

# **Taxation (Consequential Rate Alignment and Remedial Matters) Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

This bill contains consequential changes to tax rates in line with the recent tax rates and threshold adjustments. Other policy and remedial amendments to the Income Tax Act 2007, Income Tax Act 2004, Goods and Services Tax Act 1985, Tax Administration Act 1994, Income Tax Act 1994, and the Maori Trustees Amendment Act 2009 are also made in this bill.

### *Certain tax rate changes*

Since the making of the tax rate and threshold adjustments, consequential changes to certain withholding tax rates have been identified. The changes concern portfolio investment entities (PIEs), retirement scheme contribution tax (RSCT), secondary employment income, extra pays and the use of secondary codes, and amounts from which resident withholding tax (RWT) is withheld. The new rates are 12.5%, 21%, 30%, 33%, and 38%, with comparable changes to the threshold amounts.

The PIE and RSCT rate changes affect the definitions of *prescribed investor rate* and *retirement scheme prescribed rate* and *schedule 1, part D, table 5* of the Income Tax Act 2007.

A new 12.5% code for secondary employment income is introduced, affecting *schedule 2, part A, clause 8* of the Income Tax Act 2007 and *sections 24B and 24C* of the Tax Administration Act 1994.

A low rate of 12.5% for extra pays is also inserted, as well as an improved method of calculating rates applying to extra pays when they are derived from secondary employment.

The RWT rates for interest are consequentially amended. The proposed application dates are—

- (a) for the change from 19.5% to 12.5% and 21%: 1 April 2010:
- (b) for the change for interest paid to companies from 33% to 30%: 1 April 2011, but at the payer's option from 1 April 2010:
- (c) for the change from 38% or 39% to 38%: 1 April 2010.

The changes to the default rate have the following proposed application dates:

- (a) for the change to 21% for individuals on the current rate of 19.5%, unless they choose a rate: 1 April 2010:
- (b) for the change to 38% for individuals who do not choose a rate or confirm their tax rate with their bank:
  - (i) 1 April 2010 for new bank accounts; and
  - (ii) 1 April 2011 for existing bank accounts:
- (c) for the change to 38% if no tax file number is provided: 1 April 2010.

#### *Forestry issues*

The Permanent Forest Sink Initiative (PFSI) is a climate change initiative under which a person who owns land that has been reforested, or which they intend to reforest, can enter into a covenant with the government, and in exchange for meeting certain conditions, receive emission units. The earning of these units may not always constitute a forestry business under the Income Tax Acts. These provisions give forestry businesses more favourable tax treatment than others. Since PFSI foresters should receive the same treatment as foresters who carry on a forestry business, the amendment defines forestry business to include PFSI activities.

A second issue concerns the rule about cost of timber. The reference to generally accepted accounting practice rendered the provision inoperative for taxpayers using International Financial Reporting Standards (IFRS) for accounting purposes. The relationship with other deduction provisions is also clarified.

#### *Beneficiary income allocation dates*

Trustees have a 6-month period after their balance date to allocate income to beneficiaries. Problems arise with this rule if a tax agent is involved because the preparation of trust accounts and tax returns must be prioritised over other accounts and returns, conflicting with the more commercial requirements of a tax agent's clients.

The change means trustees are required to allocate income by the later of the end of the 6-month period or the period within which the trustee either files or is required to file a return.

#### *Attribution and imputation issue*

The income of certain companies is attributed to the individuals who provide services to the company. With the reduction in the company tax rate to 30%, a double taxation effect arises for individuals who have a marginal tax rate of 33%. The remedial amendment ensures that the imputation credit that would have been attached is treated as cancelled just before it would arise in the memorandum account.

#### *Research and development accounting issues*

The research and development expenditure rules rely on IFRS instead of the old accounting standards to determine when the expenditure is deductible for taxation purposes. The remedial amendment allows the 2 accounting standards to run in parallel.

#### *Remedial amendments: Rewrite Advisory Panel recommendations*

The Rewrite Advisory Panel made recommendations on the following matters:

- A post-implementation review on *Part I* (Tax losses) to resolve drafting inconsistencies leads to amendments relating to the operation of *subpart IA*, the use of the terms *tax loss*, *tax loss component*, and *loss balance*, and the ring-fenced loss rules.

- The non-resident withholding tax (NRWT) rules are amended to ensure they do not apply to income in the nature of rents derived from the right to use land. This change relates to the interaction between the definitions of *natural resource* and *royalty*.
- An intended change is listed in *schedule 51* for the definition of *settlor* in *section HC 27(2)*. A savings provision applies to certain taxpayers.
- A payer of resident passive income was not able to apply the “reasonable inquiries” test to defend their non-withholding if the recipient turned out to be non-resident. The amendment rectifies the situation.
- An amendment clarifies that a person making a nominal settlement on behalf of another person is a nominee of the other person.
- The legislation was unclear on the time of the debit date to the memorandum account for loss of shareholder continuity. Amendments are made to *schedule 51* to list the change, and a savings provision included to apply to certain taxpayers and some binding rulings.
- The meaning of capital gain amount in the Income Tax Acts 2004 and 2007 was less clear than its counterpart in the 1994 Act. The amendment ensures that a capital gain amount can be passed through a corporate chain and distributed to shareholders of a company as a capital gain amount on the liquidation of the company.
- A wording change from the Income Tax Act 1994 relating to an amount actuarially determined to be profit or loss of a controlled foreign company resulted in an unintended change in the law. The amendment restores the 1994 meaning.
- A cross reference heading in a provision of the qualifying company rules was thought to produce ambiguity. The amendment clarifies that no limitation was intended by the inclusion of the cross reference.

*Other remedial amendments*

Further remedial amendments, among other more minor remedial amendments, are as follows:

- An amendment restores the requirement that a person must have held their income interest in a foreign investment fund (FIF) for at least 12 months before they may choose to use a simplified method for determining the level of their interest.
- A credit should be available for resident withholding tax withheld in error in relation to a distribution from a FIF attributing interest and the excess applied to the taxpayer's income tax liability or otherwise refunded. The amendment clarifies that the amount should be treated as resident withholding tax, and as tax paid in excess under the Tax Administration Act 1994. The mechanism for refunding the amount to the payer or recipient has conditions.
- An amendment restores the exclusion of certain depreciation recovery income from the calculation of family scheme income.
- An amendment restores the position under the Income Tax Act 2004 in relation to deductions for gifts of money made by companies.

*Goods and Services Tax Act 1985***Levy for waste disposal**

The Waste Minimisation Act 2008 imposes a levy on the amount of waste disposed of at certain disposal facilities. Because a number of transactions are included in the chain from a waste facility user, to the waste facility operator, to the Secretary for the Ministry for the Environment, and finally to the funding recipient, the amendment clarifies that the levy is subject to GST and that a supply occurs in the payment of the levy to the Secretary and in the payment by the Secretary of amounts to funding recipients.

**Charitable trusts and associated persons**

Activities of charitable and non-profit bodies that do not involve the supply of goods and services in exchange for payment, such as collecting donations or making donations, are not performed for profit,

and should not be subject to GST. To ensure this result, the definition of *associated person* is amended to provide that a trustee and a beneficiary are not associated if the beneficiary is a charitable or non-profit body, and 2 trustees of trusts with a common settlor are not associated if 1 is a charitable or non-profit body, and the supply relates to a charitable purpose.

#### *Tax Administration Act 1994*

##### **Electronic communication**

The Act sets out criteria that must be met for the delivery of notices by the Commissioner. A notice may be sent electronically if it complies with the Electronic Transactions Act 2002, which includes a requirement that a person must consent to receiving communications electronically. The amendment allows a notice to be sent electronically if the Commissioner reasonably believes that the person will receive the notice, removing the requirement for consent.

##### **Tax recovery arrangements**

The Act provides a framework in *Part 10A* for the kinds of collection assistance that New Zealand can provide for in tax treaties. Assistance is restricted, among other things, in relation to an amount of unpaid tax that is contested. The amendment removes an inconsistency between treaty and domestic law, ensuring that New Zealand is able to comply with its obligations.

##### **Correction of minor errors in subsequent returns**

A new *section 113A* provides the Commissioner with a discretion to allow taxpayers who have made minor errors in a return involving \$500 or less in tax to correct them in a subsequent return, reducing compliance costs and the taxpayer's exposure to use of money interest and penalties.

##### **Making requirement to pay tax in dispute non-disputable decision**

In exceptional circumstances, the Commissioner can require a disputant to pay all of the tax in dispute if there is a significant risk that the amount will not be paid should the disputant's challenge not be

successful. The amendment ensures that this decision is not a disputable decision.

### **Binding rulings issue**

To resolve doubts as to the authority of the Commissioner to make binding rulings for periods before the commencement of the Income Tax Act 2007, an amendment to *section 91C(1)(eb)* confirms that authority.

### **Personal tax summaries**

The Commissioner is required to send personal tax summaries (*income statements*) to natural persons for whom returns are not required. Because an income statement must be sent to these taxpayers even if the amount involved is insignificant or zero, the Commissioner is given a discretion to determine who should automatically receive an income statement.

### **Clause by clause analysis**

*Clause 1* gives the title of the Act.

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

## **Part 1**

### **Amendments to Income Tax Act 2007**

*Clause 4* corrects a typographical error in *Flowchart B2*.

*Clause 5* inserts a reference to show priority of subsections in *section CD 44* to avoid a situation of possible overlap.

*Clause 6* amends *section CF 1* to correct a typographical error.

*Clause 7* amends *section DB 2* to correct a typographical error.

*Clause 8* amends *section DB 34* to allow parallel use of old and new accounting standards for expenditure on research and development.

*Clause 9* amends *section DB 35* to replace the definition of *reporting standard* with 2 new definitions.

*Clause 10* amends *section DC 14* to correct a typographical error.

*Clause 11* replaces *section DP 11* to clarify when a person who incurs expenditure in relation to timber is allowed a deduction.

*Clause 12* amends *section EW 43* to correct a reference to associated persons.

*Clause 13* amends *section EW 49* to correct a reference to associated persons.

*Clause 14* amends *section EX 21* to restore terminology used in the Income Tax Act 2004 to avoid an unintended change in the law.

*Clause 15* amends *section EX 49(6)* to clarify that the subsection applies only to income interests held for more than a year.

*Clause 16* inserts *section GB 27(5)* to provide for the cancellation of certain notional imputation credits.

*Clause 17* amends *section HA 21* to correct a cross reference heading.

*Clause 18* amends *section HC 6* to clarify the allocation of beneficiary income.

*Clause 19* inserts *section HC 27(3B)* to clarify that an employer is not treated as a settlor when making a contribution to an employee share purchase scheme if certain conditions are met.

*Clause 20* inserts new *section HZ 5* for the saving of binding rulings made in relation to amounts that are settlements on a trust.

*Clause 21* corrects cross references in *section IA 2* and inserts a new definition of *tax loss component*.

*Clause 22* amends *section IA 3* to clarify the use of the terms *tax loss*, *tax loss component*, and *loss balance*, and consequentially amends some references.

*Clause 23* inserts and corrects cross references in *section IA 4*.

*Clause 24* replaces *section IA 5(1) and (4)* to limit the loss balance available to be carried forward.

*Clause 25* amends *section IA 6* to insert a cross reference.

*Clause 26* amends *section IA 7* to clarify the use of ring-fenced tax losses.

*Clause 27* amends *section IQ 1* to correct some cross references.

*Clause 28* inserts a new *section IQ 1B* to make it plain that losses are able to be carried forward.

*Clause 29* amends *section IQ 2* to clarify the place where the income is derived and how the particular net loss is carried forward.

*Clause 30* amends *section IQ 4* to correct some cross references and to clarify how the particular net loss may be used.

*Clause 31* amends *section IQ 7* to insert and correct some cross references.

*Clause 32* amends *section IQ 8* to insert and correct some cross references.

*Clause 33* amends *section IS 1* to clarify that the relevant loss is a net mining loss and defines the term.

*Clause 34* amends *section IS 2* to clarify that the relevant loss is a net mining loss and inserts a new subsection to make it plain that these losses can be offset against income in certain circumstances.

*Clause 35* amends *section IS 3* to clarify that the relevant loss is a net mining loss.

*Clause 36* amends *section IS 5* to clarify how a petroleum miner's tax loss is used.

*Clause 37* amends *section IT 1* for life insurer's policyholder net losses in relation to the use of an amount carried forward, and the restrictions on grouping these losses.

*Clause 38* amends *section MB 1* to ensure certain depreciation losses are not included in family scheme income.

*Clause 39* amends the item *tax rate* in *section OA 18(3)* to insert a reference to the calculation of the maximum permitted ratio for a Maori authority credit attached to a distribution.

*Clause 40* amends *section OB 4* to remove an incorrect cross reference.

*Clause 41* inserts a new *section OZ 18* as a savings provision for debits to memorandum accounts for loss of shareholder continuity from 1 October 2007 to the date of assent for companies relying on provisions in the Income Tax Act 2004. It is associated with an intended change listed in *schedule 51* of the Income Tax Act 2007.

*Clause 42* amends *section RD 10*, aligning the tax rates for extra pays with the changes made to personal tax rates. A subsection is inserted to clarify the relationship with *section RD 17*.

*Clause 43* amends *section RD 17* to ensure that the tax rates for extra pays are aligned with the changes made to personal tax rates.

*Clause 44* inserts a new *section RE 10B* to ensure that an amount withheld from a distribution that is not treated as a dividend under the dividend rules is treated as RWT.

*Clause 45* amends *section RE 12* to insert a 1-year modification for companies to choose a tax rate for RWT in line with the changes to personal tax rates and stipulates the default rate for RWT.

*Clause 46* amends *section RE 22* to remove the reference to a non-resident person.

*Clause 47* amends *section RF 1* to change the application of the NRWT rules to ensure that certain amounts derived from owning land are not subject to the rules when they fall within the meaning of *royalty*.

*Clause 48* amends *section RM 8* to ensure that an amount withheld from a distribution that is not treated as a dividend under the dividend rules is treated as RWT and available to be refunded to either the holder or payer if certain conditions are met.

*Clause 49* amends *section YA 1*, affecting the definitions of *cost of timber*, *dispose*, *forestry business*, *lease*, *loss balance*, *net mining loss*, *new reporting standard*, *old reporting standard*, *prescribed investor rate*, *reporting standard*, *retirement scheme prescribed rate*, *tax loss*, and *timber*.

*Clause 50* inserts *section YB 21(3)* to clarify that a person making a nominal settlement is treated as a nominee.

*Clause 51* amends *schedule 1* to correct terminology and inserts new *tables 2 and 5* and amends *table 3* in *schedule 1, part D* for the payment rates applying to payments of resident passive income.

*Clause 52* amends *schedule 2* to insert a new clause for the new secondary code and replaces *schedule 2, part B, table 1* for the tax rates applying to extra pays.

*Clause 53* amends *schedule 51*, which lists identified changes in the legislation, in relation to the dividend stripping rule and the withholding tax rules, the definition of *settlor*, and the rules for debits for loss of shareholder continuity.

*Clause 54* inserts *schedule 1* which contains changes to the lists of defined terms appearing in the Income Tax Act 2007.

## Part 2

### Amendments to Tax Administration Act 1994

*Clause 56* amends *section 3* to repeal the definition of *contested tax* and to insert a definition of *uncontested tax*.

*Clause 57* amends *section 14* to provide for the Commissioner to notify a person electronically.

*Clause 58* amends *section 24B* to insert a code for secondary employment earnings for a low threshold.

*Clause 59* inserts a new *section 24C* in relation to a tax code for a payment that includes an income-tested benefit.

*Clause 60* inserts a new *section 26B* for withholding rates for RWT to ensure consistency of use of codes that a person uses.

*Clause 61* consequentially amends *section 28C* to provide a prescribed rate for retirement savings.

*Clause 62* amends *section 33A* to provide a threshold and a discretion to the Commissioner on whether to issue an income statement to certain persons.

*Clause 63* repeals *section 80C(1), (1A), and (2)* consequentially on the amendment to *section 33A*.

*Clause 64* amends *section 80D* to repeal a subparagraph and to limit the persons to whom the Commissioner is required to issue an income statement.

*Clause 65* amends *section 91C* to omit a cross reference that restricted the application of the binding rulings regime.

*Clause 66* inserts a new *section 113A* to enable the correction of minor errors to be made in a subsequent return.

*Clause 67* amends *section 138E* to insert a cross reference.

*Clause 68* amends *section 173B* to repeal the definition of *contested tax* and inserts a new definition of *uncontested tax* to prevent an inconsistency between treaty and domestic law.

### **Part 3**

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

*Clause 70* amends *section 2A* for the definition of *associated persons* to ensure that for certain purposes charitable or non-profit bodies are not subject to the GST rules.

*Clause 71* amends *section 5* to provide that GST is payable on a waste minimisation levy and stipulates the transactions to which the supply relates.

### **Part 4**

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

*Clause 73* inserts a reference to show priority of subsections in *section CD 33* to avoid a situation of possible overlap.

*Clause 74* amends *section DB 26* to allow parallel use of old and new accounting standards for expenditure on research and development.

*Clause 75* amends *section DB 27* to replace the definition of *reporting standard* with 2 new definitions.

*Clause 76* replaces *section DB 32(3)* to restore the provision relating to gifts made by companies for the *Income Tax Act 2004*.

*Clause 77* replaces *section DP 10* to clarify when a person who incurs expenditure in relation to timber is allowed a deduction.

*Clause 78* amends *section EX 21* to restore terminology used in the *Income Tax Act 1994* to avoid an unintended change in the law.

*Clause 79* amends *section EX 42(5)* to clarify that the subsection applies only to income interests held for more than a year.

*Clause 80* amends *section ME 4* to remove an incorrect cross reference.

*Clause 81* inserts a new *section NF 2E* to ensure that an amount withheld from a distribution that is not treated as a dividend under the dividend rules is treated as RWT.

*Clause 82* amends *section OB 1*, affecting definitions of *cost of timber*, *dispose*, *forestry business*, *new reporting standard*, *old reporting standard*, *timber*, and *trading stock*.

*Clause 83* inserts *schedule 2* which contains changes to the lists of defined terms appearing in the *Income Tax Act 2004*.

## **Part 5**

### **Amendments to other Acts**

*Clause 84* amends *section ME 4* of the Income Tax Act 1994 to remove a cross reference.

*Clause 85* amends *section 29(3)* of the Maori Trustee Amendment Act 2009 to correct a section reference.

### **Regulatory impact statement — setting the default resident withholding tax rate**

#### ***Executive summary***

Personal tax rates were changed last year. Amendments are now being made to ensure that interest resident withholding tax (RWT) rates are aligned with the new personal tax rate structure. A consequence of the reduction to personal tax rates is the need to consider what the default rate of RWT should be when an individual does not elect a rate. It is proposed to change the current policy settings for the default rate of RWT on interest income so that instead of the default rate being the lowest tax rate (19.5%), it will be set at the highest tax rate (38%).

An issue arises for taxpayers currently on the default rate for RWT. As the default rate no longer exists, it is necessary to move these taxpayers to a new rate. It is proposed that they are moved to the 21% rate until 1 April 2011, at which point individuals who have still not elected a rate will be shifted to the 38% rate.

#### ***Adequacy statement***

Inland Revenue has reviewed this Regulatory Impact Statement, and considers that the statement is adequate according to the Regulatory Impact Analysis adequacy criteria.

#### ***Status quo and problem***

RWT is a withholding tax that is based on the marginal tax rate of the recipient of interest or dividend income. The purpose of RWT is to ensure that:

- A reasonable amount of tax on interest income is withheld at source; this is an anti-avoidance measure to protect revenue.

- Tax is paid on that income at a rate that approximates the recipient's actual tax liability. This means that compliance costs are reduced, as recipients do not need to square up their tax obligations at the end of the income year if tax is withheld at the correct rate.

RWT rates on interest are currently 19.5%, 33%, and 39% (with an option for a 38% rate to be applied in the 2009–10 income year). Other proposals contained in this RIS will ensure that RWT rates are fully aligned with current personal tax rates, which are 12.5%, 21%, 33%, and 38%.

Currently, if recipients of interest income provide their tax file number but do not elect an RWT rate, the RWT rate that is applied to their interest income is 19.5% (the *default rate*). Approximately 33% of taxpayers on the 19.5% RWT rate are individuals who are on higher marginal tax rates. A number of these people do not square up their tax obligations at the end of the year. This is a fiscal risk and is problematic in terms of the integrity of the tax system.

The issue is what rate the default should be in light of the new personal tax rates for both new and existing taxpayers.

### ***Objectives***

In setting the default rate of RWT, the objectives are to—

- (a) promote the integrity of the tax system;
- (b) reduce fiscal risk;
- (c) minimise compliance costs for individuals and administrative costs for Inland Revenue and financial institutions; and
- (d) encourage individuals to elect the rate that is consistent with their personal tax rate, which reduces compliance costs for taxpayers and administrative costs for Inland Revenue.

### ***Alternative options***

#### **19.5%**

Retaining the status quo of a 19.5% rate is not an appropriate option. There is no longer a 19.5% personal tax rate, as it has been replaced by the 12.5% and 21% rates. Therefore, the 19.5% rate incorrectly withholds tax for all taxpayers using this rate (as taxpayers have an actual marginal tax rate of either 12.5%, 21%, 33%, or 38%). This undermines the integrity of the tax system and does not address the

fiscal cost of having taxpayers on too low a rate of RWT. If a taxpayer is required to square up their tax obligations at the end of the year (which they may be required to do for a number of reasons), this means that they will have tax to pay or tax owing as a result of the discrepancy between the RWT rate and their actual marginal rate.

### **12.5%**

Continuing the current approach of having the lowest tax rate as the default for RWT is not recommended, as the minimum statutory rate of 12.5% is considerably lower than the previous 19.5%. The majority of people using the default rate would be on the wrong rate, which would increase compliance and administrative costs. It would not encourage individuals to elect the rate that is consistent with their personal tax rate. There would be significant revenue implications, as it would mean that too little tax would be withheld for most taxpayers. The estimated cost to revenue of lowering the default rate from 19.5% to 12.5% is \$40 million per year.

### **21%**

Setting the default rate at 21% would be more likely to ensure that the highest proportion of individuals is taxed at the correct rate. This would likely minimise compliance costs for the largest number of people and for banks, as well as minimise administrative costs for Inland Revenue and financial institutions. However, it would not encourage people on higher incomes to elect their correct rate. This means that there is a fiscal risk to the extent that higher-income taxpayers using the default rate do not square up tax at the end of the year. There would also be compliance costs and administrative costs in respect of higher income taxpayers who do square up tax at the end of the year.

### **33%**

Relative to a 21% default rate, setting the default rate at 33% would result in a lower proportion of individuals taxed at the correct rate. As such, there would be greater aggregate compliance costs for individual taxpayers and increased administrative costs for Inland Revenue and financial institutions. This option would not encourage tax-

payers on the 38% tax rate to elect their correct marginal rate. As such, a significant fiscal risk remains with this option.

### **38%**

Setting the default rate at 38% will create an incentive for people to elect the correct rate and will result in a larger amount of interest income having the right rate withheld. The revenue gain from shifting everyone who is currently on the 19.5% rate (approximately 938,000 taxpayers) up to 38% is \$47 million per year.

Setting the default rate at 38% for new accounts should not result in any additional compliance costs because taxpayers are currently able to elect a rate.

However, a problem arises for existing bank accounts. Banks' current systems do not distinguish between those taxpayers who elect 19.5% and those taxpayers who have defaulted to 19.5% because they have not provided their tax rate. This means that if the default rate is set at 38% for existing bank accounts, it will mean that roughly 907,000 taxpayers will have too high a rate of RWT deducted. This will increase compliance costs for taxpayers, who will need to request refunds of over-withheld RWT from Inland Revenue, (it is estimated that there will be a 375,000 increase in current personal tax summary requests if the rate is put up immediately from 1 April 2010). This will also significantly increase contacts for both banks (who will be contacted by the majority of customers currently on 19.5% to have their rate changed from 38% to a lower rate) and Inland Revenue (who will receive an increased number of requests for refunds of over-withheld RWT).

### ***Preferred option***

The default rate should be set at 38% for new bank accounts that are opened from 1 April 2010. We consider that this is the appropriate default rate when assessed against the objectives of promoting the integrity of the tax system, reducing fiscal risk, and encouraging individuals to elect the rate that is consistent with their personal tax rate. An individual's compliance costs may be reduced if they elect a rate that is consistent with their personal tax rate, because they are less likely to be required to square up their tax obligations at the end of the year. Encouraging the taxpayer to elect the correct rate also

reduces administrative costs for Inland Revenue, as fewer contacts with taxpayers are required.

With respect to existing bank accounts, taxpayers who are currently on the 19.5% rate should be shifted to 21% from 1 April 2010. Any taxpayers who have not elected a rate by 1 April 2011 would be moved to a 38% default rate from that date. This is an approach that slightly reduces fiscal risks and promotes integrity in respect of the next year, and then significantly reduces fiscal risks and promotes integrity from 2011. This approach also mitigates some of the compliance and administrative costs that would occur if the 38% default rate were to apply immediately from 1 April 2010 to existing bank accounts because banks can proactively manage contacts in a way that suits them, and to the extent the banks manage this process effectively, it will mitigate IRD's additional costs.

The revenue gain from applying a 38% default rate to new bank accounts opened from 1 April 2010 is estimated to be \$4 million. For individuals with existing bank accounts who are currently on the default rate, the rate would increase from 19.5% to 21%, consistent with the current tax rate structure. Any interest recipient who does not elect a rate with their bank by 1 April 2011 will default to 38% from that date. Because customers do not change their bank accounts frequently, this measure ensures that the objectives of promoting the integrity of the tax system, reducing fiscal risk, and reducing compliance and administrative costs apply for all taxpayers, not just those who open new accounts. This option is expected to result in the following impact on revenue: \$-3 million in 2009–10, \$4 million in 2010–11, \$47 million in 2011–12 and outyears.

### ***Consultation***

Officials have consulted Treasury and the New Zealand Bankers' Association (NZBA) on this proposal. Significant concern was expressed by the NZBA about the costs that will arise to financial institutions from shifting all interest recipients on the default rate of 19.5% up to 38% from 1 April 2010. This is because a consequence will be a substantial increase in customer contacts (possibly 300,000–400,000), which the NZBA believes will place considerable pressure on bank systems.

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*Hon Peter Dunne*

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

**1 Title**

This Act is the Taxation (Consequential Rate Alignment and Remedial Matters) Act **2009**.

**2 Commencement**

- (1) This Act comes into force on the day after the date on which it receives the Royal assent, except as provided in this section. 5
- (2) **Section 84** is treated as coming into force on 1 April 1995.
- (3) **Sections 73, 74, 75, 77, 78, 79, 80, 81, 82, and 83** are treated as coming into force on 1 April 2005.
- (4) **Section 41** is treated as coming into force on 1 October 2007. 10
- (5) **Section 76** is treated as coming into force on 19 December 2007.

- (6) **Sections 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 44, 46, 47, 48, 49(2) to (9), (11), (13), and (14), 50, 51(1), 53, 54 (other than schedule 1, row 17), and 65** are treated as coming into force on 1 April 2008. 5
- (7) **Sections 18 and 54 (schedule 1, row 17)** are treated as coming into force on 1 April 2009.
- (8) **Sections 71 and 85** are treated as coming into force on 1 July 2009. 10
- (9) **Sections 42, 43, 45, 49(10) and (12), 51(2), (4), and (5), 52, 58, 59, 60, 61, and 62(1)** come into force on 1 April 2010.
- (10) **Section 51(3)** comes into force on 1 April 2011.

## Part 1 15

### Amendments to Income Tax Act 2007

- 3 **Income Tax Act 2007**  
**Sections 4 to 54** amend the Income Tax Act 2007.
- 4 **Flowchart B2: Calculating and satisfying income tax liabilities** 20  
In flowchart B2: Calculating and satisfying income tax liabilities, “Part 1” is replaced by “Part I”.
- 5 **Available capital distribution amount**  
In section CD 44(11), “subsection (12)” is replaced by “subsections (7) and (12)”. 25
- 6 **Benefits, pensions, compensation, and government grants**  
In section CF 1(2)(a) and (b), “or refunded to, to” is replaced by “or refunded to,” in each place where it appears.
- 7 **Goods and services tax**  
In section DB 2(2), “section 21 or 21I(1) to 21I(3)” is replaced by “section 21 or 21I(1) to (3)”. 30

**8 Research or development**

- (1) Section DB 34(2), other than the heading, is replaced by the following:
- “(2) Subsection (1) applies to a person who recognises the expenditure as an expense for financial reporting purposes— 5
- “(a) under paragraph 5.1 or 5.2 of the old reporting standard or because paragraph 5.4 of that standard applies; or
- “(b) under paragraph 68(a) of the new reporting standard applying, for the purposes of that paragraph, paragraphs 54 to 57 of that standard.” 10
- (2) Section DB 34(4)(b) is replaced by the following:
- “(b) would be required, if the expenditure were material, to recognise it for financial reporting purposes—
- “(i) under paragraph 5.1 or 5.2 of the old reporting standard or because paragraph 5.4 of that standard applies; or 15
- “(ii) under paragraph 68(a) of the new reporting standard applying, for the purposes of that paragraph, paragraphs 54 to 57 of that standard.”
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years. 20

**9 Some definitions**

In section DB 35(1), the definition of **reporting standard** is replaced by the following:

“**new reporting standard** means the New Zealand Equivalent to International Accounting Standard 38, approved by the Accounting Standards Review Board, and as amended from time to time or an equivalent standard issued in its place 25

“**old reporting standard** means Financial Reporting Standard No 13 1995 (Accounting for Research and Development Activities) being the standard approved under the Financial Reporting Act 1993, or an equivalent standard issued in its place, that applies in the tax year in which the expenditure is incurred”. 30

**10 Criteria for approval of share purchase schemes: when period of restriction ends**

In section DC 14(4), “other than one described” is replaced by “other than 1 described”.

**11 Section DP 11 replaced** 5

(1) Section DP 11 is replaced by the following:

**“DP 11 Expenditure related to disposal of timber**

*“When this section applies*

“(1) This section applies at the time of disposal of timber when—

“(a) section CB 24 or CB 25 (which relate to the disposal of timber) applies to a person; and 10

“(b) the person—

“(i) has incurred actual expenditure related to the disposal of the timber; or

“(ii) has an existing liability in relation to the expenditure; and 15

“(c) no other provision of this Act allows a deduction for the expenditure.

*“Deduction*

“(2) The person is allowed a deduction for the amount of the expenditure incurred. 20

*“Timing of deduction*

“(3) The deduction is allocated—

“(a) for timber harvested from the land before the time of disposal, to the income year in which the timber first becomes trading stock of the person; or 25

“(b) otherwise, by section EA 2 (Other revenue account property).

*“Relationship with section DB 46*

“(4) This section does not apply to expenditure to which section DB 46 (Avoiding, remedying, or mitigating effects of discharge of contaminant) applies. 30

*“Meaning of timber*

“(5) In this section, **timber** includes—

“(a) the creation or grant of a right to take timber: 35

“(b) the grant of a licence or an easement in relation to timber:

- “(c) the creation of a forestry right as defined in section 2 of the Forestry Rights Registration Act 1983, other than a right in favour of the proprietor in relation to establishing, maintaining, and harvesting timber.
- “*Link with subpart DA* 5
- “(6) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply. “Defined in this Act: amount, capital limitation, deduction, dispose, general permission, income year, timber, trading stock”.
- (2) **Subsection (1)** applies for the 2008–09 and later income 10 years.
- 12 Consideration when debt sold at discount to associate of debtor**  
In section EW 43(1), “under the 1988 version provisions” is omitted. 15
- 13 Income and deduction when debt sold at discount to associate of debtor**  
In section EW 49(1), “under the 1988 version provisions” is omitted.
- 14 Branch equivalent income or loss: calculation rules** 20
- (1) In section EX 21(26), “the amount actuarially determined to be the part of the CFC’s net income or loss” is replaced by “the amount actuarially determined to be part of the CFC’s profit or loss”.
- (2) **Subsection (1)** applies for the 2008–09 and later income 25 years.
- 15 Accounting profits method**
- (1) Section EX 49(6), other than the heading, is replaced by the following:
- “(6) For an income interest that the person has held for more than 12 months, the person may follow a simplified calculation process by choosing to be treated as holding, at all times in the tax year, the same interest, including zero interest, that they held at the end of the tax year. The person makes the election 30

by completing their return of income accordingly for the relevant income year.”

- (2) **Subsection (1)** applies for the 2008–09 and later income years. However, **subsection (1)** does not apply to a person in relation to a tax position taken by the person in the period from 1 April 2008 to the date of Royal assent of this Act in relation to the calculation of income interest in a FIF, relying on **section EX 49(6)** before the amendment made by this subsection.

**16 Attribution rule for income from personal services**

- (1) After section GB 27(4), the following is added: 10

*“Cancellation of notional imputation credits*

- “(5) For the purposes of subsection (4), to the extent to which the dividend paid by the company would have had an imputation credit attached that arose under section OB 16 (ICA attribution for personal services) in the absence of the election made under subsection (4)(c), the credit is treated as cancelled immediately before it would have been attached under sections HA 14 to HA 19 (which relate to dividends paid by qualifying companies).” 15

- (2) **Subsection (1)** applies for the 2008–09 and later income years. 20

**17 Loss balances not carried forward**

In section HA 21, “subparts IA and IQ (which relate to the treatment of foreign losses)” is replaced by “subparts IA (General rules for tax losses) and IQ (Attributed controlled foreign company net losses and foreign investment fund net losses).” 25

**18 Beneficiary income**

- (1) Section HC 6(1)(b) is replaced by the following:

“(b) it is paid to a beneficiary of the trust in the income year or by the date after the end of the income year referred to in **subsection (1B)**.” 30

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

*“Date by which income must be allocated*

- “(1B) The date referred to in **subsection (1)(b)** is the later of the following: 35

- “(a) a date that falls within 6 months of the end of the income year; or
- “(b) the earlier of—
- “(i) the date on which the trustee files the return of income for the income year; or 5
- “(ii) the date by which the trustee must file a return for the income year under section 37 of the Tax Administration Act 1994.”
- (3) Section HC 6(3) and (4) are replaced by the following:  
*“Deriving beneficiary income in same year” 10*
- “(3) When an amount derived by a trustee in an income year is also beneficiary income, the beneficiary is treated as having derived the income in the same tax year as that corresponding to the trustee’s income year.”
- (4) **Subsections (1) to (3)** apply for income years corresponding to the 2009–10 and later tax years. 15
- 19 Who is a settlor?**
- (1) After section HC 27(3), the following is inserted:  
*“Employee share purchase schemes”*
- “(3B) Despite subsection (2), an employer is not a settlor for the purposes of the trust rules in relation to a payment made by them to the trustee of an employee share purchase scheme if— 20
- “(a) some or all of the payment is used by the trustee to acquire shares under the terms of the employee share purchase scheme; and 25
- “(b) an amount equal to the payment used by the trustee is income of an employee under section CE 1(d); and
- “(c) the scheme—
- “(i) meets the criteria set out in sections DC 13 and DC 14 (which relate to the criteria for approval of employee share purchase schemes); and 30
- “(ii) has been approved by the Commissioner under section DC 12(1) (Loans to employees under share purchase schemes).”
- (2) **Subsection (1)** applies for the 2008–09 and later income years. However, **subsection (1)** does not apply to a person in relation to a tax position taken by the person— 35

- (a) in the period from 1 October 2007 to the date of assent of this Act; and
- (b) in relation to a payment to an employee share purchase scheme in consideration of a valid salary sacrifice made by the employee; and 5
- (c) relying upon paragraph (a)(i) of the definition of **settlor** in the Income Tax Act 2004, that the term **settlor** in the trust rules, and in the definitions of **corpus**, **foreign trust**, and **settlement**, for a trust other than a unit trust, means a person who makes, or has made at any time, a disposition of property to or for the benefit of the trust or on terms of the trust for less than market value. 10

**20 New section HZ 5 added**

After section HZ 4, the following is added:

**“HZ 5 Saving of binding rulings relating to settlements on trusts 15**

*“When, and extent to which, this section applies*

- “(1) This section applies when, and to the extent to which,—
- “(a) before the commencement of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009—
- “(i) an applicant has applied for a binding ruling on an arrangement that is entered into, or that the applicant seriously contemplates will be entered into, before the commencement of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009: 20
- “(ii) a binding ruling is issued; and 25
- “(b) the binding ruling is about a provision of the Income Tax Act 2004 on the question whether an amount is a settlement on a trust; and
- “(c) the binding ruling— 30
- “(i) is made before or after the commencement of this Act and continues to exist at the commencement of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009; and
- “(ii) is made in relation to a provision of the Income Tax Act 2004 to which section ZA 4 (Saving of binding rulings) of this Act would have applied but for the intended change listed in schedule 51 35

- (Identified changes in legislation) for section HC 27(2) (Who is a settlor?) made to remove the ambiguity inherent in paragraph (a)(i) of the definition of **settlor** in the Income Tax Act 2004; and
- “(d) in the absence of this section, the commencement of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 would mean that the binding ruling would cease to apply because of section 91G of the Tax Administration Act 1994. 5
- “*Ruling about new law* 10
- “(2) The binding ruling continues to exist despite the intended change referred to in **subsection (1)(c)(ii)** from the commencement of this Act to the date on which the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 receives the Royal assent. 15
- “*No confirmation rulings*
- “(3) To the extent to which a binding ruling continued by **subsection (2)** exists and applies to an arrangement, or to a person and an arrangement, the Commissioner must not make a binding ruling in the period from the commencement of this Act to the date on which the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 receives the Royal assent on how— 20
- “(a) the new law applies to the arrangement or to the person and the arrangement; or 25
- “(b) this subsection applies to the arrangement or to the person and the arrangement.
- “Defined in this Act: arrangement, binding ruling, Commissioner, settlement”.
- 21 Tax losses**
- (1) In section IA 2(2),— 30
- (a) “carried forward to” is replaced by “carried forward under section IA 3(4) to”;
- (b) “subtracted” is replaced by “subtracted under section IA 4(1)(a)”.
- (2) Section IA 2(4)(b) is replaced by the following: 35
- “(b) a company or a trustee whose imputation credits are included in their annual gross income for the tax year: the

amount of converted imputation credits arising under section LE 2 (Use of remaining credits by companies and trustees) for the tax year.”.

- (3) In section IA 2(4)(c), “section LP 10” is replaced by “section LP 10(3)”. 5
- (4) In section IA 2(4)(d), “treated as a tax loss component of company A: the payment referred to in section OB 69(5)” is replaced by “converted into a tax loss component of company A: the amount calculated under section OB 69(7)”.
- (5) In section IA 2(4)(e) and (f), “corresponding income year” is replaced by “tax year” in all places in which it appears. 10
- (6) Section IA 2(6) is repealed.
- (7) Section IA 2(7), other than the heading, is replaced by the following:
- “(7) For the purposes of this subpart, a **tax loss component**, for a tax year,— 15
  - “(a) means an amount included in a tax loss for the tax year under subsection (3) or (4):
  - “(b) includes— 20
    - “(i) an unused amount of a net loss or an amount treated as a net loss or as an available net loss of a person arising before the 2008–09 tax year which the person was entitled to have carried forward under section IE 1 (Net losses may be offset against future net income) of the Income Tax Act 2004 to that tax year: 25
    - “(ii) an amount included in a company’s loss balance at the end of the tax year to which sections IZ 4 to IZ 6 (which relate to tax losses for tax years before 1992) apply, or other amounts in relation to which modified continuity rules apply.” 30
- (8) **Subsections (1) to (7)** apply for the 2008–09 and later income years.

**22 Using tax losses in tax year**

- (1) The heading to section IA 3(5) is replaced by “*Relationship with other provisions in this subpart*”. 35

- (2) In section IA 3(5), “Sections IA 5 to IA 8” is replaced by “Sections IA 5, IA 8, and IA 10”.
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years.
- 23 Using loss balances carried forward to tax year** 5
- (1) In section IA 4(1)(b), “remaining loss balance” is replaced by “remaining loss balance under section IA 2(2)”.
- (2) Section IA 4(2) is replaced by the following:  
*“Relationship with other provisions in this subpart*
- “(2) Sections IA 5 and IA 8 to IA 10 override this section.” 10
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years.
- 24 Restrictions on companies’ loss balances carried forward**
- (1) Section IA 5(1), other than the heading, is replaced by the following: 15  
 “(1) A company’s tax loss component is carried forward in a loss balance only if the minimum continuity requirements of subsections (2) and (3) are met. The tax loss component includes an unused tax loss component carried forward from an earlier income year.” 20
- (2) Section IA 5(4), other than the heading, is replaced by the following:  
 “(4) If a tax loss component cannot be carried forward because the requirements of subsections (2) and (3) are not met, the company may apply section IP 3 (Continuity breach: tax loss components of companies carried forward) to determine whether some or all of the tax loss component is carried forward in a loss balance.” 25
- (3) In section IA 5(6),—
- (a) in the definition of **minimum market value interest**, “for a person and a period” is replaced by “for a person and a continuity period”: 30
- (b) in the definition of **minimum voting interest**, “for a person and a period” is replaced by “for a person and a continuity period”. 35

- (4) **Subsections (1) to (3)** apply for the 2008–09 and later income years.

**25 Restrictions on companies grouping tax losses**

- (1) In section IA 6(1), “may use” is replaced by “may use under section IA 3(2)”. 5
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

**26 Restrictions relating to ring-fenced losses**

- (1) After section IA 7(1), the following is inserted: 10  
*“Treatment as tax loss component*
- “(1B) For the purposes of the application of sections IA 5, IA 6, IA 9, and IA 10, a ring-fenced tax loss under this section is treated as if it were a tax loss component.”
- (2) Section IA 7(2), other than the heading, is replaced by the following: 15  
 “(2) The general rules do not apply in relation to a loss-attributing qualifying company (LAQC) to an amount that would have been a loss balance carried forward under section IA 3(4) in the absence of sections HA 21 and HA 24(5) (which relate to the treatment of losses by LAQCs). The provisions that deal 20  
 with these losses are sections HA 24 to HA 27.”
- (3) In section IA 7(5), “surplus” is replaced by “surplus amount”.
- (4) In section IA 7(6), “surplus” is replaced by “surplus amount”.
- (5) **Subsections (1) to (4)** apply for the 2008–09 and later income years. 25

**27 General treatment**

- (1) In section IQ 1(1), “subpart IA (General rules for tax losses)” is replaced by “sections IA 5, IA 9, and IA 10 (which relate to the continuity rules, the use of losses, and adjustments)”. 30
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

**28 New section IQ 1B inserted**

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

**“IQ 1B Losses carried forward to tax year**

A person may carry forward either an attributed CFC net loss or a FIF net loss or both to a tax year. Section IA 5 (Restrictions on companies’ loss balances carried forward) applies for the purposes of this subpart as if the net loss were a tax loss component. 5

“Defined in this Act: attributed CFC net loss, FIF net loss, tax loss component, tax year”.

- (2) **Subsection (1)** applies for the 2008–09 and later income years. 10

**29 Ring-fencing cap on attributed CFC net losses**

- (1) In section IQ 2(1)(a), “in relation to a CFC resident in the country in which the loss arose” is replaced by “from the country in which the CFC that has the net loss is resident”.

- (2) In section IQ 2(1)(b), “in relation to a FIF resident in the country in which the loss arose” is replaced by “from the country in which the FIF that has the net loss is resident”. 15

- (3) In section IQ 2(2)(b), “the tax loss” is replaced by “the attributed CFC net loss carried forward”.

- (4) **Subsections (1) to (3)** apply for the 2008–09 and later income years. 20

**30 Group companies using attributed CFC net losses**

- (1) In section IQ 4(1)(a), “sections IA 4, IA 5, and IA 7 (which relate to the general use of tax losses)” is replaced by “**section IQ 1B**”. 25

- (2) In section IQ 4(1)(b), “section IC 5 (Company B using company A’s tax loss)” is replaced by “section IQ 2”.

- (3) In section IQ 4(2), “net loss.” is replaced by “net loss, and the part-year grouping rules in subpart IP (Meeting requirements for part-years) do not apply.” 30

- (4) In section IQ 4(3),—

- (a) “Section IQ 2 applies to the attributed CFC net loss, but is supplemented as follows:” is replaced by “If company A cannot use the maximum amount referred to in section IQ 2 before the excess is converted into a tax loss 35

- component under section IQ 2(3), company A may use the amount in the following way:”:
- (b) in paragraph (a), “the tax loss” is replaced by “the attributed CFC net loss together with any amount carried forward”: 5
  - (c) in paragraph (b)(ii), “IQ 2” is replaced by “this section”.
- (5) **Subsections (1) to (4)** apply for the 2008–09 and later income years.
- 31 When group membership lacking in loss period**
- (1) In section IQ 7(1),— 10
    - (a) in paragraph (a), “section ID 2(2) (Pre-consolidation losses: general treatment)” is replaced by “section IQ 6”:
    - (b) in paragraph (b), “the earlier tax year” is replaced by “the earlier tax year in which the net loss arose”. 15
  - (2) In section IQ 7(2)—
    - (a) in paragraph (a),—
      - (i) “ring-fenced tax loss” is replaced by “ring-fenced tax loss referred to in subsection (1)”:
      - (ii) “sections IA 3 to IA 5 (which relate to the general use of tax losses), and” is omitted: 20
    - (b) in paragraph (b),—
      - (i) “ring-fenced tax loss” is replaced by “ring-fenced tax loss referred to in subsection (1)”:
      - (ii) “section IC 5, and” is omitted. 25
  - (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years.
- 32 When group membership lacking in tax year of use**
- (1) In section IQ 8(1), “section ID 2(2) (Pre-consolidation losses: general treatment)” is replaced by “section IQ 6”. 30
  - (2) In section IQ 8(2)(a), “ring-fenced tax loss” is replaced by “ring-fenced tax loss referred to in section IQ 7(1)”.
  - (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years.

**33 General treatment of mining companies' tax losses**

- (1) In section IS 1, the section heading is replaced by “**General treatment of mining companies' net losses**”.
- (2) In section IS 1(2), “tax loss” is replaced by “net mining loss”.
- (3) After section IS 1(2), the following is added: 5  
*“Meaning of net mining loss*  
 “(3) For the purposes of this subpart, a **net mining loss** means that part of a net loss of a mining company, a resident mining operator, or a non-resident mining operator that is described in section IA 7(7) (Restrictions relating to ring-fenced tax losses).” 10
- (4) **Subsections (1) to (3)** apply for the 2008–09 and later income years.

**34 Treatment of tax losses resulting from certain expenditure**

- (1) In section IS 2, the section heading is replaced by “**Treatment of net losses resulting from certain expenditure**”. 15
- (2) In section IS 2(1)(a), “tax loss” is replaced by “net mining loss”.
- (3) In section IS 2(1)(b), “a loss balance” is replaced by “an amount of net mining loss”.
- (4) In section IS 2(2), “loss balance” is replaced by “net mining loss”. 20
- (5) In section IS 2(4), “loss balance” is replaced by “net mining loss”.
- (6) After section IS 2(4), the following is added: 25  
*“Use against other income*  
 “(5) The company may subtract the amount of the net mining loss from its net income that is not attributable to the mining permit area but only after meeting for the whole of the continuity period the requirements set out in sections GB 3 (Arrangements for carrying forward loss balances: companies) and IA 5 30  
 (Restrictions on companies' loss balances carried forward). For the purposes of applying section IA 5, the net mining loss is treated as if it were a tax loss component.”
- (7) **Subsections (1) to (6)** apply for the 2008–09 and later income years. 35

**35 Holding companies' tax losses**

- (1) In section IS 3(1)(a), “loss balance” is replaced by “net mining loss”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 5

**36 Petroleum miners' tax losses**

- (1) Section IS 5(2), other than the heading, is replaced by the following:
- “(2) The petroleum miner’s tax loss is reduced by the amount of the deduction, but only to the extent of the amount of the tax loss. For the reduction in their tax loss, the petroleum miner is allowed a deduction in an earlier tax year for an amount that is equal to the amount of the reduction. The deduction is allocated under section EJ 14 (Spreading deduction backwards).” 10
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 15

**37 Life insurers' policyholder net losses**

- (1) Section IT 1(1) is replaced by the following:
- “*Amounts available* 20
- “(1) In calculating their policyholder base income tax liability for a tax year, a life insurer may use an amount of a policyholder net loss carried forward from an earlier tax year. The policyholder net loss includes an unused policyholder net loss determined under the Income Tax Act 2004 or Income Tax Act 1994.
- “*Loss carried forward* 25
- “(1B) If a life insurer has a balance of a policyholder net loss remaining for a tax year after the uses described in this section, the balance, including all unused amounts from earlier tax years, is carried forward to the next tax year as a loss balance.
- “*Treatment as tax loss component* 30
- “(1C) For the purposes of the application of section IA 10 (Amended assessments), a policyholder net loss under this section is treated as if it were a tax loss component.”
- (2) After section IT 1(2), the following is inserted:

*“Restrictions on use*

“(2B) A life insurer must not use a policyholder net loss to reduce a net loss of another life insurer in a tax year except as described in subsection (3).”

- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years. 5

**38 Adjustments for calculation of family scheme income**

- (1) After section MB 1(5B), the following is inserted:

*“Amounts of depreciation loss on sale of building*

“(5C) For the purposes of subsection (1), in relation to a building from the sale of which the person derives assessable income, an amount of depreciation loss allowed in the 2002–03 or earlier income year is not included in family scheme income. However, this subsection does not apply to an amount of depreciation loss of a business that under section MB 4 is treated as having no net income for the purposes of calculating family scheme income.” 10 15

- (2) **Subsection (1)** applies for the 2008–09 and later income years.

**39 Calculation of maximum permitted ratios** 20

- (1) Section OA 18(3), other than the heading, is replaced by the following:

“(3) In the formula, **tax rate** is—

“(a) for subsection (1)(a) to (e), the basic rate of income tax set out in schedule 1, part A, clause 2 (Basic tax rates: income tax, ESCT, RSCT, RWT and attributed fringe benefits) for the income year in which the dividend is paid: 25

“(b) for subsection (1)(f), the basic rate of income tax set out in schedule 1, part A, clause 7 for the income year in which the distribution is paid.” 30

- (2) **Subsection (1)** applies for the 2008–09 and later income years.

**40 ICA payment of tax**

Section OB 4(3)(c) is replaced by the following: 35

“(c) income tax paid by a life insurer to satisfy its policyholder base income tax liability; or”.

**41 New section OZ 18 added**

(1) After section OZ 17, the following is added:

**“OZ 18 Debits for loss of continuity: savings provision 5**

*“When this section applies*

“(1) This section applies for the purposes of sections OB 41, OC 24, OE 10, OE 15, OK 15, OP 42, OP 73, OP 104, and OP 108 (which relate to debits to memorandum accounts for loss of shareholder continuity) in relation to a debit arising in the period from 1 October 2007 to the date of Royal assent of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009. 10

*“Debit*

“(2) A debit arises in a memorandum account for an amount equal to the amount of a credit retained in the account and unused before the time when shareholder continuity is lost. 15

*“Debit date*

“(3) The debit arises at the start of the day on which shareholder continuity is lost. 20

*“Defined in this Act: amount, memorandum account, shareholder”.*

(2) **Subsection (1)** applies only for the period from 1 October 2007 to the date of Royal assent of this Act in relation to a tax position taken by a company—

(a) in relation to the amount and timing of the debit for loss of shareholder continuity; and 25

(b) relying upon sections ME 5(1)(i) and (2)(h), ME 12(1)(h) and (2)(g), MF 4(1)(e) and (2)(d), MF 4(3)(d) and (4)(d), MF 8(2)(e) and (3)(d), MF 8(4)(d) and (5)(d), MG 5(1)(i) and (2)(g), MG 15(1)(i) and (2)(g), and MK 5(1)(f) and (2)(f) of the Income Tax Act 2004. 30

**42 Amounts of tax for PAYE income payments**

(1) Section RD 10(2)(a) and (b) are replaced by the following:

- “(a) for an employee whose taxable income for the income year is expected to be not more than \$48,000, the rate set out in schedule 2, part B, table 1, row 2; or
- “(b) for an employee whose taxable income for the income year is expected to be not more than \$70,000, the rate set out in schedule 2, part B, table 1, row 3; or 5
- “(c) for other employees, the rate set out in schedule 2, part B, table 1, row 4.”
- (2) After section RD 10(2), the following is inserted:  
*“Relationship with section RD 17”* 10
- “(2B) Despite subsection (2), a person must not choose a rate set out in schedule 2, part B, table 1 that is lower than the rate that would apply to the amount of extra pay under section RD 17.”
- (3) **Subsections (1) and (2)** apply for the 2010–11 and later income years. 15
- 43 Payment of extra pay with other PAYE income payments**
- (1) Section RD 17(2) and (3) are replaced by the following:  
*“Rates applying”*
- “(2) For the sum of the amounts referred to in subsection (1) listed in the following paragraphs, the amount of tax for the extra pay that must be withheld is the amount determined using the basic amounts of tax for PAYE income payments set out in the relevant row of **schedule 2, part B, table 1** (Basic tax rates for PAYE income payments): 20
- “(a) if the sum of the amounts is \$14,000 or less, the amount determined by applying row 1: 25
- “(b) if the sum of the amounts is more than \$14,000 but not more than \$48,000, the amount determined by applying row 2:
- “(c) if the sum of the amounts is more than \$48,000 but not more than \$70,000, the amount determined by applying row 3: 30
- “(d) if the sum of the amounts is more than \$70,000, the amount determined by applying row 4.
- “When secondary tax codes apply”* 35
- “(3) Despite **subsection (2)**, if the person pays an amount of extra pay to an employee in relation to which the employee

has notified the person that a secondary code under **section 24B(3)(bb)**, (c), (d), or (e) of the Tax Administration Act 1994 applies, the rate under **schedule 2, part B, table 1** applying to the extra pay is determined using the formula—

extra pay + annualised amount + low threshold amount.

*“Definition of items in formula”* 5

“(4) In the formula,—

“(a) **extra pay** is the amount of the employee’s extra pay:

“(b) **annualised amount** is the annualised value of all PAYE income payments made by the person to the employee in the period that starts 4 weeks before the date of the payment of the extra pay and ends on the date of that payment: 10

“(c) **low threshold amount** is, as applicable,—

“(i) for secondary code SB, \$0:

“(ii) for secondary code S, \$14,001: 15

“(iii) for secondary code SH, \$48,001:

“(iv) for secondary code ST, \$70,001.”

(2) **Subsection (1)** applies for the 2010–11 and later income years.

**44 New section RE 10B inserted** 20

(1) After section RE 10, the following is inserted:

**“RE 10B Amounts withheld from distributions to holders of FIF attributing interests**

*“When this section applies*

“(1) This section applies when— 25

“(a) a distribution is made to a holder of an attributing interest in a FIF; and

“(b) section CD 36 (Foreign investment fund income) applies to the distribution; and

“(c) an amount of tax for resident passive income is withheld by the payer from the distribution. 30

*“Treatment of amount*

“(2) The amount is treated as—

“(a) RWT for the purposes of this subpart and subpart LA (General rules for tax credits), and sections LB 3 (Tax 35

- credits for resident withholding tax), and RM 1 to RM 10 (which relate to refunds); and
- “(b) tax paid in excess for the purposes of Part 10B of the Tax Administration Act 1994.
- “*Refunds* 5
- “(3) **Subsection (2)** does not apply if the payer or the holder applies under **section RM 8(4) or (5)** (Overpaid RWT or NRWT), as applicable, for a refund in relation to the amount withheld before the next 31 March after the date on which the amount of tax was withheld. 10
- “Defined in this Act: amount of tax, attributing interest, FIF, pay, resident passive income, RWT, tax”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 45 Interest** 15
- (1) After section RE 12(4) the following is added:
- “*Modification for companies and portfolio investment entities for 2010–11 income year*
- “(5) Despite subsection (3)(a), the amount of tax that the person must withhold and pay may, if the person chooses, be calculated under subsection (3) using a **tax rate** of 0.30 if— 20
- “(a) the payment of resident passive income that consists of interest is made to a company or a portfolio investment entity in the 2010–11 income year; and
- “(b) the tax rate under subsection (3)(a) would be 0.33 in the absence of this subsection. 25
- “*Default rate*
- “(6) A person described in **schedule 1, part D, table 2, row 5** who is paid interest but has not provided the payer of the interest with a payment rate election before 1 April 2011 has a default payment rate of 0.380 from that date for a payment of resident passive income that consists of interest.” 30
- (2) **Subsection (1)** applies for the 2010–11 and later income years.
- 46 When payment treated as non-resident passive income** 35
- (1) Section RE 22(1)(a) is replaced by the following:

- “(a) a person (**person A**) is required to pay an amount that meets the requirements of section RE 2 to another person (**person B**); and”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 5
- 47 NRWT rules and their application**
- (1) After section RF 1(2), the following is added:  
*“What this section does not apply to*
- “(3) This section does not apply to an amount referred to in section CC 1(2)(a) to (d) (Land) to which section CC 9 (Royalties) applies unless the non-resident passive income is an amount paid for— 10
- “(a) the exploitation of, or right to exploit, plant material or a naturally occurring material or mineral arising in or on the land: 15
- “(b) the removal of, or right to remove, plant material or a naturally occurring material or mineral arising in or on the land.”
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 20
- 48 Overpaid RWT or NRWT**
- (1) After section RM 8(2), the following is added:  
*“When subsections (4) and (5) apply*
- “(3) **Subsections (4) and (5)** apply when— 25
- “(a) a holder of an attributing interest in a FIF receives a distribution from which an amount of tax for resident passive income has been withheld; and
- “(b) section CD 36 (Foreign investment fund income) applies to the distribution.
- “Certain FIF income: application by holder* 30
- “(4) The holder may apply for a refund if—
- “(a) they apply before the next 31 March after the date on which the amount was withheld, with supporting information to show that the threshold referred to in section CQ 5(1)(d) (When FIF income arises) has been exceeded for their corresponding income year; and 35

- “(b) the person making the distribution has not—  
 “(i) paid them a refund of the amount; or  
 “(ii) applied themselves under **subsection (5)** for a  
 refund in relation to the amount; and  
 “(c) they notify the person making the distribution of their 5  
 application under this subsection.
- “*Certain FIF income: application by payer*
- “(5) The person making the distribution may apply for a refund if—  
 “(a) they apply before the next 31 March after the date on 10  
 which the amount was withheld, with supporting infor-  
 mation to show the payment has been made to the holder  
 without any subtraction permitted by section RA 12(5)  
 and (6) (Adjustment to correct errors: certain excess  
 amounts); and  
 “(b) the holder has not applied for a refund under **subsec-** 15  
**tion (4)** in relation to the amount; and  
 “(c) they provide, in relation to the amount,—  
 “(i) a statement that they will not include particulars  
 in an RWT withholding reconciliation statement  
 made under section 51 of the Tax Administration 20  
 Act 1994; and  
 “(ii) the disclosure information required by section 52  
 of that Act.
- “*Use of refund*
- “(6) An amount of a refund paid under **subsection (4) or (5)** may 25  
 be used under section RM 10 to satisfy a liability under the  
 Inland Revenue Acts.”
- (2) **Subsection (1)** applies for the 2008–09 and later income  
 years.
- 49 Definitions** 30
- (1) This section amends section YA 1.
- (2) The definition of **cost of timber** is replaced by the following:  
 “**cost of timber**, in sections EJ 1, EW 2, EZ 44, FB 6, and FB 7  
 (which relate to the disposal of timber), means the amount re-  
 ferred to in **section DP 11(1)(b)** (Expenditure related to dis- 35  
 posal of timber) that is a deduction under **section DP 11(2)**”.

- (3) In the definition of **dispose**, in paragraph (b), “DP 11 (Cost of timber)” is replaced by “**DP 11** (Expenditure related to disposal of timber)”.
- (4) After the definition of **forestry assets**, the following is inserted: 5  
“**forestry business** includes the activities carried on by a person on whom the obligations of a landowner under a covenant described in regulation 6 of the Forests (Permanent Forest Sink) Regulations 2007 are imposed in relation to a forest sink area described in regulation 3 of those regulations”. 10
- (5) In the definition of **lease**, in paragraph (f)(ii), “paragraph (c)” is replaced by “paragraph (d)”.
- (6) The definition of **loss balance** is replaced by the following:  
“**loss balance**, for a tax year,  
“(a) means the sum of all tax loss components— 15  
“(i) arising in the tax year and included in the tax loss for the tax year under section IA 2(3) and (4) (Tax losses), to the extent not used under section IA 3(1) to (3) or IA 4(1)(a) (which relate to the first use and to particular losses): 20  
“(ii) arising in an earlier tax year and carried forward under section IA 3(4) to the tax year, to the extent not used under section IA 3(1) to (3) or IA 4(1)(a):  
“(b) does not include a tax loss component included in a 25  
company’s loss balance at the end of the tax year if the requirements of section IA 5 (Restrictions on companies’ loss balances carried forward), as modified by sections IZ 4 to IZ 6 (which relate to tax losses for tax years before 1992), have not been met”. 30
- (7) After the definition of **net loss**, the following is inserted:  
“**net mining loss** is defined in **section IS 1(3)** (General treatment of mining companies’ net losses) for the purposes of subpart IS (Mining companies’ and petroleum miners’ tax losses)”. 35
- (8) After the definition of **new personal tax rate person**, the following is inserted:

- “**new reporting standard** is defined in **section DB 35** (Some definitions) for the purposes of **section DB 34** (Research or development)”.
- (9) After the definition of **old financial arrangements rules**, the following is inserted: 5  
 “**old reporting standard** is defined in **section DB 35** (Some definitions) for the purposes of **section DB 34** (Research or development)”.
- (10) The definition of **prescribed investor rate** is replaced by the following: 10  
 “**prescribed investor rate**, for a person who is an investor in a portfolio tax rate entity and for a portfolio allocation period in a tax year, means—  
 “(a) 0%, if the person is a resident who is— 15  
     “(i) a company: 15  
     “(ii) an organisation or trust with income that is exempt income under section CW 41 or CW 42 (which relate to the income of charities):  
     “(iii) a portfolio investment entity or superannuation fund, other than a person who chooses to have a rate of 30% under **paragraph (f)**: 20  
     “(iv) a person who derives income as a trustee and does not choose to have a rate of 30% under **paragraph (f)**:  
     “(v) a portfolio investor proxy for the portfolio allocation period: 25  
 “(b) 12.5%, if the person is a resident who derived, in either of the 2 income years immediately before the tax year,—  
     “(i) \$14,000 or less in taxable income; and 30  
     “(ii) \$48,000 or less in the sum of their taxable income and portfolio investor allocated income after subtracting any portfolio investor allocated loss:  
 “(c) 21%, if the person is a resident who derived, in either of the 2 income years immediately before the tax year,— 35  
     “(i) \$14,000 or less in taxable income, and more than \$48,000 but not more than \$70,000 in the sum of their taxable income and portfolio investor allo-

- cated income after subtracting any portfolio investor allocated loss; or
- “(ii) more than \$14,000 but not more than \$48,000 in taxable income, and \$70,000 or less in the sum of their taxable income and portfolio investor allocated income after subtracting any portfolio investor allocated loss: 5
- “(d) 21%, if the person notifies a portfolio investment entity before 1 April 2010 that 19.5% is their applicable rate:
- “(e) 30% if the person is a resident who derived, in either of the 2 income years immediately before the tax year,— 10
- “(i) more than \$48,000 in taxable income:
- “(ii) more than \$70,000 in the sum of their taxable income and portfolio investor allocated income after subtracting any portfolio investor allocated loss: 15
- “(f) 30%, if the person is a resident who derives income as a trustee of a trust other than a trust referred to in **paragraph (a)(ii)** and who chooses to have this investor rate for the tax year”. 20
- (11) The definition of **reporting standard** is repealed.
- (12) The definition of **retirement scheme prescribed rate** is replaced by the following:
- “**retirement scheme prescribed rate**, for a person and a retirement scheme contribution made for the person at a time in an income year, means a rate of— 25
- “(a) 0%, if the person is a non-resident at the time and the contribution is non-resident passive income; or
- “(b) 12.5%, if the person— 30
- “(i) derives, in either of the 2 income years immediately before the income year in which the contribution is made, taxable income of \$14,000 or less:
- “(ii) is a non-resident and a distribution of no more than \$200 is made to them by a retirement scheme contributor that is a Maori authority: 35
- “(iii) is a non-resident who supplies a retirement scheme contributor that is a Maori authority with

- a notice under section 28C of the Tax Administration Act 1994; or
- “(c) 21%, if the person derives, in either of the 2 income years immediately before the income year in which the contribution is made, more than \$14,000 but not more than \$48,000 in taxable income; or 5
- “(d) 33%, if the person derives, in either of the 2 income years immediately before the income year in which the contribution is made, more than \$48,000 but not more than \$70,000 in taxable income; or 10
- “(e) 38%”.
- (13) The definition of **tax loss** is replaced by the following:  
 “**tax loss** means an amount described in section IA 2(1) (Tax losses) and includes unused tax loss components arising in the current tax year or in an earlier tax year”. 15
- (14) The definition of **timber** is replaced by the following:  
 “**timber**—  
 “(a) is defined in **section DP 11(5)** (Expenditure related to disposal of timber) for the purposes of that section:  
 “(b) includes standing timber in— 20  
 “(i) section EB 24 (Apportionment on disposal of business assets that include trading stock):  
 “(ii) section FB 6 (Timber or right to take timber):  
 “(iii) section GC 1 (Disposals of trading stock at below market value): 25  
 “(iv) the definition of **dispose**, paragraph (b):  
 “(v) the definition of **right to take timber**:  
 “(vi) the definition of **trading stock**, paragraph (b)(iv)”.
- (15) **Subsections (10) and (12)** apply for the 2010–11 and later income years. 30
- 50 Transparency of nominees**
- (1) After section YB 21(2), the following is added:  
 “*Nominal settlements*  
 “(3) A person making a nominal settlement at the request of another person is treated for the purposes of this Act as a nominee in relation to the settlement.” 35

- (2) **Subsection (1)** applies for the 2008–09 and later income years.

**51 Schedule 1—Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits**

- (1) In schedule 1, part D, clauses 3 to 6, “passive resident income” is replaced by “resident passive income” in each place where it appears. 5
- (2) Schedule 1, part D, table 2 is replaced by the following:

**Table 2**

Row	Conditions	Payment rate
1	The payer of the interest has not been supplied with the tax file number of the person who is paid the interest.	0.380
2	For a person who receives interest on money deposited into a new account opened after 31 March 2010, whether for a fixed period or not, the payer of the interest— (a) has been supplied with the tax file number of the person; and (b) has not received a payment rate election from the person.	0.380
3	For a person who chooses the payment rate of 0.380, the payer of the interest— (a) has been supplied with the tax file number of the person; and (b) has received a payment rate election from the person.	0.380
4	For a person who chooses the payment rate of 0.330, the payer of the interest— (a) has been supplied with the tax file number of the person; and (b) has received a payment rate election from the person.	0.330
5	For a person in relation to whom RWT is withheld at the payment rate of 0.195 before 1 April 2010, the payer of the interest—	

**Table 2**

<b>Row</b>	<b>Conditions</b>	<b>Payment rate</b>
	(a) has been supplied with the tax file number of the person; and (b) has not received a payment rate election from the person.	0.210
6	For a person who chooses the payment rate of 0.210, the payer of the interest— (a) has been supplied with the tax file number of the person; and (b) has received a payment rate election from the person.	0.210
7	For a person who chooses the payment rate of 0.125 and has a reasonable expectation at the time of the election that their income for the income year will be \$14,000 or less, the payer of the interest— (a) has been supplied with the tax file number of the person; and (b) has received a payment rate election from the person.	0.125

**How to use this table**

Find the applicable condition in the second column in order to find the relevant rate to apply in the third column.

- (3) In schedule 1, part D, table 3, “0.33” is replaced by “0.30” in each place where it appears.
- (4) In schedule 1, part D, table 3, “0.39” is replaced by “0.38” in each place where it appears.
- (5) Schedule 1, part D, table 5 is replaced by the following: 5

**Table 5**

<b>Row</b>	<b>Conditions</b>	<b>Payment rate</b>
1	The person responsible for withholding RSCT— (a) has been notified under section 28C of the Tax Administration Act 1994 that 12.5 cents in the dollar is the person’s retirement scheme prescribed rate; and	

**Table 5**

Row	Conditions	Payment rate
	(b) has been supplied with the tax file number of the person.	0.125
2	The person is a non-resident and a distribution of no more than \$200 is made to them by a retirement scheme contributor that is a Maori authority.	0.125
3	The person responsible for withholding RSCT— (a) has been notified under section 28C of the Tax Administration Act 1994 that 21 cents in the dollar is equal to or greater than the person’s retirement scheme prescribed rate; and (b) has been supplied with the tax file number of the person.	0.210
4	The person responsible for withholding RSCT— (a) has been notified under section 28C of the Tax Administration Act 1994 that 33 cents in the dollar is equal to or greater than the person’s retirement scheme prescribed rate; and (b) has been supplied with the tax file number of the person.	0.330
5	When none of rows 1 to 4 apply.	0.380

**How to use this table**

Find the applicable condition in the second column, in order to find the relevant rate to apply, in the third column.

- (6) **Subsection (1)** applies for the 2008–09 and later income years.
- (7) **Subsections (2), (4), and (5)** apply for the 2010–11 and later income years.
- (8) **Subsection (3)** applies for the 2011–12 and later income years.

**52 Schedule 2—Basic tax rates for PAYE income payments**

- (1) After schedule 2, part A, clause 7, the following is added:

**“8 “SB” tax code**

If an employee has notified their employer that the employee’s tax code is “SB” under **section 24B(3)(bb)** of the Tax Administration Act 1994, the basic tax rate amount for a payment of secondary employment earnings is set by applying the rate of 0.125 for each dollar of the payment.”

- (2) Schedule 2, part B, table 1 is replaced by the following:

**Table 1**

Row	Condition	Payment rate
1	<b>Section RD 17(2)(a)</b> applies and the sum is \$14,000 or less.	0.125
2	<b>Section RD 10(2)(a)</b> or <b>RD 17(2)(b)</b> applies.	0.210
3	<b>Section RD 10(2)(b)</b> or <b>RD 17(2)(c)</b> applies.	0.330
4	<b>Section RD 10(2)(c)</b> or <b>RD 17(2)(d)</b> applies.	0.380

**How to use this table**

Find the applicable condition in the second column, in order to find the relevant rate to apply, in the third column.

- (3) **Subsections (1) and (2)** apply for the 2010–11 and later income years.

**53 Schedule 51—Identified changes in legislation**

- (1) In schedule 51, after the entry for FC 2 to FC 6, the following is inserted: 5

GB 1

The relationship between the dividend stripping rule and the withholding tax rules is clarified so that the RWT and NRWT rules apply to a dividend subject to a tax avoidance arrangement.

- (2) In schedule 51, after the entry for GB 42(2)(d), the following is inserted:

HC 27(2)	The definition of <b>settlor</b> is clarified so that any transfer to a trust that increases the net assets of the trust is a settlement on the trust and any deductible payments settled on a trust are included in trustee income.
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- (3) In schedule 51, after the entry for LC 9(2), the following is inserted:

OB 41(3), OC 24(3), OE 10(3), OK 15(3), OP 42(3), OP 73(3), OP 104(3), OP 108(3)	The interaction between the rules for debits for loss of continuity and the time at which the debit is attached is clarified so that the time the debit arises is the beginning of the day of loss of continuity.
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- (4) **Subsection (1)** applies for the 2008–09 and later income years. However, **subsection (1)** does not apply to a person in relation to a tax position taken by the person— 5
- (a) in the period from 1 October 2007 to the date of assent of this Act; and
  - (b) in relation to a dividend derived by them; and
  - (c) relying upon section GB 1(3) of the Income Tax Act 2004 as a guide to the interpretation of section GB 1. 10
- (5) **Subsections (2) and (3)** apply for the 2008–09 and later income years.

**54 Lists of defined terms in Income Tax Act 2007**

The lists of defined terms in the sections of the Income Tax Act 2007 listed in **schedule 1** are amended in the way indicated by the schedule. 15

**Part 2**

**Amendments to Tax Administration Act 1994**

- 55 Tax Administration Act 1994** 20  
**Sections 56 to 68** amend the Tax Administration Act 1994.

**56 Interpretation**

In section 3(1),—

- (a) the definition of **contested tax** is repealed:

- (b) after the definition of **unacceptable tax position**, the following is inserted:

“**uncontested tax** is defined in **section 173B**.”

**57 Giving of notices by Commissioner**

Section 14(7) is replaced by the following: 5

- “(7) The Commissioner may give the notice to the addressee by an electronic means of communication unless there are reasonable grounds to suppose that the notice will not be received by the addressee. This subsection overrides the consent provisions of the Electronic Transactions Act 2002.” 10

**58 PAYE tax codes**

- (1) After section 24B(3)(b), the following is inserted:

“(bb) “SB” for secondary employment earnings for an employee whose annual income is not more than \$14,000.” 15

- (2) **Subsection (1)** applies for the 2010–11 and later income years.

**59 Section 24C replaced**

- (1) Section 24C is replaced by the following:

“**24C Tax code for payment that includes income-tested benefits** 20  
An employee who receives a PAYE income payment of an income-tested benefit and a PAYE income payment that does not consist of an income-tested benefit may choose, for their non-benefit income, a tax code set out in **section 24B(3)(bb)**, (c), (d), or (e) that is relevant to their circumstances.” 25

- (2) **Subsection (1)** applies for the 2010–11 and later income years.

**60 New section 26B inserted**

- (1) After section 26, the following is inserted:

“**26B Withholding rates for RWT** 30  
A person paying an amount of resident passive income that consists of interest must, for each year, remind the person receiving the amount to ensure that the basic rate of RWT applying to the payment under schedule 1, part D, table 2 of the

- Income Tax Act 2007 is consistent with the rate of tax applying to their taxable income.”
- (2) **Subsection (1)** applies for the 2010–11 and later income years.
- 61 Person advising retirement savings scheme of retirement scheme prescribed rate** 5
- (1) In section 28C, “39%” is replaced by “38%”.
- (2) **Subsection (1)** applies for the 2010–11 and later income years.
- 62 Annual returns of income not required** 10
- (1) In section 33A(1)(b)(vi), the following is inserted before subparagraph (A):
- “(AA) schedule 2, part A, clause 4 of the Income Tax Act 2007 if that person’s annual gross income is more than \$14,000 but not more than \$48,000; or”.
- (2) In section 33A(5), “must” is replaced by “may”.
- (3) **Subsection (1)** applies for the 2010–11 and later income years.
- (4) **Subsection (2)** applies for the 2009–10 and later income years. 20
- 63 Natural person to request income statement**
- (1) Section 80C(1), (1A), and (2) are repealed.
- (2) **Subsection (1)** applies for the 2009–10 and later income years. 25
- 64 Commissioner must issue income statement**
- (1) Section 80D(1)(c)(i) is repealed.
- (2) In section 80D(2), “to a person at any time” is replaced by “to a person, or require a person to apply for an income statement, at any time”. 30
- (3) **Subsection (1)** applies for the 2009–10 and later income years.

**65 Taxation laws in respect of which binding rulings may be made**

In section 91C(1)(eb), “on an application to which section ZA 4(1)(a)(i) of the Income Tax Act 2007 applies,” is omitted.

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**66 New section 113A inserted**

After section 113, the following is inserted:

**“113A Correction of minor errors in subsequent returns**

“(1) This section applies for the purposes of this Act and the Goods and Services Tax Act 1985 when—

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“(a) a person has provided a return of income in which the assessment of their liability for income tax, fringe benefit tax, or goods and services tax contains 1 or more minor errors; and

“(b) the error was caused by a clear mistake, simple oversight, or mistaken understanding on the person’s part; and

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“(c) for a single return, the total discrepancy in the assessment that is caused by the error is \$500 or less.

“(2) The Commissioner may allow the person to correct the error in the next return of income that is due after the discovery of the error.

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“(3) For the purposes of **subsection (1)(c)**, the liability the person has for income tax, fringe benefit tax, or goods and services tax is treated separately.”

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**67 Certain rights of challenge not conferred**

In section 138E(1)(e)(iv), “120U,” is replaced by “120U, 138I(2B),”.

**68 Definitions**

(1) In section 173B, the definition of **contested tax** is repealed.

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(2) In section 173B, after the definition of **tax recovery arrangement**, the following is added:

“**uncontested tax** means an amount of tax—

- “(a) whose payment is enforceable under the laws of the state of the applicant requesting assistance under a tax recovery arrangement; and
- “(b) that is owed by a person who cannot, under the laws of the state of the applicant, prevent collection of the amount:”.

**Part 3**  
**Amendments to Goods and Services Tax**  
**Act 1985**

- 69 Goods and Services Tax Act 1985** 10  
**Sections 70 and 71** amend the Goods and Services Tax Act 1985.
- 70 Meaning of associated persons**
- (1) Section 2A(1)(f) is replaced by the following:
- “(f) a trustee of a trust and a person who has benefited or is eligible to benefit under the trust, except if, in relation to a supply of goods and services,—
    - “(i) the trustee is a charitable or non-profit body with wholly or principally charitable, benevolent, philanthropic, or cultural purposes and the supply is made in carrying out these purposes; or
    - “(ii) the person is a charitable or non-profit body with wholly or principally charitable, benevolent, philanthropic, or cultural purposes and the supply enables them to carry out these purposes:”.
- (2) Section 2A(1)(h) is replaced by the following:
- “(h) a trustee of a trust and a trustee of another trust if the same person is a settlor of both trusts, except if, in relation to a supply of goods and services,—
    - “(i) either trustee is a charitable or non-profit body with wholly or principally charitable, benevolent, philanthropic, or cultural purposes; and
    - “(ii) the supply is made in, or enables, the carrying out of the charitable, benevolent, philanthropic, or cultural purposes:”.

**71 Meaning of term supply**

After section 5(6AB), the following is inserted:

- “(6AC) For the purposes of this Act, a levy that is paid under the Waste Minimisation Act 2008 is treated as being consideration for a supply of services in the course or furtherance of a taxable activity. For the purposes of this subsection, the payment of the levy includes the following transactions: 5
- “(a) a payment made by a waste disposal facility user to a waste disposal facility operator; and
- “(b) a payment made by a waste disposal facility operator to the Secretary for the Ministry for the Environment; and 10
- “(c) a payment made by the Secretary to a funding recipient or territorial authority to fund waste minimisation activities in the community as described in section 30 of the Waste Minimisation Act 2008.” 15

**Part 4****Amendments to Income Tax Act 2004****72 Income Tax Act 2004**

**Sections 73 to 83** amend the Income Tax Act 2004.

**73 Available capital distribution amount** 20

In section CD 33(11), “subsection (12)” is replaced by “subsections (7) and (12)”.

**74 Research or development**

- (1) Section DB 26(2), other than the heading, is replaced by the following: 25
- “(2) Subsection (1) applies to a person who recognises the expenditure as an expense for financial reporting purposes,—
- “(a) under paragraph 5.1 or 5.2 of the old reporting standard or because paragraph 5.4 of that standard applies; or
- “(b) under paragraph 68(a) of the new reporting standard applying, for the purposes of that paragraph, paragraphs 54 to 57 of that standard.” 30
- (2) Section DB 26(4)(b) is replaced by the following:
- “(b) would be required, if the expenditure were material, to recognise it for financial reporting purposes— 35

- “(i) under paragraph 5.1 or 5.2 of the old reporting standard or because paragraph 5.4 of that standard applies; or
- “(ii) under paragraph 68(a) of the new reporting standard applying, for the purposes of that paragraph, paragraphs 54 to 57 of that standard.” 5
- (3) **Subsections (1) and (2)** apply for the 2007–08 and later income years, or if the person has chosen to adopt IFRSs for financial reporting purposes for an earlier income year, from that earlier income year. 10
- 75 Some definitions**
- In section DB 27(1), the definition of **reporting standard** is replaced by the following:
- “**new reporting standard** means the New Zealand Equivalent to International Accounting Standard 38, approved by the Accounting Standards Review Board, and as amended from time to time or an equivalent standard issued in its place 15
- “**old reporting standard** means Financial Reporting Standard No 13 1995 (Accounting for Research and Development Activities) being the standard approved under the Financial Reporting Act 1993, or an equivalent standard issued in its place, that applies in the tax year in which the expenditure is incurred”. 20
- 76 Gifts of money by company**
- Section DB 32(3), other than the heading, is replaced by the following: 25
- “(3) The deduction for the total of all gifts made in a tax year is limited to 5% of the amount that would be the company’s net income in the tax year if this section did not exist.”
- 77 Section DP 10 replaced** 30
- (1) Section DP 10 is replaced by the following:
- “**DP 10 Expenditure related to disposal of timber**
- “*When this section applies*
- “(1) This section applies at the time of disposal of timber when—

- “(a) section CB 22 or CB 23 (which relate to the disposal of timber) applies to a person; and
  - “(b) the person—
    - “(i) has incurred actual expenditure related to the disposal of the timber; or 5
    - “(ii) has an existing liability in relation to the expenditure; and
  - “(c) no other provision of this Act allows a deduction for the expenditure.
- “*Deduction* 10
- “(2) The person is allowed a deduction for the amount of the expenditure incurred.
- “*Timing of deduction*
- “(3) The deduction is allocated—
    - “(a) for timber harvested from the land before the time of disposal, to the income year in which the timber first becomes trading stock of the person; or 15
    - “(b) otherwise, by section EA 2 (Other revenue account property).
- “*Relationship with section DB 37* 20
- “(4) This section does not apply to expenditure to which section DB 37 (Avoiding, remedying, or mitigating effects of discharge of contaminant) applies.
- “*Meaning of timber*
- “(5) In this section, **timber** includes— 25
    - “(a) the creation or grant of a right to take timber:
    - “(b) the grant of a licence or an easement in relation to timber:
    - “(c) the creation of a forestry right as defined in section 2 of the Forestry Rights Registration Act 1983, other than a right in favour of the proprietor in relation to establishing, maintaining, and harvesting timber. 30
- “*Link with subpart DA*
- “(6) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply. 35
- “Defined in this Act: amount, business, capital limitation, deduction, dispose, general permission, income year, timber, trading stock”.

- (2) **Subsection (1)** applies for the 2007–08 and later income years, or if the person has chosen to adopt IFRSs for financial reporting purposes for an earlier income year, from that earlier income year.

**78 Branch equivalent income or loss: calculation rules** 5

- (1) In section EX 21(26), “the amount actuarially determined to be the part of the CFC’s net income or loss” is replaced by “the amount actuarially determined to be part of the CFC’s profit or loss”.

- (2) **Subsection (1)** applies for the 2005–06 and later income years. 10

**79 Accounting profits method**

- (1) Section EX 42(5), other than the heading, is replaced by the following:

“(5) For an income interest that the person has held for more than 12 months, the person may follow a simplified calculation process by choosing to be treated as holding, at all times in the tax year, the same interest, including zero interest, that they held at the end of the tax year. The person makes the election by completing their return of income accordingly for the relevant income year.” 15 20

- (2) **Subsection (1)** applies for the 2005–06 and later income years. However, **subsection (1)** does not apply to a person in relation to a tax position taken by the person in the period from 1 April 2005 to 31 March 2008 in relation to the calculation of income interest in a FIF, relying on **section EX 42(5)** before the amendment made by this subsection. 25

**80 Credits arising to imputation credit account**

In section ME 4(1)(a)(ii), “to which section EY 47 applies” is omitted. 30

**81 New section NF 2E inserted**

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

- “**NF 2E Amounts withheld from distributions to holders of FIF attributing interests**
- “(1) This section applies when—
- “(a) a distribution is made to a holder of an attributing interest in a FIF; and 5
  - “(b) section CD 26 applies to the distribution; and
  - “(c) an amount of resident withholding tax is deducted from the distribution.
- “(2) The amount is treated as—
- “(a) RWT for the purposes of this subpart and subpart MD 10 and section LD 3; and
  - “(b) tax paid in excess for the purposes of Part 10B of the Tax Administration Act 1994.
- “(3) **Subsection (2)** does not apply if the person making the distribution or the holder of the interest applies under section NF 7 15 for a refund in relation to the amount withheld before the next 31 March after date on which the amount of tax was withheld.”
- (2) **Subsection (1)** applies for the 2005–06 and later income years.
- 82 Definitions** 20
- (1) This section amends section OB 1.
  - (2) In the definition of **cost of timber**, “section DP 10(1) (Cost of timber)” is replaced by “**section DP 10(1)** (Expenditure related to disposal of timber)”.
  - (3) In the definition of **dispose**, in paragraph (b), “DP 10 (Cost of timber)” is replaced by “**DP 10** (Expenditure related to disposal of timber)”.
  - (4) After the definition of **forester**, the following is inserted:  
“**forestry business** includes the activities carried on by a person on whom the obligations of a landowner under a covenant described in regulation 6 of the Forests (Permanent Forest Sink) Regulations 2007 are imposed in relation to a forest sink area described in regulation 3 of those regulations”.
  - (5) After the definition of **new provisional taxpayer**, the following is inserted: 35

- “**new reporting standard** is defined in **section DB 27** (Some definitions) for the purposes of **section DB 26** (Research or development)”.
- (6) After the definition of **old financial arrangements rules**, the following is inserted: 5  
 “**old reporting standard** is defined in **section DB 27** (Some definitions) for the purposes of **section DB 26** (Research or development)”.
- (7) The definition of **timber** is replaced by the following: 10  
 “**timber**—  
 “(a) is defined in **section DP 10(5)** (Expenditure related to disposal of timber) for the purposes of that section:  
 “(b) includes standing timber in—  
     “(i) section FB 4 (Income derived from disposal of trading stock together with other assets of business): 15  
     “(ii) section FF 7 (Disposal of timber under relationship agreement):  
     “(iii) section GD 1 (Sale or other disposal of trading stock for inadequate consideration): 20  
     “(iv) section GD 2 (Distribution of trading stock to shareholders of company):  
     “(v) the definition of **dispose**, paragraph (b):  
     “(vi) the definition of **right to take timber**:  
     “(vii) the definition of **trading stock**, paragraph (b)(iv)” 25  
 (b)(iv)”.
- (8) In the definition of **trading stock**, in paragraph (a)(vi), “**DP 10** (Cost of timber)” is replaced by “**DP 10** (Expenditure related to disposal of timber)”.
- 83 Lists of defined terms in Income Tax Act 2004** 30  
 The lists of defined terms in the sections of the Income Tax Act 2004 listed in **schedule 2** are amended in the way indicated by the schedule.

## **Part 5**

### **Amendments to other Acts**

**84 Credits arising to imputation credit account**

In section ME 4(1)(a)(ii) of the Income Tax Act 1994, “to which section CM 16 applies” is omitted.

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**85 Taxes and duties**

In section 29(3) of the Maori Trustee Amendment Act 2009, “section 31(1) of the Tax Administration Act 1994” is replaced by “section 3(1) of the Tax Administration Act 1994”.

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**Schedule 1**

**s 54**

**Consequential amendments to lists of  
defined terms in Income Tax Act 2007**

<i>Row</i>	<i>Section</i>	<i>Defined term omitted</i>	<i>Defined term inserted</i>
1	CC 9		natural resource
2	CD 34	foreign-sourced amount	
3	CS 2	KiwiSaver scheme	
4	DB 23	portfolio investment-linked life fund	
5	DB 34	reporting standard	new reporting standard, old reporting standard
6	DB 35	reporting standard	new reporting standard, old reporting standard
7	DP 1		forestry business
8	DP 2		forestry business
9	DP 3		forestry business
10	DP 4		forestry business
11	DP 8		forestry business
12	DP 9		forestry business
13	EH 63		forestry business
14	EH 73		forestry business
15	EH 78		forestry business
16	GB 27		imputation credit, pay
17	HC 6	non-standard income year	return of income

**Taxation (Consequential Rate Alignment  
and Remedial Matters) Bill**

<i>Row</i>	<i>Section</i>	<i>Defined term omitted</i>	<i>Defined term inserted</i>
18	HC 27		amount, Commissioner, income, share, trustee
19	IA 2	corresponding income year, schedular income, schedular income tax liability	trustee
20	IA 3		tax loss component
21	IA 7		loss balance, ring-fenced tax loss
22	IQ 2	tax loss	
23	IQ 4	tax loss	
24	IS 1	tax loss	net mining loss
25	IS 2	loss balance, tax loss	net mining loss, tax loss component
26	IS 3	loss balance	net mining loss
27	IS 5		net income, permit area
28	IT 1		tax loss component
29	MB 1		business, depreciation loss
30	OA 18		pay
31	RE 12		company, income year, portfolio investment entity
32	RE 22	resident in New Zealand	

**Taxation (Consequential Rate Alignment  
and Remedial Matters) Bill**

Schedule 1

<i>Row</i>	<i>Section</i>	<i>Defined term omitted</i>	<i>Defined term inserted</i>
33	RF 1		amount
34	RM 8		attributing interest, corresponding income year, FIF, Inland Revenue Acts, notify, resident passive income.

## Schedule 2

s 83

Consequential amendments to lists of  
defined terms in Income Tax Act 2004

<i>Row</i>	<i>Section</i>	<i>Defined term omitted</i>	<i>Defined term inserted</i>
1	CD 24B	foreign-sourced amount	
2	DB 26	reporting standard	new reporting standard, old reporting standard
3	DB 27	reporting standard	new reporting standard, old reporting standard
4	DP 1		forestry business
5	DP 2		forestry business
6	DP 3		forestry business
7	DP 3B		forestry business
8	DP 7		forestry business
9	DP 8		forestry business
10	EH 65		forestry business
11	EH 75		forestry business
12	EH 80		forestry business.