

Taxation (Annual Rates, Savings Investment, and Miscellaneous Provisions) Bill

Government Bill

Explanatory note

General policy statement

This bill introduces important changes to current taxation law.

The tax treatment of individual investors who save by investing directly in shares, and the tax treatment of investors who save using financial intermediaries (like managed funds) will be more closely aligned.

The current approach raises inconsistencies between investors. It has the potential to undermine the rollout of the Government's KiwiSaver initiative, and has far reaching negative economic effects, particularly for financial intermediation. For example, investors otherwise facing a tax rate of 19.5% are currently overtaxed if they use a financial intermediary (most intermediaries pay tax at 33%). Similarly, capital gains on New Zealand equities are usually taxed if the equities are held through an intermediary, but may not be taxed if they are held directly.

Amendments will mean that certain financial intermediaries (called portfolio investment entities or PIEs) will have a tax treatment that is more closely aligned with the tax treatment of their underlying investors. The income of a PIE will be taxed using a tax rate based on the tax rates of the underlying investors. Gains realised on New Zealand equities (and certain Australian equities) held by a PIE will not be taxed. Such a treatment aligns the tax treatment for an investor through a PIE with the tax treatment of an individual direct investor.

Investments into the grey list of 8 countries (Australia, Canada, Germany, Japan, Norway, Spain, the United Kingdom, and the United States) which currently receive preferential tax treatment under the foreign investment fund (FIF) taxation rules will be aligned with investments into non-grey list countries. However, the treatment of certain investments into Australian listed companies that are Australian resident will not change.

Amendments will be made to the specified superannuation contribution withholding tax (SSCWT) rules, to minimise the possibility of excessive salary sacrifice being used to gain tax advantages. The changes will ensure that employer superannuation contributions are taxed at approximately the correct marginal rate for employees.

Amendments will allow the depreciation and write-off of expenditure on certain unsuccessful geothermal wells. Consequently, tax relief will be provided for expenditure that is otherwise a taxation “black hole”.

Amendments will exempt certain Australian superannuation funds from the FIF taxation rules and will exempt from income tax certain payments to military personnel involved in operational areas. Also, income from the sale of patents will be able to be spread forward, over 3 years.

Amendments will allow the GST zero-rating of financial services composed of certain active investments in equity and participatory securities. Consequently, holders of such investments will be allowed input tax deductions for GST paid on purchases relating to the investments (for example, management services).

The Commissioner’s power to retain documents will be expanded.

The bill also contains a large number of remedial, minor or consequential amendments. Many of these amendments have retrospective application, as shown by clause 2 of the bill. This is necessary to ensure that the intended policy of the provisions, as amended, applies to everyone intended to be subject to that policy.

Part 1

Annual rates of income tax for 2006–07 tax year

This provision sets the annual income tax rates that will apply for the 2006–07 tax year. The rates that will apply are those in schedule 1 of the Income Tax Act 2004.

Part 2 Amendments to Income Tax Act 2004

Taxation of savings investment income

New tax rules for PIEs

New tax rules are proposed for New Zealand collective investment vehicles (called CIVs) that meet the new PIE criteria. A CIV that meets the relevant criteria and chooses to become a PIE will not be taxable on realised share gains made on share investments in New Zealand companies and certain Australian companies. PIEs will also pay tax on investment income at a composite rate, of not more than 33%, that depends on the marginal tax rates of their investors. Income earned by investors through a PIE will not affect the investors' entitlements to family assistance or their student loan repayment and child support obligations.

The proposed rules will prevent the over-taxation of people on lower incomes who invest in managed funds, and will eliminate the taxation of most gains on the sale of New Zealand and Australian shares held through a fund. The PIE rules are intended to remove long-standing disadvantages of saving through CIVs by treating investments in PIEs in broadly the same way as direct investments by individuals.

The proposed changes are particularly important, given the implementation of KiwiSaver on 1 April 2007.

New tax rules for offshore portfolio investment in shares

The bill introduces new tax rules for investment in a foreign company by a person who own less than 10% of the foreign company.

Under the proposed rules, individuals investing in Australian resident companies listed on the Australian Stock Exchange will be taxed on dividends if they hold the investment on capital account. Individuals will be taxed on dividends and realised capital gains if they hold the investment on revenue account.

For individuals investing outside New Zealand and Australia, a \$50,000 cost threshold will apply, below which the investments will typically be taxable on dividends. For offshore investments above the threshold, investors will be able to choose a method under which the investments will be taxed, broadly, on a maximum of 5% of the opening value of the investments each year. For individuals, gains in

excess of 5% will receive rollover relief until the funds are repatriated to New Zealand.

Under the proposed rules, the taxation of an individual's offshore portfolio share investment will be largely independent of whether the investment is made directly or through a PIE. Also, investments into certain countries will no longer be disadvantaged, and the preferential treatment of investments into grey list countries will be removed.

SSCWT and extreme salary sacrifice

Amendments will give effect to changes signalled in the officials' issues paper *Countering extreme salary sacrifice: ensuring that employer superannuation contributions are taxed fairly*.

The main change is to base the selection of a rate under the progressive SSCWT scale on the total of salary and wages and employer superannuation contributions, instead of on salary and wages alone. To minimise the possibility of over-taxation, thresholds for rate selection will be increased by 15% in comparison with the corresponding personal income tax thresholds. These changes will ensure that employer superannuation contributions are taxed at approximately the appropriate marginal rate for individual employees.

The changes will minimise the possibility of the progressive SSCWT scale being used to gain significant tax advantages through excessive salary sacrifice.

The 39% flat rate for SSCWT will be removed, and the PAYE method for assessing tax liabilities on employer superannuation contributions will also be removed. This will help to reduce complexity in taxation legislation.

Geothermal wells — deductibility of capital costs

Concerns have been raised regarding the uncertainty of deducting the capital costs of failed geothermal wells drilled in New Zealand. These changes allow a deduction for the cost of failed geothermal wells, as this is the economically correct result. A tax deduction will be allowed for the cost of failed wells from the 2003–04 income year. The changes also include rules to deal with failed geothermal wells that are subsequently sold or brought back into service.

Australian superannuation fund exemption

A new exemption is proposed for the FIF taxation rules, to exempt interests held by a New Zealand resident in certain Australian superannuation schemes. For the exemption to apply, the Australian superannuation scheme must be subject to strict preservation rules (including restrictions on the early release of funds before a person's retirement). It is proposed that the new exemption will apply for the 2006–07 and later income years.

Tax exemption for military personnel in operational areas

It is proposed that operational allowances paid to military personnel on specified missions in designated operational areas will be exempt from income tax. Other amounts paid to such personnel may be exempted from income tax by an appropriately constituted ministerial committee.

Spreading taxable income on sale of patents

An amendment is proposed that enables taxable income on the sale of patents to be spread evenly over 3 years, including the year of sale. This will ease potential cashflow difficulties which may act as a barrier to investment in research and development. Cashflow difficulties sometimes arise when patents are sold for non-cash items, such as shares or share options in a company seeking to commercialise the research covered by a patent, which means that vendors of patents can have a tax liability without having the cash available to pay the tax.

Remedial provisions relating to the *Rewriting the Income Tax Act* project

The Rewrite Advisory Panel has identified that the 2004 Act, as originally enacted, contains some unintended changes in legislative outcomes when compared with the Income Tax Act 1994. The Panel has recommended that these changes in outcome should be corrected with the remedial amendments applying from the beginning of the 2005–06 income year. The provisions affected are:

- section DB 9B (Base price adjustment under old financial arrangement rules):
- section DB 36 (Bribes paid to public officials):

- section EE 33 (Transfers of depreciable property between associated persons in a non-qualifying amalgamation):
- section EX 36(1) (Immigrant's accrued superannuation entitlement exemption):
- section EY 8(3)(b) (Meaning of life insurance):
- section FC 21(3) (Amounts derived by non-residents from renting films):
- section NG 1(2) (Application of NRWT rules):
- section OB 1 (Definition of fixed rate share):
- schedule 22A (Identified policy changes).

In addition, there are corrections to cross-references and terminology in sections EX 52, EX 53, OD 5(6F), and OD 8(3).

Minor, remedial, or consequential matters

Family assistance

A number of remedial amendments are required following the implementation of the Working for Families package. These amendments are to:

- ensure that concurrent entitlement to the in-work payment and weekly compensation under the *Injury Prevention, Rehabilitation, and Compensation Act 2001* is limited to accidents on or after 1 January 2006:
- clarify that recipients of parental leave payments are not precluded from entitlement to the in-work payment, if they met the necessary full-time work test prior to receiving paid parental leave:
- provide flexibility to allow entitlement to the relevant elements of family assistance when a shared care arrangement is intended to continue for at least four months (one third of a year), and the proportion of care is such that each parent has exclusive care for at least one third of the shared care period:
- ensure that when there are eligible periods of part weeks that together form 1 continuous period, families do not lose entitlement to the in-work payment for any week in which the eligibility criteria are otherwise met:

- ensure that the ring-fencing provisions reflect the policy intent that maximum family support entitlement would be guaranteed for periods spent on a benefit if a family's annualised monthly income (calculated on a month-by-month basis while on a benefit) is below the family support abatement threshold:
- correct a number of errors of a minor technical or drafting nature.

Depreciation of patent applications and plant variety rights

The *Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005* introduced new rules for depreciating patents, patent applications, and plant variety rights. The bill introduces a number of amendments to correct unintended consequences of the new rules, and enhance their operation.

Business environmental tax rules

New rules for business environmental expenditure were enacted in the *Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005*, with application for income years starting on or after 10 June 2005. The new rules clarified and expanded tax deductions available for business environmental expenditure. Several retrospective remedial changes are proposed, to clarify the new rules and ensure that they apply as intended. The proposals include:

- ensuring that expenditure incurred prior to the cessation of business on the treatment of by-products is deductible:
- correcting a cross-reference relating to refunds from the environmental restoration account (ERA):
- clarifying that 2 types of ERA refunds are permitted, those requested by a person and those made when a person's ERA balance exceeds the maximum:
- clarifying how ERA transfers are to be treated:
- ensuring that a person who took a position on the definition of industrial waste before the introduction of the new rules can apply that position up until the time when the new rules apply.

Depreciation formulas — apportionment of business and private use for items disposed of in year acquired

Two new formulas are proposed, to calculate the apportionment between business and private use when there is a loss on a disposal of depreciable property. The 2 new formulas correct an anomaly that could otherwise prevent a deduction for such a loss when the depreciable property is acquired and disposed of in the same income year.

Other minor, remedial or consequential matters

Other minor or remedial amendments are to:

- remedy issues arising from the enactment of payment dates alignment rules and share-lending rules in the *Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006*:
- clarify the exclusions from the minor beneficiary rule by correcting the drafting of section HH 3C:
- clarify that companies cannot maintain an imputation credit account if they are treated as being non-resident under a double tax agreement (other than Australian imputation credit account companies):
- remedy minor issues arising from the enactment of the death and asset transfer rules in the *Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005*:
- allow, in certain circumstances, a refund of tax after a credit is made to a company's imputation credit account for amounts that have satisfied an income tax liability:
- amend the loss rules for consolidated groups so they are consistent with the loss rules for non-consolidated groups:
- clarify the operation of the rules for revoking a PAYE intermediary's listing:
- clarify the valuation of vehicles for fringe benefit tax purposes and, in particular, specify that certain vehicles owned or leased before 1 April 2006 must be valued using cost price after that date.

Donee status

The Children on the Edge (NZ) Trust, the DIPS'N Charitable Trust (International), The New Zealand Council of the Ramabai Mukti

Mission Trust Board, the Waterharvest Trust and the Zonta International District 16 (New Zealand) Charitable Trust are engaged in activities which come within the guidelines established by Cabinet for granting donee status to organisations which send money offshore. Amendments propose that they be added to the list of approved organisations in section KC 5(1) of the Income Tax Act 2004.

Part 3 Amendments to Tax Administration Act 1994

Inspection of documents

It is proposed that the Commissioner may retain documents removed from a person's premises, or otherwise provided to the Commissioner, for purposes of a full and complete inspection. This may include use in Court proceedings.

Currently, the Commissioner may only retain documents removed from a person's premises for purposes of copying the documents. Valuable forensic evidence may be lost if the Commissioner is restricted to retaining documents for copying and cannot do a full and complete inspection.

Dispute procedures

An amendment provides that in situations where the Commissioner makes an assessment of tax, he is not required to first issue the taxpayer with a Notice of Proposed Adjustment if the Commissioner has reasonable grounds to believe that the taxpayer may have been involved in fraudulent activity.

Part 4 Amendments to other Acts *Income Tax Act 1994*

Consequential remedial matters

Proposed amendments to the Income Tax Act 1994 are all consequential remedial matters.

Goods and Services Tax Act 1985

GST and financial services: activities connected with equity investment

Proposed amendments treat some holdings of equity securities or participatory securities as a supply of financial services. The objective of these amendments is to allow venture capital funds and investment companies to have input tax deductions for GST paid on purchases (such as management services) in some circumstances. A fund or company must have an active managerial or advisory role in the business that they have invested in, and the investment must be by way of equity or participatory securities.

Minor remedial issue

A further amendment extends the circumstances in which a supply of fringe benefits is excluded from the GST tax base. If a GST-registered employer is unable to deduct input tax for a benefit, it will be excluded.

Clause-by-clause analysis

Clause 1 gives the title of the Act.

Clause 2 gives the commencement dates for the Act.

Part 1

Annual rates of income tax for 2006–07 tax year

Clause 3 sets the income tax imposed by section BB 1 of the Income Tax Act 2004 for the 2006–07 tax year at the basic rates specified in schedule 1 of the Income Tax Act 2004.

Part 2

Amendments to Income Tax Act 2004

Part 2 amends the *Income Tax Act 2004*.

Clause 5 amends *section CD 26* which removes amounts paid by some foreign investment funds (FIFs) from the definition of *dividend* if the relevant FIF income or loss has been calculated using certain calculation methods, as part of the new savings investment regime.

Clause 6 inserts a new *subpart CP* as part of the new savings investment regime. New *section CP 1* provides that a person who invests in a PIE has an amount of income on account of their portfolio investor attributed income. New *section CP 2* provides that a distribution received by an investor from a PIE is income of the investor.

Clause 7 amends *section CQ 5* which limits the application of the FIF taxation rules and makes consequential changes, as part of the new savings investment regime and the new exemption for certain Australian superannuation funds.

Clause 8 amends *section CQ 6* consequential to the new savings investment regime.

Clause 9 amends *section CS 1(2)* as a remedial measure.

Clause 10 replaces *section CW 19* to exempt certain amounts of income derived by New Zealand Defence Force personnel serving in operational areas.

Clause 11 amends *section CX 43B* as a remedial measure.

Clause 12 inserts a new *heading* and new *sections CX 44C and CX 44D* as part of the new savings investment regime. New *section CX 44C* provides that income derived by a PIE from disposing of certain shares in New Zealand-resident and Australian-resident companies is excluded income. New *section CX 44D* provides that portfolio investor attributed income derived by an investor is excluded income in certain circumstances. *Section CX 44D* also provides that a distribution by the PIE that is derived by an investor is excluded income.

Clause 13 inserts a new *section CZ 20* consequential to the insertion of provisions for the depreciation of certain geothermal wells.

Clause 14 amends *section DB 9B* as a remedial measure consequential to the *Rewriting the Income Tax Act* project.

Clause 15 amends *section DB 31* consequential to the insertion of provisions correcting unintended consequences of recently enacted provisions for depreciating patents and related applications.

Clause 16 amends *section DB 36* as a remedial measure consequential to the *Rewriting the Income Tax Act* project.

Clause 17 inserts new *section DB 43B* allowing a deduction for a portfolio investor attributed loss as part of the new savings investment regime.

Clause 18 amends *section DE 2* to allow deductions, in the year a motor vehicle is disposed of, for depreciation loss arising from partial business use of the vehicle.

Clause 19 replaces *section DN 5(1)* as part of the changes to the FIF taxation rules by the new savings investment regime.

Clause 20 amends *section DN 6* which limits the application of the FIF taxation rules, and makes remedial and consequential changes, as part of the new savings investment regime and the new exemption for certain Australian superannuation funds.

Clause 21 amends *section DN 7* to change a cross reference consequential to the new savings investment regime

Clause 22 repeals *section DN 8* as part of the changes to the FIF taxation rules by the new savings investment regime.

Clause 23 inserts new *sections DZ 14 and DZ 15* as part of correcting unintended consequences of recently enacted provisions for depreciating patents, plant variety rights and related applications. Also deductions are allowed for certain geothermal wells.

Clause 24 amends *section EE 6* to provide that certain geothermal wells can be depreciated.

Clause 25 inserts a new *section EE 11(6)* to allow deductions, in the year an item is acquired and disposed of, for depreciation loss arising from partial business use of the item.

Clause 26 amends *section EE 16*, as part of correcting unintended consequences of recently enacted provisions for depreciating patents, plant variety rights and related applications.

Clause 27 inserts a new *section EE 24B* to allow a one-off deduction for certain plant variety rights applications, as part of correcting unintended consequences of recently enacted provisions for depreciating plant variety rights and related applications.

Clause 28 replaces *section EE 25(3)*. The new provision is remedial in nature.

Clause 29 amends *section EE 25D(3)* as a remedial measure.

Clause 30 replaces *section EE 25E(1)*. The new provision is remedial in nature.

Clause 31 amends *section EE 27* as part of correcting unintended consequences of recently enacted provisions for depreciating patents and related applications.

Clause 32 replaces *sections EE 27B to EE 27E* as part of correcting unintended consequences of recently enacted provisions for depreciating patents and related applications.

Clause 33 amends *section EE 32(1)* to provide that certain geothermal wells will attract a deduction when no longer used.

Clause 34 re-enacts the *heading before section EE 33, section EE 33, and section EE 34* consequential to the *Rewriting the Income Tax Act* project.

Clause 35 amends *section EE 33(3)* consequential to allowing deductions, in the year an item is acquired and disposed of, for depreciation loss arising from partial business use of the item.

Clause 36 amends *section EE 34(2)* consequential to allowing deductions, in the year an item is acquired and disposed of, for depreciation loss arising from partial business use of the item.

Clause 37 replaces *section EE 37(2)* consequential to the insertion of provisions for the depreciation of certain geothermal wells and for correcting unintended consequences of recently enacted provisions for depreciating patents and related applications.

Clause 38 inserts a new *section EE 38(6B)* consequential to the insertion of provisions for the depreciation of certain geothermal wells.

Clause 39 amends *section EE 40* consequential to the insertion of provisions for the depreciation of certain geothermal wells.

Clause 40 inserts a new *section EE 44B* consequential to the insertion of provisions for the depreciation of certain geothermal wells.

Clause 41 replaces *section EE 49(2)* consequential to allowing deductions, in the year an item is acquired and disposed of, for depreciation loss arising from partial business use of the item.

Clause 42 amends *section EE 51* consequential to the insertion of provisions for the depreciation of certain geothermal wells and for correcting unintended consequences of recently enacted provisions for depreciating patents and related applications.

Clause 43 amends *section EE 52* consequential to correcting unintended consequences of recently enacted provisions for depreciating patents, plant variety rights and related applications.

Clause 44 amends *section EE 58* to give a patent application the same legal life as a related patent, and visa versa, as part of correcting unintended consequences of recently enacted provisions for depreciating patents and related applications.

Clause 45 inserts a new *section EI 3B* which spreads income from the sale of patent rights over 3 years.

Clause 46 inserts a new *section EJ 21(3) and (4)* which relates to the allocation of deductions for expenditure on research and development and connected market development.

Clause 47 corrects a cross-reference in *section EK 6*.

Clause 48 replaces *section EK 12(8)* as a remedial matter arising from the enactment of environmental restoration rules in the *Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005*.

Clause 49 inserts a new *section EK 16(5B)* as a remedial matter arising from the enactment of environmental restoration rules in the *Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005*.

Clause 50 amends *section EW 32*.

Clause 51 replaces *section EX 33* which limits the application of the FIF taxation rules for certain types of investment in a FIF, as part of the new savings investment regime.

Clause 52 inserts a new *section EX 33B* which exempts interests in an Australian superannuation scheme from the application of the FIF taxation rules.

Clause 53 makes a remedial amendment to a cross-reference in *section EX 36(1)* consequential to the *Rewriting the Income Tax Act* project.

Clause 54 amends *section EX 38* which provides for the calculation methods that may be used to calculate FIF income and FIF loss under the FIF taxation rules, to provide for the new calculation methods that are part of the new savings investment regime.

Clause 55 amends references to calculation methods in *section EX 40* consequential to the new savings investment regime.

Clause 56 amends references to calculation methods in *section EX 41* consequential to the new savings investment regime.

Clause 57 repeals *section EX 44* consequential to the new savings investment regime.

Clause 58 inserts new *sections EX 44B and EX 44C* to prescribe 2 new calculation methods as part of the changes to the FIF taxation rules by the new savings investment regime.

Clause 59 repeals *section EX 45* consequential to the new savings investment regime.

Clause 60 inserts a new *section EX 45B* which prescribes a new calculation method consequential to the new savings investment regime.

Clause 61 amends *section EX 46(4)* consequential to the new savings investment regime.

Clause 62 inserts a new *section EX 46B* which prescribes the FIF income or loss for investors in grey list companies with interests in other entities consequential to the new savings investment regime.

Clause 63 amends references to calculation methods in *section EX 47* consequential to the new savings investment regime.

Clause 64 repeals *section EX 48* consequential to the new savings investment regime.

Clause 65 repeals *section EX 49* consequential to the new savings investment regime.

Clause 66 amends references to calculation methods in *section EX 50* consequential to the new savings investment regime.

Clause 67 amends references to calculation methods in *section EX 51*, and provides for the consequences of changing between the new calculation methods consequential to the new savings investment regime.

Clause 68 inserts new *section EX 51B* which provides for the consequences of changing from a calculation method that is no longer available to a new calculation method consequential to the new savings investment regime.

Clause 69 amends references to calculation methods in *section EX 52* consequential to the new savings investment regime.

Clause 70 amends *section EX 53* to correct references to a calculation method, consequential to the *Rewriting the Income Tax Act* project. Other amendments are consequential to the new savings investment regime.

Clause 71 inserts a new *section EX 54B* which provides for the consequences for a person, who did not use a calculation method

before the new rules were introduced, of using a new calculation method consequential to the new savings investment regime.

Clause 72 amends *section EX 56* consequential to the *Rewriting the Income Tax Act* project and the new savings investment regime.

Clause 73 amends references to calculation methods in *section EX 59* consequential to the new savings investment regime.

Clause 74 replaces *section EY 8(3)(b)* to correct the definition of *life insurance* as a remedial measure consequential to the *Rewriting the Income Tax Act* project.

Clause 75 repeals *section EZ 7* as part of the changes to the FIF taxation rules by the new savings investment regime.

Clause 76 inserts a new *section FB 7(8) to (11)* to allow deductions, in the year an item is acquired and disposed of, for depreciation loss arising from partial business use of the item.

Clause 77 amends *section FC 21* as a remedial measure consequential to the *Rewriting the Income Tax Act* project.

Clause 78 replaces *section FE 5(2)* consequential to *clause 34*.

Clause 79 amends references to calculation methods in *section FG 8G(1)(b)* consequential to the new savings investment regime.

Clause 80 replaces *section FI 6* as a remedial amendment consequential to the enactment of the death and asset transfer rules in the *Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005*.

Clause 81 corrects cross-references in *section FI 7* as a remedial amendment consequential to the enactment of the death and asset transfer rules in the *Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005*.

Clause 82 amends references to calculation methods in *section GD 14* consequential to the new savings investment regime.

Clause 83 amends *section HH 3C(1)* by correcting the punctuation.

Clause 84 amends *section HI 4(3)* by correcting a cross-reference.

Clause 85 inserts a new *subpart HL* to provide rules for PIEs, as part of the new savings investment regime. New *section HL 1* outlines the effects of the PIE rules, as part of the new savings investment regime. New *section HL 2* provides for the immediate consequences of an entity becoming a PIE. New *section HL 3* provides for the treatment, after an entity becomes a PIE, of the entity's tax liabilities

arising before or when the entity becomes a PIE. New *section HL 4* provides for the immediate consequences of an entity ceasing to be a PIE. New *sections HL 5 and HL 6* prescribe the eligibility requirements for being a PIE. New *section HL 7* prescribes the requirements for an election to become a PIE and the cancellation of an election. New *section HL 8* prescribes the calculation of the portfolio investor class taxable income of a portfolio investor class. New *section HL 9* prescribes the calculation of the portfolio investor class net income of a portfolio investor class. New *section HL 10* provides that the income tax liability of a PIE for a tax year is the total portfolio investment entity tax payable by the PIE for portfolio entity periods in the tax year. New *section HL 11* prescribes portfolio entity periods in a tax year. New *section HL 12* imposes portfolio investment entity tax on the income of a PIE for a period. The rate of the tax is calculated by reference to the tax rate for each investor in the PIE. New *section HL 13* provides for the treatment of a net loss of the PIE arising before the entity becomes a PIE. New *section HL 14* provides for the treatment of a PIE's net loss arising after it became a PIE. New *section HL 15* determines the amount of a person's portfolio investor attributed income or portfolio investor attributed loss. New *section HL 16* provides for the treatment of a person's portfolio investor attributed loss. New *section HL 17* provides for the ring-fencing of a loss incurred in a period by a PIE from certain real property. New *section HL 18* provides for the treatment of tax credits received by a PIE.

Clause 86 amends *section IE 1* to restrict the carrying forward of losses by a PIE consequential to the new savings investment regime.

Clause 87 amends *section IE 4* to remove restrictions on the carrying forward of FIF net losses, consequential to the new savings investment regime.

Clause 88 amends *section IG 5* to remove restrictions on the carrying forward of FIF net losses by a group of companies, consequential to the new savings investment regime.

Clause 89 amends *section KC 5(1)* by adding new names to the list of organisations, donations to which are subject to a rebate.

Clause 90 amends the formula in *section KD 1(1)(g)(ii)* as a remedial matter.

Clause 91 amends the definition in *section KD 2(2)* of the item *IWP* or *CTC* to clarify that the in-work payment or child tax credit are payable in the alternative, not concurrently.

Clause 92 amends *section KD 2AAA* to clarify that the in-work payment is payable concurrently with paid parental leave payments and compensation payments for accidents on or after 1 January 2006, when other criteria are met. The clause amends the definition of the item *weeks*.

Clause 93 replaces *section KD 2AA(2) and (2B)* to identify who is a principal caregiver for the purposes of recognising shared care arrangements.

Clause 94 amends *section KD 3(1)* as a remedial matter.

Clause 95 amends *section KD 5(6A)(b)(ii)* to include in-work payments in the list of amounts used in the calculation of interim instalments.

Clause 96 amends *section KD 5C* as a remedial matter.

Clause 97 amends *section KD 7(3A)* and repeals *section KD 7(3C)*. Consequently, *section KD 7(3A)* will apply when a credit of tax has been paid with an income-tested benefit and duplication is removed.

Clause 98 inserts new *subpart KI* relating to the tax rebates received by investors in a portfolio investment entity consequential to the new savings investment regime.

Clause 99 inserts a new *section LB 2(2C) and (2D)* providing for imputation credits received by PIEs to have limited benefit for PIEs but some benefit for investors, as part of the new savings investment regime.

Clause 100 inserts a new *section LC 1(1B) and (1C)* providing for foreign tax credits received by PIEs to have limited benefit for PIEs but some benefit for investors, as part of the new savings investment regime.

Clause 101 inserts a new *section LD 3(1B) and (1C)* providing for resident withholding tax credits received by PIEs to have limited benefit for PIEs but some benefit for investors, as part of the new savings investment regime.

Clause 102 inserts a new *section LD 8(1B) and (1C)* providing for dividend withholding payment credits received by PIEs to have limited benefit for PIEs but some benefit for investors, as part of the new savings investment regime.

Clause 103 repeals *section LD 9(1B)(b)* as a remedial matter arising from the enactment of securities lending rules in the *Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006*.

Clause 104 inserts a new *section LF 2B* providing for underlying foreign tax credits received by PIEs to have limited benefit for PIEs but some benefit for investors, as part of the new savings investment regime.

Clause 105 amends *section MB 8(1)* as a remedial matter arising from the enactment of payment dates alignment rules in the *Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006*.

Clause 106 amends the list of defined terms in *section MB 16* as a remedial matter arising from the enactment of payment dates alignment rules in the *Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006*.

Clause 107 amends the heading to *section MB 17(4)* as a remedial matter arising from the enactment of payment dates alignment rules in the *Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006*.

Clause 108 amends *section MB 19* as a remedial matter arising from the enactment of payment dates alignment rules in the *Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006*.

Clause 109 amends the item *Example: Sections MB 20 to MB 24* as a remedial matter arising from the enactment of payment dates alignment rules in the *Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006*.

Clause 110 amends the item *Examples: Sections MB 26 and MB 27 (using March balance dates)* as a remedial matter arising from the enactment of payment dates alignment rules in the *Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006*.

Clause 111 amends *section MB 28* as a remedial matter arising from the enactment of payment dates alignment rules in the *Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006*.

Clause 112 amends *section MD 2(4)* to allow, in certain circumstances, a refund of tax after a credit is made to a company's

imputation credit account for amounts that have satisfied an income tax liability.

Clause 113 amends *section ME 1*. *Subclause (1)* replaces *subsection (2)(b)* to ensure certain companies treated as non-residents under a double tax agreement cannot maintain an imputation credit account. *Subclause (2)* inserts a new *subsection (2)(k)* consequential to the new savings investment regime.

Clause 114 amends *section NBB 4* to clarify the operation of the rules for revoking a PAYE intermediary's listing.

Clause 115 amends *section ND 1A* to clarify the FBT valuation method to be used for certain vehicles.

Clause 116 amends *section NE 2(1)* as part of amending the SSCWT rules to ensure that employer superannuation contributions are taxed at approximately the appropriate marginal rate taking into account the contributions.

Clause 117 replaces *sections NE 2AA, NE 2AB, and NE 2A* as part of amending the SSCWT rules to ensure that employer superannuation contributions are taxed at approximately the appropriate marginal rate taking into account the contributions.

Clause 118 amends *section NE 3* as part of amending the SSCWT rules to ensure that employer superannuation contributions are taxed at approximately the appropriate marginal rate taking into account the contributions.

Clause 119 amends *section NE 6(a)* as part of amending the SSCWT rules to ensure that employer superannuation contributions are taxed at approximately the appropriate marginal rate taking into account the contributions.

Clause 120 amends *section NF 1(2)* to provide that excluded income of an investor from a PIE is not subject to resident withholding tax consequential to the new savings investment regime.

Clause 121 amends *section NF 4(6B)* as a remedial measure.

Clause 122 inserts a new *section NF 9(1)(c)* to provide that a PIE may hold a certificate of exemption consequential to the new savings investment regime.

Clause 123 amends *section NF 12* as a remedial matter arising from the enactment of securities lending rules in the *Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006*.

Clause 124 amends *section NG 1(2)* as a remedial measure consequential to the *Rewriting the Income Tax Act* project.

Clause 125 amends *section NG 11(4B)* as a remedial measure.

Clause 126 amends *section OB 1* with various commencement dates and application provisions. *Subclause (2)* replaces the definition of *acquire* as part of correcting unintended consequences of recently enacted provisions for depreciating patents, plant variety rights and related applications. *Subclause (3)* inserts a cross-reference to the new definition of *approved deposit fund* contained in *section EX 33B*. *Subclause (4)* replaces the definition of *calculation method* as part of the changes to the FIF taxation rules by the new savings investment regime. *Subclause (5)* replaces the definition of *comparative value method* as part of the changes to the FIF taxation rules by the new savings investment regime. *Subclause (6)* replaces the definition of *deemed rate of return method* as part of the changes to the FIF taxation rules by the new savings investment regime. *Subclause (7)* amends the definition of *diminishing value* as a remedial matter. *Subclause (8)* amends the definition of *dispose* consequential to the insertion of provisions for the depreciation of certain geothermal wells and for correcting unintended consequences of recently enacted provisions for depreciating patents and related applications. *Subclause (9)* amends the definition of *distribution* consequential to the new savings investment regime. *Subclause (10)* amends the definition of *eligible company* so that certain dual-resident companies cannot group foreign losses under the rules for consolidated groups. This ensures that loss rules applying to consolidated groups are the same as those applying to other groups.

Subclause (11) amends the definition of *eligible period* so that a ring-fenced period is also an eligible period and can be excluded from the abatement formula in *subpart KD*. *Subclause (12)* amends the definition of *employer's contribution to superannuation savings* as part of amending the SSCWT rules to ensure that employer superannuation contributions are taxed at approximately the appropriate marginal rate taking into account the contributions. *Subclause (13)* amends the definition of *employment* as a remedial matter. *Subclause (14)* inserts a cross-reference to the definition of *exempt public sector superannuation scheme* contained in *section EX 33B*. *Subclause (15)* amends the definition of *FIF net loss* as part of the changes to the FIF taxation rules by the new savings investment regime. *Subclause (16)* amends the definition of *fixed rate share* as a

remedial measure consequential to the *Rewriting the Income Tax Act* project. *Subclause (17)* inserts a cross-reference to the definition of *foreign investment vehicle* contained in *section HL 6(10)*. *Subclause (18)* inserts a cross-reference to the definition of *formula FIF income or loss* contained in *section EX 44C(4)*. *Subclause (19)* inserts new definitions of *geothermal energy proving period* and *geothermal well* consequential to the insertion of provisions for the depreciation of certain geothermal wells. *Subclause (20)* replaces the definition of *investor* as part of the new savings investment regime.

Subclause (21) amends the definition of *non-participating redeemable share* as a remedial matter. *Subclause (22)* inserts a cross-reference to the definition of *operational allowance* contained in *section CW 19(4)*. *Subclause (23)* repeals the definition of *patent application date*. *Subclause (24)* repeals the definition of *pay and allowances*. *Subclause (25)* inserts definitions of, or cross-references to definitions of, *portfolio entity formation loss*, *portfolio entity investment*, *portfolio entity period*, *portfolio investment entity*, *portfolio investment entity tax*, *portfolio investor attributed income*, *portfolio investor attributed loss*, *portfolio investor class*, *portfolio investor class available land loss*, *portfolio investor class fraction*, *portfolio investor class investment value*, *portfolio investor class land gain*, *portfolio investor class land loss*, *portfolio investor class net income*, *portfolio investor class net loss*, *portfolio investor class taxable income*, *portfolio investor interest*, *portfolio investor interest fraction*, *portfolio investor rate*, and *portfolio investor rebate* as part of the new savings investment regime. *Subclause (26)* inserts a new definition of *prescribed investor rate* as part of the new savings investment regime. *Subclause (27)* amends the definition of *provisional taxpayer* as part of the new savings investment regime. *Subclause (28)* amends the definition of *qualifying person* as a remedial matter. *Subclause (29)* inserts a cross-reference to the definition of *regulated superannuation fund* contained in *section EX 33B*. *Subclause (30)* inserts a cross-reference to the definition of *retirement savings account* contained in *section EX 33B*.

Subclause (31) amends the definition of *salary or wages* as a remedial matter. *Subclause (32)* amends the definition of *schedular income* as part of the new savings investment regime. *Subclause (33)* inserts a new definition of *SSCWT rate threshold amount* as part of amending the SSCWT rules to ensure that employer superannuation contributions are taxed at approximately the appropriate marginal rate taking into account the contributions. *Subclause (34)* inserts

a new definition of *zero-rated portfolio investor* as part of the new savings investment regime.

Clause 127 amends *section OB 6(3)* as part of the new savings investment regime.

Clause 128 amends *section OD 5(6F)* as a remedial measure consequential to the *Rewriting the Income Tax Act* project. The remedial measure applies retrospectively, unless a person has used the earlier law in certain circumstances.

Clause 129 amends *section OD 8(3)* consequential to other amendments.

Clause 130 amends *schedule 1* as part of amending the SSCWT rules to ensure that employer superannuation contributions are taxed at approximately the appropriate marginal rate.

Clause 131 amends *schedule 2* as a remedial matter relating to the valuation of motor vehicles for fringe benefit tax purposes.

Clause 132 amends *schedule 6B* to clarify the recently enacted business environmental tax rules.

Clause 133 amends *schedule 11* as a remedial matter.

Clause 134 amends *schedule 22A* as a remedial measure consequential to the *Rewriting the Income Tax Act* project.

Clause 135 amends *schedule 23* consequential to other remedial amendments related to the *Rewriting the Income Tax Act* project.

Part 3 Amendments to Tax Administration Act 1994

Part 3 amends the *Tax Administration Act 1994*.

Clause 137 amends *section 3* by inserting a new definition of *full and complete inspection* as part of the expansion of the Commissioner's power to retain documents.

Clause 138 replaces *section 14(9)* relating to the giving of a notice by post.

Clause 139 replaces *section 14B(8)* relating to the giving of a notice by post.

Clause 140 replaces *section 14C(8)* relating to the giving of a notice by post.

Clause 141 amends *section 16B* which expands the Commissioner's power to retain documents.

Clause 142 repeals *section 30B(d) and (h)* as a remedial matter arising from the enactment of securities lending rules in the *Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006*.

Clause 143 amends *section 32B(1)* as a consequence of amending the SSCWT rules.

Clause 144 amends *section 33(1)* to provide that a PIE is not required to make a return of income, consequential to the new savings investment regime.

Clause 145 inserts a new *section 36AB* that provides for electronic formats for certain returns as part of the new savings investment regime.

Clause 146 amends *section 49* as a remedial matter.

Clause 147 amends *section 51* as a remedial matter.

Clause 148 inserts a new *section 57B* to provide that a PIE must make quarterly returns and file an annual reconciliation statement consequential to the new savings investment regime.

Clause 149 amends *section 89C* so that the Commissioner is not required to first issue a taxpayer with a Notice of Proposed Adjustment if the Commissioner has reasonable grounds to believe that the taxpayer may have been involved in fraudulent activity.

Clause 150 amends *section 91AAF* as a remedial matter.

Clause 151 amends *section 120C* as a remedial matter.

Clause 152 amends the item *Example: Section 120KC* as a remedial matter arising from the enactment of payment dates alignment rules in the *Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006*.

Clause 153 amends the item *Example: Section 120KD* as a remedial matter arising from the enactment of payment dates alignment rules in the *Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006*.

Clause 154 amends *section 139A(2)* as part of the new savings investment regime.

Clause 155 amends *section 139AA* to provide for non-electronic filing penalties as part of the new savings investment regime.

Part 4 Amendments to other Acts

Income Tax Act 1994

Clauses 157 to 162 amend the *Income Tax Act 1994*.

Clause 157 inserts a new *section CZ 7* consequential on the changes to the tax treatment of certain geothermal wells.

Clause 158 replaces *section DJ 10(1)* to clarify the recently enacted business environmental tax rules. The new provision applies retrospectively to a taxpayer if they have taken a tax position in certain circumstances.

Clause 159 inserts a new *section DZ 7* to provide that certain geothermal wells will attract a deduction when no longer used.

Clause 160 amends *section HI 4(3)* as a remedial matter.

Clause 161 amends *section MD 2(4)* to allow, in certain circumstances, a refund of tax after a credit is made to a company's imputation credit account for amounts that have satisfied an income tax liability.

Clause 162 amends the definitions in *section OB 1* with various commencement dates and application provisions. *Subclause (2)* amends the definition of *eligible company* so that certain dual-resident companies cannot group foreign losses under the rules for consolidated groups. This ensures that loss rules applying to consolidated groups are the same as those applying to other groups. *Subclause (3)* inserts new definitions of *geothermal energy proving period* and *geothermal well* consequential to the insertion of provisions allowing deductions for certain geothermal wells.

Goods and Services Tax Act 1985

Clauses 164 and 165 amend the *Goods and Services Tax Act 1985*.

Clause 164 amends *section 3* and inserts a new definition of *actively managed investment* to allow the GST zero-rating of financial services composed of certain holdings of equity and participatory securities.

Clause 165 replaces *section 10(7)* to provide for the valuation of a supply of a fringe benefit.

Trustee Act 1956

Clauses 167 and 168 amend the *Trustee Act 1956*.

Clause 167 amends *section 2* consequential to the insertion of new *section 42E*.

Clause 168 inserts a new *heading* and a new *section 42E* allowing a trustee who is a PIE the power to adjust the interests of investors as required by the new savings investment regime.

Unit Trusts Act 1960

Clauses 170 and 171 amend the *Unit Trusts Act 1960*.

Clause 170 amends *section 2* consequential to the insertion of new *section 12A*.

Clause 171 inserts a new *section 12A* which provides a manager of a unit trust that is a PIE the power to adjust the interests of investors as required by the new savings investment regime.

Regulatory impact and compliance cost statement

An objective in developing tax law is to ensure that costs associated with the functioning of the tax system are minimised. This objective must necessarily be balanced by the need to protect the tax base, to treat people fairly, and to ensure an efficient system. All the proposals in this bill are intended to improve the efficiency and equity of the system. Some proposals, including those relating to the taxation of investment income, that deliver various levels of tax savings are also likely to increase tax-related compliance costs.

Compliance cost statement

The majority of changes to current law in the bill are remedial in nature and so are expected to decrease compliance costs, or keep them the same. The following changes to current law that are contained in the bill are expected to increase compliance costs:

Taxation of savings investment income

The current tax rules for savings investment income create a number of distortions.

The first kind of distortion (called the onshore problem) comes from the difference between the tax treatment of an individual investor who invests directly in New Zealand shares, and their tax treatment

if they invested in such shares through a New Zealand savings and investment vehicle (called a collective investment vehicle or CIV).

An investor who invests in New Zealand shares directly would probably be taxed only on dividends, and not realised capital gains, because they are likely to hold the investment on capital account.

However, an equivalent investment through a CIV will typically be taxed on dividends and realised capital gains, because the CIV will generally be in business as a share trader and consequently taxable on capital gains as a trader (on revenue account).

The current tax rules therefore create a clear tax disincentive to investment in New Zealand shares using a CIV, as opposed to an incentive for investing directly as an individual holder.

Another problem that arises with investment through CIVs is the mismatch between the tax rates of investors in a CIV and the tax rate at which the CIV is taxed. For example, superannuation schemes are taxed at 33%, while the investor might have a 19.5% marginal tax rate.

The second kind of distortion (called the offshore problem) arises from the current tax treatment of portfolio investment in offshore shares, specifically, the current preferential tax treatment for investments into the 8 grey list countries (Australia, Canada, Germany, Japan, Norway, Spain, the United Kingdom and the United States) as compared to investments into non-grey list countries.

Investments in companies resident in the grey list countries are taxed only on dividends, if the investment is held on capital account (which is likely to be the case for most individuals). Dividend-only taxation of grey list investments has become, in many instances, an inappropriate tax base, since dividends may not be paid by the offshore company. For many grey list investments, the investment return is made through an increase in the share price, which is a tax-free capital gain for most individuals under the current rules.

Investments into non-grey list countries, like emerging economies in Asia, are taxed on accrued capital gains (not just dividends). Therefore, by comparison, investment into a grey list country is tax-preferred.

The distortion arising from the difference in tax treatment between individual direct investors (typically taxable on dividends) and CIVs (taxable on dividends and realised capital gains) also arises for investments into the grey list countries.

The cost to the government of the proposals to address the onshore and offshore problems is twofold. First, the combined revenue cost of the proposals is expected to be more than \$113 million per annum (with a further \$20 million transitional cost in the first year — 2007–08). Second, the costs of changes to Inland Revenue systems and administration is expected to be in the order of: \$1.8 million (2005–06); \$6.6 million (2006–07); \$8.55 million (2007–2008); \$9.15 million (2008–09); and \$3.550 million (2010 and later years). The New Zealand savings industry (managed funds and other CIVs) will be affected by the proposed changes.

If a CIV opts into the proposed PIE tax rules, significant changes to their IT systems may be needed to implement the new tax rules. A CIV that becomes a PIE may also incur other costs such as professional advisor costs, costs associated with educating investors, and renewal of prospectuses and advertising (see the *Business compliance cost statement* below).

However, the proposed PIE tax rules and the proposed savings investment regime in general aim to remove tax biases against using CIVs, and to tax offshore portfolio share investments in a more consistent manner. The intangible benefits to government of removing these inequities in the tax system are real, but not quantifiable.

Further, the aim of the proposed PIE tax rules is to allow the savings industry the opportunity to offer investors access to investments in New Zealand and offshore companies that are not tax disadvantaged relative to direct investment in those companies. In addition, the PIE tax rules would allow the industry to offer investment vehicles that allow a person on lower tax rates to be taxed at those rates. This outcome is expected to remove the disadvantages to investing through a CIV.

In relation to the proposed offshore tax changes, the main costs to the savings industry relate to systems changes, investor education, new procedures, and professional advisor fees. The benefit to the industry of this change is the removal of the distortion between investing offshore directly and through a CIV.

The proposed PIE tax rules will impose some extra compliance cost on individual investors in PIEs, but in the main this should be at a very low level. Individuals on lower tax rates would need to provide their tax rate to a PIE at the start of the year (currently they do not

have to). However, once individuals have chosen a tax rate, investment income derived by a PIE will be subject to a final tax (meaning there should be no extra end-of-year compliance obligations in the form of having to file a tax return, for example, if they would otherwise not do so). Even where PIE investments make a loss Inland Revenue would generally undertake to provide value for such losses to individuals automatically.

The benefits to individuals from being able to access intermediated investments in New Zealand and most Australian companies without facing the prospect of being taxed on realised capital gains should offset the costs involved. The other benefits would arise from PIE investments not being subject to tax at a rate greater than 33% (which should particularly benefit 39% tax rate investors) while allowing 19.5% investors to get the benefit of the 19.5% rate. PIE investment income would also not affect entitlements to family assistance and other social policy initiatives.

The majority of individual investors who currently have a balanced portfolio of offshore assets should not face increased compliance costs or a higher tax liability under the proposed changes to the taxation of offshore portfolio share investments. This is because the proposed continuation of the current tax treatment for investments in companies resident and listed in Australia and the \$50,000 threshold for investments outside of Australia mean that the majority of individuals should typically continue to pay tax only on dividends.

The new tax rules for offshore portfolio share investments would increase compliance costs for individuals holding more than \$50,000 of investments in grey list countries outside of Australia. These investors are generally taxed only on dividends when they invest in the grey list countries under the current rules, so the proposals will entail changes for them. The proposed method, which broadly taxes a maximum of 5% of the opening value of offshore shares, will result in higher compliance costs than dividend-only taxation, due to the need to calculate the increase in value, the maximum amount taxable (the higher of 5% and net cash flow), and the need to carry forward gains in excess of the 5% cap (or cash flow). Some investors who currently are not required to file tax returns for their offshore investment income may now be required to do so.

The overall compliance cost implications of the PIE tax proposals and the offshore tax changes are difficult to quantify, because it is

not possible to predict accurately how many people will be affected by the proposed changes.

Business compliance cost statement

The key source of business compliance cost for CIVs who choose to become PIEs is the cost of compliance with the PIE rules.

Becoming a PIE will be compulsory for KiwiSaver default funds. Those funds may need to make changes to their IT systems in order to accommodate the new PIE tax rules. They will also be required to pay tax at a rate based on the investors' chosen tax rates and to provide information to the Inland Revenue Department on a regular basis. It is not possible to accurately quantify the system costs, as the magnitude of the incremental costs depends on the current systems being used.

In addition to systems costs, PIEs may also incur extra costs from understanding how the new rules work, including professional advisor costs, and costs from training employees, issuing amended prospectuses, educating customers and from undertaking new procedures. A number of different stakeholders in the New Zealand savings industry will be affected by the proposed changes. They include KiwiSaver default providers, superannuation funds, unit trust providers, financial planners, brokers and advisors, taxation advisors and other providers of CIVs. Some compliance costs will be incurred by businesses who invest in shares through CIVs in addition to those choosing to become a PIE.

Although it is not possible to predict the actual costs of changes to CIVs' IT systems, providers of specialised unit registry services have advised during consultation that the costs could range from hundreds of thousands of dollars to millions of dollars, depending on the capability and flexibility of existing systems.

The following steps will be taken to minimise compliance costs for affected stakeholders:

- A *Tax Information Bulletin* will be published once the proposed changes are enacted, setting out the changes and explaining how they work:
- Inland Revenue forms and guides will be updated to explain the impact of the changes.

Specified superannuation contribution withholding tax (SSCWT) and extreme salary sacrifice

It is proposed to base the selection of SSCWT rates on both wages and salary *and* employer superannuation contributions.

The proposal is designed to counter extreme salary sacrifice.

The current progressive scale thresholds would increase by 15% in comparison to the equivalent income tax thresholds, to minimise the possibility of over-taxation. Most employer superannuation contributions are less than 15% of salary and wages, so increasing thresholds by this amount means that employer superannuation contributions alone should not be sufficient to push an employee from 1 SSCWT bracket to the next. The new thresholds will be:

Salary and wages and employer superannuation contributions:	Employer superannuation contributions taxed at:
Up to \$10,925	15%
Between \$10,925 and \$43,700	21%
Over \$43,700	33%

The new legislation will continue to be elective at the discretion of the employer. If no election is made such contributions will be subject to SSCWT at a flat rate of 33%.

The 39% flat rate method and the PAYE method for calculating SSCWT will be removed, since they are not used by any significant number of people.

The proposal may prevent a potential annual revenue loss of between \$90 million and \$120 million. There may be a small revenue gain associated with the changes, but this is difficult to quantify, because it is not possible to precisely identify to what extent salary sacrifice is already being used to minimise tax

The proposal will impact on the Government in relation to contributions it makes as an employer on behalf of its employees (both present and past) to a superannuation fund. Government agencies that make such contributions will be subject to the proposal and will incur on-going higher compliance costs because of the new basis for selecting rates, if they choose to apply it. The compliance costs associated for government agencies will be the same as for employers.

Employers may incur some compliance costs as changes are made to systems in order to implement the new progressive scale for SSCWT (see the *Business compliance cost statement* below).

The retention of the 6% differential between the top rate of SSCWT and the top rate of income tax will ensure that employer contributions to superannuation funds will continue to be a tax-effective means of saving for higher income earners, thus retaining the attractiveness of employment-based superannuation funds as a vehicle for saving.

Business compliance cost statement

Employers who have employee superannuation schemes or make contributions to an employee's superannuation fund may incur a one-off compliance cost when systems are changed to calculate SSCWT under the new rules. In order to ensure that employers need to make only one set of changes to payroll systems, the changes will be implemented at the same time as KiwiSaver commences. This may reduce employer costs from the changes to the SSCWT rules compared to implementing the changes at a different date.

On-going compliance costs may be higher, because the new basis for selecting rates entails adding 2 items together, namely salary and wages, and employer superannuation contributions. However employers can choose to avoid this cost by paying the default 33% rate of SSCWT rather than using the progressive scale. In some cases this would mean paying more SSCWT than would otherwise be the case, but compliance costs would be less. This is analogous to the treatment of fringe benefit tax (FBT), where employers can use a more complex but lower rate of FBT, or a simpler but higher rate of FBT.

The number of employers that this proposal will impact on is likely to increase with the proposed introduction of KiwiSaver on 1 April 2007. This is because the number of employers making employer contributions to a superannuation fund is likely to increase as a result of KiwiSaver.

Some employers and employees may need to change the method they are using to calculate tax on employer superannuation contributions when the 39% flat rate of SSCWT and the PAYE method for calculating tax are removed, but only a few people will be affected.

Inland Revenue will publish a full explanation of the new rules in a *Tax Information Bulletin* once the new rules are enacted.

GST and financial services — zero-rating activities connected with certain equity investments

The proposed changes will create additional compliance costs for some people. However, they will have some choice over the matter, since zero-rating financial services is elective.

The proposed changes should produce a refund for people in most cases, because under the proposals they may obtain previously unavailable input tax deductions in relation to zero-rated financial services. However, if they see no benefit in zero-rating financial services, they will not be required to comply with the changes. People may choose to apply the changes, and those that choose to zero-rate will face compliance costs in terms of registering for GST (if they have not already done so) and retaining tax records and filing GST returns. The costs will not apply to all GST-registered persons but will be mainly incurred by the financial services industry.

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 policy development process focussed on tax policy development.

For the savings investment regime proposed in this bill, significant stakeholder consultation has taken place over a number of years. As part of that consultation process, in 2004 Mr Craig Stobo undertook a review of the tax rules for savings investment. Further, officials from Inland Revenue and Treasury have undertaken detailed consultation with more than 50 stakeholder groups. Also, an issues paper was released in 2003, and in 2005, the Government discussion document *Taxation of investment income* was released.

For other major measures in the bill, the Generic Tax Policy Process included the release of the following issues papers:

- *Countering extreme salary sacrifice: ensuring that employer superannuation contributions are taxed fairly*
- Tax treatment of expenditure on geothermal wells

Specific consultation was undertaken by the Inland Revenue with a number of professional groups, industry representatives, and individuals, according to their experience or membership. These consultations included:

ABN Amro Craigs

Alliance Capital Management New Zealand Ltd

AMP Capital Investors

AMP Financial Services

ASB Group

ASFONZ

Asteron Life Ltd

AXA

Bravura Solutions

Brook Asset Management Ltd

BT Funds Management (NZ) Ltd

Business NZ

CFA Society of New Zealand

Computershare Investor Services Ltd

Corporate Taxpayers Group

Deloitte

Eriksen & Associates Ltd

Ernst & Young

Financial Focus

Financial Planners and Insurance Advisers Association Inc

First NZ Capital Securities Ltd

Fisher Funds Management Ltd

Forsyth Barr

Fundsource Research Ltd

Gareth Morgan Investments Ltd

Goldman Sachs JBWere (NZ) Ltd

Government Superannuation Fund Authority

Grant Cleary Financial Planner

Guinness Peat Group New Zealand

Infratil Ltd
Investment Savings and Insurance Association of New Zealand Inc
Kingfish Ltd
KPMG
Melville Jessup Weaver
Mercer Investment Consulting
National Provident Fund
New Zealand Assets Management Ltd
New Zealand Exchange Ltd
New Zealand Funds Management Ltd
New Zealand Institute of Chartered Accountants
New Zealand Law Society
New Zealand Shareholders' Association Inc
New Zealand Venture Capital Association Inc
Phillips Fox
PriceWaterhouseCoopers
Property Council of New Zealand
Russell Investment Group Ltd
Security Industry Association
Society of Actuaries
Sovereign
Tower Ltd
Trustees Corporations Association of New Zealand
Tyndall Investment Management NZ Ltd
Westpac Banking Corporation (New Zealand Division)

Hon Peter Dunne

Taxation (Annual Rates, Savings Investment, and Miscellaneous Provisions) Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the **Taxation (Annual Rates, Savings Investment, and Miscellaneous Provisions) Act 2006**.

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) **Section 162(2)** is treated as coming into force on 26 July 1996.
- (3) **Section 161** is treated as coming into force on 1 April 2000. 5
- (4) **Section 160** is treated as coming into force on 26 March 2003.
- (5) **Sections 157, 159, and 162(3)** are treated as coming into force on 1 April 2003.
- (6) **Section 20(1), (2), (4), (5), and (7)** are treated as coming into force on 21 December 2004. 10
- (7) **Sections 13, 14, 16, 23, 34, 50, 53, 69(4), 70(3), (4), (6), and (7), 72(1)(c) and (2), 74, 77, 78, 84, 112, 124, 126(10), (11), (16), and (19), 128, 129(2)(a), 134, 135, 138, 139, and 140** are treated as coming into force on 1 April 2005.
- (8) **Sections 15, 80, 81(1), (2), and (3), and 151** are treated as coming into force on 21 June 2005. 15
- (9) **Sections 11, 26, 27, 31, 32, 37, 42, 43, 44, 47, 48, 49, 69(3), 83, 89, 126(2), (8), and (23), and 132** are treated as coming into force on 1 October 2005.
- (10) **Sections 96, 115, and 131** are treated as coming into force on 1 April 2006. 20
- (11) **Sections 28, 29, 30, 114, 121, 125, 146, and 147** are treated as coming into force on 3 April 2006.
- (12) **Sections 24, 33, 38, 39, 40, 81(4), (5), and (6), and 113(1)** are treated as coming into force on 16 May 2006. 25
- (13) **Sections 103, 123, and 142** are treated as coming into force on 1 July 2006.
- (14) **Section 10** comes into force 3 months after the date on which it receives the Royal assent.
- (15) **Sections 5, 6, 7(2), (3), (4), and (5), 8, 12, 17, 19, 20(3), (6), (8), and (9), 21, 22, 51, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69(1), (2), and (5), 70(1), (2), (5), and (8), 71, 72(1)(a) and (b), (3), and (4), 73, 75, 79, 82, 85, 86, 87, 88, 98, 99, 100, 101, 102, 104, 113(2), 116, 117, 118, 119, 120, 122, 126(4), (5), (6), (9), (15), (17), (18), (20), (21), (25), (26), (27), (32), (33), and (34), 127, 129(1) and (2)(b), 130, 143, 144, 145, 148, 154, 155, 167, 168, 170, and 171** come into force on 1 April 2007. 35

- (16) **Sections 105, 106, 107, 108, 109, 110, 111, 152, and 153** come into force on 1 October 2007.

Part 1

Annual rates of income tax for 2006–07 tax year

- 3 Rates of income tax for 2006–07 tax year** 5
- (1) Income tax imposed by section BB 1 of the Income Tax Act 2004 must, for the 2006–07 tax year, be paid at the basic rates specified in schedule 1 of that Act.
- (2) The Taxation (Annual Rates of Income Tax 2005–06) Act 2005 is repealed. 10

Part 2

Amendments to Income Tax Act 2004

- 4 Income Tax Act 2004**
- This Part amends the Income Tax Act 2004.
- 5 Foreign investment fund income** 15
- (1) In section CD 26(b), “comparative value method or the deemed rate of return method” is replaced by “cost method, the market value method, or the smoothed market value method”.
- (2) In section CD 26, in the list of defined terms— 20
- (a) “comparative value method” and “deemed rate of return method” are omitted:
- (b) “cost method”, “market value method”, and “smoothed market value method” are inserted.
- (3) **Subsections (1) and (2)** apply for income years and portfolio entity periods beginning on or after 1 April 2007. 25
- 6 New subpart CP inserted**
- (1) Before subpart CQ, the following is inserted:
- “Subpart CP—Income from portfolio investment entities
- “**CP 1 Portfolio investor attributed income** 30
- The amount of portfolio investor attributed income of a person who is an investor in a portfolio investment entity is income of

the person in the portfolio entity period for which the person derives the amount.

“Defined in this Act: amount, income, portfolio entity period, portfolio investment entity, portfolio investor attributed income, portfolio investor class

- “**CP 2 Distributions by portfolio investment entities** 5
A distribution that an investor derives from a portfolio investment entity is income of the investor.
“Defined in this Act: amount, distribution, income, portfolio investment entity”.
- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007. 10
- 7 When FIF income arises**
- (1) After section CQ 5(1)(c)(ii), the following is inserted:
“(iib) the Australian superannuation fund exemption in **section EX 33B** (Australian superannuation fund exemption):” 15
- (2) Section CQ 5(1)(d) is replaced by the following:
“(d) if the person is a natural person and not acting as a trustee, the person holds, at any time during the income year when the person is a New Zealand resident, attributing interests in FIFs for which the total of the following amounts is more than \$50,000: 20
“(i) if **subparagraph (ii)** does not apply to the interest, the cost of the interest calculated under section EX 56 (Measurement of cost):
“(ii) if the person acquired the interest before 1 January 2000 and chooses, for the year or an earlier year, that this subparagraph and **section DN 6(1)(d)(ii)** (When FIF loss arises) apply to all interests acquired before 1 January 2000, half of the market value of the interest on 1 April 2007; and 25
“(db) if the person is acting as a trustee of a trust that meets the requirements of **subsection (6)**, the person holds attributing interests in FIFs for which the total of the following amounts is more than \$50,000: 30
“(i) if **subparagraph (ii)** does not apply to the interest, the cost of the interest calculated under section EX 56 (Measurement of cost): 35

- “(ii) if the person acquired the interest before 1 January 2000 and chooses, for the year or an earlier year, that this subparagraph and **section DN 6(1)(d)(ii)** apply to all interests acquired before 1 January 2000, half of the market value of the interest on 1 April 2007; and” 5
- (3) In section CQ 5(1)(f), “EX 45” is replaced by “**EX 45B**”.
- (4) After section CQ 5(4), the following is added:
“Special rule: grey list company with FIF interest
- “(5) A person with a direct income interest in a grey list company can also have FIF income under the special rule in **section EX 46B** (Additional FIF income or loss if grey list company owns FIF). 10
- “When application of subsection (1) affected by subsection (1)(db)* 15
- “(6) **Subsection (1)(db)** applies to the trustee of a trust if—
“(a) the settlor of the trust—
“(i) is a relative or legal guardian of a beneficiary of the trust, or a person associated with a relative or legal guardian of a beneficiary of the trust under section OD 7 (Defining when 2 persons are associated persons); and 20
“(ii) is required by a court order to pay damages or compensation to the beneficiary:
“(b) the settlor of the trust is the Accident Compensation Corporation: 25
“(c) the trust is of the estate of a deceased person who has been deceased for less than 5 of the estate’s income years that begin on or after the person’s death.”
- (5) In section CQ 5, in the list of defined terms, “associated person” and “relative” are inserted. 30
- (6) **Subsection (1)** applies for the 2006–07 and later income years.
- (7) **Subsections (2), (3), (4), and (5)** apply for income years and portfolio entity periods beginning on or after 1 April 2007.
- 8 Calculation of FIF income** 35
- (1) In section CQ 6, “EX 49” is replaced by “EX 47”.

- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.

9 Withdrawals

- (1) In section CS 1(2), in the formula, “withdrawn” is replaced by “withdrawal”. 5
- (2) **Subsection (1)** applies for the 2005–06 and later income years.

10 Income for military service in operational area

Section CW 19 is replaced by the following:

“CW 19 Income for military service in operational area

“When this section applies” 10

- “(1) This section applies if a member of the New Zealand Defence Force (**the member**) derives an amount of income for serving in an operational area.

“Exempt income”

- “(2) The following amounts are exempt income of the member: 15
- “(a) an amount of operational allowance:
- “(b) an amount exempted by a decision of the ministerial committee under **subsection (3)**.

“Ministerial committee”

- “(3) A ministerial committee that includes the Prime Minister, the Minister of Defence, the Minister of Finance, and the Minister of Foreign Affairs may, for the purposes of **subsection (2)(b)**, decide to exempt an amount of income derived by a member for being in an operational area. 20

“Some definitions” 25

- “(4) In this section,—
- “operational allowance**, for a member, means an allowance payable by the government of New Zealand that—
- “(a) is paid directly and solely for being in an operational area; and 30
- “(b) is not—
- “(i) a regular force gratuity:
- “(ii) a bonus or bounty for re-engagement in a regular force

“**operational area** means an area—

“(a) to which the Minister of Defence has ordered the deployment of New Zealand Defence Force members for a specific mission authorised by the Government; and

5

“(b) that the Chief of Defence Force delineates for that mission.

“Defined in this Act: amount, exempt income, income, New Zealand, operational allowance, operational area .

11 Refund from environmental restoration account 10

(1) In section CX 43B, “, or after earlier payment or request for refund” is omitted.

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

12 New heading and sections CX 44C and CX 44D inserted 15

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

“Portfolio investment entities

“CX 44C Certain income of portfolio investment entities

Income derived by a portfolio investment entity from disposing of a share is excluded income if—

20

“(a) the share is issued by a company—

“(i) resident in New Zealand and not treated under a double tax agreement as not being resident in New Zealand:

“(ii) resident in Australia and listed on the Australian Stock Exchange; and

25

“(b) the share is not a non-participating redeemable share; and

“(c) no dividend from the share is—

“(i) declared before the disposal; and

30

“(ii) paid after the disposal; and

“(d) the portfolio investment entity is not assured, under an arrangement with another person, of having a gain on the disposal; and

“(e) the following events do not occur within the period of 30 days from the disposal:

35

“(i) the company declares a dividend; and

- “(ii) after the declaration, the portfolio investment entity purchases a share in the company that confers the same rights and imposes the same obligations on the holder as the share involved in the disposal. 5
- “Defined in this Act: amount, company, dividend, double tax agreement, excluded income, income, New Zealand, non-participating redeemable share, portfolio investment entity, resident, share
- “CX 44D Portfolio investor attributed income and distributions by portfolio investment entities 10**
- “Portfolio investor attributed income*
- “(1) Portfolio investor attributed income derived under **section CP 1** (Portfolio investor attributed income) in a portfolio entity period by an investor in a portfolio investment entity is excluded income of the investor if— 15
- “(a) the prescribed investor rate for the investor is more than 0%; and
- “(b) the investor does not, before the last day of the period, provide to the portfolio investment entity for the period a portfolio investor rate that is less than the prescribed investor rate for the period. 20
- “Distribution by portfolio investment entity*
- “(2) A distribution by a portfolio investment entity that is derived by an investor in the portfolio investment entity is excluded income of the person. 25
- “Defined in this Act: amount, distribution, excluded income, investor, portfolio investment entity, portfolio investment entity tax, portfolio investor attributed income, portfolio investor rate, prescribed investor rate”.
- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007. 30
- 13 New section CZ 20 added**
- (1) After section CZ 19, the following is added:
- “CZ 20 Geothermal wells between 31 March 2003 and 16 May 2006**
- “When this section applies 35*
- “(1) This section applies to a person’s geothermal well, if—
- “(a) the well is—

“(i) both started and completed between 31 March 2003 and 16 May 2006:	
“(ii) acquired between 31 March 2003 and 16 May 2006; and	
“(b) the person—	5
“(i) uses the well, or has the well available for use, after the end of the well’s geothermal energy proving period, in deriving assessable income or carrying on a business for the purpose of deriving assessable income:	10
“(ii) disposes of the well.	
 <i>“Income</i>	
“(2) The person has, for the first income year in which this section applies, income equal to,—	
“(a) if subsection (1)(b)(i) applies, the total amount of deductions that the person has been allowed for the well under section DZ 15 (Geothermal wells between 31 March 2003 and 16 May 2006) and section DZ 7 of the Income Tax Act 1994; or	15
“(b) if subsection (1)(b)(ii) applies, the lesser of—	20
“(i) the amount derived from disposing of the well; and	
“(ii) the total amount of deductions that the person has been allowed for the well under section DZ 15 (Geothermal wells between 31 March 2003 and 16 May 2006) and section DZ 7 of the Income Tax Act 1994.	25
 “Defined in this Act: amount, business, deduction, dispose, geothermal energy proving period, geothermal exploration well, income, income year”.	
(2) Subsection (1) applies for the 2005–06 and later income years.	30
 14 Base price adjustment under old financial arrangements rules	
(1) In section DB 9B, the following is added as subsection (2):	
“ <i>Link with subpart DA</i>	
“(2) This section supplements the general permission and overrides all the general limitations.”	35

- (2) In section DB 9B, the following list of defined terms is added:
“amount, deduction, general limitation, general permission, supplement”.
- (3) **Subsections (1) and (2)** apply for the 2005–06 and later income years. 5
- 15 Patent applications or patent rights acquired on or after 1 April 1993**
- (1) Section DB 31(4)(a) and (b) are replaced by the following:
- “(a) **total cost** is the total cost to the person of the patent application with a complete specification or of the patent rights, excluding any expenditure for which the person has been allowed a deduction under **section DZ 14** (Patent applications before 1 April 2005): 10
- “(b) **total amounts of depreciation loss** is the total of the amounts, for which the person is allowed a deduction, of depreciation loss for the patent application with a complete specification or for the patent rights and the patent application relating to the patent rights.” 15
- (2) **Subsection (1)** applies to a patent application that is lodged for the first time on or after 21 June 2005. 20
- 16 Bribes paid to public officials**
- (1) In section DB 36,—
- (a) the heading to subsection (1) is replaced by “*When this section applies*”:
- (b) in subsection (1)(b), “New Zealand” is omitted: 25
- (c) subsections (3) and (4) are replaced by the following:
“*Exclusions*”
- “(3) This section does not apply if,—
- “(a) the bribe is given outside New Zealand and, at the time it is given by person A, the bribe is not an offence under the laws of the foreign country in which is situated the principal office of the person, organisation or other body by whom the foreign public official is employed or for whom they provide services: 30
- “(b) the bribe is paid wholly or mainly to ensure or expedite the performance by a foreign public official of a routine government action when the value of the benefit is small.” 35

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

17 New heading and section DB 43B inserted

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

“Portfolio investment entities

“DB 43B Zero-rated portfolio investor and portfolio investor attributed loss 5

A person who is an investor in a portfolio investment entity has, to the extent allowed by **subpart HL** (Portfolio investment entities), a deduction for the amount of a portfolio investor attributed loss of the person under that subpart.” 10

- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.

18 Deductions for business use

- (1) In section DE 2(4)(a), “paragraph (b)” is replaced by “paragraph (b) or (c)”. 15

- (2) Section DE 2(4)(b) is replaced by the following:

“(b) using the formula in subsection (7), if that subsection applies to the depreciation loss; or

“(c) using the formula in **subsection (8C)**, if that subsection applies to the depreciation loss.” 20

- (3) After section DE 2(6), the following is inserted:

“When subsection (7) applies

- “(6B) Subsection (7) applies when—

“(a) the depreciation loss results from a calculation made for the motor vehicle under section EE 41(2) (Effect of disposal or event); and 25

“(b) the motor vehicle was, at any time during the period the person owned it, dealt with in subsection (5).”

- (4) After section DE 2(8), the following is inserted:

“When subsection (8C) applies 30

- “(8B) **Subsection (8C)** applies when—

“(a) the depreciation loss results from a calculation made for the motor vehicle under section EE 41(2) (Effect of disposal or event); and

“(b) the motor vehicle starts to have a business use in the same income year as the year in which the depreciation loss arose.

“*Calculation of deduction: depreciation loss on disposal in certain circumstances*”

5

“(8C) The formula referred to in **subsection (4)(c)** is—
disposal depreciation loss × business proportion.

“*Definition of items in formula*”

“(8D) In the formula,—

“(a) **disposal depreciation loss** is the amount resulting from a calculation made for the motor vehicle under section EE 41(2):

10

“(b) **business proportion** is the proportion of business use of the motor vehicle for the income year (expressed as a decimal) calculated under sections DE 3 to DE 12.”

15

(5) **Subsections (1) to (4)** apply for the 2006–07 and later income years.

19 Foreign investment fund loss

(1) Section DN 5(1) is replaced by the following:

“*Deduction*”

20

“(1) A person is allowed a deduction for a FIF loss.

“*Ring-fencing rule for loss under branch equivalent method*”

“(1B) The deduction for a FIF loss calculated under the branch equivalent method is subject to the jurisdictional ring-fencing rule in section DN 9.”

25

(2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.

20 When FIF loss arises

(1) In section DN 6(1)(a)(ii), “non-resident:” is replaced by “non-resident; and”.

30

(2) In section DN 6(1)(b), “FIFs:” is replaced by “FIFs); and”.

(3) After section DN 6(1)(c)(ii), the following is inserted:

- “(iib) the Australian superannuation fund exemption in **section EX 33B** (Australian superannuation fund exemption):”.
- (4) In section DN 6(1)(c)(iv), “resident:” is replaced by “resident); and”. 5
- (5) In section DN 6(1)(d), “\$50,000:” is replaced by “\$50,000; and”.
- (6) Section DN 6(1)(d), as amended by **subsection (4)** of this section, is replaced by the following:
- “(d) if the person is a natural person and not acting as a trustee, the person holds, at any time during the income year when the person is a New Zealand resident, attributing interests in FIFs for which the total of the following amounts is more than \$50,000: 10
- “(i) if **subparagraph (ii)** does not apply to the interest, the cost of the interest calculated under section EX 56 (Measurement of cost): 15
- “(ii) if the person acquired the interest before 1 January 2000 and chooses, for the year or an earlier year, that this subparagraph and **section CQ 5(1)(d)(ii)** (When FIF income arises) apply to all interests acquired before 1 January 2000, half of the market value of the interest on 1 April 2007; and 20
- “(db) if the person is acting as a trustee of a trust that meets the requirements of **subsection (5)**, the person holds attributing interests in FIFs for which the total of the following amounts is more than \$50,000: 25
- “(i) if **subparagraph (ii)** does not apply to the interest, the cost of the interest calculated under section EX 56 (Measurement of cost): 30
- “(ii) if the person acquired the interest before 1 January 2000 and chooses, for the year or an earlier year, that this subparagraph and **section CQ 5(1)(d)(ii)** apply to all interests acquired before 1 January 2000, half of the market value of the interest on 1 April 2007; and”. 35
- (7) In section DN 6(1)(e), “time:” is replaced by “time; and”.
- (8) In section DN 6(1)(f), “**EX 45**” is replaced by “**EX 45B**”.
- (9) After section DN 6(3), the following is added:

“Special rule: grey list company with FIF interest

- “(4) A person with a direct income interest in a grey list company can also have a FIF loss under the special rule in **section EX 46B** (Additional FIF income or loss if grey list company owns FIF). 5

“When application of subsection (1) affected by subsection (1)(db)

- “(5) **Subsection (1)(db)** applies to the trustee of a trust if—
- “(a) the settlor of the trust—
- “(i) is a relative or legal guardian of a beneficiary of the trust, or a person associated with a relative or legal guardian of a beneficiary of the trust under section OD 7 (Defining when 2 persons are associated persons); and 10
- “(ii) is required by a court order to pay damages or compensation to the beneficiary: 15
- “(b) the settlor of the trust is the Accident Compensation Corporation:
- “(c) the trust is of the estate of a deceased person who has been deceased for less than 5 of the estate’s income years that begin on or after the person’s death.” 20

- (10) **Subsections (6), (8), and (9)** apply for income years and portfolio entity periods beginning on or after 1 April 2007.

21 Calculation of FIF loss

- (1) In section DN 7, “EX 49” is replaced by “EX 47”. 25
- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.

22 Ring-fencing cap on deduction: not branch equivalent method

- (1) Section DN 8 is repealed. 30
- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.

23 New sections DZ 14 and DZ 15 added

- (1) After section DZ 13, the following is added:

“DZ 14 Patent applications before 1 April 2005

“When this section applies

- “(1) This section applies if—
- “(a) a patent is granted to a person in their 2005–06 or later income year; and 5
 - “(b) the patent is granted in relation to a patent application owned by the person; and
 - “(c) the patent application, with a complete specification, was first lodged with the Intellectual Property Office of New Zealand or a similar office in another jurisdiction before 1 April 2005; and 10
 - “(d) a deduction for expenditure on the patent application is not allowed under another provision.

“Calculation of deduction

- “(2) The person is allowed a deduction for the income year in which the patent is granted, for expenditure on the patent application in any income year, calculated using the formula— 15

$$\text{cost} \times \frac{\text{months of ownership}}{240} \quad 20$$

“Definition of items in formula

- “(3) In the formula,—
- “(a) **cost** means the cost to the person of the patent application: 25
 - “(b) **months of ownership** means the number of whole calendar months for which the person owns the patent application.

“Link with subpart DA

- “(4) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply. 30

“Defined in this Act: capital limitation, deduction, general limitation, general permission, income year

“DZ 15 Geothermal wells between 31 March 2003 and 16 May 2006

“When this section applies

- “(1) This section applies to a person’s geothermal well, if—
- “(a) the well’s geothermal proving period ends between 31 March 2003 and 16 May 2006; and 5
 - “(b) the well is—
 - “(i) both started and completed between 31 March 2003 and 16 May 2006;
 - “(ii) acquired between 31 March 2003 and 16 May 2006; and 10
 - “(c) a deduction for expenditure on the well is not allowed under another provision.

“Deduction

- “(2) The person is allowed, for the income year in which the well’s geothermal proving period ends, a deduction for expenditure on the well. 15

“Link with subpart DA

- “(3) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply. 20

“Defined in this Act: capital limitation, deduction, general limitation, general permission, geothermal proving period, geothermal well, income year, supplement”.

- (2) **Subsection (1)** applies for the 2005–06 and later income years. 25

24 What is depreciable property?

- (1) In section EE 6(1), “Subsections (2) and (3)” is replaced by “Subsections (2) to **(4)**”.
- (2) After section EE 6(3), the following is added:
- “Property: geothermal wells 30*
- “(4) For the purposes of this subpart, a person who owns a geothermal well is, for the geothermal energy proving period, treated as acquiring the well as property that declines in value and is to be available for use in carrying on a business for the purpose of deriving assessable income.” 35

- (3) In section EE 6, in the list of defined terms, “geothermal energy proving period” and “geothermal well” are inserted.
- (4) **Subsections (1) to (3)** apply to a geothermal well that is completed or acquired on or after 16 May 2006.
- 25 Calculation rule: income year in which item disposed of** 5
- (1) After section EE 11(5), the following is inserted:
“Exclusion: recent acquisition of item partly used for business”
- “(6) A person has the amount of depreciation loss calculated under **section FB 7(9)** (Depreciation: partial income-producing use) for a disposal or event to which the subsection applies.” 10
- (2) **Subsection (1)** applies for the 2006–07 and later income years.
- 26 Amount resulting from standard calculation**
- (1) Section EE 16(4)(b) is replaced by the following:
“(b) when the person uses the straight-line method,— 15
“(i) if **subparagraph (ii)** does not apply, the item’s cost to the person excluding expenditure for which the person is allowed a deduction under a provision of this Act outside this subpart (variations to **cost** are in sections EE 18 and EE 19): 20
“(ii) if the item is a patent or plant variety rights and the person has been allowed a deduction for depreciation loss for the patent application or plant variety rights application relating to the item, the item’s adjusted tax value at the start of the month in which the person acquires the item (a variation to **cost** is in section EE 19).” 25
- (2) In section EE 16(5)(b), “(or whole calendar months in the case of a patent application)” is inserted after “part calendar months”. 30
- (3) In section EE 16(6), “(or whole months in the case of a patent application)” is inserted after “part months”.
- (4) **Subsection (1)** applies to an item that is a patent or plant variety rights, if the item is acquired by a person in their 2005–06 or later income year. 35
- (5) **Subsections (2) and (3)** apply to a patent application, if the patent application, with a complete specification, is first lodged with

the Intellectual Property Office of New Zealand or a similar office in another jurisdiction on or after 1 April 2005.

27 New section EE 24B inserted

After section EE 24, the following is inserted:

“EE 24B Depreciation loss for plant variety rights application upon grant of rights in 2005–06 or later income year	5
<i>“When this section applies</i>	
“(1) This section applies if—	
“(a) plant variety rights are granted to a person in their 2005–06 or later income year; and	10
“(b) the plant variety rights are granted in relation to a plant variety rights application owned by the person; and	
“(c) a deduction for expenditure is not allowed under another provision.	
<i>“Calculation of deduction</i>	
“(2) A person is allowed a deduction for the income year in which the plant variety rights are granted, for expenditure on the plant variety rights application, calculated using the formula—	
$\text{cost} \times \frac{\text{months of ownership}}{\text{depreciation months.}}$	20
<i>“Definition of items in formula</i>	
“(3) In the formula,—	
“(a) cost means the cost to the person of the plant variety rights application:	25
“(b) months of ownership means the number of whole calendar months for which the person owns the plant variety rights application:	
“(c) depreciation months means the total of the number of months of ownership under paragraph (b) and the number of months in the term for which the plant variety rights are granted in relation to the plant variety rights application.	30
“Defined in this Act: amount, deduction, depreciation, income year, plant variety rights”.	35

- 28 Setting of economic depreciation rate**
- (1) Section EE 25(3) is replaced by the following:
“Relationship with subject matter: election under section EE 26B
- “(3) Subsection (1)(a), (c), and (d) are overridden by section EE 26B.” 5
- (2) **Subsection (1)** applies for the 2005–06 and later income years.
- 29 Economic rate for certain aircraft and motor vehicles**
- (1) In section EE 25D(3), “having seats for no more than 12 persons” is replaced by “that is designed exclusively or mainly to carry persons, and has seats for no more than 12 persons,”. 10
- (2) **Subsection (1)** applies for the 2005–06 and later income years.
- 30 Economic rate for plant, equipment, or building, with high residual value** 15
- (1) Section EE 25E(1), other than the heading, is replaced by the following:
- “(1) This section is about setting the economic depreciation rate that applies to items of a kind of depreciable property if—
- “(a) the kind of depreciable property is not fixed life intangible property, or excluded depreciable property, for which an economic rate cannot be set; and 20
- “(b) the estimated residual market value for the item is more than 13.5%.”
- (2) **Subsection (1)** applies for the 2005–06 and later income years. 25
- 31 Annual rate for fixed life intangible property**
- (1) Section EE 27(1)(b) is replaced by the following:
“(b) a patent for which a rate is set in **section EE 27B.**”
- (2) Section EE 27(1)(c) is repealed.
- (3) **Subsection (1)** applies to a patent, if the patent is acquired by a person in their 2005–06 and later income years. 30

32 Sections EE 27B to EE 27E replaced

Sections EE 27B to EE 27E are replaced by the following:

“EE 27B Annual rate for patent granted in 2005–06 or later income year

“When this section applies 5

“(1) This section applies to an item that is a patent, if the patent is acquired by a person in their 2005–06 or later income year.

“Rate

“(2) The rate is calculated using the formula— 10

$$\frac{1}{\text{legal life.}}$$

“Definition of item in formula

“(3) In the formula, **legal life** is—

“(a) the patent’s remaining legal life from the start of the income year in which the person incurs the additional costs referred to in that section, if section EE 19 applies to the patent; or 15

“(b) the patent’s remaining legal life from the time at which the person acquires the patent, if— 20

“(i) section EE 19 does not apply to the patent; and

“(ii) the person has not been allowed a deduction for depreciation loss for the patent application relating to the patent; or

“(c) the remaining legal life of the patent application relating to the patent from the start of the income year in which the person acquires the patent application, if— 25

“(i) section EE 19 does not apply to the patent; and

“(ii) the person has been allowed a deduction for depreciation loss for the patent application; and 30

“(iii) section EE 19 has not applied to the patent application while the person has owned it; or

“(d) the remaining legal life of the patent application relating to the patent from the start of the income year in which the person acquires the patent, if— 35

“(i) section EE 19 does not apply to the patent; and

“(ii) the person has been allowed a deduction for depreciation loss for the patent application; and

“(iii) section EE 19 has applied to the patent application while the person has owned it.

“How rate expressed

“(4) The rate calculated using the formula is expressed as a decimal and rounded to 2 decimal places, with numbers at the midpoint or greater being rounded up and other numbers being rounded down. 5

“Defined in this Act: acquire, deduction, depreciation loss, income year, legal life”.

33 Items no longer used 10

(1) Section EE 32(1)(a) is replaced by the following:

“(a) is no longer used or, because **section EE 6(4)** ceases to apply, the property ceases to be available for use; and”.

(2) **Subsection (1)** applies to a geothermal well that is completed or acquired on or after 16 May 2006. 15

34 Heading before section EE 33, section EE 33, and section EE 34 replaced

(1) The heading before section EE 33, section EE 33, and section EE 34 are replaced by the following:

“Transfers of depreciable property: associated persons and non-qualifying amalgamations 20

“EE 33 Transfer of depreciable property on or after 24 September 1997

“When this section applies

“(1) This section applies when, on or after 24 September 1997, a person (**person A**) acquires, directly or indirectly, an item of property from an associated person to whom 1 of the paragraphs in **subsection (2)** applies. The income year referred to in the paragraphs is the income year of the associated person. 25
30

“Associated person

“(2) The associated person must be a person to whom 1 of the following paragraphs applies:

- “(a) the associated person is allowed a deduction for an amount of depreciation loss for the item for the income year in which person A acquires it:
- “(b) the associated person would have been allowed a deduction for an amount of depreciation loss for the item for the income year in which person A acquired it, if section EE 11(1) had not applied: 5
- “(c) the associated person was allowed a deduction for an amount of depreciation loss for the item for the income year before the income year in which person A acquired it: 10
- “(d) the associated person has been allowed a deduction for the item under section DZ 9 (Premium paid on land leased before 1 April 1993) for the income year in which person A acquired it: 15
- “(e) the associated person has been allowed a deduction for the item under section DZ 9 for the income year before the income year in which person A acquired it:
- “(f) the associated person would have been allowed a deduction for an amount of depreciation loss for the item for the income year in which person A acquired it, if the associated person had incurred a cost for the item for which the person was denied any other deduction and if section EE 11(1) had not applied: 20
- “(g) the associated person would have been allowed a deduction for an amount of depreciation loss for the item for the income year before the income year in which person A acquired it, if the associated person had incurred a cost for the item for which the person was denied any other deduction: 25
- “(h) the associated person would have been allowed a deduction for the item under section DZ 9 for the income year in which person A acquired it, if the associated person had incurred a cost for the item for which the person was denied any other deduction: 30
- “(i) the associated person would have been allowed a deduction for the item under section DZ 9 for the income year before the income year in which person A acquired it, if the associated person had incurred a cost for the item for which the person was denied any other deduction: 35 40

“(j) the associated person would have been a person to whom any of **paragraphs (a) to (i)** applied, if the associated person had not made an election under section EE 8.

“*Cost of item to person A*

“(3) For the purpose of determining the amount of depreciation loss that person A has, the cost of the item to person A is treated as 1 of the following: 5

“(a) if section EE 49 applies for the associated person and the item, the lesser of—

“(i) the cost of the item to person A: 10

“(ii) the item’s market value when, after the associated person acquired it, a person was first allowed a deduction for it; or

“(b) if section EE 49 does not apply for the associated person and the item, the lesser of— 15

“(i) the cost of the item to person A:

“(ii) the cost of the item to the associated person.

“*Exclusions*

“(4) **Subsection (3)** does not apply—

“(a) if— 20

“(i) the item is not depreciable intangible property; and

“(ii) the Commissioner decides that it is appropriate to use the cost of the item to person A for the purposes of determining the amount of depreciation loss that person A has for the item: 25

“(b) if the cost to person A is income of the associated person, other than under section EE 41(1):

“(c) if person A acquires the item under a relationship agreement or a matrimonial agreement to which section FF 16 (Depreciable property) applies. 30

“*Rate*

“(5) The annual rate that person A applies to the item must be 1 of the following (not including an item of fixed life intangible property, for which the rate is set in section EE 27): 35

“(a) if person A uses the same depreciation method for the item as that used by the associated person for it, the annual rate that person A applies to it must not be more

than the annual rate that the associated person applied to it:

- “(b) if person A uses a depreciation method for the item different from the method that the associated person used for it, the annual rate that person A applies to it must not be more than a rate equivalent to the rate that the associated person applied to it, as determined by schedule 10 (Straight-line equivalents of diminishing value rates of depreciation). 5

“*Relationship with section EE 34 and subpart FI* 10

- “(6) This section—
 - “(a) is overridden by **section EE 34**;
 - “(b) does not apply to a bequest of property, if it is property to which subpart FI (Effect of certain disposals and resulting acquisitions) applies and the property is disposed of at market value. 15

Compare: 1994 No 164 s EG 17(1)–(5), (8)

“Defined in this Act: acquire, amount, annual rate, assessable income, associated person, business, Commissioner, deduction, depreciable intangible property, depreciation loss, depreciation method, fixed life intangible property, income, income year, matrimonial agreement, property, relationship agreement 20

“EE 34 Transfer of depreciable property in non-qualifying amalgamation on or after 14 May 2002

“*When this section applies*

- “(1) This section applies when, on or after 14 May 2002, an amalgamated company acquires, directly or indirectly, an item of property from an amalgamating company, and— 25
 - “(a) the amalgamated company’s acquiring of the item is part of an amalgamation that is not a qualifying amalgamation; and 30
 - “(b) the amalgamating company is an associated person of the amalgamated company, treating the amalgamating company as existing at the time that the amalgamated company is treated under section FE 5(1)(b) (Transfer of property or obligations under financial arrangements deemed to be at market value) as having acquired the property from the amalgamating company; and 35
 - “(c) 1 of the paragraphs in **section EE 33(2)** applies to the amalgamating company, as an associated person of the

amalgamated company, when the amalgamated company is treated as person A under that section.

“Cost of item to person

- “(2) For the purposes of determining the amount of depreciation loss that the amalgamated company has, the cost of the item to it is treated as 1 of the following: 5
- “(a) if section EE 49 applies for the amalgamating company and the item, the lesser of—
- “(i) the value given by section FE 5; and 10
- “(ii) the item’s market value when, after the amalgamating company acquired it, a person was first allowed a deduction for it; or
- “(b) if section EE 49 does not apply for the amalgamating company and the item, the lesser of—
- “(i) the value given by section FE 5; and 15
- “(ii) the cost of the item to the amalgamating company.

“Exclusions

- “(3) **Subsection (2)** does not apply—
- “(a) if— 20
- “(i) the item is not depreciable intangible property; and
- “(ii) the Commissioner decides that it is appropriate to use the cost of the item to the amalgamated company for the purposes of determining the amount of depreciation loss that it has for the item; or 25
- “(b) if the cost to the amalgamated company is income of the amalgamating company, other than under section EE 41(1).

“Rate

- “(4) The annual rate that the amalgamated company applies to the item must be 1 of the following (not including an item of fixed life intangible property, for which the rate is set in section EE 27): 30
- “(a) if the amalgamated company uses the same depreciation method for the item as that used by the amalgamating company for it, the annual rate that the amalgamated company applies to it must not be more than the 35

- annual rate that the amalgamating company applied to it; or
- “(b) if the amalgamated company uses a depreciation method for the item different from the method that the amalgamating company used for it, the annual rate that the amalgamated company applies to it must not be more than a rate equivalent to the rate that the amalgamating company applied to it, as determined by schedule 10 (Straight-line equivalents of diminishing value rates of depreciation).”
- Compare: 1994 No 164 ss EG 17(3B), FE 5(2)
- “Defined in this Act: acquire, amalgamated company, amalgamating company, amalgamation, amount, annual rate, assessable income, business, Commissioner, depreciable intangible property, depreciation loss, depreciation method, fixed life intangible property, income, matrimonial agreement, property, qualifying amalgamation, relationship agreement”.
- (2) **Subsection (1)** applies for the 2005–06 and later income years.
- 35 Transfer of depreciable property on or after 24 September 1997**
- (1) Section EE 33(3)(a)(ii), as inserted by **section 34** of this Act, is replaced by the following:
- “(ii) the item’s market value when the associated person starts to use it, or to have it available for use, for the purpose of deriving assessable income or carrying on a business for the purpose of deriving assessable income; or”.
- (2) **Subsection (1)** applies for the 2006–07 and later income years.
- 36 Transfer of depreciable property in non-qualifying amalgamation on or after 14 May 2002**
- (1) Section EE 34(2)(a)(ii), as inserted by **section 34** of this Act, is replaced by the following:
- “(ii) the item’s market value when the amalgamating company starts to use it, or to have it available for use, for the purpose of deriving assessable income or carrying on a business for the purpose of deriving assessable income; or”.
- (2) **Subsection (1)** applies for the 2006–07 and later income years.

37 Application of sections EE 41 to EE 44

- (1) Section EE 37(2) is replaced by the following:

“Exclusion

- “(2) Sections EE 41 to EE 44 do not apply—

“(a) when a person disposes of an item of intangible property as part of an arrangement to replace it with an item of the same kind: 5

“(b) to an event that is—

“(i) the conclusion of a person’s patent application because a patent is granted to the person in relation to the patent application: 10

“(ii) a person’s geothermal well ceasing to be available for use because **section EE 6(4)** ceases to apply.”

- (2) In section EE 37, in the list of defined terms, “geothermal well” is inserted. 15

- (3)
- Subsection (1)**
- applies to a patent application for the 2005–06 and later income years.

- (4)
- Subsections (1) and (2)**
- apply to a geothermal well that is completed or acquired on or after 16 May 2006. 20

38 Consideration for purposes of section EE 37

- (1) After section EE 38(6), the following is inserted:

“Unused geothermal well brought into use

“(6B) The consideration that a person derives from the event described in **section EE 40(5B)** is the amount of the deduction for depreciation loss allowed under section EE 32(4).” 25

- (2)
- Subsection (1)**
- applies to a geothermal well that is completed or acquired on or after 16 May 2006.

39 Events for purposes of section EE 37

- (1) After section EE 40(5), the following is inserted: 30

“Unused geothermal well brought into use

“(5B) The fifth event is, for a person’s geothermal well that has been, but is not, available for use because **section EE 6(4)** has ceased to apply, the start of the person’s—

- “(a) using the well in deriving assessable income or carrying on a business for the purposes of deriving assessable income:
“(b) having the well available for use in deriving assessable income or carrying on a business for the purposes of deriving assessable income.” 5
- (2) In section EE 40(6), “fifth” is replaced by “sixth”.
- (3) In section EE 40, in the list of defined terms, “assessable income”, “business”, and “geothermal well” are inserted.
- (4) **Subsections (1) to (3)** apply to a geothermal well that is completed or acquired on or after 16 May 2006. 10
- 40 New section EE 44B**
- (1) After section EE 44, the following is inserted:
“EE 44B Unused geothermal well brought into use
“When this section applies 15
- “(1) This section applies to a person when an event occurs to which **section EE 40(5B)** applies.
- “Person treated as acquiring geothermal well*
- “(2) The person is treated as having acquired the geothermal well, on the day the event occurs, for the cost of the well under this subpart before the event occurs. 20
- “Defined in this Act: geothermal well”.*
- (2) **Subsection (1)** applies to a geothermal well that is completed or acquired on or after 16 May 2006.
- 41 Base value in section EE 47 when no previous deduction** 25
- (1) Section EE 49(2) is replaced by the following:
“Base value
- “(2) **Base value** is the item’s market value at the time the person starts to use it, or to have it available for use, for the purpose of deriving assessable income or carrying on a business for the purpose of deriving assessable income.” 30
- (2) **Subsection (1)** applies for the 2006–07 and later income years.

42 Total deductions in section EE 47

- (1) In section EE 51(1)(b), “subsection (3).” is replaced by “subsection (3); and” and the following is added:
 “(c) the amount of a deduction under **section EE 24B.**”
- (2) Section EE 51(3)(a) is replaced by the following: 5
 “(a) the person was allowed for the item and for,—
 “(i) if the item is a patent, the patent application in relation to which the item was granted:
 “(ii) if the item is a geothermal well that a person acquired under **section EE 44B(2)**, the well before 10 the person acquired it under that section; or”.
- (3) Section EE 51(5)(a) to (d) are replaced by the following:
 “(a) for an item to which section EE 48 applies,—
 “(i) unless **subparagraph (ii) or (iii)** applies, the date on which the person acquired the item; or 15
 “(ii) if the item is a geothermal well that a person acquired under **section EE 44B(2)**, the earliest date on which the person acquired the geothermal well, under **section EE 6(4)** or otherwise; or
 “(iii) if the item is a patent and the person acquired the patent application in relation to which the patent was granted, the date on which the person acquired the patent application; or 20
 “(b) for an item to which section EE 49 applies,—
 “(i) unless **subparagraph (ii)** applies, the beginning of the month in which the person started to use the item, or to have it available for use, for the purpose of deriving assessable income or carrying on a business for the purpose of deriving assessable income; or 25
 “(ii) if the item is a patent and the person acquired the patent application in relation to which the item was granted, the start of the month in which the person acquired the patent application; or
 “(c) for an item to which section EE 50 applies, the date on which person A or the relevant associated person acquired the item; or 35
 “(d) for an item to which section EZ 21(1) (Base value and total deductions in section EE 47: before 1 April 1995) applies, the end of the 1992–93 income year.” 40

- (4) In section EE 51, in the list of defined terms, “geothermal well” is inserted.
- (5) **Subsections (1) to (3)** apply to a patent, if the patent is acquired by a person in their 2005–06 or later income year.
- (6) **Subsections (1) to (4)** apply to a geothermal well that is completed or acquired on or after 16 May 2006. 5
- 43 Meaning of annual rate**
Section EE 52(4C) to (4E) are repealed.
- 44 Other definitions**
- (1) In section EE 58, the definition of **legal life** is replaced by the following: 10
“legal life,—
“(a) for an item to which **paragraphs (b) and (c)** do not apply, means the number of years, months, and days for which an owner’s interest in an item of intangible property exists under the contract or statute that creates the owner’s interest, assuming that the owner exercises any rights of renewal or extension that are either essentially unconditional or conditional on the payment of predetermined fees: 15
“(b) for an item that is a patent application or a patent, means the legal life under **paragraph (a)** that a patent would have if granted when a patent application is first lodged: 20
“(c) for an item that is plant variety rights, means the total of— 25
“(i) the legal life that the rights would have under **paragraph (a)**; and
“(ii) the number of whole calendar months during which the person owns the plant variety rights application in relation to which the rights are granted”. 30
- (2) **Subsection (1)** applies to—
(a) a patent application, if the patent application, with a complete specification, is first lodged with the Intellectual Property Office of New Zealand or a similar office in another jurisdiction on or after 1 April 2005: 35
(b) a patent, if the patent is acquired by a person in their 2005–06 or later income year:

- (c) plant variety rights, if the plant variety rights are granted to a person in their 2005–06 or later income year.
- 45 New section EI 3B inserted**
- (1) After section EI 3, the following is inserted: 5
- “EI 3B Spreading income from patent rights**
- “When this section applies*
- “(1) This section applies when a person derives income under section CB 26 (Sale of patent rights).
- “Timing of income* 10
- “(2) The person may allocate the income equally between the income year in which they derive it and the following 2 income years.
- “Defined in this Act: Commissioner, income, income year, patent rights”.*
- (2) **Subsection (1)** applies for the 2007–08 and later income years. 15
- 46 Allocation of deductions for research, development, and resulting market development**
- Section EJ 21(3) is replaced by the following:
- “Minimum amount of deduction allocated to income year*
- “(3) The person must not allocate to an income year (**current year**) an amount of the deductions referred to in subsection (1) that is less than the lesser of— 20
- “(a) the amount of assessable income referred to in subsection (2)(a) that the person derives in the current year:
- “(b) the amount of the deductions that have not been allocated to income years before the current year. 25
- “Maximum amount of deduction allocated to income year*
- “(4) The person must not allocate to an income year (**current year**) an amount of the deductions referred to in subsection (1) that is more than the greater of— 30
- “(a) the amount of assessable income referred to in subsection (2)(a) that the person derives in the current year:
- “(b) the amount of the deductions that—

“(i) arise in other income years from which a net loss may be carried forward under Part I to the current year; and			
“(ii) have not been allocated to income years before the current year.”			5
47 Interest on payments to environmental restoration account			
(1) In section EK 6(1)(b), “section EK 15 or EK 19” is replaced by “section EK 15, EK 16, or EK 19”.			
(2) Subsection (1) applies for expenditure incurred by a person in an income year starting on or after 10 June 2005.			10
48 Refund			
(1) Section EK 12(8) is replaced by the following:			
“(8) If a person is entitled to a refund under section (2)(b), the amount that the Commissioner must refund is the difference at the end of the latest complete income year between—			15
“(a) the amount in the person’s environmental restoration account, after any transfer under section EK 15, EK 16, or EK 19 for the income year:			
“(b) the person’s maximum account balance for the income year.”			20
(2) Subsection (1) applies for expenditure incurred by a person in an income year starting on or after 10 June 2005.			
49 Transfer on death, bankruptcy, or liquidation			
(1) After section EK 16(5), the following is inserted:			25
“(5B) A transfer to the environmental account of a person under subsection (3)(b) is treated as being a payment by that person to their environmental account.”			
(2) Subsection (1) applies for expenditure incurred by a person in an income year starting on or after 10 June 2005.			30
50 Consideration for agreement for sale and purchase of property or services, hire purchase agreement, specified lease, or finance lease			
In section EW 32(1), “property and services” is replaced by “property or services”.			35

51 Section EX 33 replaced

(1) In section EX 33, the heading and subsection (1) are replaced by the following:

- “EX 33 Exemption: shares in listed Australian company, direct income interests in FIF in grey list country** 5
- “Exemption*
- “(1) A person’s rights in a FIF in an income year are not an attributing interest if, at all times in the year,—
- “(a) the rights are from shares listed on the official list of the Australian Stock Exchange and the FIF is a company resident in Australia that is— 10
- “(i) not an entity described in schedule 4, part B (Foreign investment funds); and
- “(ii) required under the Income Tax Assessment Act 1997 (Aust) and Income Tax Assessment Act 1936 (Aust) to maintain a franking account; and 15
- “(iii) liable under the Income Tax Assessment Act 1997 (Aust) and Income Tax Assessment Act 1936 (Aust) to income tax on income derived from Australia and income not derived from Australia: 20
- “(b) the rights are a direct income interest of 10% or more and the person is not a portfolio investment entity, a superannuation scheme, a unit trust, a life insurer, or a group investment fund, and— 25
- “(i) the FIF is a company that is not an entity described in schedule 4, part B: and:
- “(ii) a country listed in schedule 3, part A (International tax rules: grey list countries), in relation to the FIF, satisfies at least 1 of the grounds for exemption given by subsections (1B) and (1C): 30
- “(c) the rights are a direct income interest and the FIF is a grey list company and—
- “(i) the person is a New Zealand resident; and
- “(ii) no more than 100 New Zealand residents, including the person and treating persons associated under section OD 8(1) (Further definitions of associated persons) as 1 person, hold a direct income interest in the grey list company; and 35

- “(iii) New Zealand residents hold a total direct income interest of 10% or more in the grey list company; and
and
“(iv) none of the New Zealand residents is a widely-held company, a portfolio investment entity, a superannuation scheme, a unit trust, a life insurer, or a group investment fund.” 5
- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.
- 52 New section EX 33B inserted** 10
- (1) After section EX 33, the following is inserted:
- “EX 33B Australian superannuation fund exemption**
- “Exemption*
- “(1) A person’s rights in a FIF are not an attributing interest if— 15
- “(a) the person is a natural person; and
- “(b) the FIF is a foreign superannuation scheme, constituted in Australia, that is—
- “(i) an approved deposit fund:
- “(ii) an exempt public sector superannuation scheme: 20
- “(iii) a regulated superannuation fund:
- “(iv) a retirement savings account.
- “Some definitions*
- “(2) In this section,—
- “approved deposit fund** means an approved deposit fund as defined in section 10 of the Superannuation Industry (Supervision) Act 1993 (Aust), as amended from time to time 25
- “exempt public sector superannuation scheme** means an exempt public sector superannuation scheme as defined in section 10 of the Superannuation Industry (Supervision) Act 1993 (Aust), as amended from time to time 30
- “regulated superannuation fund** means a regulated superannuation fund as defined in section 19 of the Superannuation Industry (Supervision) Act 1993 (Aust), as amended from time to time

- “**retirement savings account** means a retirement savings account as defined in section 8 of the Retirement Savings Account Act 1997 (Aust), as amended from time to time.
- “Defined in this Act: approved deposit fund, attributing interest, exempt public sector superannuation scheme, FIF, foreign superannuation scheme, regulated superannuation fund, retirement savings account”.
- (2) **Subsection (1)** applies for the 2006–07 and later income years. 5
- 53 New resident’s accrued superannuation entitlement exemption**
- (1) In section EX 36(1), “in a FIF to the extent to which the requirements in subsections (2) to (9) are met at the time.” is replaced by “in a FIF—” and the following is added: 10
- “(a) to the extent to which the requirements in subsections (2) to (4) are met at the time; and
- “(b) if the requirements in subsections (5) to (9) are met at the time.” 15
- (2) **Subsection (1)** applies for the 2005–06 and later income years.
- 54 Four calculation methods**
- (1) The heading for section EX 38 is replaced by “**Five calculation methods**”. 20
- (2) In section EX 38(1), paragraphs (c) and (d) are replaced by the following:
- “(c) the market value method; or
- “(d) the smoothed market value method; or
- “(e) the cost method.” 25
- (3) In section EX 38, in the list of defined terms—
- (a) “comparative value method” and “deemed rate of return method” are omitted:
- (b) “cost method”, “market value method”, and “smoothed market value method” are inserted. 30
- (4) **Subsections (1), (2), and (3)** apply for income years and portfolio entity periods beginning on or after 1 April 2007.
- 55 Limits on choice of calculation methods**
- (1) Section EX 40(4) is repealed.

- (2) In section EX 40, in the list of defined terms, “comparative value method”, “deemed rate of return method”, “income year”, and “market value” are omitted.
- (3) **Subsections (1) and (2)** apply for income years and portfolio entity periods beginning on or after 1 April 2007. 5
- 56 Default calculation method**
- (1) In section EX 41(2)(b),—
- (a) in subparagraph (i), “comparative value method” is replaced by “market value method”:
- (b) subparagraph (ii) is replaced by the following: 10
- “(ii) the cost method if using the market value method is not practical.”
- (2) In section EX 41, in the list of defined terms—
- (a) “comparative value method” and “deemed rate of return method” are omitted: 15
- (b) “cost method” and “market value method” are inserted.
- (3) **Subsections (1) and (2)** apply for income years and portfolio entity periods beginning on or after 1 April 2007.
- 57 Section EX 44 repealed** 20
- (1) Section EX 44 is repealed.
- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.
- 58 New sections EX 44B and EX 44C inserted**
- (1) After section EX 44, the following is inserted: 25
- “EX 44B Market value method**
- “Formula*
- “(1) If a person is using the **market value method** to calculate FIF income or loss from an attributing interest in a FIF, the FIF income or loss from the interest for an income year (**relevant income year**) is calculated using the formula— 30
- $0.85 \times ((\text{closing value} + \text{other proceeds}) - (\text{opening value} + \text{costs})).$

“Definition of items in formula

“(2) The items in the formula are defined in **subsections (3) to (6)**.

“Closing value

“(3) **Closing value** is—

- “(a) the market value at the end of the relevant income year of the interest, if the person is—
 - “(i) holding the interest at the end of the relevant income year; and
 - “(ii) applying the market value method to the interest at the end of the relevant income year; or
- “(b) zero, if **paragraph (a)** does not apply.

“Other proceeds

“(4) **Other proceeds** is the total of all amounts, other than dividends, that the person derives during the relevant income year from holding or disposing of the interest. 15

“Opening value

“(5) **Opening value** is—

- “(a) the market value at the end of the income year preceding the relevant income year of the interest, if the person is—
 - “(i) holding the interest at the end of the income year preceding the relevant income year; and
 - “(ii) applying the market value method to the interest at the end of the income year preceding the relevant income year; or
- “(b) zero, if **paragraph (a)** does not apply. 25

“Costs

“(6) **Costs** is the total of all expenditure that the person incurs during the income year in acquiring or increasing the interests.

“Conversion of foreign currency amounts

“(7) If an amount in a foreign currency is derived from, or incurred on, an interest during an income year, the person must choose that— 30

- “(a) each foreign currency amount in the income year be converted into New Zealand dollars using the exchange rate on the day the amount is derived or incurred; or
- “(b) all foreign currency amounts in the income year be converted into New Zealand dollars at the average of the close of trading spot exchange rates for the 15th day of each month that falls in the income year. 5

“Defined in this Act: amount, close of trading spot exchange rate, dividend, FIF, FIF income, income year, loss, market value, market value method, New Zealand

“EX 44C Smoothed market value method 10

“*FIF income or loss*

- “(1) If a person is using the **smoothed market value method** to calculate FIF income or loss from an attributing interest for an income year (**relevant income year**), the person has—
- “(a) an amount of FIF income from all the person’s interests in FIFs for the relevant income year if the formula FIF income or loss, calculated using the formula in **subsection (6)(a)**, is more than or equal to zero: 15
- “(b) an amount of FIF loss from all the person’s interests in FIFs for the relevant income year if the formula FIF income or loss is less than zero. 20

“*FIF income*

- “(2) If the person does not dispose of all attributing interests in the relevant income year, the amount of the FIF income referred to in **subsection (1)(a)** is the lesser of— 25
- “(a) the amount by which the formula FIF income or loss under **subsection (6)(a)** is more than zero:
- “(b) the amount (**FIF income limit**) that is the greater of— 30
 - “(i) the amount calculated using the formula in **subsection (6)(b)**:
 - “(ii) the amount calculated using the formula in **subsection (6)(c)**, if the person does not meet the requirements of **subparagraph (iii)**:
 - “(iii) the amount calculated using the formula in **subsection (6)(d)**, if the person is a natural person or the trustee of a trust who meets the requirements of **subsection (3)**. 35

“Person with FIF income limit determined using formula in subsection (6)(d)

- “(3) The FIF income limit for the trustee of a trust is determined using the formula in **subsection (6)(d)** if the trust—
- “(a) is a qualifying trust; and 5
 - “(b) is established mainly for the benefit of—
 - “(i) a natural person for whom the settlor has natural love or affection;
 - “(ii) an organisation or trust with income that is exempt income under section CW 34 (Charities: non-business income) or CW 35 (Charities: business income); and 10
 - “(c) has no settlor who is not a natural person; and
 - “(d) is not a superannuation scheme.

“FIF loss 15

- “(4) If the person does not dispose of all the attributing interests in the income year, the amount of the FIF loss referred to in **subsection (1)(b)** is the lesser of—
- “(a) the amount by which the formula FIF income or loss is less than zero: 20
 - “(b) the amount calculated using the formula in **subsection (6)(b)**.

“FIF income or loss in year of complete disposal

- “(5) If the person disposes of all the attributing interests in the income year, the amount of— 25
- “(a) the FIF income referred to in **subsection (1)(a)** is the amount by which the formula FIF income or loss under **subsection (6)(a)** is greater than zero;
 - “(b) the FIF loss referred to in **subsection (1)(b)** is the amount by which the formula FIF income or loss under **subsection (6)(a)** is less than zero. 30

“Formulas

- “(6) In this section—
- “(a) the **formula FIF income or loss** is the amount calculated using the formula— 35

$$0.85 \times ((\text{closing value} + \text{other proceeds}) - (\text{opening value} + \text{costs})) + \text{dividends} + \text{carried income} - \text{carried loss};$$

- “(b) the formula referred to in **subsections (2)(b)(i) and (4)(b)** is—
0.05 × commencing value:
- “(c) the formula referred to in **subsection (2)(b)(ii)** is—
other proceeds + dividends:
- “(d) the formula referred to in **subsection (2)(b)(iii)** is— 5
other proceeds – costs + dividends.
- “Definition of items in formulas*
- “(7) The items in the formulas are defined in **subsections (8) to (15)**.
- “Closing value*
- “(8) **Closing value** is the market value at the end of the relevant 10
income year of the interests—
- “(a) that the person is holding at the end of the relevant
income year; and
- “(b) to which the person is applying the smoothed market
value method for the relevant income year. 15
- “Other proceeds*
- “(9) **Other proceeds** is the total of all amounts derived during the
relevant income year by the person from holding or disposing
of the interests, other than—
- “(a) dividends: 20
- “(b) amounts treated under subpart FI (Effect of certain
disposals and resulting acquisitions) as being derived
by the person upon the death of the person.
- “Opening value*
- “(10) **Opening value** is whichever the person chooses of— 25
- “(a) the market value at the end of the income year preced-
ing the relevant income year of the interests—
- “(i) held by the person at the end of the income year
preceding the relevant income year; and
- “(ii) to which the person applies the smoothed market 30
value method for the relevant income year:
- “(b) the total of all expenditure that the person incurs before
the relevant income year in acquiring or increasing the
interests to which the person applies the smoothed mar-
ket value method for the relevant income year. 35

- “*Costs*
- “(11) **Costs** is the total of all expenditure that the person incurs during the relevant income year in acquiring or increasing the interests.
- “*Dividends* 5
- “(12) **Dividends** is the total of all dividends that the person derives during the relevant income year from holding or disposing of the interest. The amounts include foreign withholding tax or other tax that the person is allowed as a credit under section LC 1 (Credits in respect of tax paid in country or territory outside New Zealand). 10
- “*Carried income*
- “(13) **Carried income** is—
- “(a) zero, if the person—
- “(i) acquires all the interests in the relevant income year: 15
- “(ii) has FIF income in the income year preceding the relevant income year that is less than or equal to the FIF income limit for the income year preceding the relevant income year: 20
- “(iii) has FIF loss in the income year preceding the relevant income year:
- “(iv) did not use the smoothed market value method to calculate FIF income or loss from attributing interests for the income year preceding the relevant income year: 25
- “(b) the amount by which the person’s FIF income calculated using the formula in **subsection (6)(a)** for the income year preceding the relevant income year is more than the FIF income limit for the income year preceding the relevant income year, if **subsection (a)** does not apply. 30
- “*Carried loss*
- “(14) **Carried loss** is—
- “(a) zero, if the person—
- “(i) acquires all the interests in the relevant income year: 35
- “(ii) has FIF income in the income year preceding the relevant income year:

- “(iii) has FIF loss in the income year preceding the relevant income year that is less than or equal to the amount calculated using the formula in **subsection (6)(b)** for the income year preceding the relevant income year: 5
- “(iv) did not use the smoothed market value method to calculate FIF income or loss from attributing interests for the income year preceding the relevant income year:
- “(b) the amount by which the person’s FIF loss calculated using the formula in **subsection (6)(a)** for the income year preceding the relevant income year is more than the amount calculated using the formula in **subsection (6)(b)** for the income year preceding the relevant income year, if **subsection (a)** does not apply. 10 15
- “*Commencing value*
- “(15) **Commencing value** is,—
- “(a) if the person does not have FIF loss in the relevant income year, the market value at the end of the income year preceding the relevant income year of the interests— 20
- “(i) held by the person at the end of the income year preceding the relevant income year; and
- “(ii) to which the person applies the smoothed market value method for the relevant income year: 25
- “(b) if the person has FIF loss in the relevant income year, whichever the person chooses of—
- “(i) the amount given by **paragraph (a)**:
- “(ii) the total of all expenditure that the person incurs before the relevant income year in acquiring or increasing the interests to which the person applies the smoothed market value method for the relevant income year. 30
- “*Conversion of foreign currency amounts*
- “(16) If an amount in a foreign currency is derived from, or incurred on, the interest during an income year, the person must choose that— 35
- “(a) each such foreign currency amount in the income year be converted into New Zealand dollars using the

- exchange rate on the day the amount is derived or incurred; or
- “(b) all such foreign currency amounts in the income year be converted into New Zealand dollars at the average of the close of trading spot exchange rates for the fifteenth day of each month that falls in the income year. 5
- “Defined in this Act: amount, attributing interest, close of trading spot exchange rate, dividend, FIF, FIF income, foreign withholding tax, income year, loss, market value, New Zealand, smoothed market value method, tax”.
- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007. 10
- 59 Section EX 45 repealed**
- (1) Section EX 45 is repealed.
- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007. 15
- 60 New section EX 45B inserted**
- (1) Before section EX 46, the following is inserted:
- “EX 45B Cost method**
- “FIF income from interest, disposal of interest*
- “(1) If a person is using the **cost method** to calculate FIF income or loss from an interest in a FIF, the FIF income or loss from that interest for the relevant income year is— 20
- “(a) if the person holds the interest at the end of the year, the greater of—
- “(i) the total of all dividends that the person derives during the income year from holding the interest, including foreign withholding tax or other tax that the person is allowed as a credit under section LC 1 (Credits in respect of tax paid in country or territory outside New Zealand): 25 30
- “(ii) the amount calculated using the formula in **subsection (2)(a)**: 30
- “(b) if the person disposes of the interest in the year, the amount calculated using the formula in **subsection (2)(b)**.
- “Formulas* 35
- “(2) In **subsection (1)**,—
- “(a) the first formula is—

0.05 × opening value:	
“(b) the second formula is—	
0.85 × (disposal proceeds – commencing value).	
<i>“Definition of items in formulas</i>	
“(3) The items in the formula are defined in subsections (4) to (6) .	5
<i>“Opening value</i>	
“(4) Opening value is—	
“(a) zero, if the relevant income year is the year in which the person acquired the interest; or	
“(b) the total of the following amounts, calculated for each year, before the relevant income year, in which the person held the interest:	10
“(i) expenditure that the person incurs in the year in acquiring or increasing the interest:	
“(ii) the difference between the person’s FIF income for the income year and the amount given by subsection (1)(a) .	15
<i>“Disposal proceeds</i>	
“(5) Disposal proceeds is the total of all amounts that the person derives during the income year from disposing of the interest. The amounts include foreign withholding tax or other tax that the person is allowed as a credit under section LC 1 (Credits in respect of tax paid in country or territory outside New Zealand).	20
<i>“Commencing value</i>	25
“(6) Commencing value is—	
“(a) zero, if the relevant income year is the year in which the person acquired the interest; or	
“(b) the total of the following amounts for the interest disposed of, calculated for each year, before the relevant income year, in which the person held the interest:	30
“(i) expenditure that the person incurs in the year in acquiring or increasing the interest:	
“(ii) the difference between the person’s FIF income for the income year and the amount given by subsection (1)(a)(i) .	35

“Conversion of foreign currency amounts

- “(7) If an amount in a foreign currency is derived from, or incurred on, the interest during the year, the person must choose that—
- “(a) each such foreign currency amount in the income year be converted into New Zealand dollars using the exchange rate on the day the amount is derived or incurred; or 5
 - “(b) all such foreign currency amounts in the income year be converted into New Zealand dollars at the average of the close of trading spot exchange rates for the 15th day of each month that falls in the year. 10
- “Defined in this Act: amount, calculation method, close of trading spot exchange rate, dividend, FIF, FIF income, foreign withholding tax, income year, loss, New Zealand, tax”.
- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007. 15

61 Additional FIF income or loss if CFC owns FIF

- (1) Section EX 46(4)(c) is replaced by the following:
- “(c) apply the FIF loss ring-fencing rules in section DN 9 (Ring-fencing cap on deduction: branch equivalent method) as if the person directly held the attributing interest.” 20
- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.

62 New section EX 46B inserted 25

- (1) After section EX 46, the following is inserted:
- “EX 46B Additional FIF income or loss if grey list company owns FIF**
- “Application of this section*
- “(1) This section applies if— 30
- “(a) a person has a direct income interest in a grey list company for an accounting period; and
 - “(b) the income interest is—
- “(i) not excluded from being an attributing interest by the application of **section EX 33(1)(b)**; and 35
 - “(ii) excluded from being an attributing interest by the application of **section EX 33(1)(c)**; and

- “(c) the grey list company has investments in persons that are neither of the following:
 “(i) resident in New Zealand:
 “(ii) resident in a grey list country and controlled by the grey list company; and 5
- “(d) the total value of the investments is more than 5% of the total value of the grey list company’s assets; and
- “(e) the grey list company would have FIF income or loss for the period if—
 “(i) the grey list company were resident in New Zealand; and 10
 “(ii) the grey list company’s rights were not excluded from being an attributing interest by sections EX 32 and EX 33.
- “*Calculation of FIF income or loss* 15
- “(2) The person has FIF income or loss, for the income year in which the period ends, calculated using the formula—
 income interest × company’s FIF income or loss.
- “*Definition of items in formulas*
- “(3) In the formula— 20
 “(a) **income interest** is the person’s direct income interest in the grey list company for the period:
 “(b) **company’s FIF income or loss** is the FIF income or loss that the grey list company would have relating to the persons referred to in **subsection (1)(c)** for the period 25
 if—
 “(i) the grey list company were resident in New Zealand; and
 “(ii) the grey list company’s rights were not excluded from being an attributing interest by sections EX 32 and EX 33. 30
- “*Application of FIF rules to choice of method*
- “(4) The person must—
 “(a) choose, under sections EX 38 to EX 41, the calculation method for calculating the grey list company’s FIF income or loss; and 35

- “(b) otherwise apply the calculation rules in sections EX 38 to EX 47 as if the person directly held the attributing interest.
- “Defined in this Act: accounting period, attributing interest, CFC, FIF income, grey list company, income interest, income year, loss” . 5
- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.
- 63 Codes: comparative value and deemed rate methods**
- (1) The heading for section EX 47 is replaced by “**Codes: market value method, smoothed market value method, and cost method**” . 10
- (2) Section EX 47(1), other than the heading, is replaced by the following:
- “(1) This section applies if a person holding an attributing interest in a FIF calculates the FIF income or loss from the interest for a period using— 15
- “(a) the market value method:
“(b) the smoothed market value method:
“(c) the cost method.”
- (3) In section EX 47(2), “The person” is replaced by “If the person is not using the market value method, the person” . 20
- (4) In section EX 47, in the list of defined terms—
- (a) “comparative value method” and “deemed rate of return method” are omitted:
(b) “cost method”, “market value method”, and “smoothed market value method” are inserted. 25
- (5) **Subsections (1), (2), (3), and (4)** apply for income years and portfolio entity periods beginning on or after 1 April 2007.
- 64 Section EX 48 repealed**
- (1) Section EX 48 is repealed. 30
- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.
- 65 Section EX 49 repealed**
- (1) Section EX 49 is repealed.
- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007. 35

66 Limits on changes of methods

- (1) In section EX 50(2), paragraphs (c) to (e) are replaced by the following:
- “(c) in the case of the market value method or the smoothed market value method, it is impossible to find out the end-of-year market value of the interest: 5
 - “(d) in the case of the cost method, if it was the default method under section EX 41, it ceases to be the default method.”
- (2) In section EX 50, in the list of defined terms— 10
- (a) “comparative value method” and “deemed rate of return method” are omitted:
 - (b) “cost method”, “market value method”, and “smoothed market value method” are inserted.
- (3) **Subsections (1) and (2)** apply for income years and portfolio entity periods beginning on or after 1 April 2007. 15

67 Consequences of changes in method

- (1) In section EX 51(1), paragraphs (a) and (b) are replaced by the following:
- “(a) from 1 of the 3 cost-based calculation methods (the market value method, the smoothed market value method, or the cost method) to either of the look-through calculation methods (the accounting profits method and the branch equivalent method): 20
 - “(b) from either of the look-through calculation methods to 1 of the 3 cost-based calculation methods.” 25
- (2) Section EX 51(3) and (4) are replaced by the following:
“Changes from market value method or smoothed market value method to cost method
- “(3) If a person holding an attributing interest in a FIF changes from either of the market value method and the smoothed market value method to the cost method for calculating the FIF income or loss from the interest, the person is treated as having— 30
- “(a) disposed of the interest to an unrelated person immediately before the start of the first income year to which the new method applies; and 35

- “(b) reacquired the interest immediately after the start of the income year; and
 - “(c) received for the disposal and paid for the reacquisition an amount equal to the market value of the interest at the time of the disposal. 5

- “Changes from cost method to market value method or smoothed market value method*
- “(4) If a person holding an attributing interest in a FIF changes from the cost method to either of the market value method and the smoothed market value method for calculating the FIF income or loss from the interest, the person is treated as having— 10
 - “(a) disposed of the interest to an unrelated person immediately before the start of the first income year to which the new method applies; and 15
 - “(b) reacquired the interest immediately after the start of the income year; and
 - “(c) received for the disposal and paid for the reacquisition an amount equal to what would have been the interest’s opening value under **section EX 45B** if the person had applied the cost method for the income year.” 20
- (3) In section EX 51, in the list of defined terms,—
 - (a) “comparative value method” and “deemed rate of return method” are omitted:
 - (b) “cost method”, “market value method”, and “smoothed market value method” are inserted. 25
- (4) **Subsections (1), (2), and (3)** apply for income years and portfolio entity periods beginning on or after 1 April 2007.

- 68 New section EX 51B inserted**
- (1) After section EX 51, the following is inserted: 30
 - “EX 51B Person using comparative value method or deemed rate of return method before 1 April 2007**
 - “Application of this section*
 - “(1) This section applies if—
 - “(a) a person has on both 31 March 2007 and 1 April 2007 an attributing interest in a FIF; and 35
 - “(b) for the period ending on 31 March 2007, the person calculated the person’s FIF income or loss from the

- interest using the method known as the comparative value method or the method known as the deemed rate of return method; and
- “(c) for the period beginning on 1 April 2007, the person calculates the person’s FIF income or loss from the interest using the market value method, the smoothed market value method, or the cost method. 5
- “Opening value equal to closing value under former method*
- “(2) The opening value for the interest under the calculation method for the period beginning on 1 April 2007 is equal to the closing value for the interest under the calculation method that the person used for the period ending on 31 March 2007. 10
- “Defined in this Act: cost method, direct income interest, FIF, FIF income, income interest, income year, loss, market value, market value method, smoothed market value method”.* 15
- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.
- 69 Migration of persons holding FIF interests**
- (1) Section EX 52(1)(c) is replaced by the following: 20
- “(c) for the period before the change of residence, calculates FIF income or loss from the interest using—
- “(i) the market value method:
- “(ii) the smoothed market value method:
- “(iii) the cost method.” 25
- (2) Section EX 52(3)(c) is replaced by the following:
- “(c) for the period after the change of residence or status, calculates FIF income or loss from the interest using—
- “(i) the market value method:
- “(ii) the smoothed market value method: 30
- “(iii) the cost method.”
- (3) In section EX 52(4),—
- (a) in paragraph (a), “residence” is replaced by “residence or status”:
- (b) in paragraph (b), “when not resident in New Zealand” is replaced by “when the person is a transitional resident or not a New Zealand resident”. 35

- (4) In section EX 52(5)(c), “deemed rate of return method” is replaced by “branch equivalent method”.
 - (5) In section EX 52, in the list of defined terms—
 - (a) “comparative value method” and “deemed rate of return method” are omitted: 5
 - (b) “cost method”, “market value method”, and “smoothed market value method” are inserted.
 - (6) **Subsection (3)** applies for the 2005–06 and later income years.
 - (7) **Subsections (1), (2), and (5)** apply for income years and portfolio entity periods beginning on or after 1 April 2007. 10
- 70 Changes in application of FIF exemptions**
- (1) In section EX 53(1),—
 - (a) “Subsections (2) and (3)” is replaced by “Subsections (2) to (4)”:
 - (b) in paragraph (b)(ii),— 15
 - (i) “or **(db)**” is inserted after “CQ 5(1)(d)”:
 - (ii) “or **(db)**” is inserted after “DN 6(1)(d)”.
 - (2) In section EX 53(2), in the words before paragraph (a), “the comparative value method or deemed rate of return method” is replaced by “the market value method, the smoothed market value method, or the cost method”. 20
 - (3) In section EX 53(3), “deemed rate of return method” is replaced by “branch equivalent method”.
 - (4) In section EX 53(5), “Subsections (2) to (4)” is replaced by “Subsections (6) to (8)”. 25
 - (5) In section EX 53(6), in the words before paragraph (a), “the comparative value method or the deemed rate of return method” is replaced by “the market value method, the smoothed market value method, or the cost method”.
 - (6) In section EX 53(6)(b), “repurchased” is replaced by “reacquired”. 30
 - (7) In section EX 53(7), “deemed rate of return method” is replaced by “branch equivalent method”.
 - (8) In section EX 53, in the list of defined terms—
 - (a) “comparative value method” and “deemed rate of return method” are omitted: 35

- (b) “branch equivalent method”, “cost method”, “market value method”, and “smoothed market value method” are inserted.
- (9) **Subsections (3), (4), (6), and (7)** apply for the 2005–06 and later income years. 5
- (10) **Subsections (1), (2), (5), and (8)** apply for income years and portfolio entity periods beginning on or after 1 April 2007.
- 71 New section EX 54B inserted**
- (1) After section EX 54, the following is inserted:
- “EX 54B FIF rules first applying to interest on 1 April 2007”** 10
- “Application of this section*
- “(1) This section applies if—
- “(a) a person has on both 31 March 2007 and 1 April 2007 rights in a FIF; and
- “(b) for the period ending on 31 March 2007, the person did not derive FIF income or loss from the rights; and 15
- “(c) for the period beginning on 1 April 2007, the rights are an attributing interest.
- “Revenue account property*
- “(2) If the interest is revenue account property of the person, the person is treated as having— 20
- “(a) disposed of the interest to an unrelated person immediately before 1 April 2007; and
- “(b) reacquired the interest at the start of 1 April 2007; and
- “(c) received for the disposal and paid for the reacquisition an amount equal to the cost of the interest at the time of the disposal. 25
- “Not revenue account property*
- “(3) If the interest is not revenue account property of the person, the person is treated as having— 30
- “(a) disposed of the interest to an unrelated person immediately before 1 April 2007; and
- “(b) reacquired the interest at the start of 1 April 2007; and
- “(c) received for the disposal and paid for the reacquisition an amount equal to— 35
- “(i) the market value of the interest at the time of the disposal, if **subparagraph (ii)** does not apply; or

“(ii) the cost incurred in acquiring the interest, if the person is a natural person and the cost of the interest is greater than the market value of the interest at the time of the disposal.

“Defined in this Act: deduction, direct income interest, FIF, FIF income, income interest, income year, loss, market value”. 5

- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.

72 Measurement of cost

- (1) In section EX 56(1)(a),— 10
- (a) “or **(db)**” is inserted after “CQ 5(1)(d)”:
 - (b) “or **(db)**” is inserted after “DN 6(1)(d)”:
 - (c) “arises); and” is replaced by “arises):”:
- (2) In section EX 56(1)(b), “method; and” is replaced by “method:”. 15
- (3) In section EX 56(1), paragraphs (b) and (c) are replaced by the following:
- “(b) the market value method:
 - “(c) the smoothed market value method:
 - “(d) the cost method.” 20
- (4) In section EX 56, in the list of defined terms—
- (a) “comparative value method” and “deemed rate of return method” are omitted:
 - (b) “cost method”, “market value method”, and “smoothed market value method” are inserted. 25
- (5) **Subsections (1)(c) and (2)** apply for the 2005–06 and later income years.
- (6) **Subsections (1)(a) and (b), (3), and (4)** apply for income years and portfolio entity periods beginning on or after 1 April 2007.

73 Non-market transactions in FIF interests 30

- (1) In section EX 59, “the comparative value method or the deemed rate of return method” is replaced by “the market value method, the smoothed market value method, or the cost method”. 30
- (2) In section EX 59, in the list of defined terms— 35
- (a) “comparative value method” and “deemed rate of return method” are omitted:

- (b) “cost method”, “market value method”, and “smoothed market value method” are inserted.
- (3) **Subsections (1) and (2)** apply for income years and portfolio entity periods beginning on or after 1 April 2007.
- 74 Meaning of life insurance** 5
- (1) Section EY 8(3)(b) is replaced by the following:
- “(b) all the benefits referred to in paragraph (a) are—
- “(i) payable if the death is caused by a specified cause named in the policy; or
- “(ii) payable incidentally to the provision of accident or medical benefits, if the death is caused by a specified cause named in the policy.” 10
- (2) **Subsection (1)** applies for a person for the 2005–06 and later income years, unless the person—
- (a) takes a tax position in a return for an income year provided to the Commissioner before **16 May 2006** that relies on the law that would apply if **subsection (1)** did not come into force; and 15
- (b) fails to choose, in a notice of proposed adjustment or a response notice, to apply **subsection (1)**. 20
- (3) If **subsection (1)** does not apply for a person for an income year because of **subsection (2)**, the law that would apply if **subsection (1)** did not come into force applies for the person for the income year.
- 75 Section EZ 7 repealed** 25
- (1) Section EZ 7 is repealed.
- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.
- 76 Depreciation: partial income-producing use**
- (1) After section FB 7(7), the following is inserted: 30
- “(8) **Subsection (9)** applies when—
- “(a) a person has an amount of depreciation loss for an item of depreciable property arising under section EE 41(2); and
- “(b) in the income year in which the depreciation loss arises, the person starts to use the item, or to have it available 35

- for use, for the purpose of deriving assessable income or carrying on a business for the purpose of deriving assessable income; and
- “(c) at a time during the income year, the item is partly used, or is partly available for use, by the person— 5
- “(i) in deriving assessable income or carrying on a business for the purpose of deriving assessable income; or
- “(ii) in a way that is subject to fringe benefit tax; and
- “(d) the item is not a motor vehicle to which subpart DE applies. 10
- “(9) The deduction the person has for the amount of depreciation loss is calculated using the formula—
- disposal depreciation loss \times $\frac{\text{qualifying use days}}{\text{all days}}$ 15
- “(10) In the formula,—
- “(a) **disposal depreciation loss** is the amount resulting from a calculation made for the item under section EE 41(2):
- “(b) **qualifying use days** means the number of days in the income year on which the person owns the item and uses it, or has it available for use, for a use that falls within **subsection (8)(c)(i) or (ii)**: 20
- “(c) **all days** means the number of days in the income year on which the person owns the item and uses it or has it available for use, for any purpose. 25
- “(11) Despite **subsection (8)**, a unit of measurement other than days, whether relating to time, distance, or anything else, is to be used in the formula if it achieves a more appropriate apportionment.” 30
- (2) **Subsection (1)** applies for the 2006–07 and later income years.
- 77 Amounts derived by non-residents from renting films**
- (1) After section FC 21(3), the following is inserted:
- “(3B) If the non-resident person is required under an agreement with another non-resident (**person A**) to pay to person A an amount that is a film rent, or a royalty, commission, or arises from an amount derived by the non-resident person from activities described in subsection (1), the amount paid to person A is exempt income of person A.” 35
- (2) Section FC 21(4) is replaced by the following: 40

- “(4) This section does not apply if the amounts derived by the non-resident person from activities described in subsection (1) are an insignificant proportion of the total amounts derived by them from any business.”
- (3) **Subsection (1)** applies for the 2005–06 and later income years. 5
- 78 Transfer of property or obligations under financial arrangements deemed to be at market value**
Section FE 5(2) is replaced by the following:
- “(2) This section is overridden by **section EE 34(2)** for the purposes of determining the cost of an item to an amalgamated company under that section, unless the context requires otherwise.” 10
- 79 New Zealand net equity of New Zealand banking group**
- (1) In section FG 8G(1), in paragraph (b) of the definition of item EOI, “comparative value method or the deemed rate of return method” is replaced by “cost method, the market value method, or the smoothed market value method”. 15
- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.
- 80 Section FI 6 replaced** 20
Section FI 6 is replaced by the following:
- “FI 6 Disposal and resulting acquisition of timber**
If a transaction to which section FI 1(3)(d) or (e) refers involves the disposal and acquisition of property that is timber, standing timber, or the right to take timber, the disposal is treated as a transaction to which subpart FF applies if the beneficiary of the property is within the second degree of relationship to the deceased person.” 25
- 81 Relationship of section FI 2(2) to subpart CB**
- (1) In section FI 7(1)(b), “or CB 10” is replaced by “CB 10, or CB 12”. 30
- (2) In section FI 7(2), “and CB 10” is replaced by “CB 10, and CB 12”.
- (3) In section FI 7(3), “or CB 10” is replaced by “CB 10, or CB 12”.

- (4) In section FI 7(1)(b), as amended by **subsection (1)**, “CB 10, or CB 12” is replaced by “or CB 12”.
- (5) In section FI 7(2), as amended by **subsection (2)**, “CB 10, and CB 12” is replaced by “and CB 12”.
- (6) In section FI 7(3), as amended by **subsection (3)**, “CB 10, or CB 12” is replaced by “or CB 12”. 5

82 Attributing interests in FIFs

- (1) Section GD 14(1)(b) is replaced by the following:
 - “(b) they calculate the FIF income or loss from the interest for the period ending with the disposal using the market value method, the smoothed market value method, or the cost method; and” 10
- (2) Section GD 14(3)(b) is replaced by the following:
 - “(b) they calculate the FIF income or loss from the interest for the period after the acquisition using the market value method, the smoothed market value method, or the cost method; and” 15
- (3) **Subsections (1) and (2)** apply for income years and portfolio entity periods beginning on or after 1 April 2007.

83 Source of beneficiary income 20

- In section HH 3C(1),—
- (a) in the words preceding paragraph (a), “either” is omitted:
 - (b) in paragraphs (a) to (d) and (e)(i), “; or” is replaced wherever it occurs by “:”. 25

84 Distributions by Maori authority

In section HI 4(3), “ME 5” is replaced by “ME 35”.

85 New subpart HL inserted

- (1) After subpart HK, the following is inserted:

“Subpart HL—Portfolio investment entities

“**HL 1 Portfolio investment entity tax**

“*Portfolio investment entity tax*

- “(1) An entity that is a portfolio investment entity must pay portfolio investment entity tax on income derived by the entity in a portfolio entity period. 5

“*Factors in calculation*

- “(2) The amount of portfolio investment entity tax payable for a portfolio entity period is determined under **section HL 12** by reference to— 10
- “(a) the portfolio investor rate of each investor in the entity:
 - “(b) the income and expenditure of the entity relating to investments in which the investor has a portfolio investor interest:
 - “(c) the credits received by the entity in relation to income derived from the investments: 15
 - “(d) the share of the proceeds from the investments to which the investor is entitled:
 - “(e) the days of the portfolio entity period on which the investor has the portfolio investor interest. 20

“*Portfolio investor classes*

- “(3) An investor in a portfolio investment entity belongs to a portfolio investor class in which each investor has interests in the same investments of the portfolio investment entity.

“*Portfolio investor attributed income and portfolio investor attributed loss* 25

- “(4) An investor in a portfolio investment entity for a portfolio entity period is treated as—
- “(a) deriving income for the portfolio entity period equal to the portfolio investor attributed income under **section HL 15** for all the portfolio investor classes of which the investor is a part for the period: 30
 - “(b) having for the portfolio entity period a deduction under **section HL 16** or a rebate under **section KI 1** (Rebate for investor in portfolio investment entity other than zero-rated portfolio investor) for an amount of portfolio investor attributed loss under **section HL 15** for all the 35

portfolio investor classes of which the investor is a part for the period.

“Defined in this Act: amount, company, income, income year, portfolio entity period, portfolio investment entity, portfolio investment entity tax, portfolio investor class, portfolio investor attributed income, portfolio investor attributed loss, portfolio investor interest, portfolio investor rate

5

“HL 2 Becoming portfolio investment entity

“Requirements for making election

“(1) A person (**entity**) may choose under **section HL 7** to be a portfolio investment entity if the entity—

10

“(a) is a company, a group investment fund, or a superannuation fund; and

“(b) is not a life insurer; and

“(c) meets the eligibility requirements in **section HL 5**.

“Requirement for effective election

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“(2) An entity that makes an election under **section HL 7** becomes a portfolio investment entity unless, in the period ending 12 months after the date on which the election would be effective,—

“(a) the entity cancels the election:

20

“(b) the entity on the last day of each quarter in the period fails to meet 1 or more of the eligibility requirements in **sections HL 5 and HL 6**.

“Entity treated as disposing of, reacquiring, property

“(3) If an entity becomes a portfolio investment entity—

25

“(a) the income year of the entity ends before the day on which the election is effective; and

“(b) the entity is treated for the purposes of this Act as, at the end of the income year referred to in **paragraph (a)**, disposing of the property of the entity to another person for an amount of consideration equal to the market value of the property at that time; and

30

“(c) the entity is treated for the purposes of this Act as, at the beginning of the day on which the election is effective, acquiring the property referred to in **paragraph (b)** from the other person for an amount of consideration equal to the amount referred to in **paragraph (b)**; and

35

“(d) the income year of the portfolio investment entity—

“(i) begins on the day on which the election is effective and ends with the end of the tax year in which the election is effective, for the first income year:	5
“(ii) coincides with the tax year, for later income years.	5
<i>“Payment of tax, making of returns</i>	
“(4) An entity that has chosen to be a portfolio investment entity must—	
“(a) pay portfolio investment entity tax as required by section HL 12 ; and	10
“(b) make the returns required by section 57B of the Tax Administration Act 1994.	
“Defined in this Act: amount, company, group investment fund, income year, portfolio entity period, portfolio investment entity, portfolio investment entity tax, tax year	15
“HL 3 Tax treatment of period before election effective	
<i>“No penalty or interest arising from transition</i>	
“(1) An entity that becomes a portfolio investment entity is not liable to pay any penalty or interest for which the entity would otherwise be liable for an inaccuracy in an estimate, or shortfall in the payment, of provisional tax to the extent that the inaccuracy or shortfall arises because of—	20
“(a) the effect of the election on the length of the entity’s income year:	25
“(b) the disposal and acquisition referred to in section HL 2(3) .	
<i>“Spreading of liability for period before election</i>	
“(2) An entity that becomes a portfolio investment entity and at the time has a liability under the resident withholding tax rules and the non-resident withholding tax rules to make payments to the Commissioner may satisfy each liability by making a payment of one third of the liability at the end of each of the 3 tax years following the tax year in which the entity becomes a portfolio investment entity.	30
“Defined in this Act: interest, non-resident withholding tax rules, portfolio investment entity, provisional tax, resident withholding tax rules	35

“HL 4 Ceasing to be portfolio investment entity

“When entity ceases to portfolio investment entity

- “(1) An entity that has chosen to be a portfolio investment entity ceases to be a portfolio investment entity if—
- “(a) the entity cancels the election under **section HL 7:** 5
 - “(b) the entity no longer meets the eligibility requirements in **section HL 5:**
 - “(c) the entity ceases under **section HL 6(9)** to meet the further eligibility requirements in **section HL 6.**
- “Entity treated as disposing of, reacquiring, property 10*
- “(2) An entity that ceases to be a portfolio investment entity is treated for the purposes of this Act as—
- “(a) disposing of the property of the portfolio investment entity to another person for an amount of consideration equal to the market value of the property at the time; 15
 - and
 - “(b) acquiring the property referred to in **paragraph (a)** from the other person for an amount of consideration equal to the amount referred to in **paragraph (a).**
- “Defined in this Act: portfolio investment entity 20

“HL 5 Eligibility requirements for entities

“Eligibility requirements

- “(1) **Subsections (2) to (5)** describe eligibility requirements that must be met by a portfolio investment entity and an entity that is electing under **section HL 7** to become a portfolio investment entity. 25
- “Residence requirement*
- “(2) The residence requirement is that the entity must be—
- “(a) resident in New Zealand; and
 - “(b) not treated under a double tax agreement as not being 30
- resident in New Zealand.
- “Income interest requirement*
- “(3) The income interest requirement is that all portfolio investor interests in the entity that give rights in relation to a portfolio

entity investment give the rights in relation to all the proceeds from the investment.

“Independent management requirement

“(4) The independent management requirement is that no investor or person associated with an investor, other than a portfolio investment entity or a foreign investment vehicle, has a power to influence the entity in the making or disposal of an investment if the making or disposal is within the power of the entity. 5

“Entity history requirement 10

“(5) The entity history requirement is that the entity must not, before the day on which the election to be a portfolio investment entity is to be effective, have ceased to be a portfolio investment entity—

“(a) under **section HL 4(1)(a)**, unless the cessation occurred more than 5 years before the day on which the election is to be effective: 15

“(b) under **section HL 4(1)(b) or (c)**.

“Defined in this Act: amount, portfolio entity investment, portfolio entity period, portfolio entity taxable income, portfolio investment entity, portfolio investor attributed income, portfolio investor attributed loss, portfolio investor class, portfolio investor class net loss, portfolio investor interest, portfolio investor interest fraction, taxable income 20

“HL 6 Further eligibility requirements for entities

“Eligibility requirements 25

“(1) **Subsections (2) to (8)** describe further eligibility requirements that must be met by a portfolio investment entity.

“Investor class requirement

“(2) The investor class requirement is that each portfolio investor class for the entity must include— 30

“(a) 20 persons, if all persons associated under section OD 8(3) (Further definitions of associated persons) are treated as 1 person:

“(b) a portfolio investment entity:

“(c) a foreign investment vehicle. 35

“Investor interest adjustment requirement

- “(3) The investor interest adjustment requirement is that, after each period for which the entity is liable for portfolio investment entity tax calculated under **section HL 12** by reference to the portfolio investor rate of each investor, the entity must adjust the portfolio investor interest of each investor to reflect the effect of the rate on the amount of portfolio investment entity tax paid by the entity. 5

“Investor interest size requirement

- “(4) The investor interest size requirement is that the portfolio investor interests held by an investor who is not a portfolio investment entity or a foreign investment vehicle, together with the portfolio investor interests held by persons associated with the investor under section OD 8(3),— 10
- “(a) must not be more than 20% of the total interests of investors in a portfolio investor class if the investor is— 15
- “(i) a qualifying unit trust that is a New Zealand resident:
- “(ii) a group investment fund:
- “(iii) a life insurer that is a New Zealand resident: 20
- “(iv) a superannuation fund; and
- “(b) must not be more than 10% of the total interests of investors in a portfolio investor class if the investor is not a person referred to in **paragraph (a)** and is not associated with such a person under section OD 8(3). 25

“Investment type requirement

- “(5) The investment type requirement is that the entity must use, or have available to use, 90% or more by value of the entity’s assets in deriving income from the owning or trading of— 30
- “(a) an interest in land: 30
- “(b) a financial arrangement or an excepted financial arrangement that is, or is similar to, a—
- “(i) loan:
- “(ii) security:
- “(iii) share: 35
- “(iv) futures contract:
- “(v) currency swap contract:
- “(vi) interest rate swap contract:
- “(vii) forward exchange contract:

- “(viii) forward interest rate contract:
- “(c) a right or option concerning property referred to in **paragraphs (a) and (b)**.
- “*Application of investment value requirement*
- “(6) The investment value requirement applies if the entity has a portfolio entity investment— 5
- “(a) in a company that is not a portfolio investment entity or a foreign investment vehicle; and
- “(b) having a value equal to more than 25% of the value of the company. 10
- “*Investment value requirement*
- “(7) The investment value requirement is that—
- “(a) the total value of portfolio entity investments referred to in **subsection (6)** must be equal to or less than 10% of the total value of the entity’s assets; and 15
- “(b) the total amount of the portfolio investor class investment values for portfolio entity investments referred to in **subsection (6)** must be equal to or less than 10% of the total amount of the portfolio investor class investment values for all the portfolio entity investments in which investors in the portfolio investor class have interests. 20
- “*Investor interest repurchase requirement*
- “(8) The investor interest repurchase requirement is that, at intervals of 5 years or less after the entity’s election to be a portfolio investment entity,— 25
- “(a) the entity must offer to purchase from an investor in a portfolio investor class all or part of the investor’s portfolio investor interests at the time if, at the time,—
- “(i) the entity has a portfolio entity investment in a company that is not a portfolio investment entity or a foreign investment vehicle; and 30
- “(ii) the market value of the investment is more than 10% of the market value of the company; and
- “(iii) the total amount of the portfolio investor class investment values for the portfolio entity investments that meets the requirements of **subparagraphs (i) and (ii)** is more than 10% of the total amount of the portfolio investor class investment 35

- values for all the portfolio entity investments in which the investors in the portfolio investor class have interests; and
- “(b) if an investor accepts an offer from the entity under **paragraph (a)**,— 5
- “(i) the entity must purchase the portfolio investor interests that the investor wishes to sell to the entity; and
- “(ii) pay for the interests an amount equal to the total of the amounts that are, for each portfolio entity investment, the portfolio investor interest fraction of the portfolio investor class investment value at the time of the acceptance. 10
- “*Effect of not meeting requirement*
- “(9) An entity is not eligible to be a portfolio investment entity if— 15
- “(a) the entity fails to meet a requirement referred to in **subsections (2) to (8)** on the last day of a quarter—
- “(i) beginning 6 months or more after the date on which the company becomes a portfolio investment entity; and 20
- “(ii) ending more than 3 months before an announcement by the company to its shareholders that the company is winding up within 6 months of the announcement; and
- “(b) the entity’s failure— 25
- “(i) is repeated on the last day of the quarter following the quarter referred to in **paragraph (a)**:
- “(ii) is due to factors within the control of the company.
- “*Foreign investment vehicle* 30
- “(10) **Foreign investment vehicle** means an entity that—
- “(a) is not resident in New Zealand; and
- “(b) meets the requirements of all of **subsections (2)(a), (4), (5), (6), (7) and (8) and section HL 5(3) and (4)**.
- “Defined in this Act: amount, foreign investment vehicle, futures contract, group investment fund, life insurance company, New Zealand resident, portfolio entity investment, portfolio entity period, portfolio investment entity, portfolio investor class, portfolio investor class investor values, portfolio investor interest, portfolio investor interest fraction, qualifying unit trust, superannuation fund 35

**“HL 7 Election to become portfolio investment entity and
cancellation of election**

“Notice of election

- “(1) An entity that meets the eligibility requirements in **section HL 5** may choose to be a portfolio investment entity by giving a notice to the Commissioner. 5

“When election effective

- “(2) An election received by the Commissioner is effective on—
 “(a) the start of the next quarter of the 2007–08 tax year beginning after the day of receipt, if the day is before the end of the 2007–08 tax year; or 10
 “(b) the start of the next tax year, if the day of receipt is on or after 1 January 2008.

“Notice of cancellation

- “(3) An entity may choose at any time to cease being a portfolio investment entity by giving a notice to the Commissioner. 15

“When cancellation effective

- “(4) An election to cease being a portfolio investment entity takes effect from 1 April after the election is made.

“Defined in this Act: Commissioner, notice, portfolio investment entity, quarter, tax year, taxable income 20

“HL 8 Portfolio investor class taxable income

“Amount

- “(1) The **portfolio investor class taxable income** of a portfolio investor class of a portfolio investment entity for a portfolio entity period is— 25
 “(a) the amount calculated using the formula in **subsection (2)**, if the portfolio investor class has, for the period, an amount of portfolio investor class land loss that is more than the portfolio investor class net loss; or 30
 “(b) zero, if the portfolio investor class has, for the period, an amount of portfolio investor class land loss that is less than or equals the portfolio investor class net loss.

(5) and reduced by the amount of land loss used under
subsection (6).

“Defined in this Act: amount, portfolio entity class taxable income, portfolio entity formation loss, portfolio entity investment, portfolio entity period, portfolio investment entity, portfolio investor attributed income, portfolio investor class, portfolio investor class available land loss, portfolio investor class land gain, portfolio investor class land loss, portfolio investor class net income, portfolio investor class net loss, portfolio investor class taxable income, portfolio investor interest, portfolio investor interest fraction

5

“HL 9 Portfolio investor class net income and portfolio investor class net loss

10

“Portfolio investor class net income

“(1) The **portfolio investor class net income** of a portfolio investor class for a portfolio entity period is the total of the following amounts, found for each portfolio entity investment in which the investors in the portfolio investor class have an interest:

15

“(a) zero, if the amount of the entity’s assessable income for the period derived from the portfolio entity investment is less than or equal to the amount of the entity’s deductions for the period incurred in deriving assessable income from the portfolio entity investment; or

20

“(b) the amount calculated using the formula—
class fraction × (investment income – investment cost).

“Definition of items in formula

25

“(2) In the formula,—

“(a) **class fraction** is the portfolio investor class fraction for the portfolio entity investment:

“(b) **investment income** is the total amount of the entity’s assessable income for the period derived from the portfolio entity investment:

30

“(c) **investment cost** is the total amount of the entity’s deductions for the period incurred in deriving assessable income from the portfolio entity investment.

“Portfolio investor class net loss

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“(3) The **portfolio investor class net loss** of a portfolio investor class for a period is the total of the following amounts, found for each portfolio entity investment in which the investors in the portfolio investor class have an interest:

“(a) zero, if the amount of the entity’s deductions for the period incurred in deriving assessable income from the portfolio entity investment is less than or equal to the amount of the entity’s assessable income for the period derived from the portfolio entity investment; or	5
“(b) the amount calculated using the formula— class fraction × (investment cost – investment income).	
“ <i>Definition of items in formula</i>	
“(4) In the formula,—	
“(a) class fraction is the portfolio investor class fraction for the portfolio entity investment:	10
“(b) investment cost is the total amount of the entity’s deductions for the period incurred in deriving assessable income from the portfolio entity investment:	
“(c) investment income is the total amount of the entity’s assessable income for the period derived from the portfolio entity investment.	15
“Defined in this Act: amount, portfolio entity investment, portfolio entity period, portfolio investment entity, portfolio investor attributed income, portfolio investor attributed loss, portfolio investor class, portfolio investor class fraction, portfolio investor class net loss, portfolio investor interest, portfolio investor interest fraction	20
“HL 10 Income tax liability	
The income tax liability of a portfolio investment entity for a tax year is the total amount of portfolio investment entity tax that the portfolio investment entity is liable to pay for the portfolio entity periods in the tax year.	25
“Defined in this Act: portfolio entity period, portfolio entity tax, portfolio investment entity, tax year	
“HL 11 Portfolio entity periods	30
The portfolio entity period for a portfolio investment entity for a tax year is—	
“(a) a quarter, if the entity does not choose a shorter portfolio entity period under paragraph (b) ; or	
“(b) a period of less than a quarter, if—	35
“(i) the first portfolio entity period in a tax year begins with the beginning of the tax year; and	

- “(ii) no portfolio entity period begins in 1 quarter and ends in another quarter; and
- “(iii) the entity chooses the period by giving a notice to the Commissioner before the tax year.

“Defined in this Act: Commissioner, notice, portfolio entity period, portfolio investment entity, quarter, tax year 5

“**HL 12 Portfolio investment entity tax**

“*Liability of portfolio investment entity*

- “(1) A portfolio investment entity is liable to pay an amount of **portfolio investment entity tax** for a portfolio entity period that is the total of the amounts calculated using the formula in **subsection (2)** for— 10
- “(a) each day of the period; and
 - “(b) each portfolio entity investment; and
 - “(c) each investor with a portfolio investor interest in the portfolio entity investment on the day, treating an interest in the portfolio entity investment that is not held by an investor as being a portfolio investor interest held by the entity as the sole investor in a portfolio investor class. 15 20

“*Formula*

- “(2) The formula is—
- $$\frac{\text{investor fraction} \times (\text{class income} \times \text{rate} - \text{credits})}{\text{days in period.}}$$

“*Definition of items in formula*

- “(3) The items in the formula are defined in **subsections (4) to (8)**. 25

“*Investor fraction*

- “(4) **Investor fraction** is the investor’s portfolio investor interest fraction on the day.

“*Class income*

- “(5) **Class income** is the portfolio investor class net income for the investor’s portfolio investor class and the portfolio entity investment. 30

	<i>“Rate</i>	
“(6)	Rate is—	
	“(a) the portfolio investor rate for the investor for the period; or	
	“(b) 33%, if the entity is treated as the investor.	5
	<i>“Credits</i>	
“(7)	Credits is the lesser of the following amounts:	
	“(a) the amount of credits for tax paid or withheld that are received by the entity from the portfolio entity invest- ment for the period:	10
	“(b) the amount found by multiplying the class net income under subsection (5) by the rate under subsection (6) .	
	<i>“Days in period</i>	
“(8)	Days in period is the number of days in the portfolio entity period.	15
	“Defined in this Act: amount, investor, portfolio entity investment, portfolio entity period, portfolio investment entity, portfolio investor class, portfolio investor class net income, portfolio investor interest, portfolio investor interest fraction, portfolio investor rate, taxable income	
	“HL 13 Portfolio entity formation loss	20
	<i>“Losses arising before election</i>	
“(1)	If an entity that chooses to become a portfolio investment entity has a net loss arising from a period ending before the entity becomes a portfolio investment entity, the net loss may be carried forward under subparts IE and IF (which relate to tax losses generally) to a period during which the entity is a portfolio investment entity.	25
	<i>“Liquidation losses</i>	
“(2)	If an entity that chooses to become a portfolio investment entity is treated as having a loss resulting from the liquidation and formation required by section HL 2(3)(b) and (c) , the loss is treated under subsection (1) as being a net loss arising before the entity becomes a portfolio investment entity.	30

“Portfolio entity formation loss

“(3) The total for the entity of the net losses referred to in **subsection (1) or (2)** is the amount of the portfolio investment entity’s **portfolio entity formation loss** and—

“(a) may be offset against portfolio class net income for a portfolio entity period under **section HL 8**: 5

“(b) may not be offset against the net income of another person.

“Defined in this Act: amount, net loss, portfolio class net income, portfolio entity formation loss, portfolio entity period, portfolio investment entity 10

“HL 14 Loss of entity from portfolio entity period

If a portfolio investment entity has a net loss arising from a portfolio entity period, the net loss may not be—

“(a) carried forward under subparts IE and IF (which relate to tax losses generally) to a later period: 15

“(b) offset against the net income of another person.

“Defined in this Act: net income, net loss, portfolio entity period, portfolio investment entity

“HL 15 Portfolio investor attributed income and portfolio investor attributed loss 20

“Portfolio investor attributed income for period

“(1) A person who is an investor in a portfolio investment entity on a day in a portfolio entity period is treated as deriving in the period from the entity an amount of **portfolio investor attributed income** equal to— 25

“(a) the amount described in **subsection (3)**, if that amount is more than or equal to zero; or

“(b) zero, if **paragraph (a)** does not apply.

“Portfolio investor attributed loss for period

“(2) A person who is an investor in a portfolio investment entity on a day in a portfolio entity period is treated as having in the period in relation to the entity an amount of **portfolio investor attributed loss** equal to— 30

“(a) the amount by which zero is more than the amount given by **subsection (3)**, if the amount given by **subsection (3)** is less than zero; or 35

“(b) zero, if **paragraph (a)** does not apply.

“Amount

- “(3) The amount that determines whether an investor has portfolio investor attributed income or portfolio investor attributed loss for a period is the total of the amounts calculated using the formula in **subsection (4)** for— 5
- “(a) each day of the period; and
- “(b) each portfolio investor class to which the investor belongs on the day.

“Formula

- “(4) The formula is— 10
- $$\frac{\text{investor fraction} \times (\text{class taxable income} - \text{class loss})}{\text{days in period.}}$$

“Definition of items in formula

- “(5) In the formula,—
- “(a) **investor fraction** is the portfolio investor interest fraction of the investor as part of the portfolio investor class on the day: 15
- “(b) **class taxable income** is the portfolio investor class taxable income for the period under **section HL 8**:
- “(c) **class loss** is the amount of the portfolio investor class net loss for the portfolio investor class for the period under **section HL 9**: 20
- “(d) **days in period** is the number of days in the portfolio entity period.

“Defined in this Act: amount, investor, portfolio entity period, portfolio investment entity, portfolio investor attributed income, portfolio investor attributed loss, portfolio investor class, portfolio investor class net loss, portfolio investor class taxable income, portfolio investor interest, portfolio investor interest fraction 25

“HL 16 Treatment of portfolio investor attributed loss

“Treatment of loss by zero-rated portfolio investors 30

- “(1) For each zero-rated portfolio investor who has an amount of portfolio investor attributed loss under **section HL 15** for a portfolio entity period, the amount is treated as a deduction under **section DB 43B** (Zero-rated portfolio investor and portfolio investor attributed loss) in the income year corresponding to the tax year containing the period. 35

“Treatment of loss by other investors

- “(2) Each investor who is not a zero-rated portfolio investor and has an amount of portfolio investor attributed loss under **section HL 15** for a period has, as a rebate of tax under **section KI 1** (Rebate for investor in portfolio investment entity other than zero-rated portfolio investor) for the period, an amount calculated using the formula— 5
- $$\text{rate} \times \text{loss.}$$

“Definition of items in formula

- “(3) In the formula in **subsection (2)**,— 10
- “(a) **rate** is the portfolio investor rate for the investor for the period:
- “(b) **loss** is the amount of portfolio investor attributed loss for the period.

“Defined in this Act: amount, income year, investor, portfolio entity period, portfolio investment entity, portfolio investor attributed loss, portfolio investor rate, tax year, zero-rated portfolio investor 15

“HL 17 Income and expenditure from certain real property

“When this section applies

- “(1) This section applies if, at the end of a quarter in a tax year,— 20
- “(a) investors in a portfolio investor class have interests in portfolio entity investments that are interests in land; and
- “(b) the total value given by **subsection (2)** for such portfolio entity investments is more than 10% of the total value given by **subsection (2)** for all interests of the investors in portfolio entity investments. 25

“Value of portfolio entity investment

- “(2) The value of a portfolio entity investment for the purposes of **subsection (1)** is the portfolio investor class fraction of the market value of the portfolio entity investment at the end of the quarter. 30

“Portfolio investor class land loss

- “(3) If, in the tax year, the entity is allowed an amount of deductions for expenditure or loss incurred in deriving assessable income from an interest in land that is more than the amount 35

of assessable income derived by the entity from the interest in land, the portfolio investor class fraction of the amount of the excess is the **portfolio investor class land loss** for the investors in the portfolio investor class and the tax year.

“Portfolio investor class land gain 5

- “(4) If, in the tax year, the amount of assessable income derived by the entity from an interest in land is more than the amount of deductions allowed for expenditure of loss incurred by the entity in deriving assessable income from the interest in land, the amount of the excess is the **portfolio investor class land gain** for the company and the tax year. 10

“Portfolio investor class available land loss

- “(5) The **portfolio investor class available land loss** for an entity that is a portfolio investment entity is,— 15
- “(a) at the beginning of the tax year in which the entity becomes a portfolio investment entity, zero: 15
- “(b) at the end of a period, the amount calculated using the formula—
- opening value + period loss – period gain – loss used.

“Definition of items in formula 20

- “(6) In the formula in **subsection (5)**,—
- “(a) **opening value** is the portfolio investor class available land loss at the beginning of the period:
- “(b) **period loss** is the amount of the portfolio investor class land loss for the period: 25
- “(c) **period gain** is the amount of the portfolio investor class land gain for the period:
- “(d) **loss used** is the amount of the land loss used for the period under **section HL 8(7)**.
- “Defined in this Act: amount, portfolio entity investment, portfolio entity period, portfolio investment entity, portfolio investor class, portfolio investor class available land loss, portfolio investor class fraction, portfolio investor class land gain, portfolio investor class land loss, portfolio investor class net loss, portfolio investor interest, portfolio investor interest fraction, taxable income 30

“HL 18 Credits received by portfolio investment entity

“Use of credit by portfolio investment entity

- “(1) A portfolio investment entity that receives a credit for tax paid or withheld may not, except under this section,—
- “(a) use the credit to reduce the liability of the entity for income tax or portfolio investment entity tax or to obtain a refund of tax: 5
- “(b) attach the credit to any distribution or transfer the credit to any other person.

“Tax credit associated with investor 10

- “(2) For a portfolio entity period for which a portfolio investment entity receives a credit for tax paid or withheld, the amount of the credit that is associated with an investor in the entity is the total of the amounts calculated using the formula in **subsection (3)** for each day of the period. 15

“Formula

- “(3) The formula is—
- $$\frac{\text{credit} \times \text{class fraction} \times \text{investor fraction}}{\text{days in period.}}$$

“Definition of items in formula 20

- “(4) In the formula in **subsection (3)**,—
- “(a) **credit** is the amount of the credit received by the portfolio investment entity in relation to the portfolio entity investment:
- “(b) **class fraction** is the portfolio investor class fraction, of the investor’s portfolio investor class, in relation to the portfolio entity investment that gives rise to the credit: 25
- “(c) **investor fraction** is the portfolio investor interest fraction of the investor:
- “(d) **days in period** is the number of days in the period. 30

“Zero-rated portfolio investor

- “(5) A zero-rated portfolio investor is treated as receiving for the period, as a credit of the type received by the entity, the amount of the credit received by the entity that is associated with the investor under **subsection (2)**. 35

“Other investor

- “(6) For an investor who is not a zero-rated portfolio investor, the amount of the credit associated with the investor under **subsection (2)** is treated as—
- “(a) a credit, of the type received by the entity, to the extent that such a credit reduces the liability of the entity for portfolio investment entity tax arising from net income associated with the investor under **section HL 12**: 5
- “(b) a rebate of tax under **section KI 1** (Rebate for investor in portfolio investment entity other than zero-rated portfolio investor) for the period, of an amount equal to the amount of the credit that is not used under **paragraph (a)**. 10

“Portfolio investment entity

- “(7) For property of a portfolio investment entity in which no investor has a portfolio investor interest, the portfolio investment entity is treated under **subsection (5)** as being the sole zero-rated portfolio investor in a portfolio investor class having an interest in the property. 15
- “Defined in this Act: amount, investor, net income, portfolio class fraction, portfolio entity investment, portfolio entity period, portfolio investment entity, portfolio investment entity tax, portfolio investor class, portfolio investor interest, portfolio investor interest fraction, zero-rated portfolio investor”. 20
- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.

86 Net losses may be offset against future net income 25

- (1) After section IE 1(2B), the following is inserted:
- “(2BB) If a taxpayer is a portfolio investment entity,—
- “(a) the taxpayer may not carry forward a net loss under this section unless permitted by **section HL 13**; and
- “(b) in the calculation of the taxpayer’s liability to pay portfolio investment entity tax for a period, this section and section IF 1 apply as if the period were an income year.” 30
- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.

87 FIF net losses 35

- (1) In section IE 4,—
- (a) subsections (2), (3), and (6) are repealed:

- (b) in subsection (5), “or (db)” is inserted after “CQ 5(1)(d)” in both places that it occurs.
- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.
- 88 Group of companies FIF net losses** 5
- (1) Section IG 5(2) is repealed.
- (2) In section IG 5(4), “subsection (2) or (3)” is replaced by “subsection (3)”.
- (3) **Subsections (1) and (2)** apply for income years and portfolio entity periods beginning on or after 1 April 2007. 10
- 89 Rebate in respect of gifts of money**
- (1) In section KC 5(1)(cp), “Limited.” is replaced by “Limited:” and the following is added:
- “(cq) Children on the Edge (NZ) Trust:
- “(cr) DIPS’N Charitable Trust (International): 15
- “(cs) The New Zealand Council of the Ramabai Mukti Mission Trust Board:
- “(ct) Waterharvest Trust:
- “(cu) Zonta International District 16 (New Zealand) Charitable Trust.” 20
- (2) **Subsection (1)** applies for the 2006–07 and later income years.
- 90 Determination of net income**
- In section KD 1(1)(g)(ii),—
- (a) in the formula, “(c – d)” is replaced with “c”:
- (b) in the definition of the item **c**, “corresponds” is replaced with “corresponds; and”: 25
- (c) the definition of the item **d** is repealed.
- 91 Calculation of subpart KD credit**
- (1) In section KD 2(2), in the definition of the item **IWP** or **CTC**, in paragraph (a), “:” is replaced by “; or”. 30
- (2) **Subsection (1)** applies for the 2006–07 and later income years.
- 92 In-work payment**
- (1) In section KD 2AAA,—

- (a) in subsection (1)(d), “subsection (7)” is replaced by “subsection (8)”:
- (b) in subsection (2), the definition of **weeks** is replaced by the following:
- “**weeks**,— 5
- “(a) for 2 or more eligible periods forming 1 continuous period, is the number of whole 1-week periods in the continuous period for which the principal caregiver or the principal caregiver’s spouse, civil union partner, or de facto partner has, from the activity, income to which subsection (1)(d)(i) and (ii) refer: 10
- “(b) for an eligible period to which **paragraph (a)** does not apply, is the number of whole 1-week periods in the eligible period for which the principal caregiver or the principal caregiver’s spouse, civil union partner, or de facto partner has, from the activity, income to which subsection (1)(d)(i) and (ii) refer”: 15
- (c) in subsection (5)(a),—
- (i) in subparagraph (i), “(x), (xi), (xii), (xiii), (xiv), (xv), and (xvi)” is replaced by “(xi), (xii), (xiii), (xiv), and (xv)”:
- (ii) the following is inserted after subparagraph (ii):
- “(iii) paid as a result of an incapacity, suffered before 1 January 2006, due to personal injury by accident within the meaning of section 26 of the Injury Prevention, Rehabilitation, and Compensation Act 2001:”. 25
- (2) **Subsection (1)** applies for the 2006–07 and later income years.
- 93 Rules for subpart KD credit**
- (1) Section KD 2AA(2) is replaced by the following: 30
- “*Principal caregiver*
- “(2) A person (**person A**) is a principal caregiver of a child if person A lives apart from another qualifying person for that dependent child, and person A has the dependent child in their exclusive care for periods totalling at least one-third of— 35
- “(a) a 4-month period:
- “(b) the tax year:
- “(c) the entitlement period, in the case of the parental tax credit.”

- (2) Section KD 2AA(2B) is replaced by the following:
- “Principal caregiver for eligible period for purposes of in-work payment*
- “(2B) A person (**person A**) is a principal caregiver of a child for an eligible period under section KD 2AAA(1) if person A lives apart from another qualifying person for that dependent child, and person A has the dependent child in their exclusive care for periods totalling at least one-third of a 4-month period or the tax year, whether or not those periods coincide with the eligible period.”
- (3) **Subsections (1) and (2)** apply for the 2006–07 and later income years.
- 94 Calculation of family tax credit**
In section KD 3(1), “In this section” is replaced by “In this section and section KD 3A”.
- 95 Credit of tax by instalments**
(1) In section KD 5(6A)(b)(ii),—
(a) “rates of family support credit” is replaced by “amounts of family support credit, in-work payment”;
(b) “KD 2” is replaced by “KD 2, KD 2AAA,”.
- (2) **Subsection (1)** applies for the 2006–07 and later income years.
- 96 Adjustment of family support amounts, abatement threshold amounts, amounts of in-work payment and parental tax credit, and amount of family tax credit**
In section KD 5C(1)(d), “the amount of the family tax credit” is replaced by “the figure in the definition of the item **amount**”.
- 97 Commissioner to deliver credit of tax by instalments**
(1) In section KD 7(3A), “any person a credit of tax” is replaced by “any person a credit of tax with an income-tested benefit”.
(2) Section KD 7(3C) is repealed.
- 98 New subpart KI inserted**
(1) After subpart KH, the following is inserted:

“Subpart KI—Portfolio investor rebates

“**KI 1 Rebate for investor in portfolio investment entity other than zero-rated portfolio investor**“*Portfolio investor rebate*

- “(1) An investor in a portfolio investment entity who is not a zero-rated portfolio investor is allowed a **portfolio investor rebate** as a rebate of income tax arising in a tax year if the entity has, for a portfolio entity period in the tax year,—
- “(a) an imputation credit or a credit for tax paid or withheld giving rise to a tax credit for the investor under **section HL 18** (Credits received by portfolio investment entity): 10
- “(b) a net loss giving rise to a rebate for the investor under **section HL 16** (Treatment of portfolio investor attributed loss). 15

“*Amount* 15

- “(2) The amount of an investor’s portfolio investor rebate that produces a rebate of tax for a tax year (**current year**) is the lesser of the following amounts—
- “(a) the total of—
- “(i) the amount of each credit referred to in **subsection (1)(a)** arising in the current year: 20
- “(ii) the amount of each rebate under **section HL 16** arising in the current year:
- “(iii) the amount of credits referred to in **subsection (1)(a)** and rebates under **section HL 16** arising before the current year that have not produced a rebate before the current year: 25
- “(b) the total for the tax year of provisional tax, tax deductions, and resident withholding tax paid to the Commissioner in the tax year for the credit of the investor. 30

“Defined in this Act: Commissioner, imputation credit, investor, net loss, portfolio entity period, portfolio investment entity, portfolio investor rebate, provisional tax, resident withholding tax, tax deductions, tax year, zero-rated portfolio investor”.

- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007. 35

99 Credit of tax for imputation credit

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

- “(2C) A taxpayer that is a portfolio investment entity is entitled under this section to a credit of tax of no more than the extent allowed by **subpart HL** (Portfolio investment entities).
- “(2D) A taxpayer that is an investor in a portfolio investment entity is, to the extent allowed by **subpart HL**, entitled to a credit of tax to which the entity’s entitlement is restricted by **subsection (2C)**.” 5
- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.
- 100 Credits in respect of tax paid in country or territory outside New Zealand** 10
- (1) After section LC 1(1), the following is inserted:
- “(1B) A taxpayer that is a portfolio investment entity is allowed under this section a credit of tax of no more than the extent allowed by **subpart HL** (Portfolio investment entities). 15
- “(1C) A taxpayer that is an investor in a portfolio investment entity is, to the extent allowed by **subpart HL**, allowed a credit of tax to which the entity’s entitlement is restricted by **subsection (1B)**.”
- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007. 20
- 101 Resident withholding tax payments to be credited against income tax assessed**
- (1) In section LD 3, the following is inserted after subsection (1):
- “(1B) A taxpayer that is a portfolio investment entity is allowed under this section a credit of tax of no more than the extent allowed by **subpart HL** (Portfolio investment entities). 25
- “(1C) A taxpayer that is an investor in a portfolio investment entity is, to the extent allowed by **subpart HL**, allowed a credit of tax to which the entity’s entitlement is restricted by **subsection (1B)**.”
- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007. 30
- 102 Credit of tax for dividend withholding payment credit in hands of shareholder**
- (1) After section LD 8(1), the following is inserted:

- “(1B) A taxpayer that is a portfolio investment entity is entitled under this section to a credit of tax of no more than the extent allowed by **subpart HL** (Portfolio investment entities).
- “(1C) A taxpayer that is an investor in a portfolio investment entity is, to the extent allowed by **subpart HL**, entitled to a credit of tax to which the entity’s entitlement is restricted by **subsection (1B)**.” 5
- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.
- 103 Refund to non-resident or exempt shareholders** 10
Section LD 9(1B)(b) is repealed.
- 104 New section LF 2B inserted**
- (1) After section LF 2, the following is inserted:
- “LF 2B Restriction for portfolio investment entity**
- “(1) A taxpayer that is a portfolio investment entity is allowed under this section an amount of underlying foreign tax credit to no more than the extent allowed by **subpart HL** (Portfolio investment entities). 15
- “(2) A taxpayer that is an investor in a portfolio investment entity is, to the extent allowed by **subpart HL**, allowed an amount of underlying foreign tax credit to which the entity’s entitlement is restricted by **subsection (1)**.” 20
- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.
- 105 Provisional tax payable in instalments** 25
- (1) In section MB 8(1), “residual income tax” is replaced, in both places it occurs, by “provisional tax”.
- (2) **Subsection (1)** applies for provisional tax payments for the 2008–09 and later income years.
- 106 Choosing to use GST ratio** 30
- (1) In section MB 16, in the list of defined terms, “notice” and “notify” are omitted.
- (2) **Subsection (1)** applies for provisional tax payments for the 2008–09 and later income years.

- 107 Changing determination method**
- (1) In section MB 17(4), in the heading, “first instalment date” is replaced by “date of instalment A”.
- (2) **Subsection (1)** applies for provisional tax payments for the 2008–09 and later income years. 5
- 108 Calculating residual income tax in transitional years**
- (1) In section MB 19(1)(a) and (b), “transitional tax year” is replaced in both places it occurs by “transitional year”.
- (2) **Subsection (1)** applies for provisional tax payments for the 2008–09 and later income years. 10
- 109 Example: Sections MB 20 to MB 24**
- (1) In the example after section MB 24, “20 January” is replaced by “15 January”.
- (2) **Subsection (1)** applies for provisional tax payments for the 2008–09 and later income years. 15
- 110 Examples: Sections MB 26 and MB 27 (using March balance dates)**
- (1) In the examples after section MB 27, “20 January” is replaced wherever it occurs, by “15 January”.
- (2) **Subsection (1)** applies for provisional tax payments for the 2008–09 and later income years. 20
- 111 Application of provisions of Tax Administration Act 1994**
- (1) In section MB 28(1), “residual income tax” is replaced by “provisional tax”. 25
- (2) **Subsection (1)** applies for provisional tax payments for the 2008–09 and later income years.
- 112 Limit on refunds and allocations of tax**
- In section MD 2(4), “after the date of instalment B specified in schedule 13, part A, for the company’s income year that corresponds to that tax year” is replaced by “after a credit is made to that company’s imputation credit account for amounts that have satisfied the company’s income tax liability for that tax year,”. 30

113 Companies required to maintain imputation credit account

- (1) Section ME 1(2)(b) is replaced by the following:
 “(b) a company resident in New Zealand which, under a double tax agreement, is treated as not being resident in New Zealand for the purposes of the double tax agreement; or” 5
- (2) In section ME 1(2)(j), “authority.” is replaced by “authority; or” and the following is added:
 “(k) a portfolio investment entity.” 10

114 Revocation of listing

- (1) In section NBB 4(2), “30 days” is replaced by “notice”.
- (2) Section NBB 4(3) is replaced with the following:
 “(3) The Commissioner may give 14 days notice of revocation, if, within 30 days of the date on which the notice of intended revocation is given under subsection (2), the listed PAYE intermediary fails to satisfy the Commissioner that the matters listed in that notice of intended revocation are resolved.” 15
- (3) In section NBB 4(4), “a notice” is replaced by “the 14 days notice of revocation given”. 20

115 Private use of a motor vehicle: value of benefit

- (1) In section ND 1A(1C)(b)(ii), “ceases to be leased” is replaced by “ceases to be leased by the employer or an associated person without a consecutive or successive lease of the vehicle by the employer or an associated person”. 25
- (2) After section ND 1A(1D), the following is added:
 “(1E) Despite subsections (1B) to (1D), an employer must apply schedule 2, part A item 1 or item 2 using the cost price valuation method if—
 “(a) a vehicle is owned, leased or rented by the employer or an associated person; and 30
 “(b) the employer or the associated person owned, leased or rented the vehicle:
 “(i) during the initial return period for that vehicle, being a period beginning before 1 April 2006: 35
 “(ii) before 1 April 2006.

- “(1F) **Subsection (1E)** does not apply if—
- “(a) the employer’s initial return for the vehicle is for a period beginning on or after 1 April 2006 and the vehicle is not subject to an agreement or arrangement referred to in section CX 6B; or 5
 - “(b) the vehicle is owned by the employer or the associated person and there has been a period of 5 years after the beginning of the period of the employer’s initial return for the vehicle.”
- (3) **Subsections (1) and (2)** apply for a person’s liability for fringe benefit tax for a period beginning on or after 1 April 2006. 10
- 116 Specified superannuation contribution withholding tax imposed**
- In section NE 2(1), “unless either section NE 2AA(2), NE 2AB, or NE 2A(2) applies” is replaced by “unless **section NE 2B** applies”. 15
- 117 Sections NE 2AA, NE 2AB, and NE 2A replaced by new section NE 2B**
- Sections NE 2AA, NE 2AB, and NE 2A are replaced by the following: 20
- “**NE 2B Employer election that progressive rates of specified superannuation contribution withholding tax apply**
- If an employer makes a specified superannuation contribution on behalf of an employee for a tax year, the employer may choose that the employer, or a PAYE intermediary, pays specified superannuation contribution withholding tax on the specified superannuation contribution at the rate specified in **schedule 1, part A, clause 10(a)** for the SSCWT rate threshold amount for the employee.” 25
- 118 Specified superannuation contribution withholding tax to be deducted** 30
- In section NE 3, “sections NE 2, NE 2AA, and NE 2AB” is replaced by “section NE 2 or **NE 2B**”.

119	Tax deemed for certain purposes to have been received by superannuation fund	
	In section NE 6(a),—	
	(a) “commitments—” is replaced by “commitments, the amount of any specified superannuation contribution withholding tax payable in accordance with the SSCWT rules; and”:	5
	(b) subparagraphs (i) and (ii) are repealed.	
120	Application of RWT rules	
(1)	In section NF 1(2)(b)(viii), “CW 50:” is replaced by “CW 50; or” and the following is added:	10
	“(ix) dividends that are excluded income by virtue of the application of section CX 44D: ”.	
(2)	Subsection (1) applies for income years and portfolio entity periods beginning on or after 1 April 2007.	15
121	Payment of deductions of resident withholding tax to Commissioner	
(1)	In section NF 4(6B), “emigration date” is replaced by “emigration time”.	
(2)	Subsection (1) applies for the 2005–06 and later income years.	20
122	Certificates of exemption	
(1)	In section NF 9(1), after paragraph (b), the following is inserted:	
	“(c) any portfolio investment entity:”.	
(2)	Subsection (1) applies for income years and portfolio entity periods beginning on or after 1 April 2007.	25
123	Amount of resident withholding tax deduction deemed to have been received	
	In section NF 12, “under the RWT rules from any payment” is replaced by “under the RWT rules from any payment other than a replacement payment under a share-lending arrangement”.	30

- 124 Application of NRWT rules**
- (1) In section NG 1(2), in the words before paragraph (a), “assessable income” is replaced by “income”.
 - (2) In section NG 1(2)(d), “applies.” is replaced by “applies; or”, and the following is added: 5
 “(e) exempt income.”
 - (3) **Subsections (1) and (2)** apply for the 2005–06 and later income years.
- 125 Payment of deductions of non-resident withholding tax to Commissioner** 10
- (1) In section NG 11(4B), “emigration date” is replaced by “emigration time”.
 - (2) **Subsection (1)** applies for the 2005–06 and later income years.
- 126 Definitions**
- (1) This section amends section OB 1. 15
 - (2) The definition of **acquire** is replaced by the following:
 “**acquire**, for depreciable property, includes—
 “(a) make:
 “(b) be granted, for a patent or plant variety rights:
 “(c) lodge, for a patent application or a plant variety rights application” 20
 - (3) After the definition of **applicable basic tax rate**, the following is inserted:
 “**approved deposit fund** is defined in **section EX 33B** (Australian superannuation fund exemption) for the purposes of that section” 25
 - (4) The definition of **calculation method** is replaced by the following:
 “**calculation method**, for the calculation of FIF income or FIF loss, means any of the accounting profits method, the branch equivalent method, the market value method, the smoothed market value method, and the cost method” 30
 - (5) The definition of **comparative value method** is replaced by the following:

- “**comparative value method** means the method of calculating FIF income or FIF loss under former **section EX 44** before the repeal of that section”.
- (6) The definition of **deemed rate of return method** is replaced by the following: 5
- “**deemed rate of return method** means the method of calculating FIF income or FIF loss under former **section EX 45** before the repeal of that section”.
- (7) In the definition of **diminished value**—
- (a) in item **a**, paragraph (a) is replaced by the following: 10
- “(a) on an improvement described in section DO 4 (Improvements to farm land), DO 4B (Expenditure on land: planting of listed horticultural plants), DO 6 (Improvements to aquacultural business), or DP 3 (Improvements to forestry land); or”: 15
- (b) in item **c**, paragraph (b) is replaced by the following:
- “(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 4 (Improvements to farm land), DO 4B (Expenditure on land: planting of listed horticultural plants), DO 4C (Expenditure on land: horticultural replacement planting), DO 6 (Improvements to aquacultural business), or DP 3 (Improvements to forestry land)”. 20 25
- (8) In the definition of **dispose**, paragraph (e) is replaced by the following:
- “(e) for depreciable property, includes destroy, withdraw, or let lapse, but does not include the following: 30
- “(i) for a patent application, conclude the patent application because a patent is granted in relation to the patent application:
- “(ii) for a geothermal well, have the well cease to be available for use because **section EE 6(4)** (What is depreciable property?) ceases to apply:”. 35
- (9) In the definition of **distribution**, in the words before paragraph (a), “sections CQ 2” is replaced by “sections **CP 2** (Distributions by portfolio investment entities), CQ 2”.

- (10) In the definition of **eligible company**, in paragraph (d)(ii), “equity)” is replaced by “equity); and”, and the following is added:
- “(e) is—
- “(i) incorporated in New Zealand; or 5
- “(ii) carrying on a business in New Zealand through a fixed establishment; and
- “(f) is not, by the law of another country or territory, liable to income tax in that country or territory by reason of domicile, residence, or place of incorporation”. 10
- (11) In the definition of **eligible period**, in paragraph (e), “last day” is replaced by “last day; and”, and the following is added:
- “(f) the person does not start or cease to be a ring-fenced family support recipient, other than on the first or, as applicable, the last day”. 15
- (12) In the definition of **employer’s contributions to superannuation savings**, in paragraph (a), subparagraphs (i) and (ii) are replaced by the following:
- “(i) those that were treated as salary and wages under section NE 2A before that section was replaced by **section NE 2B** (Employer election that progressive rates of specified superannuation contribution withholding tax apply) on 1 April 2007; or 20
- “(ii) those on which specified superannuation contribution withholding tax was paid at the rate specified in schedule 1, part A, clause 10(a) before that clause was replaced by a new **clause 10(a)** on 1 April 2007; and”. 25
- (13) In the definition of **employment, in paragraph (e), “that section” is replaced by “that section and section KD 3A (Rules for family tax credit)”**. 30
- (14) After the definition of **exempt interest**, the following is inserted:
- “**exempt public sector superannuation scheme** is defined in **section EX 33B** (Australian superannuation fund exemption) for the purposes of that section”. 35

- (15) In the definition of **FIF net loss**, “sections **DN 8** (Ring-fencing cap on deduction: not branch equivalent method) and” is replaced by “section”.
- (16) In the definition of **fixed rate share**, in paragraph (a), “and any imputation credits or dividend withholding payment credits attached to any dividend” is inserted after “issue of the share”. 5
- (17) After the definition of **foreign expenditure**, the following is inserted:
“**foreign investment vehicle** is defined in **section HL 6(10)** (Further eligibility requirements for entities)”. 10
- (18) After the definition of **forestry company**, the following is inserted:
“**formula FIF income or loss** is defined in **section EX 44C(6)** (Smoothed market value method)”. 15
- (19) After the definition of **generally accepted accounting practice**, the following is inserted:
“**geothermal energy proving period** means, for a geothermal well that is not used to exploit geothermal energy, a period— 20
“(a) starting with the completion or acquisition of the well; and
“(b) ending when the well, for the foreseeable future, is not intended, and cannot reasonably be expected, to be used or available for use in— 25
“(i) deriving assessable income:
“(ii) carrying on a business for the purpose of deriving assessable income
“**geothermal well** means a bore or well solely for the purpose of investigating or exploiting geothermal energy in New Zealand”. 30
- (20) The definition of **investor** is replaced by the following:
“**investor** means—
“(a) for a group investment fund, a person who is entitled, by reason of the terms of the trust under which the group investment fund is established, to the income from the money, investments, and other property of the group investment fund: 35

- “(b) for a portfolio investment entity that is a company, a shareholder in the company:
- “(c) for a portfolio investment entity that is not a company, a person who is entitled, by reason of the rules of the portfolio investment entity or the terms of the trust under which the portfolio investment entity is established, to a proportion of the funds available for distribution by the entity as if the entity were a company and the investor were a shareholder in the company”. 5
- (21) In the definition of **non-participating redeemable share**, “for the purposes of that section” is omitted. 10
- (22) After the definition of **operating lease**, the following is inserted:
 “**operational allowance** is defined in **section CW 19(4)** (Income for military service in operational area) for the purposes of that section”. 15
- (23) The definition of **patent application date** is repealed.
- (24) The definition of **pay and allowances** is repealed.
- (25) After the definition of **portable veteran’s pension**, the following is inserted: 20
 “**portfolio entity formation loss** is defined in **section HL 13** (Portfolio entity formation loss)
 “**portfolio entity investment** means an investment of a portfolio investment entity in an item of property of a type to which **section HL 6(5)** (Further eligibility requirements for entity) refers 25
 “**portfolio entity period** for a portfolio investment entity, means a period of a length given by **section HL 11** (Portfolio entity periods) for which the entity pays portfolio investment entity tax under **section HL 12** (Portfolio investment entity tax) 30
 “**portfolio investment entity** means a company, superannuation fund, or group investment fund that has become a portfolio investment entity under **section HL 2** (Becoming portfolio investment entity) and has not ceased to be a portfolio investment entity under **section HL 4** (Ceasing to be portfolio investment entity) 35
 “**portfolio investment entity tax** means the tax imposed on a portfolio investment entity under **section HL 12** (Portfolio investment entity tax)

“ portfolio investor attributed income is defined in section HL 15 (Portfolio investor attributed income and portfolio investor attributed loss)	
“ portfolio investor attributed loss is defined in section HL 15 (Portfolio investor attributed income and portfolio investor attributed loss)	5
“ portfolio investor class means a group of investors in a portfolio investment entity, each investor having an entitlement—	
“(a) to a distribution by the entity of proceeds from portfolio entity investments that are the same as for the other investors in the group; and	10
“(b) to a proportion, that is the same for each portfolio entity investment, of a distribution by the entity—	
“(i) of proceeds from a portfolio entity investment; and	15
“(ii) to the investors in the group	
“ portfolio investor class available land loss is defined in section HL 17 (Income and expenditure from certain real property)	20
“ portfolio investor class fraction , for a portfolio investment entity and a portfolio investor class, means the fraction of the proceeds from a portfolio entity investment to which the investors in the portfolio investor class are entitled as a group	
“ portfolio investor class investment value , for a portfolio investment entity, a portfolio investor class, and a portfolio entity investment, means the portfolio investor class fraction of the market value of the portfolio entity investment	25
“ portfolio investor class land gain is defined in section HL 17 (Income and expenditure from certain real property)	30
“ portfolio investor class land loss is defined in section HL 17 (Income and expenditure from certain real property)	
“ portfolio investor class net income is defined in section HL 9 (Portfolio investor class net income and portfolio investor class net loss)	35
“ portfolio investor class net loss is defined in section HL 9 (Portfolio investor class net income and portfolio investor class net loss)	

- “**portfolio investor class taxable income** is defined in **section HL 8** (Portfolio investor class taxable income)
- “**portfolio investor interest**, means an interest in a portfolio investment entity that gives the holder an entitlement to a distribution of proceeds from a portfolio entity investment of the entity 5
- “**portfolio investor interest fraction**, for an investor in a portfolio investor class of a portfolio investment entity, means the fraction to which the investor is entitled of an amount of proceeds from a portfolio entity investment distributed by the entity to the investors in the portfolio investor class 10
- “**portfolio investor rate**, for an investor in a portfolio investment entity and a portfolio entity period, means—
- “(a) 33%, if the investor does not, before the end of the period, notify the entity that a lower rate is the prescribed investor rate for the investor and the period; or 15
- “(b) the rate that the investor, before the end of the period, notifies to the entity as the prescribed investor rate for the investor and the period
- “**portfolio investor rebate** is defined in **section KI 1** (Rebate for investor in portfolio investment entity other than zero-rated portfolio investor)”. 20
- (26) After the definition of **prescribed interest**, the following is inserted:
- “**prescribed investor rate**, for a person who is an investor of a portfolio investment entity and a portfolio entity period in a tax year, means— 25
- “(a) 33%, unless **paragraph (b) or (c)** applies to the person; or
- “(b) 19.5%, if the person—
- “(i) is a resident to whom **paragraph (c)** does not apply; and 30
- “(ii) had, in the latest income year ending before the tax year, \$48,000 or less in total of taxable income and attributed investment entity income; or 35
- “(c) 0%, if the person is a resident who—
- “(i) is an organisation or trust with income that is exempt income under section CW 34 (Charities: non-business income) or CW 35 (Charities: business income): 40

- “(ii) is a company:
- “(iii) derives income as a trustee.”.
- (27) In the definition of **provisional taxpayer**, after paragraph (b)(i), the following is inserted:
 - “(ib) a portfolio investment entity; or”.
- (28) In the definition of **qualifying person**, in paragraph (c), “that section” is replaced by “that section and section KD 3A (Rules for family tax credit)”.
- (29) After the definition of **registered security**, the following is inserted:
 - “**regulated superannuation fund** is defined in **section EX 33B** (Australian superannuation fund exemption) for the purposes of that section”.
- (30) After the definition of **retained earnings**, the following is inserted:
 - “**retirement savings account** is defined in **section EX 33B** (Australian superannuation fund exemption) for the purposes of that section”.
- (31) In the definition of **salary or wages**, paragraph (b)(iii) is repealed.
- (32) In the definition of **schedular income**, after paragraph (d), the following is inserted:
 - “(db) income derived by a portfolio investment entity:”.
- (33) After the definition of **spreading method**, the following is inserted:
 - “**SSCWT rate threshold amount** means—
 - “(a) if the employee is employed by the employer for all of the tax year immediately previous to the tax year to which the specified superannuation contribution relates, the total amount of—
 - “(i) salary and wages derived by the employee in that previous tax year; and
 - “(ii) specified superannuation contributions (being the gross amount of the contributions before deduction of specified superannuation contribution withholding tax) that the employer makes on behalf of the employee in that previous year; or
 - “(b) if **paragraph (a)** does not apply, the total amount of—

- “(i) salary and wages that the employer estimates will be derived by the employee in the tax year to which the specified superannuation contribution relates; and
- “(ii) specified superannuation contributions (being the gross amount of the contributions before deduction of specified superannuation contribution withholding tax) that the employer estimates they will make on behalf of the employee in the tax year to which the specified superannuation contribution relates”.
- (34) After the definition of **year of determination**, the following is inserted:
- “**zero-rated portfolio investor** means an investor in a portfolio investment entity who has a prescribed investor rate of 0%”.
- (35) **Subsections (8), (11), (16), and (19)** apply for the 2005–06 and later income years.
- (36) **Subsection (10)** applies for a person for the 2005–06 and later income years, unless the person took a tax position in a return provided to the Commissioner before **16 May 2006** that relies on the definition of **eligible company** that would apply if **subsection (6)** did not come into force.
- (37) If **subsection (10)** does not apply for a person for an income year because of **subsection (36)**, the definition of **eligible company** that would apply if **subsection (10)** did not come into force applies for the person for the income year.
- (38) **Subsections (4), (5), (6), (9), (15), (17), (18), (20), (21), (25), (26), (27), (32), (33), and (34)** apply for income years and portfolio entity periods beginning on or after 1 April 2007.
- 127 Meaning of income tax**
- (1) In section OB 6(3)(d),—
- (a) “**EX 44**,” is omitted:
- (b) “**EZ 7B**,” is inserted after “EY 47,”.
- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.

- 128 Modifications to measurement of voting and market value interests in case of continuity provisions**
- (1) In section OD 5(6F), “sections OD 3(3)(b) and OD 4(3)(b) and (d)” is replaced by “sections OD 3(3)(d), OD 4(3)(d), and OD 9”. 5
- (2) **Subsection (1)** applies for a person for the 2005–06 and later income years, unless the person—
- (a) has taken a tax position for an income year in a return provided to the Commissioner before **16 May 2006** that relies on the law that would apply if **subsection (1)** did not come into force; and 10
- (b) fails to choose, in a notice of proposed adjustment or a response notice, to apply **subsection (1)**.
- (3) If **subsection (1)** does not apply for a person for an income year because of **subsection (2)**, the law that would apply if **subsection (1)** did not come into force applies for the person for the income year. 15
- 129 Further definitions of associated persons**
- (1) In section OD 8(1), “**EX 33**,” is inserted after “EJ 14,”: 20
- (2) In section OD 8(3),—
- (a) “EE 34” is replaced by “EE 33”:
- (b) “**HL 6**,” is inserted after “HK 11,”.
- (3) **Subsection (2)(b)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.
- 130 Schedule 1—Basic rates of income tax and specified superannuation contribution withholding tax** 25
- In schedule 1,—
- (a) in part A, clause 10, paragraphs (a) and (aa) are replaced by the following:
- “(a) the rate specified in part C, if the employer has made an election under **section NE 2B**; and” 30
- (b) in the heading to part C, “(aa)” is replaced by “(a)”:
- (c) in part C,—
- (i) “The amount of salary or wages given by section NE 2AB” is replaced by “The SSCWT rate threshold amount” 35
- (ii) “\$9,500” is replaced, in both places it occurs, by “\$10,925”:

- (iii) “\$38,000” is replaced, in both places it occurs, by “\$43,700”.

131 Schedule 2—Fringe benefit values

- (1) In schedule 2, in part A item 7, the words before paragraph (a) are replaced by the following: 5
- “(7) When a vehicle is leased or rented to the person after it has been leased or rented to another person (the **other person**), the vehicle’s cost price is its market value at the time it is first leased or rented to the person if—”.
- (2) **Subsection (1)** applies for a person’s liability for fringe benefit tax for a period beginning on or after 1 April 2006. 10

132 Schedule 6B—Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant

- In schedule 6B, in part B item 7, “incurred in the cessation of a business,” is omitted. 15

133 Schedule 11—Banded rates of depreciation

- (1) In the shoulder reference in schedule 11, “EE 25” is replaced by “EE 25E”. 20
- (2) **Subsection (1)** applies for the 2005–06 and later income years. 20

134 Schedule 22A—Identified policy changes

In schedule 22A, after the entry relating to section EY 44(3), the following is inserted:

- “FC 21 The recharacterisation of amounts derived from New Zealand, from the listed activities, does not apply to a New Zealand company that is under the control of non-residents.” 25

135 Schedule 23—Comparative tables of old and new provisions

- In schedule 23,— 30
- (a) in the third column of part A,—
- (i) the entry corresponding to EG 17(1) is replaced by “EE 33(1)–(3)”:

- (ii) the entry corresponding to EG 17(2) is replaced by “EE 33(4)”:
- (iii) the entry corresponding to EG 17(3) is replaced by “EE 33(4)”:
- (iv) the entry corresponding to EG 17(3B) is replaced by “EE 34(1)”:
- (v) the entry corresponding to EG 17(4) is replaced by “EE 33(5)”:
- (vi) the entry corresponding to EG 17(5) is replaced by “EE 33(1)”:
- (vii) the entry corresponding to EG 17(8) is replaced by “EE 33(1), (3)–(5), EE 35”:
- (b) in the second column of part B,—
 - (i) the entry corresponding to EE 33 is replaced by “EG 17(1)–(5), (8)”:
 - (ii) the entry corresponding to EE 34 is replaced by “EG 17(3B), FE 5(2)”.

Part 3 Amendments to Tax Administration Act 1994

- 136 Tax Administration Act 1994** 20
This Part amends the Tax Administration Act 1994.
- 137 Interpretation**
- (1) This section amends section 3.
 - (2) After the definition of **fringe benefit**, the following is inserted: 25
“full and complete inspection includes use as evidence in court proceedings”.
- 138 Giving of notices by Commissioner**
- Section 14(9) is replaced by the following:
- “(9) A notice given by post is treated as having been given at the time the notice would have been delivered in the ordinary course of the post.” 30

- 139 Giving of notices to Commissioner**
Section 14B(8) is replaced by the following:
“(8) A notice given by post is treated as having been given at the time the notice would have been delivered in the ordinary course of the post.” 5
- 140 Giving of notices to other persons**
Section 14C(8) is replaced by the following:
“(8) A notice given by post is treated as having been given at the time the notice would have been delivered in the ordinary course of the post.” 10
- 141 Power to remove and copy documents**
(1) In the heading to section 16B, “**and copy**” is omitted.
(2) Section 16B(1) is replaced by the following:
“(1) The Commissioner, or an officer of the Department authorised by the Commissioner, may remove books or documents accessed under section 16 to—
 “(a) make copies:
 “(b) retain them for a full and complete inspection:”
(3) In section 16B(2), “unless **subsection (2B)** applies” is inserted after “as soon as practicable”. 15
(4) After section 16B(2), the following is inserted:
“(2B) Books or documents retained for a full and complete inspection may be retained for so long as is necessary for the inspection.” 20
- 142 Statement to share supplier when share user makes replacement payment under share-lending arrangement** 25
Section 30B(d) and (h) are repealed.
- 143 Certification requirements for withdrawals subject to section CS 1 of Income Tax Act 2004**
Section 32B(1)(b) and (c) are replaced by the following: 30
“(b) The amount of specified superannuation contributions that were subject to specified superannuation contribution withholding tax at the rate specified in schedule 1, part A, clause 10(a) of the Income Tax Act 2004 before

	that clause was replaced by a new clause 10(a) on 1 April 2007:	
	“(c) The amount of specified superannuation contributions that were treated as salary and wages under section NE 2A of the Income Tax Act 2004 before that section was replaced by section NE 2B on 1 April 2007:”.	5
144	Annual returns of income In section 33(1), after “section 33A applies”, “or a portfolio investment entity” is inserted.	
145	New section 36AB inserted	10
(1)	After section 36A, the following is inserted: “36AB Electronic format of returns by portfolio investment entity “(1) The Commissioner must prescribe one or more electronic formats in which a return required under section 57B must be furnished by a portfolio investment entity. “(2) A format prescribed under subsection (1) is subject to the conditions specified by the Commissioner, whether generally or in a particular case.”	15
(2)	Subsection (1) applies for income years and portfolio entity periods beginning on or after 1 April 2007.	20
146	Non-resident withholding tax deduction certificates and annual reconciliations	
(1)	In section 49(4B), in the words before paragraph (a), “emigration date” is replaced by “emigration time”.	25
(2)	In section 49(4C)(c), “emigration date” is replaced by “emigration time”.	
(3)	Subsections (1) and (2) apply for the 2005–06 and later income years.	
147	Resident withholding tax deduction reconciliation statements	30
(1)	In section 51(5B), “emigration date” is replaced by “emigration time”.	
(2)	In section 51(5C)(c), “emigration date” is replaced by “emigration time”.	35

- (3) **Subsections (1) and (2)** apply for the 2005–06 and later income years.

148 New section 57B inserted

- (1) After section 57, the following is inserted:

**“57B Portfolio investment entity to make quarterly returns,
file annual reconciliation statement** 5

- “(1) A company that is a portfolio investment entity in a portfolio entity period must, by the end of the first month beginning on or after the end of the period,—
- “(a) file a return in the prescribed electronic format 10
showing—
- “(i) the portfolio investment entity tax payable by the company for the period; and
- “(ii) further information that the Commissioner considers relevant; and 15
- “(b) pay the portfolio investment entity tax payable by the company for the period
- “(2) A company that is a portfolio investment entity in a tax year must, by 20 May of the calendar year in which the tax year ends, file for the tax year a return in the prescribed electronic format showing— 20
- “(a) the portfolio investment entity tax paid by the company for the tax year; and
- “(b) further information that the Commissioner considers relevant.” 25
- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.

149 Notices of proposed adjustment required to be issued by Commissioner

In section 89C(eb), “has left New Zealand and” is omitted. 30

150 Determination on economic rate

Section 91AAF(4)(b) is replaced by the following:

- “(b) is—
- “(i) reacquired, after the date on which the new determination is issued, by the person who disposed of it before the date on which the new determination is issued: 35

“(ii) an item of property to which section EE 25B, EE 25C, EE 25E, or EZ 21B of the Income Tax Act 2004 applies.”

151 Definitions

In section 120C(1), in the definition of **date interest starts**, paragraph (f) is replaced by the following: 5

“(f) for unpaid tax, being terminal tax for the tax year in which a taxpayer dies, 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”. 10

152 Example: Section 120KC

- (1) In the example after section 120KC,—
- (a) “20 January” is replaced in both places it occurs, by “15 January”: 15
 - (b) “21 January” is replaced in both places it occurs, by “16 January”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

153 Example: Section 120KD

- (1) In the example after section 120KD,— 20
- (a) “21 January” is replaced by “16 January”:
 - (b) “21 Jan” is replaced by “16 January”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

154 Late filing penalties

- (1) After section 139A(2)(a)(iii), the following is inserted: 25
- “(iiib) a return required to be furnished under **section 57B**.”
- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.

155 Non-electronic filing penalty

- (1) After section 139AA(1)(a), the following is inserted: 30
- “(ab) a portfolio investment entity; and”
- (2) Section 139AA(2) is replaced by the following:

- “(2) An employer, a portfolio investment entity, or a PAYE intermediary is liable to a non-electronic filing penalty if the employer, the portfolio investment entity, or the PAYE intermediary furnishes a return required to be in electronic format in a format that is not prescribed.” 5
- (3) **Subsections (1) and (2)** apply for income years and portfolio entity periods beginning on or after 1 April 2007.

Part 4 Amendments to other Acts

Income Tax Act 1994 10

156 Income Tax Act 1994

Sections 157 to 162 amend the Income Tax Act 1994.

157 New section CZ 7 added

- (1) After section CZ 6, the following is added:

“CZ 7 Geothermal wells between 31 March 2003 and 16 May 2006 15

- “(1) This section applies to a person’s geothermal well, if—
- “(a) the well is—
- “(i) both started and completed between 31 March 2003 and 16 May 2006: 20
- “(ii) acquired between 31 March 2003 and 16 May 2006; and
- “(b) the person—
- “(i) uses the well, or has the well available for use, after the end of the well’s geothermal energy proving period, in deriving assessable income or carrying on a business for the purpose of deriving assessable income: 25
- “(ii) disposes of the well.
- “(2) The person’s gross income, for the first income year in which this section applies, includes an amount equal to,— 30
- “(a) if **subsection (1)(b)(i)** applies, the amount of a deduction that the person has been allowed for the well under **section DZ 7**; or
- “(b) if **subsection (1)(b)(ii)** applies, the lesser of— 35

- “(i) the amount derived from disposing of the well;
and
“(ii) the amount of a deduction that the person has
been allowed for the well under **section DZ 7**.”
- (2) **Subsection (1)** applies for the 2003–04 and later income years. 5
- 158 Expenditure to prevent or combat pollution of
environment**
- (1) Section DJ 10(1) is replaced by the following:
- “(1) If a taxpayer engaged in any business in New Zealand (other
than a farming or agricultural business) has incurred in that 10
business any expenditure in the construction on land in New
Zealand of earthworks, ponds, settling tanks, or other similar
improvements primarily for the purpose of treating waste in
order to prevent or combat pollution of the environment (not 15
being expenditure in respect of which a deduction, whether by
way of depreciation or otherwise, is allowed under any other
provision of this Act or the Income Tax Act 1976), the tax-
payer is allowed a deduction in accordance with this section of
the amount of that expenditure.”
- (2) **Subsection (1)** applies for a taxpayer for an income year after 20
the 1994–95 income year if,—
- (a) the taxpayer, before 16 November 2004,—
- (i) provides a return:
- (ii) issues a notice of proposed adjustment:
- (iii) issues a response notice: 25
- (iv) requests a re-assessment; and
- (b) the income year is an income year to which the return,
notice or request described in **paragraphs (a)(i)–(iv)** relates
or a later income year; and
- (c) the correctness of the tax position adopted by the tax- 30
payer in the return, notice or request described in
paragraphs (a)(i)–(iv) depends on an interpretation of the
meaning of **industrial waste** in section DJ 10; and
- (d) the taxpayer’s interpretation of **industrial waste** is con- 35
sistent with the meaning of section DJ 10 as amended
by **subsection (1)**.
- (3) If **subsection (1)** does not apply for a taxpayer for an income
year because the requirements of **subsection (2)** are not met, the

law that would apply if **subsection (1)** did not come into force applies for the taxpayer for the income year.

159 New section DZ 7 added

(1) After section DZ 6, the following is added:

“DZ 7 Geothermal wells between 31 March 2003 and 16 May 2006 5

“(1) This section applies to a person’s geothermal well, if—

“(a) the well’s geothermal proving period ends between 31 March 2003 and 16 May 2006; and

“(b) the well is— 10

“(i) both started and completed between 31 March 2003 and 16 May 2006:

“(ii) acquired between 31 March 2003 and 16 May 2006; and

“(c) a deduction for expenditure on the well is not allowed under another provision. 15

“(2) The person is allowed a deduction, for the income year in which the well’s geothermal proving period ends, for expenditure on the well.”

(2) **Subsection (1)** applies for the 2003–04 and later income years. 20

160 Distributions by Maori authority

(1) In section HI 4(3), “ME 5” is replaced by “ME 35”.

(2) **Subsection (1)** applies for the 2004–05 and later income years.

161 Limit on refunds and allocations of tax

In section MD 2(4), “after the date of payment of the first instalment of provisional tax for that income year” is replaced by “after a credit is made to that company’s imputation credit account for amounts that have satisfied the company’s income tax liability for that income year,”. 25

162 Definitions 30

(1) This section amends section OB 1.

(2) In the definition of **eligible company**,—

(a) in the words before paragraph (a), “, and is either incorporated in New Zealand or carrying on a business in

- New Zealand through a fixed establishment,” is inserted after “New Zealand”:
- (b) in paragraph (c), “company:” is replaced by “company; or”, and the following is added:
- “(d) by the law of another country or territory, liable to income tax in that country or territory by reason of domicile, residence, or place of incorporation”.
- (3) After the definition of **geophysical prospecting**, the following is inserted:
- “**geothermal energy proving period** means, for a geothermal well that is not used for exploiting geothermal energy, a period—
- “(a) starting with the completion or acquisition of the well; and
- “(b) ending when the well, for the foreseeable future, is not intended, and cannot reasonably be expected, to be used or available for use in—
- “(i) deriving assessable income:
- “(ii) carrying on a business for the purpose of deriving assessable income
- “**geothermal well** means a bore or well solely for the purpose of investigating or exploiting geothermal energy in New Zealand”.
- (4) **Subsection (2)** applies for a person for the 1997–98 and later income years, unless the person took a tax position in a return provided to the Commissioner before **16 May 2006** that relies on the definition of **eligible company** that would apply if **subsection (2)** did not come into force.
- (5) If **subsection (2)** does not apply for a person for an income year because of **subsection (4)**, the definition of **eligible company** that would apply if **subsection (2)** did not come into force applies for the person for the income year.
- (6) **Subsection (3)** applies for the 2003–04 and later income years.

Goods and Services Tax Act 1985

- 163 Goods and Services Tax Act 1985** 35
Sections 164 and 165 amend the Goods and Services Tax Act 1985.

164 Meaning of term financial services

In section 3,—

(a) after subsection (1)(ka), the following is inserted:

“(kb) the investment in an entity, if the investment is an actively managed investment that is made up of— 5

“(i) an equity security:

“(ii) a participatory security:”:

(b) in subsection (2), before the definition of **cheque**, the following is inserted:

“**actively managed investment** means an investment that— 10

“(a) is equal to or greater than 10% of all participatory securities and equity securities issued by the entity into which the investment is made; and

“(b) allows the investor, or a person associated with the investor, to influence the management of the business of the entity”. 15

165 Value of supply of goods and services

(1) Section 10(7) is replaced by the following:

“(7) If goods and services are treated by section 21I(1) as being supplied by a person, the consideration in money for the supply is— 20

“(a) an amount equal to the taxable value of the fringe benefit as determined by sections CX 18 and ND 1S to ND 1V of the Income Tax Act 2004, if **paragraph (b)** does not apply; or 25

“(b) nil, if the person would not have a deduction under section 20(3) relating to the supply of the fringe benefit if the consideration in money for the supply were given by **paragraph (a)**.”

(2) **Subsection (1)** applies for fringe benefits provided or granted on or after the date on which this Act receives the Royal assent. 30

Trustee Act 1956

166 Trustee Act 1956

Sections 167 and 168 amend the Trustee Act 1956. 35

167 Interpretation and application

- (1) In section 2, after the definition of **possession**, the following is inserted:

“**portfolio investment entity** means a portfolio investment entity within the meaning of the Income Tax Act 2004”. 5

- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.

168 New heading and new section 42E inserted

- (1) After section 42D, the following is inserted:

“*Special powers in respect of portfolio investment entities* 10

“42E Power to adjust interests in trust property of portfolio investment entity

Where any property is employed in a business that the trustee is empowered or authorised to carry on as a portfolio investment entity, the trustee may adjust the interests of the beneficiaries in the property in the way required by **section HL 6(3)** of the Income Tax Act 2004 despite any provision in the Superannuation Schemes Act 1989.” 15

- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007. 20

Unit Trusts Act 1960

169 Unit Trusts Act 1960

Sections 170 and 171 amend the Unit Trusts Act 1960.

170 Interpretation

- (1) In section 2, after the definition of **nominee**, the following is inserted: 25

“**portfolio investment entity** means a portfolio investment entity within the meaning of the Income Tax Act 2004”.

- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007. 30

171 New section 12A inserted

- (1) After section 12, the following is inserted:

“12A Implied provision in trust deed of portfolio investment entity

- “(1) The provision in **subsection (2)** shall be implied in every trust deed relating to a unit trust for which the trustee is a portfolio investment entity, notwithstanding anything to the contrary in the deed. 5
- “(2) Where any money, investments or other property of the unit trust is employed in a business carried on as a portfolio investment entity, the manager may adjust the interests in the unit trust of the beneficiaries in the way required by **section HL 6(3)** of the Income Tax Act 2004.” 10
- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.