the amount in the environmental restoration account is zero.

“Defined in this Act: amalgamating company, amount, Commissioner, environmental restoration account, interest, liquidation

**“EK 5 Details to be provided with payment to environmental restoration account**

“(1) A person making a payment to an environmental restoration account must provide the Commissioner with a notice, in a form prescribed by the Commissioner, giving—

“(a) the name of the person; and

“(b) the income year for which the payment is made; and

“(c) a calculation of the maximum payment for the person and the income year; and

“(d) any additional information that the Commissioner requires.

“(2) The person must provide the information required by **subsection (1)** within 2 working days from the day of the payment.

“Defined in this Act: Commissioner, environmental restoration account, income year, maximum payment

“**EK 6 Interest on payments to environmental restoration account**

“*Interest payable*

“(1) Interest is payable by the Commissioner on—

“(a) a payment under **section EK 2** to an environmental restoration account:

“(b) an amount that is treated under **section EK 15 or EK 20** as being a payment to an environmental restoration account:

“(c) interest that is added to a payment under **subsection (3)(a)**.

“*Period*

“(2) Interest is computed with daily rests from the date of acknowledgment of the receipt of the payment until the day before the date on which the payment is included in a refund under **section EK 12** or in a transfer under **section EK 15, EK 16, or EK 20**.

“*Date to which interest accrues*

“(3) Interest that has accrued on a payment is added to the payment on the earlier of—

“(a) 31 March in each year:

“(b) the day before the date on which the payment is included in a refund under **section EK 12** or in a transfer under **section EK 15, EK 16, or EK 20**.

“*Rate*

“(4) The interest rate is 3% per year.

“Defined in this Act: Commissioner, environmental restoration account, interest, year

“EK 7 **Deduction for payment**

“*When this section applies*

- “(1) This section applies if a person is allowed a deduction under **section DQ 4** (Environmental restoration accounts scheme) for a payment to the person’s environmental restoration account under **section EK 2**.

“*Amount of deduction*

- “(2) The amount of the deduction is calculated using the formula—
- $$\frac{\text{payment}}{\text{tax rate.}}$$

“*Definitions of items in formula*

- “(3) The items in the formula are defined in **subsections (4) and (5)**.

“*Payment*

- “(4) **Payment** is the lesser of—
- “(a) the person’s payment to the Commissioner under **section EK 2** for the income year; and
- “(b) the person’s maximum payment for the income year.

“*Tax rate*

- “(5) **Tax rate** is the highest rate of income tax on taxable income that—
- “(a) is stated in schedule 1; and
- “(b) would apply to the person for the tax year if the person had sufficient taxable income.

“*Timing of deduction*

- “(6) The person is allowed the deduction for the income year for which the payment is made.

“Defined in this Act: Commissioner, deduction, environmental restoration account, income tax, income year, maximum payment, tax year, taxable income

“EK 8 **Deduction for transfer**

“*When this section applies*

- “(1) This section applies if a person is allowed a deduction under **section DQ 4** (Environmental restoration accounts scheme) for

a transfer to the person's environmental restoration account under **section EK 15 or EK 20**.

*“Amount of deduction*

“(2) The amount of the deduction is calculated using the formula—

$$\frac{\text{transfer}}{\text{tax rate.}}$$

*“Definitions of items in formula*

“(3) The items in the formula are defined in **subsections (4) and (5)**.

*“Transfer*

“(4) **Transfer** is the amount of the transfer to the person's environmental restoration account that is treated as a payment by the person under **section EK 15(4)**.

*“Tax rate*

“(5) **Tax rate** is the highest rate of income tax on taxable income that—

“(a) is stated in schedule 1; and

“(b) would apply to the person for the tax year if the person had sufficient taxable income.

*“Timing of deduction*

“(6) The person is allowed the deduction for the income year for which the payment is made.

“Defined in this Act: deduction, environmental restoration account, income tax, income year, maximum payment, tax year, taxable income

**“EK 9 Refund of payment if excess, lacking details, after payment or request for refund**

*“When this section applies*

“(1) This section applies if a person's payment under **section EK 2** for an income year is—

“(a) more than the person's maximum payment for the income year:

“(b) made without providing the details required by **section EK 5**:

“(c) made after the person has—

- “(i) made under **section EK 2** a payment for the income year:
- “(ii) applied under **section EK 11** for a refund for the income year.

*“Refund*

- “(2) As soon as practicable after the date on which the payment is received, the Commissioner must refund to the person—
  - “(a) the excess, if the payment is more than the person’s maximum payment for the income year:
  - “(b) the payment, if the payment is described by **subsection (1)(b) or (c)**.

*“No interest payable by Commissioner*

- “(3) No interest is payable by the Commissioner under **section EK 6** on the amount of the payment.

“Defined in this Act: Commissioner, income year, interest, maximum payment

**“EK 10 Certain refunds not income**

A refund under **section EK 9** is excluded income under **section CX 43B** (Refund from environmental restoration account).

“Defined in this Act: excluded income

**“EK 11 Application for refund**

*“Who may apply*

- “(1) A person may apply to the Commissioner for a refund under **section EK 12** of an amount in the person’s environmental restoration account if the person has not, before the date on which the Commissioner receives the application—
  - “(a) made a payment to the environmental restoration account for the income year in which the Commissioner receives the application:
  - “(b) received a refund under **section EK 12** for the income year in which the Commissioner receives the application.

*“Application*

- “(2) An application for a refund must—
  - “(a) be in writing; and
  - “(b) state the grounds on which the application is made; and

- “(c) provide evidence satisfactory to the Commissioner verifying the existence of the grounds; and
- “(d) state the amount of the refund that the applicant wants.

“Defined in this Act: Commissioner, environmental restoration account, income year

“**EK 12 Refund on request**

“*When this section applies*

- “(1) This section applies when a person wants a refund of some or all of the amount in their environmental restoration account and none of **sections EK 9, EK 15, EK 16, and EK 20** applies.

“*Refund if request made*

- “(2) The Commissioner must make a refund under this section to a person who applies for a refund if—
  - “(a) the person has incurred expenditure—
    - “(i) of a type that is listed in **schedule 6B, part B** (Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant) and not in **schedule 6B, part C**; and
    - “(ii) of an amount equal to or greater than the amount given by **subsection (3)** for the amount of the refund; and
    - “(iii) after the first date on which the person made to the Commissioner a payment under **section EK 2** for entry in the person’s environmental restoration account or a transfer under **section EK 15** was made to the person’s environmental restoration account:
  - “(b) the maximum account balance for the latest complete income year for the person’s environmental restoration account is less than the amount in the environmental restoration account at the end of that income year, after any transfer under **section EK 15** for that income year.

“*Minimum amount of expenditure incurred*

- “(3) The amount of expenditure incurred that corresponds to the amount of a refund is calculated using the formula—

$$\frac{\text{amount}}{\text{tax rate.}}$$

*“Definitions of items in formula*

“(4) The items in the formula are defined in **subsections (5) and (6)**.

*“Amount*

“(5) **Amount** is the amount of the refund.

*“Tax rate*

“(6) **Tax rate** is the highest rate of income tax on taxable income that—

“(a) is stated in schedule 1; and

“(b) would apply to the person for the tax year if the person had sufficient taxable income.

*“Amount of refund if expenditure incurred*

“(7) If a person is entitled to a refund under **subsection (2)(a)**, the amount that the Commissioner must refund to the person is the smallest of—

“(a) the refund for which the person applies:

“(b) the contents of the person’s environmental restoration account at the time of the refund:

“(c) the refund corresponding to the person’s expenditure that satisfies **subsection (2)(a)(i) to (iii)**.

*“Amount of refund if maximum account balance decreases*

“(8) If a person is entitled to a refund under **subsection (2)(b)**, the amount that the Commissioner must refund to the person is the lesser of—

“(a) the refund for which the person applies:

“(b) the difference at the end of the latest complete income year between—

“(i) the amount in the environmental restoration account, after any transfer under **section EK 15** for the income year:

“(ii) the maximum account balance for the environmental restoration account for that income year.

*“Section EK 18 overrides subsections (7) and (8)*

“(9) **Section EK 18** overrides **subsections (7) and (8)**.

“Defined in this Act: amount, Commissioner, environmental restoration account, income tax, income year, maximum account balance, tax year, taxable income

**“EK 13 Income when refund given on request**

A refund under **section EK 12** is income, under **section CB 24B** (Environmental restoration accounts), derived by the person in the income year in which the Commissioner receives the application for the refund.

“Defined in this Act: Commissioner, income, income year

**“EK 14 Application for transfer**

*“Who may apply*

“(1) A person may apply to the Commissioner for a transfer under **section EK 15** from the amount in the person’s environmental restoration account.

*“Application*

“(2) An application for a transfer must—

“(a) be in writing; and

“(b) state the grounds on which the application is made; and

“(c) state the amount of the transfer that the applicant wants.

“Defined in this Act: Commissioner, environmental restoration account

**“EK 15 Transfer on request**

*“When this section applies*

“(1) This section applies if—

“(a) a person applies under **section EK 14** for a transfer of some or all of the amount in their environmental restoration account to a person who is nominated in the application; and

“(b) none of **sections EK 9, EK 12, EK 16, and EK 20** applies.

*“Transfer if request made*

“(2) The Commissioner must make a transfer under this section to an environmental restoration account of the person nominated in the application.

*“Transfer treated as payment by nominated person if  
transfer of obligations verified*

- “(3) A transfer under **subsection (2)** is treated as being a payment by the nominated person to the nominated person’s environmental restoration account if the nominated person satisfies the Commissioner that—
- “(a) the obligations to which the transferred amount relates have been transferred to the nominated person; and
  - “(b) in the absence of the transfer, the nominated person would be entitled to make a payment, of the amount of the transfer, to the nominated person’s environmental restoration account.

*“Rights of nominated person if transfer of obligations not  
verified*

- “(4) If the person nominated in the application does not satisfy the Commissioner that the person meets the requirements of **subsection (3)(a)**,—
- “(a) the person is not entitled to obtain a refund under **section EK 12(2)**;
  - “(b) the person is entitled to apply for a transfer under this section.

*“Rights of nominated person if entitlement to make payment  
not verified*

- “(5) If the person nominated in the application does not satisfy the Commissioner that the person meets the requirements of **subsection (3)(b)**,—
- “(a) the person is not entitled to make a payment to the environmental restoration account;
  - “(b) the person is entitled to apply for a transfer under this section.

“Defined in this Act: Commissioner, environmental restoration account

**“EK 16 Transfer on death, bankruptcy, or liquidation**

*“When this section applies*

- “(1) This section applies if a person—
- “(a) has an environmental restoration account; and
  - “(b) does one of the following:
    - “(i) dies:

- “(ii) becomes bankrupt:
- “(iii) is put into liquidation.

*“Transfer to other person*

- “(2) **Subsection (3)** applies if the Commissioner is informed, by the administrator of the person’s estate, the Official Assignee, or the person’s liquidator, that the obligation to which the balance in the person’s environmental restoration account relates has been transferred to another person.

*“Transfer to Crown or other person*

- “(3) The Commissioner must transfer the amount referred to in **subsection (4)** to—
- “(a) the department that is at the time responsible for the administration of the Environment Act 1986, if the transfer is to Her Majesty the Queen in right of New Zealand; or
  - “(b) an environmental restoration account of the person to whom the obligation has been transferred, if **paragraph (a)** does not apply.

*“Amount of transfer*

- “(4) The Commissioner must transfer under **subsection (3)** the amount that is in the person’s environmental restoration account—
- “(a) on the date on which the person dies, if **subsection (1)(b)(i)** applies:
  - “(b) on the date on which the person becomes bankrupt, if **subsection (1)(b)(ii)** applies:
  - “(c) on the date on which the person is put into liquidation, if **subsection (1)(b)(iii)** applies.

*“Section EK 18 overrides subsection (4).*

- “(5) **Section EK 18** overrides **subsection (4)**

*“Year of income*

- “(6) The amount of a transfer under this section is income, under **section CB 24B** (Environmental restoration accounts), derived

by the person on the day before the day on which the amount of the transfer is determined under **subsection (4)**.

“Defined in this Act: amount, Commissioner, environmental restoration account, income, liquidation

**“EK 17 Amendment of assessment**

Despite the time bar, the Commissioner may amend an assessment at any time, in order to give effect to **sections EK 7, EK 8, EK 13, and EK 16**.

“Defined in this Act: assessment, Commissioner, time bar

**“EK 18 Minimum refund or transfer**

The Commissioner must not give a refund or make a transfer under any of **sections EK 9, EK 12, EK 15, EK 16, and EK 20** that is less than the lesser of—

“(a) \$1,000; and

“(b) the balance in the person’s environmental restoration account on the date on which the refund or transfer is made.

“Defined in this Act: Commissioner, environmental restoration account

**“EK 19 Payments from which refunds come**

Each refund to a person is treated as coming from the total amount in the person’s environmental restoration account in the order in which the person made the payments into the account.

“Defined in this Act: amount, environmental restoration account

**“EK 20 Environmental restoration account of amalgamating company**

If an amalgamating company with an environmental restoration account ceases to exist because of an amalgamation during an income year—

“(a) the contents of the environmental restoration account of the amalgamating company are transferred to an environmental restoration account of the amalgamated company on the date of the amalgamation:

“(b) the amalgamated company is treated as having—

- “(i) made to the amalgamated company’s environmental restoration account the payments that the amalgamating company made before the amalgamation to the amalgamating company’s environmental restoration account; and
- “(ii) made from the amalgamated company’s environmental restoration account the transfers that the amalgamating company made before the amalgamation from the amalgamating company’s environmental restoration account; and
- “(iii) received from the amalgamated company’s environmental restoration account the refunds that the amalgamating company received before the amalgamation from the amalgamating company’s environmental restoration account.

“Defined in this Act: amalgamated company, amalgamating company, amalgamation, environmental restoration account, income year

**“EK 21 Environmental restoration account of member of consolidated group**

*“Member may have environmental restoration account*

- “(1) A member of a consolidated group may have an environmental restoration account.

*“Nominated company for group may act on behalf of member*

- “(2) The nominated company for the consolidated group may make payments and applications and receive refunds under this subpart on behalf of the member.

*“Use of consolidated financial statements for group*

- “(3) In making payments and applications under this subpart, the nominated company may rely on the audited consolidated financial statements for the consolidated group.

*“Use of consolidated figures for liabilities anticipated and expenditure incurred*

- “(4) If the nominated company relies on the audited consolidated financial statements for the consolidated group, the consolidated figures for the anticipated liabilities and incurred expenditure of the consolidated group are attributed to the members on the basis of the individual obligations of the members to incur expenditure of a type listed in **schedule 6B, part B** (Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant) and not in **schedule 6B, part C**.

“Defined in this Act: consolidated group, environmental restoration account, nominated company

“EK 22 **Commissioner may require notice in electronic format**

The Commissioner may require a person to provide a notice under this subpart in an electronic format that the Commissioner prescribes under **section 36BC** of the Tax Administration Act 1994.

“Defined in this Act: Commissioner

“EK 23 **Meaning of maximum payment**

*“Meaning of maximum payment*

- “(1) In this subpart, **maximum payment** means the maximum payment that under **subsection (2)** a person may make to the person’s environmental restoration account for an income year.

*“Amount of maximum payment*

- “(2) The maximum payment that a person may make for an income year is the lesser of—
- “(a) the amount by which the maximum account balance for the income year for the environmental restoration account exceeds the amount in the environmental restoration account at the end of the income year:
  - “(b) the amount, if any, given for the person and the income year by **subsection (3)**.

*“Maximum payment for first 5 years of environmental restoration funds scheme*

- “(3) If a person has a maximum account balance for the 2005–06 income year that is more than zero, the amount given by this subsection for the person and for that income year, and for each of the later income years before the 2010–11 income year, is the amount given by the formula—  
level increase + (year × 0.2 × initial level) - contents.

*“Definitions of items in formula*

- “(4) In the formula—  
“(a) **level increase** is the greater of zero and the amount by which the maximum account balance for the income year exceeds the maximum account balance for the 2005–06 income year:  
“(b) **year** is 1 for the 2005–06 income year and increases by 1 for each successive income year to a maximum of 5 for the 2009–10 income year:  
“(c) **initial level** is the maximum account balance for the 2005–06 income year:  
“(d) **contents** is the amount in the environmental restoration account at the end of the income year.

“Defined in this Act: amount, business, environmental restoration account, income year, maximum payment

#### “EK 24 Other definitions

*“Meaning of maximum account balance*

- “(1) In this subpart, **maximum account balance** for a person and an income year means—  
“(a) if the person does not satisfy **section EK 2** for the income year, zero:  
“(b) if the person satisfies **section EK 2** for the income year, the amount calculated using the formula—  
provision × tax rate.

*“Definitions of items in formula*

- “(2) In the formula in **subsection (1)(b)**—  
“(a) **provision** is the provision in the person’s financial statements for future expenditure that—

- “(i) is of a type listed in **schedule 6B, part B** (Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant); and
- “(ii) is not of a type listed in **schedule 6B, part C**:
- “(b) **tax rate** is the highest rate of income tax on taxable income that—
  - “(i) is stated in schedule 1; and
  - “(ii) would apply to the person for the tax year if the person had sufficient taxable income.

*“Meaning of environmental restoration account*

- “(3) In this subpart, **environmental restoration account**, for a person, means the account that the Commissioner keeps in the person’s name under **section EK 4**.

“Defined in this Act: business, Commissioner, environmental restoration account, income tax, income year, taxable income”.

- (2) **Subsection (1)** applies for expenditure incurred by a person in an income year starting on or after **10 June 2005**.

**31 When calculation of base price adjustment required**

In section EW 29—

- (a) section EW 29(13) is repealed:
- (b) in the item “Defined in this Act:”, “New Zealand resident, trustee” is replaced by “New Zealand resident”.

**32 Consideration when person exits from rules: accrued entitlement**

Section EW 36(1)(b)(i) is repealed.

**33 Section EW 39 repealed**

Section EW 39 is repealed.

**34 Consideration when person exits from rules: accrued obligation**

Section EW 41(1)(b)(i) is repealed.

**35 Section EW 44 repealed**

Section EW 44 is repealed.

**36 Section EX 55 repealed**

Section EX 55 is repealed.

**37 Disposal of trading stock**

In section FB 3, “(whether by way of exchange, or gift, or distribution in terms of a will or on an intestacy, or otherwise” is replaced by “(whether by way of exchange, or otherwise, other than by a disposition of property to which **section FI 1** applies”.

**38 Premiums paid to residents of Switzerland and the Netherlands**

- (1) In the heading to section FC 17, “**and the Netherlands**” is omitted.
- (2) Section FC 17(1)(c) is replaced by the following:
  - “(c) the insurer or other person is treated as being resident in Switzerland for the purposes of a double tax agreement between the government of New Zealand and the government of Switzerland.”

**39 Entities to which apportionment rule potentially applies**

- (1) The heading to section FG 2 is replaced by “**Entities to which interest deduction rules potentially apply**”.
- (2) Section FG 2(1) is replaced by the following:
  - “(1) A taxpayer is not subject for a tax year to the interest apportionment rule in section FG 8 or the adjustment of annual total deduction in **section FG 8B** unless, at a time in the taxpayer’s income year, the taxpayer—
    - “(a) is a non-resident who is not a company:
    - “(b) is a company that is a non-resident in which—
      - “(i) no person who is resident in New Zealand has a direct ownership interest that is equal to or greater than 50%; and
      - “(ii) a non-resident has a direct ownership interest that, when aggregated with the direct ownership interests of persons associated with the non-resident, is equal to or greater than 50%:
    - “(c) is a company that is resident in New Zealand—
      - “(i) in which a non-resident has an ownership interest that is equal to or greater than 50%:

- “(ii) of which a non-resident has control by any other means:
- “(d) is the trustee of a non-qualifying trust for which 50% or more in value of the settlements on the trust is settled by—
  - “(i) a non-resident:
  - “(ii) persons who are associated with the non-resident.”
- (3) Section FG 2(7) is omitted.

#### **40 Section FG 3 replaced**

Section FG 3 is replaced by the following:

- “**FG 3 When interest apportioned under section FG 8 or annual total deduction adjusted under section FG 8B**
- “(1) A taxpayer who is not excluded by section FG 2 from the application of section FG 8 for a tax year is required to make an apportionment under section FG 8 of interest expenditure incurred during the corresponding income year of the taxpayer if the taxpayer—
    - “(a) at no time in the income year—
      - “(i) is a reporting bank for a New Zealand banking group:
      - “(ii) is part of a New Zealand banking group for the purpose of **section FG 8C**; and
    - “(b) has a New Zealand group debt percentage for the income year that—
      - “(i) is greater than 75%; and
      - “(ii) if the taxpayer is a company or a trustee, exceeds the number obtained by multiplying the world-wide group debt percentage of the taxpayer by 1.1.
  - “(2) A taxpayer who is not excluded by section FG 2 from the application of **section FG 8B** for a tax year is treated as having an annual total deduction for the tax year of an amount that is given by **section FG 8B** if—
    - “(a) at a time in the taxpayer’s corresponding income year the taxpayer is the reporting bank for a New Zealand banking group; and
    - “(b) the New Zealand banking group has a New Zealand net equity, as defined in **section FG 8G**, of less than the net

equity threshold for the New Zealand banking group, as defined in **section FG 8H**, on a measurement day for the taxpayer's corresponding income year, as defined in **section FG 8E**."

**41 Rules for calculating New Zealand group debt percentage**

- (1) In section FG 4(12)(b), "New Zealand parent." is replaced by "New Zealand parent; and" and the following is added:  
" (c) are not members of the New Zealand banking group of a registered bank."
- (2) In section FG 4(14C)(b)(iii), "New Zealand parent." is replaced by "New Zealand parent; and" and the following is added:  
" (c) are not members of the New Zealand banking group of a registered bank."

**42 Apportionment of interest deductions**

- (1) In the heading to section FG 8, "**—taxpayer not in New Zealand banking group**" is added after "**deductions**".
- (2) In section FG 8(1), "taxpayer is not in a New Zealand banking group and the" is inserted after "if a".

**43 New sections FG 8B to FG 8J inserted**

After section FG 8, the following is inserted:

**"FG 8B Adjustment of annual total deduction—reporting bank**

- "(1) For a taxpayer that is a reporting bank and under **section FG 3(2)** has an annual total deduction for a tax year given by this section, the taxpayer's annual total deduction for the tax year is—
  - "(a) if the New Zealand banking group of the reporting bank has a group funding debt for the tax year that is not zero, the amount calculated using the formula—  
unadjusted annual total deduction - adjustments:
  - "(b) if the New Zealand banking group of the reporting bank has a group funding debt for the tax year of zero, the annual total deduction for the tax year that the taxpayer

would have had in the absence of this section and **section FG 3(2)**.

“(2) In the formula in **subsection (1)(a)**—

“(a) **unadjusted annual total deduction** is the annual total deduction for the tax year that the taxpayer would have had in the absence of this section and **section FG 3(2)**:

“(b) **adjustments** is the sum of the income adjustment amounts that are given by **subsection (4)** for the measurement periods for the corresponding income year of the reporting bank.

“(3) The **group funding debt** for a tax year for the New Zealand banking group of a reporting bank means the amount calculated using the formula—

$$\frac{\text{SFI} + \text{FID} - \text{FTE}}{\text{NQ}}$$

where—

**SFI** is the sum of the amounts for the tax year, each of which is the financial value for the New Zealand banking group of interest-bearing debt calculated under generally accepted accounting practice for a group quarter day

**FID** is the sum of the amounts for the tax year, each of which is the financial value for the New Zealand banking group, on a group quarter day, of financial arrangements—

(a) for which the consolidated financial statements of the New Zealand banking group would show a deduction in the corresponding income year of the reporting bank—

(i) under 1 or more of sections DB 6 to DB 8; and

(ii) other than as a consequence of a fluctuation in the value of a currency of a country relative to the value of a currency of another country; and

(b) that do not contribute to **item SFI**

**FTE** is the sum of the amounts for the tax year, each of which is the financial value for the New Zealand banking group, on a group quarter day, of shares that contribute to **item SFI**

NQ is the number of group quarter days in the corresponding income year of the registered bank.

“(4) For a measurement day in an income year of a reporting bank, the adjustment amount for a reporting bank is the amount calculated using the formula—

$$(\text{NET} - \text{NZE}) \times \frac{\text{I}}{\text{GFD}} \times \frac{\text{PD}}{\text{YD}}$$

where—

NET is the net equity threshold for the New Zealand banking group for the measurement day

NZE is the lesser of—

- (a) the net equity threshold for the New Zealand banking group for the measurement day;
- (b) the New Zealand net equity for the New Zealand banking group for the measurement day

I is the financial value for the New Zealand banking group, on the last day of the income year, of expenditure that—

- (a) is incurred by a member of the New Zealand banking group in the income year; and
- (b) is an interest expense under generally accepted accounting practice

GFD is the group funding debt for the tax year for the New Zealand banking group

PD is the number of days in the measurement period that corresponds to the measurement day

YD is the number of days in the income year.

“(5) If this Act requires that the annual total deduction for a reporting bank for an income year be apportioned between 2 or more parts of the income year, the adjustment amount under **subsection (4)** for a measurement day in the income year is attributed to the part containing the measurement day.

“(6) In this section, **group quarter day** for a registered bank and a tax year means a day—

- “(a) that is the last day of a quarter in the corresponding income year of the registered bank; and
- “(b) on which the registered bank is a reporting bank.

**“FG 8C New Zealand banking group of registered bank**

- “(1) The New Zealand banking group** of a registered bank for a measurement period consists of every person or fixed establishment that on the measurement day for the measurement period is—
- “(a) a member under subsection (2) or a potential member under subsection (3) or (4); and**
  - “(b) not excluded by an election under subsection (8).**
- “(2) If the registered bank—**
- “(a) is resident in New Zealand, the registered bank is a member:**
  - “(b) is not resident in New Zealand, a fixed establishment in New Zealand of the registered bank is treated as being a person who is—**
    - “(i) separate from the registered bank; and**
    - “(ii) a member.**
- “(3) A person who is resident is a potential member if—**
- “(a) the person satisfies subsection (5) and—**
    - “(i) the registered bank is resident in New Zealand; and**
    - “(ii) there is no non-resident who is an ultimate parent of the registered bank under subsection (9):**
  - “(b) the person satisfies subsection (6) and—**
    - “(i) the registered bank is a non-resident; and**
    - “(ii) there is no non-resident who is an ultimate parent of the registered bank under subsection (9):**
  - “(c) the person satisfies subsection (7) and there is a non-resident who is an ultimate parent of the registered bank under subsection (9).**
- “(4) A fixed establishment in New Zealand of a non-resident is treated as being a person who is separate from the non-resident and a potential member if—**
- “(a) the fixed establishment satisfies subsection (6) and—**
    - “(i) the registered bank is a non-resident; and**
    - “(ii) there is no non-resident who is an ultimate parent of the registered bank under subsection (9):**
  - “(b) the fixed establishment satisfies subsection (7) and there is a non-resident who is an ultimate parent of the registered bank under subsection (9).**

- “(5) A person satisfies this subsection if—
- “(a) under generally accepted accounting practice, consolidated group accounts—
    - “(i) are required to include the person and the registered bank:
    - “(ii) would be required to include the person and the registered bank but for relevant materiality thresholds:
  - “(b) the person is in the same group of companies as the registered bank under section IG (1)(2).
- “(6) A person or fixed establishment satisfies this subsection if—
- “(a) under generally accepted accounting practice, the person or fixed establishment would be required to be included in consolidated group accounts with the registered bank if—
    - “(i) the registered bank were resident in New Zealand; and
    - “(ii) the relevant materiality thresholds were satisfied:
  - “(b) the person is in the same group of companies as the registered bank under section IG (1)(2).
- “(7) A person or fixed establishment satisfies this subsection if—
- “(a) under generally accepted accounting practice, the person or fixed establishment would be required to be included in consolidated group accounts with the ultimate parent of the registered bank if—
    - “(i) the ultimate parent were resident in New Zealand; and
    - “(ii) the relevant materiality thresholds were satisfied:
  - “(b) the person is in the same group of companies as the ultimate parent under section IG (1)(2).
- “(8) A reporting bank may elect under this subsection to exclude from the New Zealand banking group of the reporting bank—
- “(a) a person or fixed establishment whose main activity is the providing of life insurance:
  - “(b) a person who—
    - “(i) is resident in New Zealand; and
    - “(ii) has a voting interest of 100% in a person who is excluded by an election under **paragraph (a)**; and
    - “(iii) does not have a main activity that is banking, financing or leasing; and

- “(iv) does not have a main activity that involves the ownership or control of entities having a main activity of banking, financing or leasing:
- “(c) a person who—
- “(i) is resident in New Zealand; and
- “(ii) under generally accepted accounting practice is required for the making of financial reports to be included in consolidated group accounts with a person or fixed establishment who is excluded by an election under **paragraph (a) or (b)**; and
- “(iii) does not have a main activity that is banking, financing or leasing; and
- “(iv) does not have a main activity that involves the ownership or control of entities having a main activity of banking, financing or leasing.
- “(9) For the purposes of this section, the **ultimate parent** of a registered bank is a company—
- “(a) that has an ownership interest in the registered bank, calculated under section FG 2, of 50% or more; and
- “(b) in which no ownership interest, as calculated under section FG 2, is held by a company that holds an ownership interest in the registered bank, calculated under section FG 2, of 50% or more.
- “(10) For the purposes of this section, the **ultimate parent** of a fixed establishment in New Zealand of a registered bank is the registered bank.
- “FG 8D **Reporting bank for New Zealand banking group**
- “(1) For a New Zealand banking group that on a day includes a single registered bank, or includes no registered bank but includes a fixed establishment of a single registered bank, the reporting bank for the day is the registered bank.
- “(2) For a New Zealand banking group that on a day includes more than 1 registered bank, the reporting bank for the day is—
- “(a) the registered bank that first gives notice to the Commissioner of an election to be the reporting bank, if the Commissioner receives such a notice by the day that is 6 months after the end of the tax year in which the day occurs:

- “(b) the registered bank chosen by the Commissioner, if **paragraph (a)** does not apply.
- “(3) For a New Zealand banking group that on a day includes no registered bank but includes fixed establishments of more than 1 registered bank, the reporting bank for the day is—
  - “(a) the registered bank that first gives notice to the Commissioner of an election to be the reporting bank, if the Commissioner receives such a notice by the day that is 6 months after the end of the tax year in which the day occurs:
  - “(b) the registered bank chosen by the Commissioner, if **paragraph (a)** does not apply.

“FG 8E **Measurement periods and measurement days**

- “(1) For the New Zealand banking group and income year of a reporting bank, the **measurement periods** are—
  - “(a) the quarters in the income year, if the reporting bank does not make an election under **paragraph (b) or (c)**:
  - “(b) each calendar month of the income year, if the reporting bank elects that the New Zealand banking group have such measurement periods:
  - “(c) each day of the income year, if the reporting bank elects that the New Zealand banking group have such measurement periods.
- “(2) For the New Zealand banking group and income year of a reporting bank, the **measurement days** are each last day of each measurement period if the measurement periods are given by **subsection (1)(a) or (b)**.
- “(3) If there is a change in the identity of the reporting bank for a New Zealand banking group, the measurement period corresponding to the first measurement day for the new reporting bank begins on the day after the last measurement day for the former reporting bank.

“FG 8F **Financial value and regulatory value**

- “(1) In **sections FG 8B to FG 8J**, the **financial value** of an item for a New Zealand banking group at a time is the amount that would be recorded for the item in financial statements for the New Zealand banking group that—
  - “(a) related to the time; and

- “(b) were prepared for external reporting purposes; and
  - “(c) were produced consistently with generally accepted accounting practice at the time by—
    - “(i) consolidating the financial statements for the members of the New Zealand banking group that are in the same group of companies; and
    - “(ii) if more than 1 consolidation is required under **subparagraph (i)**, combining the consolidated financial statements so as to eliminate inter-group transactions.
- “(2) In **sections FG 8B to FG 8J**, the **regulatory value** of an item for a New Zealand banking group at a time is the total risk-weighted value for the item that would be obtained for the New Zealand banking group if the New Zealand banking group were a banking group for the purposes of the Capital Adequacy Framework that is issued by the Reserve Bank of New Zealand acting in the prudential supervision of registered banks under the Reserve Bank of New Zealand Act 1989.

“**FG 8G New Zealand net equity of New Zealand banking group**

- “(1) The **New Zealand net equity** of the New Zealand banking group of a registered bank for a measurement day is given by the following formula:

$$\text{EQV} - \text{EID} - \text{UPB} - \text{INTG} - \text{CGA} - \text{REV} - \text{TXB} - \text{CEFA} - \text{NAFA} - \text{EOI} - \text{NOIA} - \text{AEQ} - \text{AEQI}$$

where—

EQV is the sum of the following amounts:

- (a) the financial value for the measurement day of—
  - (i) the shareholders’ equity relating to members of the New Zealand banking group; and
  - (ii) the branch equity relating to fixed establishments that are members of the New Zealand banking group;
- (b) the financial value for the measurement day of shares, each of which—
  - (i) is issued by a member of the taxpayer’s New Zealand banking group; and

- (ii) does not contribute to the amount referred to in **paragraph (a)**;
  - (c) the financial value for the measurement day of financial arrangements, each of which is a loan or the provision of funds by a parent to a permanent establishment that—
    - (i) is not taken into account in the calculation of the group funding debt of the New Zealand banking group; and
    - (ii) is made by a non-resident who is not a member of the New Zealand banking group and is associated with a member of the New Zealand banking group under section OD 7 or OD 8(3); and
    - (iii) is made to a member of the New Zealand banking group; and
    - (iv) does not contribute to the amount referred to in **paragraph (a)**; and
    - (v) does not give rise to interest expenditure other than as a result of a fluctuation in the value of a currency of a country relative to the value of a currency of another country; and
    - (vi) does not relate to a supply of goods or services
- EID is the financial value for the measurement day of financial arrangements, each of which—
- (a) is taken into account under **paragraph (a) or (b)** of the definition of **item EQV** in calculating the value of that item; and
  - (b) gives rise to a deduction for the tax year under 1 or more of sections DB 6 to DB 8 for a member of the New Zealand banking group
- UPB is the financial value for the measurement day of unvested policyholder benefit liabilities and policyholder retained profits that contribute to the value of **item EQV**
- INTG is the financial value for the measurement day of intangible assets, other than—

- (a) goodwill relating to a business that is not banking, financing, leasing, or life insurance and that—
    - (i) is acquired from a person who, at the time of acquisition, is not associated under section OD 7 or OD 8(3) with a member of the New Zealand banking group:
    - (ii) relates to an entity that is acquired from a person who is not associated under section OD 7 or OD 8(3) with a member of the New Zealand banking group:
  - (b) a film or film right:
  - (c) property that is depreciable property or is expected to become depreciable property
- CGA is the sum for the measurement day of capital gain amounts, each of which arises for the 2004–05 or a later tax year from a transfer of an intangible asset between a member of the New Zealand banking group and a person who—
- (a) is not a member of the New Zealand banking group; and
  - (b) is associated with a member of the New Zealand banking group under section OD 7 or OD 8(3)
- REV is the financial value for the measurement day of revaluation reserves that contribute to the value of **item EQV**
- TXB is the financial value for the measurement day of future tax benefits that are taken into account in determining the value of **item EQV** and arise from—
- (a) net losses for the tax year:
  - (b) losses carried forward from an earlier tax year:
  - (c) timing or temporary differences relating to the tax year or an earlier tax year
- CEFA is the financial value for the measurement day of the credit enhancements provided by members of the New Zealand banking group, each of which is, for the purpose of the Capital Adequacy Framework that is issued by the Reserve Bank of New Zealand—

- (a) a credit enhancement that is provided to an associated funds management and securitisation scheme of a non-member:
- (b) a credit enhancement that is provided to an affiliated insurance group that is a non-member and has not been expensed

NAFA is the financial value for the measurement day of advances by members of the New Zealand banking group, each of which is, for the purpose of the Capital Adequacy Framework that is issued by the Reserve Bank of New Zealand, an advance of a capital nature to a connected person who is not a member of the New Zealand banking group

EOI is the amount that would, if the New Zealand banking group included all the potential members of the New Zealand banking group and before any set-off allowed under generally accepted accounting practice, be the financial value for the measurement day of shares in non-residents that are neither of the following:

- (a) interests in foreign investment funds for which the FIF income or loss is calculated using the comparative value method or the deemed rate of return method:
- (b) shares in a grey list company that are—
  - (i) listed on the official list of a recognised exchange; and
  - (ii) revenue account property

NOIA is the notional offshore investment amount for the New Zealand banking group for the income year of the reporting bank, as defined in **subsection (4)**

AEQ is the financial value for the measurement day of interests, each of which is taken into account in calculating **item EQV** and is held by a person who—

- (a) is not a member of the New Zealand banking group; and
- (b) is associated under section OD 7 or OD 8(3) with a member of the New Zealand banking group; and

(c) is resident in New Zealand or holds the interest through a fixed establishment in New Zealand  
AEQI is the financial value for the measurement day of—

- (a) shares in persons who are not members of the New Zealand banking group but are associated under section OD 7 or OD 8(3) with members of the New Zealand banking group:
- (b) loans, other than on arm's-length terms, to persons who are not members of the New Zealand banking group but are associated under section OD 7 or OD 8(3) with members of the New Zealand banking group.

“(2) **Subsection (3)** applies if a component of an item, other than the **item NOIA**, that is subtracted from the **item EQV** under **subsection (1)** is a component of 1 or more other such items.

“(3) The value of the component is included in a single item for which the value of the component is not less than the value of the component for each of the other items.

“(4) The **notional offshore investment amount** for a New Zealand banking group for an income year of the reporting bank for the New Zealand banking group is the greater of zero and the amount given by the following formula:

$$\frac{(\text{FTC} - \text{DMT}) \times 12}{\text{CRT} \times \text{IRR} \times \text{NM}}$$

where—

FTC is the total for the tax year of foreign tax credits each of which—

- (a) is claimed as a credit against the income tax liability for the tax year of—
  - (i) a member of the New Zealand banking group:
  - (ii) a person who is excluded from the New Zealand banking group by an election under **section FG 8C(7)**; and
- (b) does not arise from attributed CFC income or from FIF income; and
- (c) does not arise from income derived before 1 July 2005

DMT is the amount—

- (a) set by the Governor-General by Order in Council as the threshold amount for the application of this subsection; or
  - (b) equal to \$5,000,000, if no threshold amount is set under **paragraph (a)** and **paragraph (c)** does not apply; or
  - (c) equal to \$416,667 multiplied by the number of months beginning on or after 1 July 2005 in the corresponding income year for the reporting bank, if the corresponding income year includes that date and no threshold amount is set under **paragraph (a)**
- CRT is the rate of tax for companies referred to in schedule 1, part A, item 5 for the tax year
- IRR is the amount—
- (a) set by the Governor-General by Order in Council as the interest rate of return for the purposes of this subsection; or
  - (b) of 7% per year, if no interest rate of return is set under **paragraph (a)**
- NM is the number of months beginning on or after 1 July 2005 in the income year of the reporting bank for the New Zealand banking group.

**“FG 8H Net equity threshold**

“(1) The **net equity threshold** for a measurement day for the New Zealand banking group of a registered bank is given by the following formula:

$$0.04 \times (\text{RWE} - \text{DEQ})$$

where—

- RWE is the sum of the following values for the measurement day:
- (a) for an asset that is included in a balance sheet, the regulatory value of the asset;
  - (b) for an exposure that is not included in a balance sheet, the regulatory value of the exposure;
  - (c) for goodwill that is not taken into account in calculating **item INTG** in determining the New Zealand net equity of the New Zealand banking group, the financial value of the goodwill

DEQ is the total of the regulatory values for the measurement day of items, other than **item NOIA**, that are deducted from **item EQV** in determining the New Zealand net equity of the New Zealand banking group.

“(2) For the purposes of **subsection (1)**, the assets of a fixed establishment include the assets that are treated as being the assets of the fixed establishment under generally accepted accounting practice.

“**FG 8I Valuation of debt and risk-weighted exposures**

For the purposes of **sections FG 8B to FG 8H**, the value on a day of a financial arrangement or risk-weighted exposure that is denominated in a foreign currency must be determined—

“(a) in New Zealand currency; and

“(b) using the close of trading spot exchange rate for the foreign currency on the day.

“**FG 8J Treatment of temporary change in New Zealand net equity or net equity threshold**

A change in a quantity that, but for this subsection, would produce a temporary change in the New Zealand net equity or net equity threshold of the New Zealand banking group of a registered bank does not affect the value of the New Zealand net equity or net equity threshold if the change is produced by an arrangement that has an effect of defeating the intent and application of **sections FG 8B to FG 8I**.”

**44 Circumstances in which group excess interest allocation required**

Section FH 1(1) is replaced by the following:

“(1) Subject to subsection (2), the group excess interest allocation rules in sections FH 5 to FH 8 apply for a tax year to a company that—

“(a) for the imputation year that corresponds with the tax year—

“(i) is a dividend withholding payment account company or a conduit tax relief company; and

“(ii) is not a member of a New Zealand banking group for a registered bank; and

- “(b) in the corresponding income year—
  - “(i) derives foreign attributed income:
  - “(ii) is paid a dividend from which the company must deduct an amount of dividend withholding payment or would have to deduct such an amount but for section NH 7.”

#### 45 New subpart FI inserted

After subpart H of Part F, the following is inserted:

#### “Subpart I—Effect of certain disposals and resulting acquisitions

##### “FI 1 Disposals and resulting acquisitions to which subpart FI applies

- “(1) The purpose of this subpart is to provide a disposal value in respect of the disposals and a cost price in respect of the resulting acquisitions of property for transactions to which **subsections (2) and (3)** refer.
- “(2) This subpart applies to a transaction that is of a type referred to in **subsection (3)** and involves property of a type referred to in **subsection (5)**.
- “(3) This subpart applies to a transaction that is—
  - “(a) a distribution of property made by a trustee of a trust to a beneficiary of that trust:
  - “(b) a distribution in kind made by a company to a shareholder of that company:
  - “(c) a gift made by one person to another person:
  - “(d) a transfer of an estate of a deceased person to an administrator or executor of the estate occurring as a result of the death of a person:
  - “(e) a distribution of property made by an administrator, executor, or trustee of the estate of a deceased person to a person who is beneficially entitled to receive the property under a will or an intestacy:
  - “(f) a payment under a credit contract (as defined in section 7 of the Credit Contracts and Consumer Finance Act 2003) made by a person who is beneficially entitled to receive property under a will or an intestacy, if an obligation to make a payment under the credit contract existed on the date of the transaction referred to in **paragraph (d)**.

- “(4) Property involved in a transaction to which this subpart applies may be any property that is not owned by 2 or more natural persons as joint tenants and is—
- “(a) real or personal:
  - “(b) legal or equitable:
  - “(c) tangible or intangible:
  - “(d) money or money’s worth:
  - “(e) anything that is the subject of a distribution in kind.
- “(5) A transaction to which this subpart applies is treated as a disposal and resulting acquisition of the property involved in the transaction.

“FI 2 **Disposal and resulting acquisition of property treated as occurring at market value**

A transaction to which this subpart applies is—

- “(a) a disposal at market value by the person who disposes of the property; and
- “(b) an acquisition at market value by the recipient of the property.

“FI 3 **Market value of property to recipient**

In this Act, the market value of property that a person receives from a transaction to which this subpart applies is the market value of the property for the person from whom the property was received.

“FI 4 **Date on which disposal and resulting acquisition treated as occurring**

- “(1) Unless **subsection (2)** applies, the person who disposes of property in a transaction to which **section FI 1** refers and the person who receives the property must treat the disposal as occurring on the date on which the transaction occurs.
- “(2) On the happening of a transaction to which **section FI 1(3)(d)** refers, the personal representatives of the deceased person and the recipient of the property must treat the disposal as occurring immediately before the person died.

**“FI 5 Disposal and resulting acquisition of property by spouse or de facto partner on death of person**

- “(1) This section applies to a person who is the surviving spouse or de facto partner of a deceased person and, under the terms of the will or intestacy of the deceased, is—
- “(a) the sole recipient of the property of the deceased person:
  - “(b) a beneficiary of the deceased and the sole recipient of the property of the deceased that is—
    - “(i) revenue account property:
    - “(ii) an interest in a foreign investment fund:
    - “(iii) a financial arrangement:
    - “(iv) an item in respect of which a person has an amount of depreciation loss under section EE 1(2).
- “(2) If a person to whom this section applies receives property from a transaction to which **section FI 1(3)(d) or (e)** refers, subpart FF applies to the property that is not referred to in **subsection (1)(b)** and is received by the person.

**“FI 6 Distributions of property to close relatives and others**

- “(1) This section applies to a transaction to which **section FI 1(3)(e)** refers if,—
- “(a) in the case of bequests of property to natural persons, all of the bequests to persons who are not within the second degree of relationship to the deceased person are of property that is not—
    - “(i) revenue account property:
    - “(ii) an interest in a FIF:
    - “(iii) a financial arrangement:
    - “(iv) an item in respect of which a person has an amount of depreciation loss under section EE 1(2):
  - “(b) in the case of bequests of property to persons that are not natural persons, the income of all the persons is exempt under section CW 36.
- “(2) A disposal of property, other than property specified in **subsections (1)(a)(i) to (iv)**, to which this section applies is treated as a transaction to which subpart FF applies, if—
- “(a) the terms of the testamentary instrument or intestacy of the deceased person establish no life interest; and

- “(b) other than for the period in which the property is subject to administration or executorship, the terms of the testamentary instrument or intestacy of the deceased person require that no property of the deceased person be held in trust; and
- “(c) in a tax year during which the property is subject to administration or executorship or in which the property is held in trust, the net income of the estate is distributed beneficially to the maximum extent that is practicable.

“FI 7 **Disposal and resulting acquisition of timber**

If a transaction to which **section FI 1(3)(d) or (e)** refers involves the acquisition of property that is timber by a person who is an administrator or executor of a deceased person, the disposal is treated as a transaction to which subpart FF applies if the transaction—

- “(a) is under a will or intestacy; and
- “(b) the recipient of the property is within the second degree of relationship to the deceased person.

“FI 8 **Relationship of section FI 3 to subpart CB**

For the purposes of sections CB 7, CB 8, CB 9 and CB 12, a transaction that does not involve timber, and to which **section FI 1(3)(d) or (e)** refers and **section FI 4** applies, is a disposal of property to which subpart FF applies if the transaction—

- “(a) is under a will or intestacy; and
- “(b) the recipient of the property is within the second degree of relationship to the deceased person.

“FI 9 **Special rules for in-kind distribution of property by company**

- “(1) This section applies if a company makes a distribution of property that is paid in kind, which may be a distribution that is a dividend under subpart CD.
- “(2) A distribution to which this section applies must be treated by the company and the shareholder as occurring—
  - “(a) on the date on which the distribution occurs; and
  - “(b) at the market value of the property, calculated on the date of the distribution.

**“FI 10 Relationship of subpart FI to unexpired prepayments**

- “(1) If a transaction to which **section FI 1** refers involves an amount of unexpired expenditure to which sections EA 3(4) to (7) refer and for which the deceased person was allowed a deduction, the amount of the unexpired expenditure is income of the trustee, administrator, or executor in the income year in which the transaction occurs.
- “(2) If a transaction to which **section FI 1** refers involves an unpaid amount of expenditure on employment income to which section EA 4(2) to (7) refer and for which a deceased person was allowed a deduction, the unpaid amount is income of the trustee, administrator, or executor in the income year in which the transaction occurs.

**“FI 11 Death occurring before commencement of 2005–06 income year**

- “(1) This section applies to a transaction to which **section FI 1** refers that involves the disposal of property to an administrator, or executor, or trustee on the death of a person if—
- “(a) the death occurred before the commencement of the 2005–06 income year of the deceased person; and
- “(b) in the year in which the transaction occurred,—
- “(i) each beneficiary of the deceased person is a New Zealand resident; and
- “(ii) no amount of the income of the beneficiary is exempt income under section CW 36; and
- “(c) the tax returns of the deceased person and of the resulting estate that are provided to the Commissioner in respect of the income year in which the transaction occurred are calculated on the basis that all the property of the deceased person was disposed of immediately before death—
- “(i) at market values; or
- “(ii) at the values given by subpart FF for property of that type; or
- “(iii) at a combination of the values in **subparagraphs (i) and (ii)**; and
- “(d) the administrator or executor adopted for taxation purposes the value referred to in **paragraph (c)** for the property.

- “(2) For the purposes of the Income Tax Act 1994 and this Act, the value used in the tax returns of the deceased person and the estate for the disposal value and the cost price of the property involved in the transaction is treated as correct.
- “(3) Despite **subsection (1)**, if an enactment contained in the Income Tax Act 1994 or this Act prescribes the adoption of a market value on a disposal by an administrator or executor or trustee of the estate of the deceased person on the death of the deceased person, that market value must be adopted in a tax return provided to the Commissioner.

“**FI 12 Value of property acquired by beneficiary of a trust before 16 November 2004**

- “(1) This section applies to a transaction to which **section FI 1** refers that involves the disposal of property to a beneficiary by an administrator or executor or trustee if—
- “(a) the transaction occurred before **16 November 2004**; and
  - “(b) the beneficiary was a New Zealand resident when the beneficiary acquired the property; and
  - “(c) no amount of the income of the beneficiary is exempt income under section CW 36; and
  - “(d) the tax returns of the estate and of the beneficiary provided to the Commissioner in respect of the income year in which the transaction occurred are calculated on the basis that—
    - “(i) the distributed property was disposed of at market value; or
    - “(ii) the disposition of the estate was a disposition and acquisition of the property at values given by subpart FF for property of that type; or
    - “(iii) the value of the property was a combination of the values given by **paragraphs (d)(i) or (ii)**; and
  - “(e) the beneficiary adopted for taxation purposes the value referred to in **paragraph (d)** for the property.
- “(2) For the purposes of the Income Tax Act 1994 and this Act, the value used in the tax returns of the estate and the beneficiary for the disposal value and the cost price of the property involved in the transaction is treated as correct.
- “(3) Despite **subsection (1)**, if an enactment contained in the Income Tax Act 1994 or this Act prescribes the adoption of a market

value on a disposal by an administrator or executor or trustee of the estate of a deceased person and on an acquisition of property by a beneficiary, that market value must be adopted in a tax return provided to the Commissioner.

**“FI 13 Value of property acquired by beneficiary of a trust on or after 16 November 2004 and before commencement of 2004–05 income year**

- “(1) This section applies to a transaction to which **section FI 1** refers that involves a disposal of property to a beneficiary by an administrator or executor or trustee if—
- “(a) the transaction occurred on or after **16 November 2004** and before the commencement of the 2004–05 income year of the trust; and
  - “(b) the beneficiary was a New Zealand resident when the beneficiary acquired the property; and
  - “(c) no amount of the income of the beneficiary is exempt income under section CW 36; and
  - “(d) the tax returns of the trust and of the beneficiary provided to the Commissioner in respect of the income year in which the transaction occurred are calculated on the basis that—
    - “(i) the distributed property was disposed of at market value; or
    - “(ii) the disposition of the estate was a disposition and acquisition of the property at values given by subpart FF for property of that type; or
    - “(iii) the value of the property was a combination of the values given by **paragraphs (d)(i) or (ii)**; and
  - “(e) the beneficiary adopted for taxation purposes the value referred to in **paragraph (d)** for the property.
- “(2) For the purposes of the Income Tax Act 1994 and this Act, the value used in the tax returns of the trust and of the beneficiary for the disposal value and the cost price of the property involved in the transaction is treated as correct.
- “(3) Despite **subsection (1)**, if an enactment contained in the Income Tax Act 1994 or this Act prescribes the adoption of a market value on a disposal of property by a trustee of the estate of a deceased person, that market value must be adopted in a tax return provided to the Commissioner by the estate and the beneficiary.”

- 46 Imputation: arrangement to obtain tax advantage**  
In section GC 22(4)(b), “both a tax credit advantage and” is omitted.
- 47 Sale of trading stock for inadequate consideration**  
After section GD 1(4), the following is added:  
“(5) In subsections (1), (2)(b) and (3), trading stock does not include—  
“(a) property that is gifted:  
“(b) property that is distributed in kind:  
“(c) property that is on hand at the date of death of a deceased person.”
- 48 Attributing interests in FIFs**  
Section GD 14(3)(c) is replaced by the following:  
“(c) the consideration (if any) is not equal to the market value of the interest at the time.”
- 49 Liability for tax payable by company left with insufficient assets**  
(1) Section HK 11(1)(b) is replaced by the following:  
“(b) an effect of that arrangement is that the company is unable to satisfy under this Act a liability (called in this section the **tax liability**) of the company, whether arising before or after the arrangement is entered, for—  
“(i) income tax:  
“(ii) a civil penalty:  
“(iii) an amount payable under Part 7 of the Tax Administration Act 1994; and”.
- (2) In section HK 11(4)(c), “(exclusive of any late payment penalty or interest arising under this Act or the Tax Administration Act 1994 for late payment of any part of the tax liability)” is replaced by “(excluding a civil penalty or an amount payable under Part 7 of the Tax Administration Act 1994 that is part of the tax liability)”.
- (3) In section HK 11(4)(d),—  
(a) “any late payment penalty or interest arising under this Act or the Tax Administration Act 1994 for late payment, which comprises part of the tax liability” is replaced by “a civil penalty or an amount payable under

Part 7 of the Tax Administration Act 1994 that is part of the tax liability”:

- (b) “(exclusive of any such late payment penalty or interest)” is replaced by “(excluding the civil penalty or the amount payable under Part 7 of the Tax Administration Act 1994)”.

#### **50 Determination of amount of credit in certain cases**

After section LB 1(1)(h), the following is inserted:

“(hb) in the case of an imputation credit carried forward to a later income year under **section LB 2(3C)** as a credit of tax, the amount of the credit of tax carried forward reduced by any amount of the credit that is extinguished by the Commissioner under section 177C of the Tax Administration Act 1994.”.

#### **51 Credit of tax for imputation credit**

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

“(2B) Subsection (3) applies to a taxpayer that is—

- “(a) a company;
- “(b) a trustee (other than the Maori Trustee);
- “(c) a Maori authority;
- “(d) a taxpayer whose imputation credit giving rise to the credit of tax is category A income of the trustee of a group investment fund.”

- (2) In section LB 2(3)—

- (a) “There is no refund to the taxpayer of any credit of tax under this section” is replaced by “For a taxpayer referred to in **subsection (2B)**, no refund of a credit of tax under this section is available”;
- (b) in the definition of item b of the formula—
  - (i) in subparagraph (iiia), “year; and” is replaced by “year.”;
  - (ii) subparagraph (iv) is omitted.

- (3) After section LB 2(3A), the following is inserted:

“(3B) For a taxpayer other than a taxpayer referred to in **subsection (2B)**, no refund of a credit of tax under this section is available, but if the whole of the credit of tax is not credited under subsection (2) against the taxpayer’s income tax liability for

the income year, **subsection (3C)** applies to the amount of the credit of tax that remains.

“(3C) The remaining credit of tax for an income year is treated in the following ways, applied in the alphabetical order of the paragraphs so far as the credit of tax extends:

“(a) carried forward as a credit of tax to the next income year:

“(b) reduced by any amount extinguished under **section 177C(5B)** of the Tax Administration Act 1994 by the Commissioner in that next income year:

“(c) reduced by any amount credited against the taxpayer’s income tax liability for that next income year:

“(d) treated under this subsection as a remaining credit of tax for that next income year.”

**52 Section LC 15 repealed**

Section LC 15 is repealed.

**53 Amount of provisional tax payable**

Section MB 2(1)(aa) and (ab) is repealed.

**54 Credits arising to imputation credit account**

(1) After section ME 4(1)(c), the following is inserted:

“(cb) the amount of any credit arising in the imputation credit account as a result of an election under **section ME 9B(2)(a)(ii)**:

“(cc) the amount of any payment of further income tax for which the company is liable under **section ME 9B(2)(b)**.”

(2) In section ME 4(1)(k), “closed.” is replaced by “closed:” and the following is added:

“(l) the amount of any credit balance arising in the company’s account with the Commissioner from a payment made by the company to the Commissioner that does not give rise to a credit under any other paragraph.”

(3) After section ME 4(2)(b), the following is inserted:

“(bb) in the case of a credit referred to in **subsection (1)(cb)**, on the date on which the leaving company ceases to be a member of the wholly-owned group of companies:

- “(bc) in the case of a credit referred to in **subsection (1)(cc)**, on the date on which the company makes the payment to the Commissioner:”.
- (4) In section ME 4(2)(i), “section MK 5.” is replaced by “section MK 5:” and the following is added:
- “(j) in the case of a credit referred to in **subsection (1)(l)**, on the date on which the company makes the payment to the Commissioner.”

### 55 Debits arising to imputation credit account

- (1) After section ME 5(1)(f), the following is inserted:
- “(fb) the amount of any debit arising in the imputation credit account as a result of an election under **section ME 9B(2)(a)(i)**:”.
- (2) In section ME 5(1)(h), “section LD 8(1)(a)” is replaced by “section LD 8(1)(c)”.
- (3) After section ME 5(2)(f), the following is inserted:
- “(fb) in the case of a credit referred to in **subsection (1)(fb)**, on the date on which the leaving company ceases to be a member of the wholly-owned group of companies:”.

### 56 New sections ME 9B and ME 9C inserted

After section ME 9, the following is inserted:

#### “ME 9B **Imputation credit account company leaving wholly-owned group**

- “(1) This section applies to an imputation credit account company (called the **leaving company**) if, at a time in the income year of the leaving company that corresponds to a tax year—
- “(a) there is a change in the ultimate owners of the leaving company; and
- “(b) as a result of the change, the leaving company ceases to be a member of a wholly-owned group of companies (called the **former group**); and
- “(c) the total amount of the available net losses from the previous tax year for the members of the former group exceeds \$1,000,000.
- “(2) If the leaving company at the time has a debit balance in its imputation credit account, the leaving company—

- “(a) may elect that an amount that is not more than the debit balance be—
  - “(i) a debit in the imputation credit account of another imputation credit account company that is a member of the former group and for which there is no change in ultimate owners at the time; and
  - “(ii) a credit in the imputation credit account of the leaving company:
- “(b) may elect to pay an amount of tax by way of further income tax that is equal to—
  - “(i) the amount of the debit balance, if the leaving company makes no election under **paragraph (a)**:
  - “(ii) the amount by which the debit balance exceeds the amount that is subject to the election under **paragraph (a)**.
- “(3) If the leaving company at the time would be entitled, in the absence of section MD 2, to a refund under section MD 1 of an amount of excess tax, **subsection (4)** applies to the following amount (called the **excess entitlement**):
  - “(a) zero, if at the time the credit balance in the imputation credit account of the leaving company equals or exceeds the total of the following amounts:
    - “(i) the amount that would be the entitlement:
    - “(ii) the amount in a tax pooling account that has been provided by or for the benefit of the leaving company and would produce a credit balance in the account with the Commissioner of the leaving company if transferred to that account:
  - “(b) the total of the amounts referred to in **paragraph (a)(i) and (ii)**, if at the time there is no credit balance in the imputation credit account of the leaving company:
  - “(c) the amount by which the credit balance in the imputation credit account of the leaving company at the time is exceeded by the total of the amounts referred to in **paragraph (a)(i) and (ii)**, if neither of **paragraphs (a) and (b)** applies.
- “(4) If the leaving company at the time has an excess entitlement, the leaving company—
  - “(a) may elect that an amount that is not more than the credit balance in the account with the Commissioner of the leaving company be—

- “(i) a credit to the account with the Commissioner of another imputation credit account company that is a member of the former group and for which there is no change in ultimate owners at the time; and
  - “(ii) a debit to the account with the Commissioner of the leaving company:
- “(b) may elect to pay an amount of tax by way of further income tax equal to—
- “(i) the amount of the excess entitlement, if the leaving company makes no election under **paragraph (a)**; or
  - “(ii) the amount by which the credit balance exceeds the amount that is subject to the election under **paragraph (a)**.
- “(5) If the leaving company elects to pay an amount of further income tax under **subsection (2)(b) or (4)(b)**, the further income tax must be paid to the Commissioner by the 20<sup>th</sup> day of the month following the month in which the leaving company leaves the former group.
- “(6) The former group is jointly liable with the leaving company for further income tax payable under **subsection (2) or (4)**.
- “(7) A leaving company or a former group may satisfy a liability to pay further income tax under **subsection (2) or (4)** by a debit against a credit balance in the account with the Commissioner of the leaving company or the former group.
- “(8) A payment of further income tax under **subsection (2) or (4)** does not satisfy any other liability of the leaving company or the former group.
- “(9) In this section, an **ultimate owner** of a company means a person—
- “(a) who has an ownership interest in the company, calculated under section FG 2; and
  - “(b) in whom no ownership interest, as calculated under section FG 2, is held by a person who holds an ownership interest in the company, calculated under section FG 2, of 50% or more.

“ME 9C **Imputation credit account company joining wholly-owned group**

“(1) This section applies to an imputation credit account company (called the **joining company**) if, at a time in the income year of the joining company that corresponds to a tax year—

“(a) the joining company becomes a member of a wholly-owned group of companies (called the **new group**); and

“(b) the joining company was formerly a member of a wholly-owned group (called the **former group**) having ultimate owners that differed from the ultimate owners of the new group.

“(2) **Subsection (3)** applies to the joining company if—

“(a) the joining company at the time has a debit balance in its imputation credit account; and

“(b) the debit balance includes debits (called the **former group debits**)—

“(i) that were recorded in the imputation credit account when the joining company was a member of the former group; and

“(ii) upon which further income tax under section ME 9B(2) was not paid by the joining company or former group.

“(3) The joining company must pay an amount of tax by way of further income tax that is equal to the amount of the former group debits.

“(4) If the joining company at the time would be entitled, in the absence of section MD 2, to a refund under section MD 1 of an amount of excess tax relating to a time when the joining company was in the former group, **subsection (5)** applies to the following amount (called the **excess entitlement**):

“(a) zero, if at the time the credit balance in the imputation credit account of the joining company equals or exceeds the total of the following amounts:

“(i) the amount that would be the entitlement:

“(ii) the amount in a tax pooling account that has been provided by or for the benefit of the joining company and would produce a credit balance in the account with the Commissioner of the joining company if transferred to that account:

- “(b) the total of the amounts referred to in **paragraph (a)(i) and (ii)**, if at the time there is no credit balance in the imputation credit account of the joining company:
  - “(c) the amount by which the credit balance in the imputation credit account of the joining company at the time is exceeded by the total of the amounts referred to in **paragraph (a)(i) and (ii)**, if neither of **paragraphs (a) and (b)** applies.
- “(5) If the joining company at the time has an excess entitlement, the joining company must pay an amount of tax by way of further income tax equal to the amount of the excess entitlement.
- “(6) If the joining company must pay an amount of further income tax under **subsection (3) or (5)**, the further income tax must be paid to the Commissioner by the 20<sup>th</sup> day of the month following the month in which the joining company joins the new group.
- “(7) The new group is jointly liable with the joining company for further income tax payable under **subsection (3) or (5)**.
- “(8) A joining company or a new group may satisfy a liability to pay further income tax under **subsection (3) or (5)** by a debit against a credit balance in the account with the Commissioner of the joining company or the new group.
- “(9) A payment of further income tax under **subsection (3) or (5)** does not satisfy any other liability of the joining company or the new group.
- “(10) In this section, an **ultimate owner** of a company means a person—
- “(a) who has an ownership interest in the company, calculated under section FG 2; and
  - “(b) in whom no ownership interest, as calculated under section FG 2, is held by a person who holds an ownership interest in the company, calculated under section FG 2, of 50% or more.”

**57 Debits arising to dividend withholding payment account**  
In section MG 5(1)(e), “section LD 8(1)(a)” is replaced by “section LD 8(1)(c)”.

**58 Certificates of exemption**

In section NF 9(1)(i), “CW 43” is replaced by “CW 44”.

**59 Payment and recovery of dividend withholding payment**

In section NH 3(4)(b), “penalty under section 150” is replaced by “late payment penalty under section 139B”.

**60 Definitions**

(1) This section amends section OB 1.

(2) After the definition of **child tax credit**, the following is inserted:

“**civil penalty** is defined in section 3(1) of the Tax Administration Act 1994”.

(3) After the definition of **consolidation rules**, the following is inserted:

“**contaminant** means a contaminant as defined in section 2(1) of the Resource Management Act 1991”.

(4) The definition of **diminished value** is replaced by the following:

“**diminished value**, for an income year, means the amount calculated using the formula—

$$a + b - c$$

where—

**a** is the amount of expenditure—

“(a) on an improvement described in section DO 4 (Improvements to farm land), DO 4C (Expenditure on land: planting of listed horticultural plants), DO 4D (Expenditure on land: horticultural replacement planting), DO 6 (Improvements to aquacultural business), or DP 3 (Improvements to forestry land); or

“(b) of a type described in section DB 37 (Avoiding, remedying, or mitigating effects of discharge of contaminant):

**b** is the total amount of income derived under **section CB 24B(6)** (Environmental restoration accounts) in relation to the expenditure:

**c** is the total of every amount allowed as a deduction for the expenditure to any person—

- “(a) in any earlier income year under this Act or an earlier Act:
- “(b) in the income year under this Act, except an amount allowed in the income year under section DB 37 (Avoiding, remedying, or mitigating effects of discharge of contaminant), section DO 4C (Expenditure on land: planting of listed horticultural plants), DO 4D (Expenditure on land: horticultural replacement planting), DO 6 (Improvements to aquacultural business), or DP 3 (Improvements to forestry land)”.
- (5) In the definition of **dispose**, in paragraph (e), “destroy” is replaced by “destroy:” and the following is added:
- “(f) in **subpart FI** (Effect of certain disposals and resulting acquisitions), means a disposal of property in the manner provided for in **section FI 1** (Disposals and resulting acquisitions to which subpart FI applies), of property that is—
- “(i) assigned, conveyed, delivered, settled, or transferred:
- “(ii) a payment:
- “(iii) otherwise alienated, whether at law or in equity”.
- (6) After the definition of **entitlement period**, the following is inserted:
- “**environmental restoration account** is defined in **section EK 24** (Other definitions) for the purposes of **subpart EK** (Environmental restoration accounts)”.
- (7) After the definition of **expenditure on account of an employee**, the following is inserted:
- “**exploration and development activities** is defined in **section CW 45B** (Non-resident company involved in exploration and development activities) for the purposes of that section”.
- (8) After the definition of **financial statements**, the following is inserted:
- “**financial value** for the New Zealand banking group of a registered bank is defined in **section FG 8F** (Financial value and regulatory value) for the purposes of subpart FG (Apportionment of interest costs)”.

- (9) In the definition of **further income tax**, “, **ME 9B** (Imputation credit account company leaving wholly-owned group) or **ME 9C** (Imputation credit account company joining wholly-owned group)” is added after “credit account company”.
- (10) After the definition of **gross tax deductions**, the following is inserted:  
“**group funding debt** is defined in **section FG 8B** (Adjustment of annual total deduction—reporting bank) for the purposes of subpart FG (Apportionment of interest costs)”.
- (11) After the definition of **group of persons**, the following is inserted:  
“**group quarter day** is defined in **section FG 8B(5)** (Adjustment of annual total deduction—reporting bank) for the purposes of that section”.
- (12) In the definition of **market value**, in paragraph (f), “in **sections FI 2, FI 4, FI 9, and FI 10** (which relate to certain disposals and resulting acquisitions), and” is inserted before “in sections OD 4, OD 5, and OD 6”.
- (13) After the definition of **maturity**, the following is inserted:  
“**maximum account balance** is defined in **section EK 24** (Other definitions) for the purposes of **subpart EK** (Environmental restoration accounts)  
“**maximum payment** is defined in **section EK 23** (Meaning of maximum payment) for the purposes of **subpart EK** (Environmental restoration accounts)”.
- (14) After the definition of **maximum pooling value**, the following is inserted:  
“**measurement day**, for an income year of a reporting bank, means 1 of the measurement days for the income year defined in **section FG 8E** (Measurement periods and measurement days) for the purposes of subpart FG (Apportionment of interest costs)  
“**measurement period**, for an income year of a reporting bank, means 1 of the measurement periods for the income year defined in **section FG 8E** (Measurement periods and measurement days) for the purposes of subpart FG (Apportionment of interest costs)”.
- (15) After the definition of **net balance due**, the following is inserted:

- “**net equity threshold** for the New Zealand banking group of a registered bank is defined in **section FG 8H** (Net equity threshold) for the purposes of subpart FG (Apportionment of interest costs)”.
- (16) In paragraph (a) of the definition of **net loss**, “amount written off by the Commissioner under section 177C(4)” is replaced by “amount extinguished by the Commissioner under section 177C(5)”.
- (17) After the definition of **New Zealand**, the following is inserted:
- “**New Zealand banking group**, for a registered bank, means the New Zealand banking group that is given for the registered bank by **section FG 8C** (New Zealand banking group of registered bank) for the purposes of subpart FG (Apportionment of interest costs)”.
- (18) After the definition of **New Zealand group debt percentage**, the following is inserted:
- “**New Zealand net equity**, for a New Zealand banking group, is defined in **section FG 8G(1)** (New Zealand net equity of New Zealand banking group) for the purposes of subpart FG (Apportionment of interest costs)”.
- (19) After the definition of **notional income tax liability**, the following is inserted:
- “**notional offshore investment amount**, for a reporting bank, is defined in **section FG 8G(4)** (New Zealand net equity of New Zealand banking group) for the purposes of subpart FG (Apportionment of interest costs)”.
- (20) After the definition of **offshore development**, the following is inserted:
- “**offshore permit area** is defined in **section CW 45B** (Non-resident company involved in exploration and development activities) for the purposes of that section”.
- (21) After the definition of **partnership net income**, the following is inserted:
- “**patent application date** is defined in **section EE 27B** (Annual rate for patents) for the purposes of that section”.
- (22) After the definition of **physical cost of production**, the following is inserted:

- “**plant variety rights** means proprietary rights granted for a plant variety, within the meaning of the terms **plant** and **variety** in the Plant Variety Rights Act 1987”.
- (23) After the definition of **qualifying debenture**, the following is inserted:
- “**qualifying event** means an unexpected event that either results in, or brings about, the destruction of a person’s building or renders it useless, when the destruction or damage is not caused by the action or failure to act of the person, or their agent, or an associated person”.
- (24) After the definition of **registered**, the following is inserted:
- “**registered bank** means a registered bank as defined in section 2 of the Reserve Bank of New Zealand Act 1989”.
- (25) After the definition of **registered security**, the following is inserted:
- “**regulatory value** for the New Zealand banking group of a registered bank is defined in **section FG 8F** (Financial value and regulatory value) for the purposes of subpart FG (Apportionment of interest costs)”.
- (26) After the definition of **replacement permit**, the following is inserted:
- “**reporting bank** for a New Zealand banking group, means the reporting bank that is given for the New Zealand banking group by **section FG 8D** (Reporting bank for New Zealand banking group)”.
- (27) After the definition of **residual income tax**, the following is inserted:
- “**resource consent** means a resource consent as defined in section 2 of the Resource Management Act 1991”.
- (28) After the definition of **type**, the following is inserted:
- “**ultimate owner** is defined in—
- “(a) **section ME 9B** (Imputation credit account company leaving wholly-owned group) for the purposes of that section:
- “(b) **section ME 9C** (Imputation credit account company joining wholly-owned group) for the purposes of that section

“**ultimate parent** is defined in **section FG 8C** (New Zealand banking group of registered bank) for the purposes of that section”.

**61 Meaning of income tax**

In section OB 6(1), the following is inserted after paragraph (i):

“(ib) is defined in **section HK 11(10)** for the purposes of that section.”

**62 New schedule 6B inserted**

After schedule 6, **schedule 6B** in the schedule of this Act is inserted.

**63 Schedule 17—Depreciable intangible property**

In schedule 17, after item 10, the following is added:

“11 plant variety rights granted under the Plant Variety Rights Act 1987

“12 a right to use plant variety rights granted under the Plant Variety Rights Act 1987”.

## Part 2

### Amendments to Income Tax Act 1994

**64 Income Tax Act 1994**

This Part amends the Income Tax Act 1994.

**65 Non-residents’ exempt income**

In section CB 2(1)(f)(v), “foreign company.” is replaced by “foreign company:” and the following is inserted:

“(g) any foreign-sourced amount derived by the Cook Islands National Superannuation Fund, as established by the National Superannuation Board under section 11(1)(a) of the Cook Islands National Superannuation Act 2000.”

**66 New section CB 16 inserted**

The following is inserted after section CB 15:

**“CB 16 Non-resident company involved in exploration and development activities**

“(1) An amount of income derived by a non-resident company from exploration and development activities in an offshore permit area is exempt income if it is derived in the period that starts on 1 January 2004 and ends on 31 December 2009.

“(2) In this section,—

“**exploration and development activities** means the following activities undertaken for the purposes of identifying and developing exploitable petroleum deposits or occurrences in an offshore permit area:

“(a) operating a ship to provide seismic survey readings of the earth’s crust:

“(b) drilling an exploratory well or other well

“**offshore permit area** means an area of land that is—

“(a) in New Zealand; and

“(b) on the seaward side of the mean high-water mark; and

“(c) a permit area or part of a permit area.”

**67 Expenditure incurred by superannuation funds**

(1) After section DI 3(2), the following is inserted:

“(2B) **Subsection (2C)** applies if,—

“(a) for the 2000–01 income year, the balance date of the second superannuation fund is earlier than the balance date of the first superannuation fund; and

“(b) the first superannuation fund has incurred expenditure of a kind described in subsection (2)(b) in the period that starts on the second superannuation fund’s 2000–01 balance date and ends on the first superannuation fund’s 2000–01 balance date.

“(2C) Despite subsection (2)(c), the second superannuation fund may deduct under subsection (2)(d) the expenditure referred to in subsection (2)(b) in whichever of the 2000–01 income year and the 2001–02 income year that the second superannuation fund elects by including the expenditure as a deduction in a return of income for the elected income year.”

- (2) **Subsection (1)** applies for the 2000–01 and 2001–02 income years.

**68 Expenditure to prevent or combat pollution of environment**

- (1) In section DJ 10(1), “industrial waste” is replaced by “waste”.
- (2) **Subsection (1)** applies to a taxpayer for an income year that is the 1995–96 or a subsequent income year if—
- (a) the taxpayer, before **16 November 2004**, makes a return of income, issues a notice of proposed adjustment or response notice, or requests a reassessment, that relates to the income year; and
  - (b) the correctness of the tax position adopted by the taxpayer in the return, notice, or request depends on the interpretation of the meaning of “industrial waste” in section DJ 10; and
  - (c) the taxpayer’s interpretation of “industrial waste” in the return, notice, or request, is consistent with the meaning of section DJ 10 as amended by **subsection (1)**.

**69 Entities to which apportionment rule potentially applies**

- (1) The heading to section FG 2 is replaced by “**Entities to which interest deduction rules potentially apply**”.
- (2) Section FG 2(1) is replaced by the following:
- “(1) A taxpayer is not subject for a tax year to the interest apportionment rule in section FG 8 or the adjustment of annual total deduction in **section FG 8B** unless, at a time in the taxpayer’s income year, the taxpayer—
- “(a) is a non-resident who is not a company:
  - “(b) is a company that is a non-resident in which—
    - “(i) no person who is resident in New Zealand has a direct ownership interest that is equal to or greater than 50%; and
    - “(ii) a non-resident has a direct ownership interest that, when aggregated with the direct ownership interests of persons associated with the non-resident, is equal to or greater than 50%:
  - “(c) is a company that is resident in New Zealand—

- “(i) in which a non-resident has an ownership interest that is equal to or greater than 50%:
  - “(ii) of which a non-resident has control by any other means:
  - “(d) is the trustee of a non-qualifying trust for which 50% or more in value of the settlements on the trust is settled by—
    - “(i) a non-resident:
    - “(ii) persons who are associated with the non-resident.”
- (3) Section FG 2(7) is omitted.

**70 Section FG 3 replaced**

Section FG 3 is replaced by the following:

**“FG 3 When interest apportioned under section FG 8 or annual total deduction adjusted under section FG 8B**

- “(1) A taxpayer who is not excluded by section FG 2 from the application of section FG 8 for a tax year is required to make an apportionment under section FG 8 of interest expenditure incurred during the corresponding income year of the taxpayer if the taxpayer—
- “(a) at no time in the income year—
    - “(i) is a reporting bank for a New Zealand banking group:
    - “(ii) is part of a New Zealand banking group for the purpose of **section FG 8C**; and
  - “(b) has a New Zealand group debt percentage for the income year that—
    - “(i) is greater than 75%; and
    - “(ii) if the taxpayer is a company or a trustee, exceeds the number obtained by multiplying the world-wide group debt percentage of the taxpayer by 1.1.
- “(2) A taxpayer who is not excluded by section FG 2 from the application of **section FG 8B** for a tax year is treated as having an annual total deduction for the tax year of an amount that is given by **section FG 8B** if—
- “(a) at a time in the taxpayer’s corresponding income year the taxpayer is the reporting bank for a New Zealand banking group; and

“(b) the New Zealand banking group has a New Zealand net equity, as defined in **section FG 8G**, of less than the net equity threshold for the New Zealand banking group, as defined in **section FG 8H**, on a measurement day for the taxpayer’s corresponding income year, as defined in **section FG 8E**.”

### **71 Rules for calculating New Zealand group debt percentage**

(1) In section FG 4(12)(b), “New Zealand parent.” is replaced by “New Zealand parent; and” and the following is added:

“(c) are not members of a New Zealand banking group for a registered bank.”

(2) In section FG 4(14C)(b)(iii), “New Zealand parent.” is replaced by “New Zealand parent; and” the following is added:

“(c) are not members of a New Zealand banking group for a registered bank.”

### **72 Apportionment of interest deductions**

(1) In the heading to section FG 8, “—**taxpayer not in New Zealand banking group**” is added after “**deductions**”.

(2) In section FG 8(1), “taxpayer is not in a New Zealand banking group and the” is inserted after “if a”.

### **73 New sections FG 8B to FG 8J inserted**

After section FG 8, the following is inserted:

#### **“FG 8B Adjustment of annual total deduction—reporting bank**

“(1) For a taxpayer that is a reporting bank and under **section FG 3(2)** has an annual total deduction for a tax year given by this section, the taxpayer’s annual total deduction for the tax year is—

“(a) if the New Zealand banking group of the reporting bank has a group funding debt for the tax year that is not zero, the amount calculated using the formula—

unadjusted annual total deduction - adjustments:

“(b) if the New Zealand banking group of the reporting bank has a group funding debt for the tax year of zero, the

annual total deduction for the tax year that the taxpayer would have had in the absence of this section and **section FG 3(2)**.

“(2) In the formula in **subsection (1)(a)**—

“(a) **unadjusted annual total deduction** is the annual total deduction for the tax year that the taxpayer would have had in the absence of this section and **section FG 3(2)**:

“(b) **adjustments** is the sum of the income adjustment amounts that are given by **subsection (4)** for the measurement periods for the corresponding income year of the reporting bank.

“(3) The **group funding debt** for a tax year for the New Zealand banking group of a reporting bank means the amount calculated using the formula—

$$\frac{\text{SFI} + \text{FID} - \text{FTE}}{\text{NQ}}$$

where—

**SFI** is the sum of the amounts for the tax year, each of which is the financial value for the New Zealand banking group of interest-bearing debt calculated under generally accepted accounting practice for a group quarter day

**FID** is the sum of the amounts for the tax year, each of which is the financial value for the New Zealand banking group, on a group quarter day, of financial arrangements—

(a) for which the consolidated financial statements of the New Zealand banking group would show a deduction in the corresponding income year of the reporting bank—

(i) under 1 or more of sections DB 6 to DB 8; and

(ii) other than as a consequence of a fluctuation in the value of a currency of a country relative to the value of a currency of another country; and

(b) that do not contribute to **item SFI**

FTE is the sum of the amounts for the tax year, each of which is the financial value for the New Zealand banking group, on a group quarter day, of shares that contribute to **item SFI**

NQ is the number of group quarter days in the corresponding income year of the registered bank.

“(4) For a measurement day in an income year of a reporting bank, the adjustment amount for a reporting bank is the amount calculated using the formula—

$$(\text{NET} - \text{NZE}) \times \frac{\text{I}}{\text{GFD}} \times \frac{\text{PD}}{\text{YD}}$$

where—

NET is the net equity threshold for the New Zealand banking group for the measurement day

NZE is the lesser of—

- (a) the net equity threshold for the New Zealand banking group for the measurement day;
- (b) the New Zealand net equity for the New Zealand banking group for the measurement day

I is the financial value for the New Zealand banking group, on the last day of the income year, of expenditure that—

- (a) is incurred by a member of the New Zealand banking group in the income year; and
- (b) is an interest expense under generally accepted accounting practice

GFD is the group funding debt for the tax year for the New Zealand banking group

PD is the number of days in the measurement period that corresponds to the measurement day

YD is the number of days in the income year.

“(5) In this section, **group quarter day** for a registered bank and a tax year means a day—

- “(a) that is the last day of a quarter in the corresponding income year of the registered bank; and
- “(b) on which the registered bank is a reporting bank.

**“FG 8C New Zealand banking group of registered bank**

- “(1) The New Zealand banking group** of a registered bank for a measurement period consists of every person or fixed establishment that on the measurement day for the measurement period is—
- “(a) a member under subsection (2) or a potential member under subsection (3) or (4); and**
  - “(b) not excluded by an election under subsection (8).**
- “(2) If the registered bank—**
- “(a) is resident in New Zealand, the registered bank is a member:**
  - “(b) is not resident in New Zealand, a fixed establishment in New Zealand of the registered bank is treated as being a person who is—**
    - “(i) separate from the registered bank; and**
    - “(ii) a member.**
- “(3) A person who is resident is a potential member, if—**
- “(a) the person satisfies subsection (5) and—**
    - “(i) the registered bank is resident in New Zealand; and**
    - “(ii) there is no non-resident who is an ultimate parent of the registered bank under subsection (9):**
  - “(b) the person satisfies subsection (6) and—**
    - “(i) the registered bank is a non-resident; and**
    - “(ii) there is no non-resident who is an ultimate parent of the registered bank under subsection (9):**
  - “(c) the person satisfies subsection (7) and there is a non-resident who is an ultimate parent of the registered bank under subsection (9).**
- “(4) A fixed establishment in New Zealand of a non-resident is treated as being a person who is separate from the non-resident and a potential member if—**
- “(a) the fixed establishment satisfies subsection (6) and—**
    - “(i) the registered bank is a non-resident; and**
    - “(ii) there is no non-resident who is an ultimate parent of the registered bank under subsection (9):**
  - “(b) the fixed establishment satisfies subsection (7) and there is a non-resident who is an ultimate parent of the registered bank under subsection (9).**

- “(5) A person satisfies this subsection if—
- “(a) under generally accepted accounting practice, consolidated group accounts—
    - “(i) are required to include the person and the registered bank:
    - “(ii) would be required to include the person and the registered bank but for relevant materiality thresholds:
  - “(b) the person is in the same group of companies as the registered bank under section IG (1)(2).
- “(6) A person or fixed establishment satisfies this subsection if—
- “(a) under generally accepted accounting practice, the person or fixed establishment would be required to be included in consolidated group accounts with the registered bank if—
    - “(i) the registered bank were resident in New Zealand; and
    - “(ii) the relevant materiality thresholds were satisfied:
  - “(b) the person is in the same group of companies as the registered bank under section IG (1)(2).
- “(7) A person or fixed establishment satisfies this subsection if—
- “(a) under generally accepted accounting practice, the person or fixed establishment would be required to be included in consolidated group accounts with the ultimate parent of the registered bank if—
    - “(i) the ultimate parent were resident in New Zealand; and
    - “(ii) the relevant materiality thresholds were satisfied:
  - “(b) the person is in the same group of companies as the ultimate parent under section IG (1)(2).
- “(8) A reporting bank may elect under this subsection to exclude from the New Zealand banking group of the reporting bank—
- “(a) a person or fixed establishment whose main activity is the providing of life insurance:
  - “(b) a person who—
    - “(i) is resident in New Zealand; and
    - “(ii) has a voting interest of 100% in a person who is excluded by an election under **paragraph (a)**; and
    - “(iii) does not have a main activity that is banking, financing or leasing; and

- “(iv) does not have a main activity that involves the ownership or control of entities having a main activity of banking, financing or leasing:
- “(c) a person who—
- “(i) is resident in New Zealand; and
- “(ii) under generally accepted accounting practice is required for the making of financial reports to be included in consolidated group accounts with a person or fixed establishment who is excluded by an election under **paragraph (a) or (b)**; and
- “(iii) does not have a main activity that is banking, financing or leasing; and
- “(iv) does not have a main activity that involves the ownership or control of entities having a main activity of banking, financing or leasing.
- “(9) For the purposes of this section, the **ultimate parent** of a registered bank is a company—
- “(a) that has an ownership interest in the registered bank, calculated under section FG 2, of 50% or more; and
- “(b) in which no ownership interest, as calculated under section FG 2, is held by a company that holds an ownership interest in the registered bank, calculated under section FG 2, of 50% or more.
- “(10) For the purposes of this section, the **ultimate parent** of a fixed establishment in New Zealand of a registered bank is the registered bank.
- “FG 8D **Reporting bank for New Zealand banking group**
- “(1) For a New Zealand banking group that on a day includes a single registered bank, or includes no registered bank but includes a fixed establishment of a single registered bank, the reporting bank for the day is the registered bank.
- “(2) For a New Zealand banking group that on a day includes more than 1 registered bank, the reporting bank for the day is—
- “(a) the registered bank that first gives notice to the Commissioner of an election to be the reporting bank, if the Commissioner receives such a notice by the day that is 6 months after the end of the tax year in which the day occurs:

- “(b) the registered bank chosen by the Commissioner, if **paragraph (a)** does not apply.
- “(3) For a New Zealand banking group that on a day includes no registered bank but includes fixed establishments of more than 1 registered bank, the reporting bank for the day is—
  - “(a) the registered bank that first gives notice to the Commissioner of an election to be the reporting bank, if the Commissioner receives such a notice by the day that is 6 months after the end of the tax year in which the day occurs:
  - “(b) the registered bank chosen by the Commissioner, if **paragraph (a)** does not apply.

“FG 8E **Measurement periods and measurement days**

- “(1) For the New Zealand banking group and income year of a reporting bank, the **measurement periods** are—
  - “(a) the quarters in the income year, if the reporting bank does not make an election under **paragraph (b) or (c)**:
  - “(b) each calendar month of the income year, if the reporting bank elects that the New Zealand banking group have such measurement periods:
  - “(c) each day of the income year, if the reporting bank elects that the New Zealand banking group have such measurement periods.
- “(2) For the New Zealand banking group and income year of a reporting bank, the **measurement days** are each last day of each measurement period if the measurement periods are given by **subsection (1)(a) or (b)**.
- “(3) If there is a change in the identity of the reporting bank for a tax year for a New Zealand banking group, the measurement period corresponding to the first measurement day for the new reporting bank begins on the day after the last measurement day for the former reporting bank.

“FG 8F **Financial value and regulatory value**

- “(1) In **sections FG 8B to FG 8J**, the **financial value** of an item for a New Zealand banking group at a time is the amount that would be recorded for the item in financial statements for the New Zealand banking group that—
  - “(a) related to the time; and

- “(b) were prepared for external reporting purposes; and
  - “(c) were produced consistently with generally accepted accounting practice at the time by—
    - “(i) consolidating the financial statements for the members of the New Zealand banking group that are in the same group of companies; and
    - “(ii) if more than 1 consolidation is required under **subparagraph (i)**, combining the consolidated financial statements so as to eliminate inter-group transactions.
- “(2) In **sections FG 8B to FG 8J**, the **regulatory value** of an item for a New Zealand banking group at a time is the total risk-weighted value for the item that would be obtained for the New Zealand banking group if the New Zealand banking group were a banking group for the purposes of the Capital Adequacy Framework that is issued by the Reserve Bank of New Zealand acting in the prudential supervision of registered banks under the Reserve Bank of New Zealand Act 1989.

“**FG 8G New Zealand net equity of New Zealand banking group**

- “(1) The **New Zealand net equity** of the New Zealand banking group of a registered bank for a measurement day is given by the following formula:

$$\text{EQV} - \text{EID} - \text{UPB} - \text{INTG} - \text{CGA} - \text{REV} - \text{TXB} - \text{CEFA} - \text{NAFA} - \text{EOI} - \text{NOIA} - \text{AEQ} - \text{AEQI}$$

where—

EQV is the sum of the following amounts:

- (a) the financial value for the measurement day of—
  - (i) the shareholders’ equity relating to members of the New Zealand banking group; and
  - (ii) the branch equity relating to fixed establishments that are members of the New Zealand banking group;
- (b) the financial value for the measurement day of shares, each of which—
  - (i) is issued by a member of the taxpayer’s New Zealand banking group; and

- (ii) does not contribute to the amount referred to in **paragraph (a)**;
  - (c) the financial value for the measurement day of financial arrangements, each of which is a loan or the provision of funds by a parent to a permanent establishment that—
    - (i) is not taken into account in the calculation of the group funding debt of the New Zealand banking group; and
    - (ii) is made by a non-resident who is not a member of the New Zealand banking group and is associated with a member of the New Zealand banking group under section OD 7 or OD 8(3); and
    - (iii) is made to a member of the New Zealand banking group; and
    - (iv) does not contribute to the amount referred to in **paragraph (a)**; and
    - (v) does not give rise to interest expenditure other than as a result of a fluctuation in the value of a currency of a country relative to the value of a currency of another country; and
    - (vi) does not relate to a supply of goods or services
- EID is the financial value for the measurement day of financial arrangements, each of which—
- (a) is taken into account under **paragraph (a) or (b)** of the definition of **item EQV** in calculating the value of that item; and
  - (b) gives rise to a deduction for the tax year under 1 or more of sections DB 6 to DB 8 for a member of the New Zealand banking group
- UPB is the financial value for the measurement day of unvested policyholder benefit liabilities and policyholder retained profits that contribute to the value of **item EQV**
- INTG is the financial value for the measurement day of intangible assets, other than—

- (a) goodwill relating to a business that is not banking, financing, leasing, or life insurance and that—
    - (i) is acquired from a person who, at the time of acquisition, is not associated under section OD 7 or OD 8(3) with a member of the New Zealand banking group:
    - (ii) relates to an entity that is acquired from a person who is not associated under section OD 7 or OD 8(3) with a member of the New Zealand banking group:
  - (b) a film or film right:
  - (c) property that is depreciable property or is expected to become depreciable property
- CGA is the sum for the measurement day of capital gain amounts, each of which arises for the 2004–05 or a later tax year from a transfer of an intangible asset between a member of the New Zealand banking group and a person who—
- (a) is not a member of the New Zealand banking group; and
  - (b) is associated with a member of the New Zealand banking group under section OD 7 or OD 8(3)
- REV is the financial value for the measurement day of revaluation reserves that contribute to the value of **item EQV**
- TXB is the financial value for the measurement day of future tax benefits that are taken into account in determining the value of **item EQV** and arise from—
- (a) net losses for the tax year:
  - (b) losses carried forward from an earlier tax year:
  - (c) timing or temporary differences [to the extent that a net loss would have been carried forward to the tax year if there had been a net loss for the tax year]

- CEFA is the financial value for the measurement day of the credit enhancements provided by members of the New Zealand banking group, each of which is, for the purpose of the Capital Adequacy Framework that is issued by the Reserve Bank of New Zealand—
- (a) a credit enhancement that is provided to an associated funds management and securitisation scheme of a non-member;
  - (b) a credit enhancement that is provided to an affiliated insurance group that is a non-member and has not been expensed
- NAFA is the financial value for the measurement day of advances by members of the New Zealand banking group, each of which is, for the purpose of the Capital Adequacy Framework that is issued by the Reserve Bank of New Zealand, an advance of a capital nature to a connected person who is not a member of the New Zealand banking group
- EOI is the amount that would, if the New Zealand banking group included all the potential members of the New Zealand banking group and before any set-off allowed under generally accepted accounting practice, be the financial value for the measurement day of shares in non-residents that are neither of the following:
- (a) interests in foreign investment funds for which the FIF income or loss is calculated using the comparative value method or the deemed rate of return method;
  - (b) shares in a grey list company that are—
    - (i) listed on the official list of a recognised exchange; and
    - (ii) revenue account property
- NOIA is the notional offshore investment amount for the New Zealand banking group for the income year of the reporting bank, as defined in **subsection (4)**
- AEQ is the financial value for the measurement day of interests, each of which is taken into account in calculating **item EQV** and is held by a person who—

- (a) is not a member of the New Zealand banking group; and
- (b) is associated under section OD 7 or OD 8(3) with a member of the New Zealand banking group; and
- (c) is resident in New Zealand or holds the interest through a fixed establishment in New Zealand

AEQI is the financial value for the measurement day of—

- (a) shares in persons who are not members of the New Zealand banking group but are associated under section OD 7 or OD 8(3) with members of the New Zealand banking group:
- (b) loans, other than on arm's-length terms, to persons who are not members of the New Zealand banking group but are associated under section OD 7 or OD 8(3) with members of the New Zealand banking group.

“(2) **Subsection (3)** applies if a component of an item, other than the **item NOIA**, that is subtracted from the **item EQV** under **subsection (1)** is a component of 1 or more other such items.

“(3) The value of the component is included in a single item for which the value of the component is not less than the value of the component for each of the other items.

“(4) The **notional offshore investment amount** for a New Zealand banking group for an income year of the reporting bank for the New Zealand banking group is the greater of zero and the amount given by the following formula:

$$\frac{(\text{FTC} - \text{DMT}) \times 12}{\text{CRT} \times \text{IRR} \times \text{NM}}$$

where—

FTC is the total for the tax year of foreign tax credits each of which—

- (a) is claimed as a credit against the income tax liability for the tax year of—
  - (i) a member of the New Zealand banking group:
  - (ii) a person who is excluded from the New Zealand banking group by an election under **section FG 8C(7)**; and

- (b) does not arise from attributed CFC income or from FIF income; and
  - (c) does not arise from income derived before 1 July 2005
- DMT is the amount—
- (a) set by the Governor-General by Order in Council as the threshold amount for the application of this subsection; or
  - (b) equal to \$5,000,000, if no threshold amount is set under **paragraph (a)** and **paragraph (c)** does not apply; or
  - (c) equal to \$416,667 multiplied by the number of months beginning on or after 1 July 2005 in the corresponding income year for the reporting bank, if the corresponding income year includes that date and no threshold amount is set under **paragraph (a)**
- CRT is the rate of tax for companies referred to in schedule 1, part A, item 5 for the tax year
- IRR is the amount—
- (a) set by the Governor-General by Order in Council as the interest rate of return for the purposes of this subsection; or
  - (b) of 7% per year, if no interest rate of return is set under **paragraph (a)**
- NM is the number of months beginning on or after 1 July 2005 in the income year of the reporting bank for the New Zealand banking group.

**“FG 8H Net equity threshold**

“(1) The **net equity threshold** for a measurement day for the New Zealand banking group of a registered bank is given by the following formula:

$$0.04 \times (\text{RWE} - \text{DEQ})$$

where—

RWE is the sum of the following values for the measurement day:

- (a) for an asset that is included in a balance sheet, the regulatory value of the asset:

- (b) for an exposure that is not included in a balance sheet, the regulatory value of the exposure:
- (c) for goodwill that is not taken into account in calculating **item INTG** in determining the New Zealand net equity of the New Zealand banking group, the financial value of the goodwill

DEQ is the total of the regulatory values for the measurement day of items that are—

- (a) excluded from the calculation of **item NOIA**; and
- (b) deducted from **item EQV** in determining the New Zealand net equity of the New Zealand banking group.

“(2) For the purposes of **subsection (1)**, the assets of a fixed establishment include the assets that are treated as being the assets of the fixed establishment under generally accepted accounting practice.

“**FG 8I Valuation of debt and risk-weighted exposures**

For the purposes of **sections FG 8B to FG 8H**, the value on a day of a financial arrangement or risk-weighted exposure that is denominated in a foreign currency must be determined—

- “(a) in New Zealand currency; and
- “(b) using the close of trading spot exchange rate for the foreign currency on the day.

“**FG 8J Treatment of temporary change in New Zealand net equity or net equity threshold**

A change in a quantity that, but for this subsection, would produce a temporary change in the New Zealand net equity or net equity threshold of the New Zealand banking group of a registered bank does not affect the value of the New Zealand net equity or net equity threshold if the change is produced by an arrangement that has an effect of defeating the intent and application of **sections FG 8B to FG 8I**.”

**74 Circumstances in which group excess interest allocation required**

Section FH 1(1) is replaced by the following:

- “(1) Subject to subsection (2), the group excess interest allocation rules in sections FH 5 to FH 8 apply for a tax year to a company that—
- “(a) for the imputation year that corresponds with the tax year—
    - “(i) is a dividend withholding payment account company or a conduit tax relief company; and
    - “(ii) is not a member of a New Zealand banking group for a registered bank; and
  - “(b) in the corresponding income year—
    - “(i) derives foreign attributed income:
    - “(ii) is paid a dividend from which the company must deduct an amount of dividend withholding payment or would have to deduct such an amount but for section NH 7.”

**75 Imputation—arrangement to obtain tax advantage**

In section GC 22(4)(b), “both a tax credit advantage and” is omitted.

**76 Credits arising to imputation credit account**

- (1) After section ME 4(1)(c), the following is inserted:
- “(cb) the amount of any credit arising in the imputation credit account as a result of an election under **section ME 9B(2)(a)(ii)**:
  - “(cc) the amount of any payment of further income tax for which the company is liable under **section ME 9B(2)(b)**.”
- (2) In section ME 4(1)(k), “closed.” is replaced by “closed:” and the following is added:
- “(l) the amount of any credit balance arising in the company’s account with the Commissioner from a payment made by the company to the Commissioner that does not give rise to a credit under any other paragraph.”
- (3) After section ME 4(2)(b), the following is inserted:
- “(bb) in the case of a credit referred to in **subsection (1)(cb)**, on the date on which the leaving company ceases to be a member of the wholly-owned group of companies:

- “(bc) in the case of a credit referred to in **subsection (1)(cc)**, on the date on which the company makes the payment to the Commissioner:”.
- (4) In section ME 4(2)(i), “section MK 5.” is replaced by “section MK 5:” and the following is added:
- “(j) in the case of a credit referred to in **subsection (1)(l)**, on the date on which the company makes the payment to the Commissioner.”
- (5) **Subsections (2) and (4)** apply for the 1995–96 and later income years.

**77 Debits arising to imputation credit account**

- (1) After section ME 5(1)(f), the following is inserted:
- “(fb) the amount of any debit arising in the imputation credit account as a result of an election under **section ME 9B(2)(a)(i)**:”.
- (2) In section ME 5(1)(h), “section LD 8(1)(a)” is replaced by “section LD 8(1)(c)”.
- (3) After section ME 5(2)(f), the following is inserted:
- “(fb) in the case of a credit referred to in **subsection (1)(fb)**, on the date on which the leaving company ceases to be a member of the wholly-owned group of companies:”.

**78 New sections ME 9B and ME 9C inserted**

After section ME 9, the following is inserted:

**“ME 9B Imputation credit account company leaving wholly-owned group**

- “(1) This section applies to an imputation credit account company (called the **leaving company**) if, at a time in the income year of the leaving company that corresponds to a tax year—
- “(a) there is a change in the ultimate owners of the leaving company; and
- “(b) as a result of the change, the leaving company ceases to be a member of a wholly-owned group of companies (called the **former group**); and
- “(c) the total amount of the available net losses from the previous tax year for the members of the former group exceeds \$1,000,000.

- “(2) If the leaving company at the time has a debit balance in its imputation credit account, the leaving company—
- “(a) may elect that an amount that is not more than the debit balance be—
    - “(i) a debit in the imputation credit account of another imputation credit account company that is a member of the former group and for which there is no change in ultimate owners at the time; and
    - “(ii) a credit in the imputation credit account of the leaving company:
  - “(b) may elect to pay an amount of tax by way of further income tax that is equal to—
    - “(i) the amount of the debit balance, if the leaving company makes no election under **paragraph (a)**;
    - “(ii) the amount by which the debit balance exceeds the amount that is subject to the election under **paragraph (a)**.
- “(3) If the leaving company at the time would be entitled, in the absence of section MD 2, to a refund under section MD 1 of an amount of excess tax, **subsection (4)** applies to the following amount (called the **excess entitlement**):
- “(a) zero, if at the time the credit balance in the imputation credit account of the leaving company equals or exceeds the total of the following amounts:
    - “(i) the amount that would be the entitlement;
    - “(ii) the amount in a tax pooling account that has been provided by or for the benefit of the leaving company and would produce a credit balance in the account with the Commissioner of the leaving company if transferred to that account:
  - “(b) the total of the amounts referred to in **paragraph (a)(i) and (ii)**, if at the time there is no credit balance in the imputation credit account of the leaving company;
  - “(c) the amount by which the credit balance in the imputation credit account of the leaving company at the time is exceeded by the total of the amounts referred to in **paragraph (a)(i) and (ii)**, if neither of **paragraphs (a) and (b)** applies.
- “(4) If the leaving company at the time has an excess entitlement, the leaving company—

- “(a) may elect that an amount that is not more than the credit balance in the account with the Commissioner of the leaving company be—
  - “(i) a credit to the account with the Commissioner of another imputation credit account company that is a member of the former group and for which there is no change in ultimate owners at the time; and
  - “(ii) a debit to the account with the Commissioner of the leaving company:
- “(b) may elect to pay an amount of tax by way of further income tax equal to—
  - “(i) the amount of the excess entitlement, if the leaving company makes no election under **paragraph (a)**; or
  - “(ii) the amount by which the credit balance exceeds the amount that is subject to the election under **paragraph (a)**.
- “(5) If the leaving company elects to pay an amount of further income tax under **subsection (2)(b) or (4)(b)**, the further income tax must be paid to the Commissioner by the 20<sup>th</sup> day of the month following the month in which the leaving company leaves the former group.
- “(6) The former group is jointly liable with the leaving company for further income tax payable under **subsection (2) or (4)**.
- “(7) A leaving company or a former group may satisfy a liability to pay further income tax under **subsection (2) or (4)** by a debit against a credit balance in the account with the Commissioner of the leaving company or the former group.
- “(8) A payment of further income tax under **subsection (2) or (4)** does not satisfy any other liability of the leaving company or the former group.
- “(9) In this section, an **ultimate owner** of a company means a person—
  - “(a) who has an ownership interest in the company, calculated under section FG 2; and
  - “(b) in whom no ownership interest, as calculated under section FG 2, is held by a person who holds an ownership interest in the company, calculated under section FG 2, of 50% or more.

“ME 9C **Imputation credit account company joining wholly-owned group**

“(1) This section applies to an imputation credit account company (called the **joining company**) if, at a time in the income year of the joining company that corresponds to a tax year—

“(a) the joining company becomes a member of a wholly-owned group of companies (called the **new group**); and

“(b) the joining company was formerly a member of a wholly-owned group (called the **former group**) having ultimate owners that differed from the ultimate owners of the new group.

“(2) **Subsection (3)** applies to the joining company if—

“(a) the joining company at the time has a debit balance in its imputation credit account; and

“(b) the debit balance includes debits (called the **former group debits**)—

“(i) that were recorded in the imputation credit account when the joining company was a member of the former group; and

“(ii) upon which further income tax under **section ME 9B(2)** was not paid by the joining company or former group.

“(3) The joining company must pay an amount of tax by way of further income tax that is equal to the amount of the former group debits.

“(4) If the joining company at the time would be entitled, in the absence of section MD 2, to a refund under section MD 1 of an amount of excess tax relating to a time when the joining company was in the former group, **subsection (5)** applies to the following amount (called the **excess entitlement**):

“(a) zero, if at the time the credit balance in the imputation credit account of the joining company equals or exceeds the total of the following amounts:

“(i) the amount that would be the entitlement:

“(ii) the amount in a tax pooling account that has been provided by or for the benefit of the joining company and would produce a credit balance in the account with the Commissioner of the joining company if transferred to that account:

- “(b) the total of the amounts referred to in **paragraph (a)(i) and (ii)**, if at the time there is no credit balance in the imputation credit account of the joining company:
  - “(c) the amount by which the credit balance in the imputation credit account of the joining company at the time is exceeded by the total of the amounts referred to in **paragraph (a)(i) and (ii)**, if neither of **paragraphs (a) and (b)** applies.
- “(5) If the joining company at the time has an excess entitlement, the joining company must pay an amount of tax by way of further income tax equal to the amount of the excess entitlement.
- “(6) If the joining company must pay an amount of further income tax under **subsection (3) or (5)**, the further income tax must be paid to the Commissioner by the 20<sup>th</sup> day of the month following the month in which the joining company joins the new group.
- “(7) The new group is jointly liable with the joining company for further income tax payable under **subsection (3) or (5)**.
- “(8) A joining company or a new group may satisfy a liability to pay further income tax under **subsection (3) or (5)** by a debit against a credit balance in the account with the Commissioner of the joining company or the new group.
- “(9) A payment of further income tax under **subsection (3) or (5)** does not satisfy any other liability of the joining company or the new group.
- “(10) In this section, an **ultimate owner** of a company means a person—
- “(a) who has an ownership interest in the company, calculated under section FG 2; and
  - “(b) in whom no ownership interest, as calculated under section FG 2, is held by a person who holds an ownership interest in the company, calculated under section FG 2, of 50% or more.”

## **79 Certificates of exemption**

- (1) In section NF 9(1)(i), “and paragraph (l)” is replaced by “, (l), and (m)”.
- (2) **Subsection (1)** applies for the 2004–05 tax year.

**80 Definitions**

- (1) This section amends section OB 1.
- (2) After the definition of **expenditure portion**, the following is inserted:

“**exploration and development activities** is defined in **section CB 16(2)** for the purposes of that section”.
- (3) After the definition of **financial statements**, the following is inserted:

“**financial value** for the New Zealand banking group of a registered bank is defined in **section FG 8F** for the purposes of Part FG”.
- (4) In the definition of **further income tax**, “, **ME 9B**, or **ME 9C**” is added after “ME 9”.
- (5) After the definition of **gross tax deductions**, the following is inserted:

“**group funding debt** is defined in **section FG 8B** for the purposes of Part FG”.
- (6) After the definition of **group of persons**, the following is inserted:

“**group quarter day** is defined in **section FG 8B(6)** for the purposes of that section”.
- (7) The definition of **measurement day** is replaced by the following:

“**measurement day**—

  - “(a) in relation to a calendar year, means each of 31 March, 30 June, 30 September, and 31 December, except for the purposes of Part FG:
  - “(b) for an income year of a reporting bank, means 1 of the measurement days for the income year defined in **section FG 8E** for the purposes of Part FG

“**measurement period**, for an income year of a reporting bank, means 1 of the measurement periods for the income year defined in **section FG 8E** for the purposes of Part FG”.
- (8) Before the definition of **net gain**, the following is inserted:

“**net equity threshold** for the New Zealand banking group of a registered bank is defined in **section FG 8H** for the purposes of Part FG”.

- (9) In the definition of **net loss**, “written off by the Commissioner under section 177C(4)” is replaced by “extinguished by the Commissioner under section 177C(5)”.
- (10) After the definition of **New Zealand**, the following is inserted:  
“**New Zealand banking group**, for a registered bank, is defined in **section FG 8C** for the purposes of Part FG”.
- (11) After the definition of **New Zealand group debt percentage**, the following is inserted:  
“**New Zealand net equity**, for a New Zealand banking group, is defined in **section FG 8G(1)** for the purposes of Part FG”.
- (12) After the definition of **notional income tax liability**, the following is inserted:  
“**notional offshore investment amount**, for a reporting bank, is defined in **section FG 8G(4)** for the purposes of Part FG”.
- (13) After the definition of **offshore development**, the following is inserted:  
“**offshore permit area** is defined in **section CB 16(2)** for the purposes of that section”.
- (14) After the definition of **registered**, the following is inserted:  
“**registered bank** means a registered bank as defined in section 2 of the Reserve Bank of New Zealand Act 1989”.
- (15) After the definition of **registered security**, the following is inserted:  
“**regulatory value** for the New Zealand banking group of a registered bank is defined in **section FG 8F** for the purposes of Part FG”.
- (16) After the definition of **replacement price option**, the following is inserted:  
“**reporting bank**, for a New Zealand banking group, means the reporting bank that is given for the New Zealand banking group by **section FG 8D**”.
- (17) In the definition of **taxable bonus issue**, paragraph (b) is replaced by the following:  
“(b) any bonus issue that—  
    “(i) is not a share split under section 48(b) or (c) of the Companies Act 1993 or a similar division of a

- share in a company that is not registered under the Companies Act 1993; and
- “(ii) the company elects in accordance with section CF 8(a) (or with section 3(3)(a)(i) of the Income Tax Act 1976) to be a bonus issue that will be treated as a dividend for the purposes of this Act”.
- (18) After the definition of **type**, the following is inserted:  
“**ultimate owner** is defined in—  
“(a) **section ME 9B** for the purposes of that section:  
“(b) **section ME 9C** for the purposes of that section”.
- (19) Before the definition of **unadjusted income tax liability**, the following is inserted:  
“**ultimate parent** is defined in **section FG 8C** for the purposes of that section”.

### Part 3

#### Amendments to Tax Administration Act 1994

##### 81 Tax Administration Act 1994

This Part amends the Tax Administration Act 1994.

##### 82 Interpretation

- (1) This section amends section 3(1) of the Tax Administration Act 2004.
- (2) After the definition of **amount payable**, the following is inserted:  
“**approved advisor group** is defined in **section 20B(5)**”.
- (3) After the definition of **incremental late payment penalty**, the following is inserted:  
“**information holder** is defined in **section 20B(1)** for the purposes of **sections 20B to 20F**”.
- (4) After the definition of **tax**, the following is inserted:  
“**tax advice document** is defined in **section 20B(3)**  
“**tax advisor** is defined in **section 20B(4)**”.
- (5) After the definition of **tax agent**, the following is inserted:  
“**tax contextual information** is defined in **section 20F(3)**”.

**83 Court orders for production of information or return**

In section 17A(7)(b)(ii), “law).” is replaced by “law); and” and the following is added:

“(iii) whether or not the information is contained in a tax advice document; and

“(iv) if the information is contained in a tax advice document, whether or not the information is required to be disclosed under **section 20E or 20F.**”

**84 New sections 20B to 20F inserted**

(1) After section 20, the following is inserted:

**“20B No requirement to disclose tax advice document**

“(1) A person (called in this section and **sections 20C to 20F** an **information holder**) who is required under 1 or more of sections 16 to 19 to disclose information in relation to a person is not required to disclose a document that is a tax advice document for that person.

“(2) A document is eligible to be a tax advice document for a person if the document—

“(a) is created by—

“(i) the person for the main purpose of instructing a tax advisor to act for the person by giving to the person advice about the operation and effect of tax laws:

“(ii) by a tax advisor for the main purpose of giving to the person advice about the operation and effect of tax laws; and

“(b) for purposes that do not include a purpose of committing, or promoting or assisting the committing of, an illegal or wrongful act.

“(3) A document is a **tax advice document** for a person if—

“(a) the document is eligible under **subsection (2)** to be a tax advice document for the person; and

“(b) the person makes a claim, under **section 20D**, that the document is a tax advice document; and

“(c) the person satisfies the requirements of **sections 20E and 20F** for the document.

“(4) A **tax advisor** is a natural person who—

“(a) is part of an approved advisor group; and

- “(b) has a significant function of giving advice on the operation and effect of tax laws; and
  - “(c) is subject to the code of conduct and disciplinary process referred to in **subsection (6)(a)(ii) and (iii)**.
- “(5) An **approved advisor group** is a group that—
- “(a) includes natural persons—
    - “(i) who have a significant function of giving advice on the operation and effect of tax laws; and
    - “(ii) are subject to a professional code of conduct in giving the advice; and
    - “(iii) are subject to a disciplinary process that enforces compliance with the code of conduct; and
  - “(b) is approved by the Commissioner for the purposes of this definition.

“20C **Treatment of document**

- “(1) This section applies to a document that is—
- “(a) included in a request for information in relation to a person; and
  - “(b) possibly eligible to be a tax advice document for the person.
- “(2) The document must be treated as being a tax advice document for the person—
- “(a) from the time of the request for information:
  - “(b) until the earlier of—
    - “(i) the time by which the person is required by **section 20D** to claim that the document is a tax advice document for the person:
    - “(ii) the time at which the person informs the Commissioner that the person does not claim that the document is a tax advice document for the person.
- “(3) If the person makes a claim under **section 20D** that the document is a tax advice document for the person, the document must be treated as being a tax advice document for the person from the time of the claim until—
- “(a) a court or the Taxation Review Authority rules that the document is not a tax advice document for the person:
  - “(b) the person agrees in writing that the document is not a eligible to be a tax advice document for the person:

- “(c) the person withdraws in writing the claim that the document is a tax advice document for the person:
- “(d) an approved advisor group informs the Commissioner that a tax advisor is or was not a member of the approved advisor group at a time—
  - “(i) at which the tax advisor is claimed by the person or the tax advisor to be a member of the approved advisor group; and
  - “(ii) at which the tax advisor would be required to be a member of an approved advisor group for the document to be a tax advice document.
- “(4) If a document must be treated under this section as being a tax advice document for a person, a copy of the document must be held in a secure place for the periods referred to in **subsections (2) and (3)** by a tax advisor who is accepted by the Commissioner as being a member of an approved advisor group.

“20D **Claim that document is tax advice document**

- “(1) A claim by a person that a document is a tax advice document for the person must be made by the person or by a tax advisor who is authorised to act on behalf of the person for the purposes of **sections 20C to 20F**.
- “(2) A claim that a document created by a person is a tax advice document for the person must contain the following information:
  - “(a) a brief description of the form and contents of the document; and
  - “(b) the name of the tax advisor for whom the document was intended; and
  - “(c) the date on which the document was created.
- “(3) A claim that a document created by a tax advisor is a tax advice document for a person must contain the following information:
  - “(a) a brief description of the form and contents of the document; and
  - “(b) the name of the tax advisor who created the document; and
  - “(c) the approved advisor group to which the tax advisor belonged when creating the document; and

- “(d) the areas of law about which the tax advisor was intending to give advice when creating the document; and
  - “(e) the date on which the document was created.
- “(4) A claim that a document is a tax advice document for a person must be made—
- “(a) if the requirement to disclose information is under 1 or both of sections 16 and 16B—
    - “(i) on the day on which the Commissioner or an officer of the Department exercises the right of inspection or removal that leads to the claim:
    - “(ii) by a later date to which the Commissioner agrees:
  - “(b) if the requirement to disclose information is under section 17, by the date that is the later of the following:
    - “(i) the date that is given by the Commissioner in the request for disclosure of the information:
    - “(ii) the date that is 28 days after the date of the request by the Commissioner for disclosure of the information:
  - “(c) if the requirement to disclose information is under section 17A or section 18, by the date on which the Court requires the production of information:
  - “(d) if the requirement to disclose information is under section 19, by the date on which the Commissioner requires the production of information.
- “(5) If a tax advisor acting on behalf of a person claims that a document is a tax advice document for the person, the claim must be accompanied by—
- “(a) written confirmation from the person that the tax advisor is authorised to act on behalf of the person for the purposes of **sections 20C to 20F**:
  - “(b) a statutory declaration, which may be a statutory declaration required by **section 20F(4)**, by the tax advisor stating that the tax advisor is authorised to act on behalf of the person for the purposes of **sections 20C to 20F**.

“20E **Document or part of document included in tax advice document**

An information holder who is required to disclose information in relation to a person is required to provide a copy of a document or part of a document that—

- “(a) is attached to a document that is eligible under **section 20B(2)** to be a tax advice document for the person; and
- “(b) is not eligible under **section 20B(2)** to be a tax advice document for the person.

“20F **Person must disclose tax contextual information from tax advice document**

- “(1) An information holder who is required to disclose information relating to a person must disclose tax contextual information from a document that the person claims, under **section 20D**, to be a tax advice document for the person.
- “(2) A disclosure under **subsection (1)** of tax contextual information from a document must be made—
  - “(a) if the requirement to disclose information is under 1 or both of sections 16 and 16B, by the date that is determined by the Commissioner:
  - “(b) if the requirement to disclose information is under section 17, by the date that is the later of—
    - “(i) the date that is given by the Commissioner in the request for disclosure of the information:
    - “(ii) the date that is 28 days after the date of the request by the Commissioner for disclosure of the information:
  - “(c) if the requirement to disclose information is under section 17A or section 18, by the date on which the Court requires the production of information:
  - “(d) if the requirement to disclose information is under section 19, by the date on which the Commissioner requires the production of information.
- “(3) **Tax contextual information** for a tax advice document for a person is—
  - “(a) a fact or assumption relating to a transaction that has occurred or is postulated by the person creating the tax advice document:
  - “(b) a step involved in the performance of a transaction that has occurred or is postulated by the person creating the tax advice document:
  - “(c) advice that does not concern the operation and effect on the person of tax laws:
  - “(d) advice that concerns the operation and effect on the person of tax laws relating to the collection by the

Commissioner of amounts payable to the  
Commissioner:

- “(e) a fact or assumption relating to advice that is referred to in **paragraph (c) or (d)**:
  - “(f) a fact or assumption from, or relating to the preparation of,—
    - “(i) financial statements of the person:
    - “(ii) a document containing information that the person is required to provide to the Commissioner under an Inland Revenue Act.
- “(4) A disclosure by a person or tax advisor of tax contextual information from a tax advice document for the person must be in a statutory declaration that—
- “(a) is made by a tax advisor who has not been barred under **subsection (5)** from making statutory declarations under this subsection; and
  - “(b) states that the tax advisor is authorised to act on behalf of the person for the purposes of **sections 20C to 20F**; and
  - “(c) is in the prescribed form.
- “(5) A court may order that a tax advisor be barred from making statutory declarations under this section, if the tax advisor is convicted of an offence under—
- “(a) section 111 of the Crimes Act 1961:
  - “(b) section 143(1)(b):
  - “(c) section 143A(1)(b) or (c):
  - “(d) section 143B(1)(b) or (c):
  - “(e) section 143H.”
- (2) **Subsection (1)** applies to a requirement to disclose information for which notice of the requirement is given after the date on which this Act receives the Royal assent.

## **85 Annual returns of income not required**

- (1) In section 33A(2), the following is inserted after paragraph (k):
  - “(kb) has carried forward to the income year a credit of tax under **section LB 2(3C)** of the Income Tax Act 2004:”.
- (2) **Subsection (1)** applies for the 2005–06 and subsequent income years.

**86 New section 36BC inserted**

After section 36BB, the following is inserted:

**“36BC Electronic format for details required under subpart EK of Income Tax Act 2004**

The Commissioner may prescribe 1 or more electronic formats in which details that must be provided under **subpart EK** of the Income Tax Act 2004 may be provided by electronic means.”

**87 Particulars furnished in electronic format**

In section 36C(1), “or 36BB” is replaced by “, 36BB, or **36BC**”.

**88 Officers to maintain secrecy**

In section 81(4)(p), “Commission.” is replaced by “Commission:”, and the following is added:

“(q) communicating, for the purpose of **section 85H**, information to a person who is an officer, employee, or agent of the department for the time being responsible for the administration of the Parental Leave and Employment Protection Act 1987 and who is authorised to receive the information by the chief executive of that department.”

**89 New section 81B inserted**

After section 81, the following is inserted:

**“81B Disclosure of information concerning actions of tax advisor**

Despite section 81, the Commissioner may supply information to an approved advisor group about an action or omission—

“(a) by a person who is, or purports to be, a member of the approved advisor group; and

“(b) that the Commissioner considers to be a breach of a member’s responsibilities under **sections 20B to 20F**.”

**90 New sections 85H and 85I inserted**

After section 85G, the following are inserted:

**“85H Disclosure of information for purposes of Parental Leave and Employment Protection Act 1987**

- “(1) The purpose of this section is to facilitate the exchange of information between the Commissioner and the responsible department for the purposes of providing to the responsible department, applicant information that the Commissioner considers necessary to enable the responsible department to—
- “(a) verify an entitlement to parental leave payments:
  - “(b) investigate possible overpayment of parental leave payments.
- “(2) For the purpose of **subsection (1)**, an employee or agent of the responsible department who is authorised to do so by the chief executive of the responsible department may from time to time supply to the Commissioner information that is held by the responsible department in relation to an applicant, or the spouse of an applicant, for a parental leave payment.
- “(3) For the purpose of **subsection (1)**, the Commissioner may compare applicant information contained in an application for payment of paid parental leave made under section 71I of the Parental Leave and Employment Protection Act 1987, or compare applicant information supplied under **subsection (2)**, and information held by the Commissioner that relates to the applicant.
- “(4) Where the Commissioner has made a comparison under **subsection (3)**, the Commissioner may communicate applicant information to the chief executive of the responsible department if the Commissioner considers the communication to be necessary for the purposes set out in **subsection (1)**.
- “(5) In this section and in **section 85I**—
- “**applicant** means a person who has made an application for a parental leave payment under section 71I of the Parental Leave and Employment Protection Act 1987
  - “**applicant information**, for an applicant, means—
    - “(a) information that relates to the circumstances of the applicant that are relevant to the eligibility of the applicant for parental leave payments under Part 7A of the Parental Leave and Employment Protection Act 1987:
    - “(b) the applicant’s name and tax file number:

“(c) the name and tax file number of the applicant’s employer

“**parental leave** has the meaning in section 2 of the Parental Leave and Employment Protection Act 1987

“**responsible department** means the department for the time being responsible for the administration of the Parental Leave and Employment Protection Act 1987.

**“85I Use of Parental Leave and Employment Protection Act 1987 and parental tax credit information to determine entitlement**

“(1) For the purpose of section 71G(1) of the Parental Leave and Employment Protection Act 1987, if the Commissioner as a delegate under section 71ZA of that Act receives an application for parental leave payments in relation to a child, the Commissioner may—

“(a) compare applicant information and information held by the Commissioner:

“(b) refuse the application for payment of parental leave if a comparison under **paragraph (a)** indicates that the employee or his or her spouse has received a payment of parental tax credit in respect of the child.

“(2) The Commissioner may treat information obtained while acting as a delegate of the responsible department under section 71ZA of the Parental Leave and Employment Protection Act 1987 as information obtained for the purposes of administering the Inland Revenue Acts.

“(3) The Commissioner may refuse or recover a parental tax credit under section KD 2AB(1) of the Income Tax Act 2004 in respect of a child if a parental leave payment under Part 7A of the Parental Leave and Employment Protection Act 1987 is to be paid or has been paid to the applicant in respect of the child.”

**91 Further secrecy requirements**

In section 87(5)(a)(i), “and (i)” is replaced by “, (i) and (q)”.

**92 Election of small claims jurisdiction of Taxation Review Authority**

(1) In section 89E(1)(a), “89D” is replaced by “89D or 89DA”.

- (2) **Subsection (1)** applies for disputes that begin under Part 4A of the Tax Administration Act 1994 on or after 1 April 2005.

### 93 Determination on special rates and provisional rates

- (1) In section 91AE(2), “must have regard to—” and paragraphs (a) and (b) are replaced by “may have regard to any factors that are relevant in determining the item’s estimated useful life, including an estimate based on a depreciation method or on a valuer’s report, or a rate of depreciation that the person uses for the item for financial reporting purposes”.
- (2) In section 91AE(3), “after having regard to the factors in subsection (2)” is replaced by “using either the formula in section EE 25(4) of the Income Tax Act 2004 or the straight-line method for an item of property”.
- (3) **Subsections (1) and (2)** apply for the 2005–06 and subsequent income years.

### 94 Applications for determinations

- (1) In section 91AK(2), “Within” is replaced by “Unless **subsection (2B)** applies, within”.
- (2) After section 91AK(2), the following is inserted:  
“(2B) Despite subsection (2), a person making an application may agree to an extension of the 6-month time limit within which the Commissioner must respond.”
- (3) **Subsections (1) and (2)** apply for the 2005–06 and subsequent income years.

### 95 New section 91AL and heading inserted

After section 91AK, the following is inserted:

*“Determinations relating to environmental restoration  
expenditure*

#### “91AL Determinations on rates for diminishing value of environmental expenditure

- “(1) If requested in writing by a person or a group of persons to set a rate or an expected life for the purpose of section DB 37 of the Income Tax Act 2004, the Commissioner may determine that the person, group, or a class of persons is to calculate the diminishing value for a type of expenditure listed in **schedule 6B, part A** of that Act, or for expenditure that is part of such a

- type of expenditure, using a banded rate set out in column 1 of schedule 11 of that Act for the purposes of **section DB 37(3)(c)** of that Act.
- “(2) The Commissioner may decline to issue a determination under **subsection (1)** if—
- “(a) the information that is supplied to the Commissioner by the person or group is insufficient for the calculation of an appropriate rate:
  - “(b) the Commissioner considers that the alternative rate for the expenditure differs from the banded rate set out for the expenditure in **schedule 6B** of the Income Tax Act 2004, or in an existing applicable determination, by less than half the difference between that banded rate and the banded rate that is next closest to the alternative rate.
- “(3) In making a determination, the Commissioner may take into account—
- “(a) the length of time for which the expenditure may reasonably be expected to be effective for the purpose for which it was incurred:
  - “(b) the length of time for which the expenditure may reasonably be expected to be effective for the purpose of earning income:
  - “(c) the treatment of the expenditure in the person’s financial reports:
  - “(d) the life of any resource consent that is associated with the expenditure:
  - “(e) an estimate based on a depreciation method or on a valuer’s report.
- “(4) The determination may set out the income year or income years for which it is to apply, but may not apply for income years before the 2005–06 income year.
- “(5) The determination may provide for the extension, limitation, variation, cancellation, or revocation of an earlier determination.
- “(6) A person affected by a determination made under this section may dispute or challenge the determination under Parts 4A and 8A.

- “(7) Within 30 days of issuing a determination under **subsection (1)**, the Commissioner must give notice of the determination to the person or group who requested the determination.
- “(8) Within 30 days of issuing a determination under **subsection (1)** that is expressed to apply to a class of persons, the Commissioner must give publish a notice in the *Gazette* that—
- “(a) gives notice that the determination has been issued; and
  - “(b) states where copies of the determination can be obtained.”

**96 Commissioner to make private rulings on request**  
Section 91E(6) is repealed.

- 97 Taxpayer assessment**
- (1) Section 92(4) is repealed.
  - (2) **Subsection (1)** applies for the 2005–06 and later tax years.

**98 Assessment of further income tax**  
In section 101(1), “**or ME 9C**” is inserted after “ME 9”.

- 99 Time bar for amendment of income tax assessment**
- (1) Section 108(1B) is repealed.
  - (2) **Subsection (1)** applies for the 2005–06 and later tax years.

- 100 Definitions**  
In section 120C, in the definition of **date interest starts**, the following is added:
- “(f) for unpaid tax, being terminal tax for the tax year in which a disposition of property to which **section FI 5** of the Income Tax Act 2004 refers, the due date for the deceased person’s terminal tax, if all instalments of provisional tax (including terminal tax) payable by the deceased person are paid by their due date”.

- 101 Imputation penalty tax payable where end of year debit balance**  
In section 140B(1), “**or ME 9C(3) or (5)**” is inserted after “ME 9”.

**102 Unacceptable tax position**

- (1) In section 141B(5), “interpretation of a tax law” is replaced by “tax position”.
- (2) Section 141B(6) is replaced by the following:  
“(6) The time at which a taxpayer takes a tax position for a return period is—
  - “(a) the time at which the taxpayer provides the return containing the taxpayer’s tax position, if the taxpayer provides a tax return for the return period:
  - “(b) the due date for providing the tax return for the return period, if the taxpayer does not provide a tax return for the return period.”

**103 Publication of names**

- (1) Section 146 is repealed.
- (2) **Subsection (1)** applies to publication that, but for this section, would be required after the date on which this Act receives the Royal assent.

**104 Write-off of tax by Commissioner**

- (1) In section 177C, the following is inserted after subsection (5):  
“(5B) If the Commissioner writes off outstanding tax for a taxpayer who has a credit of tax carried forward under **section LB 2(3C)** of the Income Tax Act 2004, the Commissioner must extinguish all or part of the credit of tax on a dollar-for-dollar basis.  
“(5C) If a taxpayer has both a net loss to which subsection (5) applies and a credit of tax carried forward to which **subsection (5B)** applies, the Commissioner must determine the part of the amount extinguished that relates to the net loss and the part of the amount extinguished that relates to the credit of tax carried forward.  
“(5D) In making a determination under **subsection (5C)**, the Commissioner must consider any preference of the taxpayer concerning the apportionment if the Commissioner is aware of the preference before making the determination.”
- (2) **Subsection (1)** applies for the 2005–06 and subsequent income years.

## Part 4

### Amendments to other Acts

#### *Amendments to Goods and Services Tax Act 1985*

#### **105 Goods and Services Tax Act 1985**

**Sections 106 to 110** amend the Goods and Services Tax Act 1985.

#### **106 Meaning of term “supply”**

After section 5(6A), the following is inserted:

“(6AB) For the purposes of this Act, a levy paid to the New Zealand Fire Service Commission under section 48 of the Fire Service Act 1975 that is not penalty or default interest under that Act is treated as being consideration for a supply of services in the course or furtherance of a taxable activity carried on by the Commission.”

#### **107 Imposition of goods and services tax on imports**

In section 12(4)(d)(ii), “does not qualify for an input tax credit in relation to” is replaced by “is not entitled to make an input tax deduction under section 20(3) in respect of”.

#### **108 Credit and debit notes**

In section 25(2)(a), “tax charged by that supplier in relation to a taxable supply” is replaced by “tax charged on a taxable supply made by that supplier and be”.

#### **109 Section 26A replaced**

Section 26A is replaced by the following:

##### **“26A Factored debts**

“(1) This section applies to a registered person who—

“(a) sells a debt to another person during a taxable period; and

“(b) is required to account for tax payable on a payments basis.

“(2) The sale of the debt is treated as being a taxable supply—

“(a) that is made by the registered person during the taxable period; and

“(b) on which the amount of tax charged is the tax fraction of the remaining book value of the debt.”

**110 Cancellation of registration**

- (1) After section 52(5A), the following is inserted:  
“(7) In subsections (5) and (5A), for a person who is a non-resident, a taxable activity means a taxable activity carried on in New Zealand.”
- (2) **Subsection (1)** applies to a person who becomes registered under the Goods and Services Tax Act 1985 on or after the date on which this Act receives the Royal assent.

*Amendment to Taxation Review Authorities Act 1994*

**111 Small claims jurisdiction of Authorities**

- (1) In section 13B(1)(b) of the Taxation Review Authorities Act 1994, “of precedent” is replaced by “, the decision of which affects or may affect the outcome of a separate and unrelated dispute between the Commissioner and a taxpayer other than the disputant”.
- (2) **Subsection (1)** applies for disputes that begin under Part 4A of the Tax Administration Act 1994 on or after 1 April 2005.

*Amendment to Privacy Act 1993*

**112 Schedule 3 amended**

In Schedule 3 of the Privacy Act 1993, in the item “Tax Administration Act 1994”, “and 85G” is replaced by “, 85G, and **85H**”.

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62 **Schedule**  
**New schedule 6B inserted in Income Tax Act 2004**

**Schedule 6B**  
**Expenditure in avoiding, remedying, or mitigating  
detrimental effects of discharge of contaminant**

**Part A**

Expenditure relating to activity or improvement to land

- 1 expenditure on investigating and testing, before a choice between options, of locations and methods for an activity or improvement that is intended to avoid, remedy, or mitigate future detrimental effects on the environment from the discharge of a contaminant
- 2 expenditure, on the construction of an improvement to land in New Zealand, incurred in order to avoid or mitigate future detrimental effects on the environment from the discharge of a contaminant
- 3 expenditure on screen planting, on land in New Zealand, incurred in association with the construction of an improvement to the land that is intended to avoid, or mitigate future detrimental effects on the environment from the discharge of a contaminant
- 4 expenditure on riparian planting, on land in New Zealand, incurred in order to avoid or mitigate future detrimental effects on the environment from the discharge of a contaminant
- 5 expenditure on an activity that is intended to avoid or mitigate the future discharge of a contaminant

**Part B**

Expenditure relating to monitoring, remedies, and mitigation

- 1 expenditure related to monitoring the discharge of a contaminant
- 2 expenditure related to monitoring detrimental effects on the environment from the discharge of a contaminant
- 3 expenditure, incurred after the discharge of a contaminant, on avoiding, remedying, or mitigating detrimental effects on the environment from the discharged contaminant

**Schedule 6B**—continued

**Part B**—*continued*

- 4 expenditure, incurred after the discharge of a contaminant, on removing an improvement to land in New Zealand for the purpose of avoiding, remedying, or mitigating detrimental effects on the environment from the discharged contaminant
- 5 expenditure, incurred after the discharge of a contaminant, on the installation of impermeable surfaces on land in New Zealand with the purpose of avoiding, remedying, or mitigating detrimental effects on the environment from the discharged contaminant
- 6 expenditure, incurred after the discharge of a contaminant, on replanting land in New Zealand in association with expenditure to avoid, remedy, or mitigate detrimental effects on the environment from the discharged contaminant

**Part C**

**Excluded expenditure**

- 1 expenditure related to land reclamation
- 2 expenditure relating to dredging