

Taxation (Tax Administration and Remedial Matters) Bill

Government Bill

Explanatory note

General policy statement

This bill amends the Tax Administration Act 1994 (TAA) to improve the ability of the Commissioner, in defined circumstances, to disclose information in the course or furtherance of good tax administration practice. Some information may be disclosed, in circumscribed cases, if it is in the interests of government efficiency. The bill also provides for other matters, including the abolition of gift duty, improvements to the tax disputes process, and improvements to tax pooling legislation. A number of minor issues are remedied as well.

Regulatory impact statement

In accordance with Cabinet Office Circular CO (09) 08, this explanatory note does not contain a regulatory impact statement for this bill. Copies of the regulatory impact statements for this bill are available at the following internet sites:

- <http://taxpolicy.ird.govt.nz/publications/2010-ris-tarm-bill/overview>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Information disclosure

Changes are proposed to the rules around Inland Revenue secrecy, in section 81 of the TAA, to allow more efficient administration of the tax system, and to improve government efficiency.

The proposed changes to section 81 of the TAA are intended to relax the secrecy rule in relation to disclosures made in carrying out the Commissioner's power, duties, and functions, including the implementation and administration of the tax system. The proposed wording is intended to give the Commissioner discretion around making such disclosures, following consideration of a number of factors. For example, it is intended that the Commissioner will have the discretionary ability to respond in situations where people make incorrect media statements about Inland Revenue, or actions taken by Inland Revenue. Further examples of intended permissible disclosure include generic information such as statistical data, certain disclosures that have been expressly consented to by the taxpayer, disclosure of information to the Treasury for tax policy development, and disclosure of information that is already in the public domain.

While the relaxed rule will encompass a number of the specific disclosure situations described in section 81(4) of the TAA, these provisions will be largely unchanged. It is not intended that the Commissioner's proposed discretion will be affected, or constrained in any way by the specific disclosure situations set out in section 81(4) of the TAA.

A new framework for sharing Inland Revenue information with other government agencies is proposed. Such sharing would be permissible where the government agency seeking access to Inland Revenue information is entitled to collect the information itself, but such independent collection results in inefficiency and unnecessary cost. The sharing of information would be authorised by Order in Council, specifying matters such as the agency with whom information will be shared, the type of information to be shared, and the processes for sharing and using the information. Prior to recommending an Order in Council, the Minister of Revenue must carry out consultation with affected agencies and the Privacy Commissioner. The Minister must also be satisfied that the sharing will not unduly impact on Inland Revenue's ability to collect information in the future.

This bill proposes a post-implementation report on access to Inland Revenue information by other government departments. The post-

implementation report will occur after 5 years and be tabled in the House of Representatives.

Tax disputes

Procedural rules in relation to tax disputes will be amended to more closely align taxpayer-initiated disputes processes with Commissioner-initiated disputes processes.

If a taxpayer in exceptional circumstances fails to meet timelines within the disputes process, a new procedure proposed in this bill may be available to remedy that failure, and allow the taxpayer to enter into or continue the disputes process despite the failure.

A new procedural step is introduced before the issue of court proceedings, to allow time for Inland Revenue to finally consider the merits of a dispute after the issuing of statements of position by the parties, and before going to court.

The small claims jurisdiction of Taxation Review Authorities is to be abolished.

The evidence exclusion rule is relaxed to exclude factual and evidential matters.

A number of minor and remedial issues are dealt with, as well. For example, the definition of *disputable decision* is better structured and procedural steps in the disputes process itself are removed from being disputable decisions (since they are already part of a dispute).

Tax pooling

A number of amendments are proposed to the provisional tax pooling rules, to ensure the legislation is simpler, fairer, and consistent in its application to different tax types. Most of these amendments relate to previous operational practice and concessions, or to remedial issues with the current tax pooling legislation.

A new 75-day time limit to meet tax liabilities is proposed, and the time limit will be further relaxed in some circumstances. Also, the available uses for pooled funds will be extended, and a number of clarifications and corrections will be made.

Abolition of gift duty

Gift duty is to be abolished from 1 October 2011.

Gift duty no longer raises any significant revenue and imposes a high level of compliance costs on the private sector. The protection offered by gift duty in the areas of income tax, creditors, and social assistance have only ever been incidental rather than intended policy goals. In any case, such protection is indirect, inefficient, and very limited.

Donee status

Donee status is proposed for 7 overseas-orientated charities.

Credit card fees

It is proposed to accept payment by credit card, and to have the ability to charge credit card fees on top of tax paid.

Rewrite remedial matters

Remedial amendments resulting from the rewrite of the *Income Tax Act* include:

- imputation credits on distributions to beneficiaries to trusts;
- disposal of petroleum mining assets to related parties;
- foreign tax credits;
- the use of BETA debits to satisfy tax on attributed CFC income;
- calculation of further income tax;
- thin capitalisation and on-lending concessions; and
- tracing of shareholder interest, for imputation credits on transfer of overpaid provisional tax within a group of companies.

General remedial matters

A number of general remedial issues are provided for, including:

- clarification of shareholder continuity requirements;
- clarification of the treatment of the New Zealand Superannuation Fund's tax status, including a consequential amendment in the New Zealand Superannuation and Retirement Income Act 2001;
- confirmation of the deductibility of use-of-money interest for tax purposes;

- extension of the exemption for dividends paid within a wholly owned group;
- clarification of the measurement of company control and ownership;
- the branch equivalent tax account rules;
- the PIE rules, specifically in relation to life insurance income, prescribed investor rates for recent migrants, double counting of income, grouping of losses by listed PIEs, conditional entitlement, and fees for management and administration;
- the IFRS financial arrangement rules, specifically in relation to integral fees where the modified fair value method applies, the timing of base price adjustment when changing from fair value method to another method, and anti-arbitrage for the use of the fair value method;
- modernisation of the term *document*; and
- KiwiSaver administration procedures for refunds, and for payment of some credits when a person changes KiwiSaver provider.

This bill also includes a number of minor drafting corrections regarding cross references and faults of expression.

Clause by clause analysis

Clause 1 gives the title of the Act.

Clause 2 gives the dates on which clauses come into effect.

Part 1

Amendments to Income Tax Act 2007

Clause 3 gives the numbers of the clauses that affect the *Income Tax Act 2007*.

Clause 4 amends *section CW 10(2)* to alter the balance date requirements for exempt dividends within a New Zealand wholly-owned group, as a rewrite remedial matter.

Clause 5 replaces the *cross heading before section DB 1* as part of confirming the treatment of use-of-money interest for tax purposes.

Clause 6 adds *new section DB 3B* to confirm the treatment of use-of-money interest for tax purposes.

Clause 7 amends *section DT 9* as a rewrite remedial matter related to disposals of petroleum mining assets to related parties.

Clause 8 amends *section EW 15(1)* to clarify that certain fees are excluded from the financial arrangements spreading rules.

Clause 9 amends *section EW 15D(2B)* to correct the anti-arbitrage rule in the fair value method.

Clause 10 amends *section EW 29(13)* to clarify the timing of base price adjustments for certain changes in IFRS methods.

Clause 11 replaces *section EX 52(13)(c)* to clarify the application of the FDR quick sale rules.

Clause 12 amends *section EX 54(1)(b)* to clarify the application of the FDR quick sale rules.

Clause 13 amends *section FE 6(3)* as a rewrite remedial matter to correct a cross reference and ensure the correct calculation of the income for thin capitalisation purposes.

Clause 14 amends *section FE 12(1)* to correct a fault of expression.

Clause 15 amends *section HL 10(2)(b)* as a PIE remedial matter related to life insurance income.

Clause 16 amends *section HL 12* as a PIE remedial matter related to life insurance income.

Clause 17 amends *section HM 36(3)(e)(i)* to correct a fault of expression.

Clause 18 amends *section HM 38* as a PIE remedial matter clarifying when a conditional entitlement exists.

Clause 19 amends *section HM 56* as a PIE remedial matter clarifying when an amount is not included in taxable income for the purposes of prescribed investor rates.

Clause 20 inserts *new section HM 57B* as a PIE remedial matter relating to prescribed investor rates for new residents.

Clause 21 inserts *new section HR 4B* to confirm the tax status of the New Zealand Superannuation Fund.

Clause 22 amends *section IC 3* as a PIE remedial matter relating to company loss grouping.

Clause 23 amends *section LJ 1* as a rewrite remedial matter related to foreign tax credits.

Clause 24 amends *section LJ 5* as a rewrite remedial matter related to foreign tax credit calculation.

Clause 25 amends *section MC 5* as a rewrite remedial matter.

Clause 26 amends *section MK 3(5)(b)* to ensure that tax credits are administered correctly when a person changes KiwiSaver providers.

Clause 27 amends *section OB 4* as rewrite remedial matter related to imputation credits for provisional tax paid.

Clause 28 amends *section OB 67* as rewrite remedial matter related to the reduction of further income tax liability.

Clause 29 amends *section OE 7* as a rewrite remedial matter related to the use of BETA debits to satisfy tax on attributed CFC income.

Clause 30 repeals *section OE 8* as a rewrite remedial matter related to the use of BETA debits to satisfy tax on attributed CFC income.

Clause 31 amends *section OP 101* as a rewrite remedial matter related to the use of BETA debits to satisfy tax on attributed CFC income.

Clause 32 repeals *section OP 102* as a rewrite remedial matter related to the use of BETA debits to satisfy tax on attributed CFC income.

Clause 33 amends *section RP 17B* to improve the administration of the tax pooling regime.

Clause 34 replaces *section RP 19(3)* to improve the administration of the tax pooling regime.

Clause 35 inserts *new section RP 19B* to improve the administration of the tax pooling regime.

Clause 36 amends *section YA 1*. *Subclause (2)* amends the definition of *major shareholder* as a rewrite remedial matter. *Subclause (3)* amends the definition of *prescribed investor rate* as a PIE remedial matter. *Subclause (4)* provides an appropriate application date for *subclause (2)*. *Subclause (5)* provides an appropriate application date for *subclause (3)*.

Clause 37 amends *section YC 11(3)* as a rewrite remedial matter related to the measurement of company control and ownership.

Clause 38 amends *section YC 15(1)* as a remedial matter related to the measurement of company control and ownership.

Clause 39 inserts *new section YD 3B* to confirm the tax status of the New Zealand Superannuation Fund.

Clause 40 amends *schedule 1, part A* to confirm the tax status of the New Zealand Superannuation Fund.

Clause 41 amends schedule 32 to give donee status to 7 overseas-orientated charities.

Part 2

Amendments to Tax Administration Act 1994

Clause 42 gives the numbers of the clauses that affect the Tax Administration Act 1994.

Clause 43 amends section 3(1). Subclause (2) repeals the definitions of book and document and book or document as part of updating the definition of document. Subclause (3) amends the definition of challenge to recognise a challenge if the Commissioner refuses to issue a notice under section 89K. Subclause (4) inserts a new definition of challenge notice as part of instituting a challenge notice to allow time for the Commissioner to finally consider the merits of a dispute. Subclause (5) inserts new definition of document as part of modernising the term document. Subclause (6) repeals paragraph (b)(ii) of the definition of day of determination of final liability as part of abolishing the small claims jurisdiction of Taxation Review Authorities. Subclause (7) amends the definition of disputable decision as part of clarifying and restructuring what is a disputable decision. Subclause (8) inserts a new definition of duty of the Commissioner as part of ensuring that disclosure of information by the Commissioner is more flexible. Subclause (9) inserts a new definition of Inland Revenue officer as part of ensuring disclosure of information by the Commissioner is more flexible. Subclause (10) provides an appropriate application date for subclause (6), which relates to abolishing the small claims jurisdiction of Taxation Review Authorities.

Clause 44 amends section 16 as part of updating the definition of document.

Clause 45 amends section 16B as part of updating the definition of document.

Clause 46 amends section 16C as part of updating the definition of document.

Clause 47 amends section 17 as part of updating the definition of document.

Clause 48 amends section 17A as part of updating the definition of document.

Clause 49 amends *section 19* as part of updating the definition of *document*.

Clause 50 amends *section 20* as part of updating the definition of *document*.

Clause 51 amends *section 20B* as part of updating the definition of *document*.

Clause 52 amends *section 20C* as part of updating the definition of *document*.

Clause 53 amends *section 20D* as part of updating the definition of *document*.

Clause 54 amends *section 20E* as part of updating the definition of *document*.

Clause 55 amends *section 20F* as part of updating the definition of *document*.

Clause 56 amends *section 20G* as part of updating the definition of *document*.

Clause 57 amends *section 21* as part of updating the definition of *document*.

Clause 58 amends *section 81* to make disclosure of information by the Commissioner more flexible, and as part of updating the definition of *document*.

Clause 59 inserts *new section 81BA* to allow disclosure of information by the Commissioner to another government agency in prescribed circumstances.

Clause 60 amends *section 86* as part of updating the definition of *document*.

Clause 61 amends *section 87* as part of updating the definition of *document*.

Clause 62 amends *section 89C* to clarify the circumstances in which a notice of proposed adjustment is not required to be issued.

Clause 63 repeals *section 89E* as part of abolishing the small claims jurisdiction of Taxation Review Authorities.

Clause 64 amends *section 89K* to allow the Commissioner to issue a notice in favour of a taxpayer for entry into or continuation of, the disputes process in circumstances where the Commissioner considers that the taxpayer has the requisite demonstrable intention. A right of

appeal is provided, as well, if the Commissioner refuses to issue a notice.

Clause 65 repeals *section 89L(3)(b)* to clarify what is an exceptional circumstance for purposes of the Commissioner applying to the High Court under *section 89L*.

Clause 66 amends *section 89M* to clarify when the Commissioner must issue a statement of position.

Clause 67 amends *section 89N* as part of abolishing the small claims jurisdiction of Taxation Review Authorities and as part of instituting a challenge notice to allow time for the Commissioner to finally consider the merits of a dispute.

Clause 68 amends *section 108* to extend the relevant timebar in the case of a taxpayer exercising their right of appeal for entry into, or continuation of, the disputes process.

Clause 69 amends *section 108A* to extend the relevant timebar in the case of a taxpayer exercising their right of appeal for entry into, or continuation of, the disputes process.

Clause 70 amends *section 138B(3)* to clarify the taxpayer-initiated disputes process, and as part of instituting a challenge notice to allow time for the Commissioner to finally consider the merits of a dispute. Also, a new fast-track challenge right is allowed in limited circumstances.

Clause 71 amends *section 138E(1)(e)(iv)* as part of clarifying and restructuring what is a disputable decision.

Clause 72 amends *section 138G* to relax the evidence exclusion rule.

Clause 73 amends *section 138N* as part of abolishing the small claims jurisdiction of Taxation Review Authorities.

Clause 74 repeals *section 138O* as part of abolishing the small claims jurisdiction of Taxation Review Authorities.

Clause 75 amends *section 143* as part of updating the definition of *document*.

Clause 76 amends *section 143A* as part of updating the definition of *document*.

Clause 77 amends *section 143B* as part of updating the definition of *document*.

Clause 78 amends *section 150D* as part of updating the definition of *document*.

Clause 79 amends *section 157(10)* to clarify that certain amounts paid to the Commissioner by a tax pooling intermediary are subject to deduction for debt arrears.

Clause 80 adds *new section 226C* to allow the Commissioner to accept secure internet and telephone credit card payments and to charge a fee for the service.

Part 3

Remedial Matters and abolition of gift duty

Amendments to Income Tax Act 2004

Clause 81 gives the numbers of the clauses that affect the *Income Tax Act 2004*.

Clause 82 replaces the *cross heading before section DB 1* as part of confirming the treatment of use-of-money interest for tax purposes.

Clause 83 inserts *new section DB 3B* to confirm the treatment of use-of-money interest for tax purposes.

Clause 84 amends *section DT 9* as a rewrite remedial matter related to disposals of petroleum mining assets to related parties.

Clause 85 amends *section EW 15(1)* to clarify that certain fees are excluded from the financial arrangements spreading rules.

Clause 86 amends *section HL 10(2)(b)* as a PIE remedial matter related to life insurance income.

Clause 87 replaces *section OD 5(8)(b)* to clarify shareholder continuity requirements.

Amendment to New Zealand Superannuation and Retirement Income Act 2001

Clause 88 repeals *section 76 of the New Zealand Superannuation and Retirement Income Act 2001*, consequential to confirming the tax status of the New Zealand Superannuation Fund in the *Income Tax Act 2007*.

Amendment to KiwiSaver Act 2006

Clause 89 inserts *new section 81B of the KiwiSaver Act 2006*, to give the Commissioner a residual refund power for amounts in the holding account.

*Amendments to Taxation Review Authorities Act
1994*

Clause 90 gives the numbers of the clauses that affect the *Taxation Review Authorities Act 1994*.

Clause 91 repeals *section 13A(b)(ii)* as part of abolishing the small claims jurisdiction of Taxation Review Authorities.

Clause 92 repeals *section 13B* as part of abolishing the small claims jurisdiction of Taxation Review Authorities.

Clause 93 amends *section 15(2)* as part of updating the definition of *document*.

Clause 94 replaces *section 26A(2)* as part of abolishing the small claims jurisdiction of Taxation Review Authorities.

Amendments to Income Tax Act 1994

Clause 95 gives the numbers of the clauses that affect the *Income Tax Act 1994*.

Clause 96 replaces the *subpart heading before section DB 1* as part of confirming the treatment of use-of-money interest for tax purposes.

Clause 97 adds *new section DB 2* to confirm the treatment of use-of-money interest for tax purposes.

*Amendments to Taxation Review Authorities
Regulations 1998*

Clause 98 gives the numbers of the clauses that affect the *Taxation Review Authorities Regulations 1998*.

Clause 99 amends *regulation 2*, definition of *notice of claim* as part of abolishing the small claims jurisdiction of Taxation Review Authorities.

Clause 100 amends *regulation 4* to update a cross-reference.

Clause 101 amends *regulation 5* as part of abolishing the small claims jurisdiction of Taxation Review Authorities.

Clause 102 amends *regulation 7* as part of abolishing the small claims jurisdiction of Taxation Review Authorities.

Clause 103 amends *regulation 11* as part of abolishing the small claims jurisdiction of Taxation Review Authorities, and to update the time in which a notice of defence must be filed and served by the Commissioner.

Clause 104 revokes *regulation 12(2)* as part of abolishing the small claims jurisdiction of Taxation Review Authorities.

Clause 105 revokes *Part 3* as part of abolishing the small claims jurisdiction of Taxation Review Authorities.

Clause 106 revokes *regulation 27(2)* as part of abolishing the small claims jurisdiction of Taxation Review Authorities.

Clause 107 revokes *regulation 28(b)* as part of abolishing the small claims jurisdiction of Taxation Review Authorities.

Clause 108 amends the *schedule* as part of abolishing the small claims jurisdiction of Taxation Review Authorities and as part of relaxing the evidence exclusion rule.

Amendment to Goods and Services Tax Act 1985

Clause 109 replaces the definition of *document* in *section 2(1)* of the *Goods and Services Tax Act 1985* as part of updating the definition of *document*.

Abolition of gift duty

Clause 110 abolishes gift duty from 1 October 2011 and amends the *Estate and Gift Duties Act 1968* consequentially.

Hon Peter Dunne

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Taxation (Tax Administration and Remedial Matters) Act **2010**.

2 Commencement

- (1) This Act comes into force on the date on which it receives the Royal assent, except as provided in this section. 5
- (2) **Sections 96 and 97** are treated as coming into force on 1 April 1997.
- (3) **Sections 82, 83, 84, and 87** are treated as coming into force on 1 April 2005. 10
- (4) **Section 85** is treated as coming into force on 1 April 2007.
- (5) **Section 86** is treated as coming into force on 1 October 2007.
- (6) **Sections 5, 6, 7, 8, 9, 10, 11, 12, 13(1), 14, 15, 23, 24, 25, 27, 28, 29, 30, 31, 32, 36(2) and (4), 37, and 38** are treated as coming into force on 1 April 2008. 15
- (7) **Sections 16 and 17** are treated as coming into force on 1 April 2010.
- (8) **Section 13(2)** is treated as coming into force on the day of introduction for the Taxation (Tax Administration and Remedial Matters) Bill. 20
- (9) **Sections 21, 39, 40, and 88** are treated as coming into force on 1 April 2011.

- (10) **Section 110** comes into force on 1 October 2011.
- (11) **Sections 18, 19, 20, 36(3) and (5), and 41** come into force on 1 April 2012.

Part 1

Amendments to Income Tax Act 2007 5

3 Income Tax Act 2007

Sections 4 to 41 amend the Income Tax Act 2007.

4 Dividend within New Zealand wholly-owned group

- (1) In section CW 10(1)(e), “subsections (2)” is replaced by “subsections (3)”. 10
- (2) Section CW 10(2) is repealed.
- (3) **Subsections (1) and (2)** apply to dividends derived by a company on or after the first day of the company’s 2010–11 income year.

5 Taxes, other than GST, and penalties 15

The cross heading before section DB 1 is replaced by “*Taxes and other amounts*”.

6 New section DB 3B

- (1) After section DB 3, the following is inserted:

“DB 3B Use of money interest 20

“*Deduction*

- “(1) A person is allowed a deduction for an amount of interest they are liable to pay under Part 7 of the Tax Administration Act 1994.

“*Timing of deduction* 25

- “(2) Interest to which this section applies is allocated under section EF 5 (Use of money interest payable by person).

“*Link with subpart DA*

- “(3) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply. 30
- “Defined in this Act: amount, capital limitation, deduction, general limitation, general permission”.

- (2) **Subsection (1)** applies—
- (a) for the 2010–11 and later income years; and
 - (b) for the 2009–10 income year, other than for a person who has furnished a return of income for the income year before the date of introduction of the Taxation (Tax Administration and Remedial Matters) Act **2010** who has not treated an amount of interest imposed under Part 7 of the Tax Administration Act 1994 as a deduction in the return; and
 - (c) for the 2008–09 income year, only in relation to an amount of interest imposed under Part 7 of the Tax Administration Act 1994 that the person has treated as a deduction in a return of income that they have furnished on or before the date of introduction of the Taxation (Tax Administration and Remedial Matters) Act **2010**.

7 Disposal of petroleum mining asset to associate

- (1) In section DT 9(1)(b), “section EJ 12 or EJ 12B (which relate to petroleum development expenditure)” is replaced by “section EJ 15 (Disposal of petroleum mining asset)”.
- (2) Section DT 9(2), other than the heading, is replaced by the following:
 - “(2) The miner is denied a deduction for the amount that section EJ 16(2) prevents from being allocated to the income year in which the miner disposes of the asset.”
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years.

8 What is included when spreading methods used

- (1) In section EW 15(1)(a)(ii), “or the modified fair value method in section EW 15G” is added after “EW 15D”.
- (2) In section EW 15(1)(b)(ii), “or the modified fair value method in section EW 15G” is added after “EW 15D”.

9 IFRS financial reporting method

- Section EW 15D(2B)(b) is replaced by the following:
- “(b) the person uses for the other financial arrangement a method that is neither of the following:

- “(i) the IFRS reporting method:
- “(ii) the method required under *Determination G29: Agreements for sale and purchase of property denominated in foreign currency: exchange rate to determine the acquisition price and method for spreading income and expenditure.*” 5

10 When calculation of base price adjustment required

In section EW 29(13), in the words before the paragraphs, “at the date of a change for the financial arrangement, where that change involves a change” is replaced by “for the first income year for which a changed method is used for the financial arrangement, where the change in method is”. 10

11 Fair dividend rate method: usual method

(1) Section EX 52(13)(c) is replaced by the following:

- “(c) **average cost** is— 15
 - “(i) if no share reorganisation occurs in the income year, the total amount of expenditure that the person incurs in acquiring or increasing the attributing interest in the FIF divided by the total for the income year of the shareholding increase in the interest for each acquisition or increase; or 20
 - “(ii) if a share reorganisation occurs in the income year, the amount calculated under section EX 54 for the year.”

(2) **Subsection (1)** applies for income years beginning on or after 1 April 2008. 25

12 Fair dividend rate method and cost method: when periods affected by share reorganisations

(1) In section EX 54(1)(b), “EX 52(8)” is replaced by “EX 52(8), EX 52(12)”. 30

(2) **Subsection (1)** applies for income years beginning on or after 1 April 2008.

13 Apportionment of interest by excess debt entity

- (1) In section FE 6(3)(a)(i), “sections FE 14(2)” is replaced by “sections FE 3”.
- (2) Section FE 6(3)(ac)(ii) to (iv) are replaced by the following:
 - “(ii) the amount (the **group finance cost**) that is the total amount for the New Zealand group found by calculating for each member of the New Zealand group the total amount (the **member finance cost**) of the items total deduction and FRD for the member, if the group finance cost is \$1,000,000 or less and subparagraph (i) does not apply; or
 - “(iii) the amount found by multiplying the amount by which \$2,000,000 exceeds the group finance cost by the ratio obtained by dividing the member finance cost for the excess debt entity by the group finance cost, if the group finance cost is more than \$1,000,000 and less than \$2,000,000 and subparagraph (i) does not apply; or
 - “(iv) zero, if the group finance cost is \$2,000,000 or more and subparagraph (i) does not apply.”.

14 Calculation of debt percentages

- (1) In section FE 12(1), “A natural person” is replaced by “A natural person or an excess debt entity”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

15 Further eligibility requirements relating to investments

- (1) After section HL 10(2)(b)(vii), the following is added:
 - “(viii) an amount of income under section CW 4 (Annuities under life insurance policies) or CX 40 (Superannuation fund deriving amount from life insurance policy).”
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

16 Income sources

- (1) In section HM 12, in the section heading, “**sources**” is replaced by “**types**”.
- (2) In section HM 12(b)(viii), “superannuation fund.” is replaced by “superannuation fund:” and the following is added: 5
- “(ix) an amount of income under section CW 4 (Annuities under life insurance policies) or CX 40 (Superannuation fund deriving amount from life insurance policy).”
- (3) **Subsections (1) and (2)** apply for the 2010–11 and later income years. 10

17 Calculating amounts attributed to investors

- (1) In section HM 36(3)(e)(i), “ongoing management and administration” is replaced by “ongoing management or ongoing administration”. 15
- (2) **Subsection (1)** applies for the 2010–11 and later income years.

18 When superannuation fund investor has conditional entitlement

- (1) Section HM 38(3)(b) is replaced by the following: 20
- “(b) the person and the employer have agreed that the person will have an unconditional entitlement to the interest at the end of a vesting period that—
- “(i) starts on the date when a contribution to the fund is made; and 25
- “(ii) ends on the date when the employee becomes unconditionally entitled to the investor interest to which the contribution relates; and
- “(bb) the vesting period is within 5 years of its end as described in **paragraph (b)(ii)**; and” 30
- (2) **Subsection (1)** applies for the 2012–13 and later income years.

19 Prescribed investor rates: schedular rates

- (1) In section HM 56, “*Rates set out in schedule*” is inserted after the section heading as a subsection heading. 35

- (2) In section HM 56, the following is inserted as subsection (2):
“When amount not included in taxable income
- “(2) In the determination of a person’s prescribed investor rate under subsection (1), the person’s taxable income does not include an amount that— 5
- “(a) arises because their notified investor rate is lower than their prescribed investor rate; and
- “(b) is treated as taxable income because section CX 56 (Attributed income of certain investors in multi-rate PIEs) does not apply.” 10
- (3) In section HM 56, in the list of defined terms, “amount”, “notified investor rate”, and “taxable income” are inserted.
- (4) **Subsections (1), (2), and (3)** apply for the 2012–13 and later income years.
- 20 New section HM 57B** 15
- (1) After section HM 57, the following is inserted:
“HM 57B Prescribed investor rates for new residents
“When this section applies
- “(1) This section applies for the purposes of section BD 1(5) (Income, exempt income, excluded income, non-residents’ foreign-sourced income, and assessable income) when a person becomes a New Zealand resident in an income year. 20
- “Prescribed investor rates*
- “(2) In the determination of the person’s prescribed investor rate under schedule 6, table 1 (Prescribed rates: investments and retirement scheme contributions) for the income year or a later income year, the person is treated as having been resident for the income year in which they become resident and for the immediately preceding 2 income years. 25
- “Defined in this Act: income year, New Zealand resident, prescribed investor rate”.* 30
- (2) **Subsection (1)** applies for the 2012–13 and later income years.
- 21 New section HR 4B inserted**
- (1) After section HR 4, the following is inserted: 35

“HR 4B Crown activities through New Zealand Superannuation Fund

Amounts of income derived and expenditure incurred by the Crown in relation to the activities of its New Zealand Superannuation Fund are determined using the rules in this Act that apply to companies. This treatment applies to determine—

“(a) how the amounts derived and incurred are quantified and timed:

“(b) whether income is treated as exempt income or excluded income: 10

“(c) any other matter concerning an activity of the Fund.

“Defined in this Act: amount, company, excluded income, exempt income, income, tax”.

(2) **Subsection (1)** applies for the 2011–12 and later income years. 15

22 Common ownership: group of companies

(1) In section IC 3(1), “none of which is a portfolio tax rate entity” is replaced by “none of which is a multi-rate PIE or a listed PIE”.

(2) After section IC 3(2B), the following is inserted: 20
“*When listed PIEs included in group*

“(2C) In relation to 2 or more companies of which 1 is a listed PIE, the companies are treated as a group of companies at a particular time or for a particular period if the PIE owns 100% of the voting interests in the other companies.” 25

23 What this subpart does

(1) In section LJ 1(2)(a), “not derived from New Zealand” is replaced by “sourced from outside New Zealand”.

(2) In section LJ 1, in the list of defined terms, “derived from New Zealand” is omitted. 30

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

24 Calculation of New Zealand tax

(1) Section LJ 5(1) to (4B) are replaced by the following:

“What this section does

“(1) This section provides the rules that a person must use to calculate the amount of New Zealand tax for an income year in relation to each segment of foreign-sourced income of the person that is allocated to the income year. 5

“Calculation for single segment

“(2) If the person has a notional income tax liability of more than zero, the amount of New Zealand tax for the income year relating to the allocated segment is calculated using the following formula, the result of which can not be less than zero: 10

$$\frac{(\text{segment} - \text{person's deductions})}{\text{person's net income}} \times \text{notional liability.}$$

“Definition of items in formula

“(3) In the formula in **subsection (2)**,—

“(a) **segment** is the amount of the segment of foreign-sourced income for the income year:

“(b) **person's deductions** is the amount of the person's deduction for the tax year corresponding to the income year that is attributable to the segment of foreign-sourced income: 15

“(c) **person's net income** is the person's net income for the tax year corresponding to the income year under section BD 4(1) to (3) (Net income and net loss): 20

“(d) **notional liability** is the person's notional income tax liability for the income year under subsection (5).

“When subsection (4B) applies

“(4) **Subsection (4B)** applies for the income year when the total amount of New Zealand tax for all segments of foreign-sourced income of the person calculated under **subsection (2)** is more than the notional income tax liability. 25

“Modification to results of formula for single segment

“(4B) Each amount of New Zealand tax calculated under **subsection (2)** in relation to each segment of foreign-sourced income is adjusted by multiplying the amount by the following ratio: 30

person's notional income tax liability

NZ tax.

“Definition of item in formula

“(4C) In the formula in **subsection (4B)**, **NZ tax** is the amount given by adding together the result of the calculation under **subsection (2)**, for each segment of assessable income from all sources, including assessable income sourced in New Zealand.” 5

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

25 Third requirement: residence

(1) In section MC 5(2)(a), “is” is replaced by “has been” in each place where it appears. 10

(2) In section MC 5(3), “resident” is replaced by “a New Zealand resident”.

(3) **Subsections (1) and (2)** apply for the 2008–09 and later income years. 15

26 Payment of tax credits

In section MK 3(5)(b), “the fund provider asks for the payment to be made to provider B because” is omitted.

27 ICA payment of tax

(1) In section OB 4(1), “provisional tax paid” is replaced by “provisional tax paid or an amount treated under section RC 32(5)(b) (Wholly-owned groups of companies) as a payment of provisional tax”. 20

(2) Section OB 4(4), other than the heading, is replaced by the following: 25

“(4) The credit date is—

“(a) for an amount of income tax or provisional tax paid other than an amount referred to in **paragraph (b)**, the day the tax is paid:

- “(b) for an amount treated under section RC 32(5)(b) as a payment of provisional tax, the day on which notice of the allocation of the tax is given to the Commissioner.”
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years. 5
- 28 Reduction of further income tax**
- (1) Section OB 67(2) is replaced by the following:
“Reduction applying for consecutive tax years
- “(2) In relation to 2 tax years that are consecutive, the liability for further income tax at the end of the second tax year is reduced 10
 by the amount calculated using the formula—
- debit balance at end of second year – first year adjustment.
- “Definition of items in formula*
- “(2B) In the formula in **subsection (2)**,—
- “(a) **debit balance at end of second year** is the amount of the debit balance in the company’s imputation credit 15
 account at the end of the second tax year:
- “(b) **first year adjustment** is the amount—
- “(i) of the first year’s debit balance in the company’s imputation credit account less the credits made to the account during the second tax year; and 20
- “(ii) that cannot be less than zero.”
- (2) In section OB 67(5), “the formula” is replaced by “the formula in subsection (4)”.
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years. 25
- 29 BETA payment of income tax**
- (1) Section OE 7(3B), other than the heading, is replaced by the following:
- “(3B) Despite subsection (3) and section OP 101(2) (Consolidated BETA payment of income tax), the amount of BETA debits 30
 applied under elections under subsection (3) and section OP 101(2) relating to the attributed CFC income referred to in subsection (3) must be no more than the amount calculated

- under section OE 6(1) for the company that has the attributed CFC income, treating the item debit balances as zero.”
- (2) Section OE 7(4) is repealed.
- (3) In section OE 7(5), “subsection (4)” is replaced by “subsection (3), as limited by subsection (3B),”. 5
- (4) Section OE 7(6) is replaced by the following:
“Excess amount treated as tax loss component
- “(6) If a company chooses under subsections (3) and (3B) to apply a debit amount that exceeds the total income tax liability for the attributed CFC income referred to in subsection (3), the excess amount is treated as an amount of tax loss component of the company having the attributed income calculated using the formula— 10
- $$\frac{\text{debit applied} - \text{tax liability}}{\text{tax rate.}}$$
- (5) Section OE 7(7) is replaced by the following:
“Definition of items in formula 15
- “(7) In the formula,—
- “(a) **debit applied** is the amount of the debit balance applied by the company under an election under subsections (3) and (3B):
- “(b) **tax liability** is the total income tax liability for the attributed CFC income: 20
- “(c) **tax rate** is the basic rate of income tax set out in—
- “(i) schedule 1, part A, clause 2 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits), if the company is not a Maori authority; or 25
- “(ii) schedule 1, part A, clause 7, if the company is a Maori authority.”
- (6) **Subsections (1) to (5)** apply for the 2008–09 and later income years. 30

30 Section OE 8 repealed

- (1) Section OE 8 is repealed.

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

31 Consolidated BETA payment of income tax

- (1) Section OP 101(1), other than the heading, is replaced by the following: 5

“(1) This section applies when, for a consolidated BETA group,—

“(a) attributed CFC income is derived by—

“(i) the consolidated BETA group, and there is a debit balance in the branch equivalent tax account of the consolidated BETA group, of a member of the consolidated BETA group, or of a BETA company (a **BETA group company**) that would be part of the same group of companies as the consolidated BETA group if the consolidated BETA group were a single company: 10

“(ii) a BETA group company, and there is a debit balance in the branch equivalent tax account of the consolidated BETA group; and 15

“(b) the debits producing the debit balance arise from FDP that has been paid— 20

“(i) directly:

“(ii) by reducing a tax loss:

“(iii) to reduce an FDP liability under section RG 7 (Reduction of payments for conduit tax relief).”

- (2) Section OP 101(2), other than the heading, is replaced by the following: 25

“(2) A company that is allowed under **subsection (6)** to make an election under this subsection may choose to apply some or all of the debit balance in the branch equivalent tax account to satisfy an income tax liability arising from attributed CFC income of the consolidated BETA group or the BETA group company.” 30

- (3) Section OP 101(2B), other than the heading, is replaced by the following:

“(2B) Despite **subsection (2)** and section OE 7(3) (BETA payment of income tax), the amount of BETA debits applied under elections under **subsection (2)** and section OE 7(3) relating to 35

- the attributed CFC income referred to in **subsection (2)** must be no more than the amount calculated under section OE 6(1) (BETA payment of income tax on foreign income) for the company that has the attributed CFC income or under section OP 100(1) for the consolidated BETA group, in both cases treating the item debit balances as zero.” 5
- (4) Section OP 101(3) is repealed.
- (5) In section OP 101(4), “subsection (3)” is replaced by “**subsection (2)**, as limited by **subsection (2B)**.”
- (6) After section OP 101(4), the following is inserted: 10
“Excess amount treated as tax loss component
 “(4B) If a company chooses under **subsections (2) and (2B)** to apply a debit amount that exceeds the total income tax liability for the attributed CFC income referred to in subsection (1), the excess amount is treated as an amount of tax loss component— 15
 “(a) of the BETA group company, if it has the attributed CFC income, or of the consolidated BETA group, otherwise;
 and
 “(b) calculated using the formula—

$$\frac{\text{debit applied} - \text{tax liability}}{\text{tax rate.}}$$

“Definition of items in formula” 20
 “(4C) In the formula,—
 “(a) **debit applied** is the amount of the debit balance applied by the company under an election under **subsections (2) and (2B)**:
 “(b) **tax liability** is the total income tax liability for the attributed CFC income: 25
 “(c) **tax rate** is the basic rate of income tax set out in—
 “(i) schedule 1, part A, clause 2 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits), if the company is not a Maori authority; or 30
 “(ii) schedule 1, part A, clause 7, if the company is a Maori authority.”
 (7) Section OP 101(5) is repealed.

- (8) Section OP 101(6), other than the heading, is replaced by the following:
- “(6) An election under **subsection (2)** may be made as follows:
- “(a) if the income tax liability of the consolidated BETA group is to be satisfied, the election may be made by— 5
- “(i) the nominated company, if the debit balance is in the branch equivalent tax account of the consolidated BETA group:
- “(ii) a company that is a member of the consolidated BETA group, if the debit balance is in the branch equivalent tax account of that company: 10
- “(iii) a BETA group company, if the debit balance is in the branch equivalent tax account of that BETA group company:
- “(b) if the income tax liability of a BETA group company is to be satisfied, the election may be made by the nominated company of the consolidated BETA group.” 15
- (9) Section OP 101(7), other than the heading, is replaced by the following:
- “(7) An election under **subsection (2)**, limited by **subsection (2B)**, is made by recording in the branch equivalent tax account a credit equal to the amount of the debit balance for which the election is made.” 20
- (10) **Subsections (1) to (9)** apply for the 2008–09 and later income years. 25
- 32 Section OP 102 repealed**
- (1) Section OP 102 is repealed.
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 33 Tax pooling accounts and their use** 30
- (1) After section RP 17B(3)(a), the following is inserted:
- “(ab) also arises when a person has—
- “(i) before taking any action under **subparagraph (ii)**, filed a return required to be provided for a tax type listed in **subsection (8)**; and 35

- “(ii) has made a voluntary disclosure in relation to the return:
- “(ac) also arises when—
- “(i) before any assessment or adjustment under **sub-paragraph (ii)** is made, the person has filed a return required to be provided for a tax type listed in **subsection (8)**; and
- “(ii) the Commissioner makes an assessment or adjustment increasing an amount previously payable:”.
- (2) In section RP 17B(3)(c), “previous assessment” is replaced by “previous assessment or the amount that was previously payable under **paragraph (ab) or (ac)**, as applicable”.
- (3) Section RP 17B(4) is replaced by the following:
“Transfers for provisional tax or terminal tax
- “(4) A person who chooses to use funds in a tax pooling account to satisfy an obligation for provisional tax or terminal tax for a tax year may ask the tax pooling intermediary to arrange the transfer of an amount to their tax account with the Commissioner as follows:
- “(a) within 75 days from their terminal tax date for the tax year unless **paragraph (b)** applies:
- “(b) if the amount is to be transferred from funds deposited by them in the tax pooling account under section RP 18 and their return filing requirements have been met, at any time.”
- (4) In section RP 17B(5), “under subsection (3)(a)” is replaced by “as described in subsection (3)(a) to **(ac)**”.
- (5) After section RP 17B(6), the following is added:
“Maximum amount of transfer
- “(7) The maximum amount that a person may ask a tax pooling intermediary to transfer to meet an obligation to pay tax is—
- “(a) for a transfer under **subsection (4)(a)**, the amount payable:
- “(b) for a transfer under **subsection (4)(b)**, the amount of the funds deposited by the person under section RP 18:
- “(c) for a transfer under subsection (5), the increased amount of tax payable:

“(d) for a transfer under subsection (6), the amount of deferrable tax payable.

“Extended meaning for increased amount of tax and deferrable tax

“(8) For the purposes of sections RP 17 to RP 21, an increased amount of tax or deferrable tax includes an amount relating to— 5

“(a) tax paid or payable under the PAYE rules, ESCT rules, RSCT rules, RWT rules, or NRWT rules:

“(b) income tax, GST, FBT, further income tax, and imputation penalty tax payable under section 140B of the Tax Administration Act 1994.” 10

34 Transfers from tax pooling accounts

Section RP 19(3), other than the heading, is replaced by the following: 15

“(3) The credit date for an amount transferred to a person’s tax account is—

“(a) for a transfer under **section RP 17B(4)(a)**, the relevant instalment date set out in schedule 3, part A (Payment of provisional tax and terminal tax): 20

“(b) for a transfer under **section RP 17B(4)(b)**, the date on which the person deposited the funds in a tax pooling account:

“(c) for a request made within the 60-day period referred to in section RP 17B(5) or (6), a date nominated that is no earlier than the original due date for the relevant period: 25

“(d) in any other case, the date on which the Commissioner receives the request for the transfer.”

35 New section RP 19B inserted

After section RP 19, the following is inserted: 30

“RP 19B Transfers for certain expected tax liabilities

“Who this section applies to

“(1) This section applies to a person who—

“(a) expects to have an income tax or provisional tax liability for a tax year; and 35

- “(b) has acquired funds in a tax pooling account other than by depositing them on their own account; and
- “(c) has not yet filed a return of income in relation to the liability for the tax year.
- “*Using funds* 5
- “(2) The person may choose to use the funds towards the payment of the liability for the tax year on meeting all the requirements of this section.
- “*Requirements at time of making request*
- “(3) At the time of making the request, the person must— 10
- “(a) for an income tax liability, have met all their return filing requirements for earlier tax years:
- “(b) for a provisional tax liability, have met all their obligations under the provisional tax rules for the tax year.
- “*Effective date of transfer* 15
- “(4) The effective date that the person nominates for the transfer of funds must correspond to the relevant instalment date set out in schedule 3, part A (Payment of provisional tax and terminal tax).
- “*Refunds* 20
- “(5) If, as a result of a transfer under this section, excess tax arises for the person, the amount of excess tax is treated as follows:
- “(a) first, the amount is transferred to meet a liability for the person, as applicable, for—
- “(i) provisional tax or terminal tax under **section RP 17B(4)(a)**: 25
- “(ii) an increased amount of tax under section RP 17B(5):
- “(iii) an obligation to pay deferrable tax under section RP 17B(6): 30
- “(b) second, the amount is transferred with an effective date that is no earlier than the date on which the Commissioner received the later request:
- “(c) third, the amount is refunded to the person.
- “Defined in this Act: amount, Commissioner, instalment date, provisional tax, provisional tax rules, return of income, tax pooling account, tax year, terminal tax”. 35

36 Definitions

- (1) This section amends section YA 1.
- (2) In the definition of **major shareholder**, paragraphs (c) and (d), “at least 10% of the voting rights of the company” is replaced by “at least 10% of the voting and market value interests in the company” in each place where it appears. 5
- (3) In the definition of **prescribed investor rate**, “retirement scheme contributions)” is replaced by “retirement scheme contributions), modified as necessary by **section HM 56(2)** (Prescribed investor rates: schedular rates) or **HM 57B** (Prescribed investor rates for new residents)”. 10
- (4) **Subsection (2)** applies for the 2008–09 and later income years.
- (5) **Subsection (3)** applies for the 2012–13 and later income years. 15

37 No look-through rule for companies in certain cases

- (1) In section YC 11(3), “market value interest would” is replaced by “market value interest in the issuing company would”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 20

38 Directors’ knowledge of failure to meet requirements of continuity provision

- (1) In section YC 15(1)(b), the words before the subparagraphs are replaced by “the failure, but for that concessionary application, to meet the requirements would have occurred in the absence of transactions of the following types:”. 25
- (2) In section YC15(1)(b)(iii), “unit trust;” and is replaced by “unit trust:” and the following is added:
 - “(iv) the sale of shares in a company other than in the ordinary course of trading on a recognised exchange between persons, each of which is not a company associated with the company and has a direct voting interest or direct market value interest of less than 5%, calculated before the application of section YC 4 as modified by section YC 11: 30
35

- “(v) transfers, between a company and the company’s shareholders, of shares in the company that in total for the company’s income year would be a direct voting interest or direct market value interest of less than 5% if held by a single person; and”.
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years. 5
- 39 New section YD 3B**
- (1) After section YD 3, the following is inserted: 10
- “**YD 3B Crown**
For the purposes of this Act and for the avoidance of doubt, Her Majesty the Queen in right of New Zealand is regarded as resident in New Zealand.
“Defined in this Act: New Zealand, resident in New Zealand”.
- (2) **Subsection (1)** applies for the 2011–12 and later income years. 15
- 40 Schedule 1 — Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits**
- (1) In schedule 1, part A, clause 1, “clauses 2 to 8” is replaced by “clauses 2 to **9**”. 20
- (2) In schedule 1, part A, clause 2, “clauses 3 to 8” is replaced by “clauses 3 to **9**”.
- (3) After schedule 1, part A, clause 8, the following is added:
“**9 Taxable income: New Zealand Superannuation Fund** 25
The basic rate of income tax on each dollar of taxable income derived by the Crown through the New Zealand Superannuation Fund is the rate applying to companies set out in clause 2.”
- (4) **Subsections (1), (2), and (3)** apply for the 2011–12 and later income years. 30
- 41 Schedule 32 — Recipients of charitable or other public benefit gifts**
- (1) In schedule 32,—

- (a) after the entry for “International Christian Aid (ICA)”,
an entry for “Jasmine Charitable Trust No 2” is inserted:
 - (b) after the entry for “New Zealand Disaster Assistance
Response Team Trust”, an entry for “New Zealand
Good Samaritan Heart Mission to Samoa Trust” is 5
inserted:
 - (c) after the entry for “New Zealand Sports Foundation (In-
corporated)”, an entry for “NZ-Iraqi Relief Charitable
Trust” is inserted:
 - (d) after the entry for “Register of Engineers for Disaster 10
Relief New Zealand”, an entry for “RNZWCS Limited”
is inserted:
 - (e) before the entry for “Sampoerna Foundation Limited”,
an entry for “Ruel Foundation” is inserted:
 - (f) after the entry for “The Band Aid Box”, an entry for 15
“The Cambodia Charitable Trust” is inserted:
 - (g) after the entry for “The Sir Walter Nash Vietnam Ap-
peal”, an entry for “The Unions Aotearoa International
Development Trust” is inserted.
- (2) **Subsection (1)** applies for the 2012–13 and later tax years. 20

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

- 42 Tax Administration Act 1994**
Sections 43 to 80 amend the Tax Administration Act 1994. 25
- 43 Interpretation**
- (1) This section amends section 3(1).
 - (2) The definitions of **book and document** and **book or docu-
ment** are repealed.
 - (3) In the definition of **challenge**, the following is inserted after 30
paragraph (a):
“(ab) to commence proceedings under **section 89K(4)** chal-
lenging a refusal to issue a notice; or”.
 - (4) The following definition is inserted, in alphabetical order:

- “**challenge notice** means a notice issued by the Commissioner stating that a challenge may proceed, and that the Commissioner will not be issuing an amended assessment”.
- (5) The following definition is inserted, in alphabetical order:
- “**document** means— 5
- “(a) a thing that is used to hold, in or on the thing and in any form, items of information:
- “(b) an item of information held in or on a thing referred to in **paragraph (a)**:
- “(c) a device associated with a thing referred to in **paragraph (a)** and required for the expression, in any form, of an item of information held in or on the thing” 10
- (6) In the definition of **day of determination of final liability**, paragraph (b)(ii) is repealed.
- (7) In the definition of **disputable decision**, paragraph (b)(iv) is replaced by the following: 15
- “(iv) to issue a Commissioner’s notice of proposed adjustment under section 89B, a Commissioner’s disclosure notice or statement of position under **section 89M**, or a challenge notice” 20
- (8) The following definition is inserted, in alphabetical order:
- “**duty of the Commissioner** is defined in **section 81(8)** for the purposes of **section 81**”.
- (9) The following definition is inserted, in alphabetical order:
- “**Inland Revenue officer** is defined in **section 81(8)** for the purposes of **section 81**” 25
- (10) **Subsection (6)** applies for a dispute or challenge, in relation to which there has been no election into the small claims jurisdiction of a Taxation Review Authority before the day that the Taxation (Tax Administration and Remedial Matters) Act **2010** receives Royal assent. 30
- 44 Commissioner may access premises to obtain information**
- In section 16(1),—
- (a) “books and documents” is replaced by “documents” in each place where it appears: 35
- (b) “books or documents” is replaced by “documents”.

- 45 Power to remove and copy documents**
- (1) In section 16B(1), “books or documents” is replaced by “documents”.
 - (2) In section 16B(2), “books or documents” is replaced by “documents” in each place where it appears. 5
 - (3) In section 16B(3), “book or document” is replaced by “document”.
 - (4) In section 16B(4), “book or document” is replaced by “document” in each place where it appears.
- 46 Power to remove and retain documents for inspection** 10
- (1) In section 16C(1), “books or documents” is replaced by “documents”.
 - (2) In section 16C(2), “books or documents” is replaced by “documents” in each place where it appears.
 - (3) In section 16C(5), “book or document” is replaced by “document” in each place where it appears. 15
 - (4) In section 16C(6), “Books or documents” is replaced by “Documents”.
 - (5) In section 16C(7),—
 - (a) “books or documents” is replaced by “documents”; and 20
 - (b) “book or document” is replaced by “document”.
- 47 Information to be furnished on request of Commissioner**
- (1) In section 17(1), “books and documents” is replaced by “documents”.
 - (2) In section 17(1B), “book or document” is replaced by “document” in each place where it appears. 25
 - (3) In section 17(1D), “books and documents” is replaced by “documents” in each place where it appears.
 - (4) In section 17(3),—
 - (a) “books or documents” is replaced by “documents”; and 30
 - (b) “books and documents” is replaced by “documents”.
 - (5) In section 17(4), “books or documents” is replaced by “documents” in each place where it appears.
 - (6) In section 17(6), “books or documents” is replaced by “documents”. 35

- 48 Court orders for production of information or return**
In section 17A(15), in the definition of **information**, “book or document” is replaced by “document”.
- 49 Inquiry by Commissioner**
In section 19(1), “books and documents” is replaced by “documents”.
- 50 Privilege for confidential communication between legal practitioners and their clients**
- (1) In section 20(1), “book or document” is replaced by “document”. 10
- (2) In section 20(2), “book or document” is replaced by “document”.
- (3) In section 20(3), “book or document” is replaced by “document”.
- (4) In section 20(4), “book or document” is replaced by “document”. 15
- (5) In section 20(5), “book or document” is replaced by “document” in each place where it appears.
- (6) In section 20(6), “information, books, and documents” is replaced by “information and documents”. 20
- 51 No requirement to disclose tax advice document**
- (1) In section 20B(1), “book or document” is replaced by “document”.
- (2) In section 20B(2), “book or document” is replaced by “document” in each place where it appears. 25
- (3) In section 20B(3), “book or document” is replaced by “document” in each place where it appears.
- 52 Treatment of book or document**
- (1) In the heading to section 20C, “**book or document**” is replaced by “**document**”. 30
- (2) In section 20C(1), “book or document” is replaced by “document”.

- (3) In section 20C(2), “book or document” is replaced by “document” in each place where it appears.
- (4) In section 20C(3), “book or document” is replaced by “document” in each place where it appears.
- (5) In section 20C(4), “book or document” is replaced by “document” in each place where it appears. 5

53 Claim that book or document is tax advice document

- (1) In the heading to section 20D, “**book or document**” is replaced by “**document**”.
- (2) In section 20D(1), “book or document” is replaced by “document”. 10
- (3) In section 20D(2), “book or document” is replaced by “document” in each place where it appears.
- (4) In section 20D(3), “book or document” is replaced by “document” in each place where it appears. 15
- (5) In section 20D(4), “book or document” is replaced by “document”.
- (6) In section 20D(5), “book or document” is replaced by “document”.

54 Book or document or part of book or document included in tax advice document 20

- (1) The heading to section 20E is replaced by “**Document or part of document included in tax advice document**”.
- (2) In section 20E, “book or document” is replaced by “document” in each place where it appears. 25

55 Person must disclose tax contextual information from tax advice document

- (1) In section 20F(1), “book or document” is replaced by “document”.
- (2) In section 20F(2), “book or document” is replaced by “document”. 30

56 Challenge to claim that book or document is tax advice document

- (1) In the heading to section 20G, “**book or document**” is replaced by “**document**”.
- (2) In section 20G(1), “book or document” is replaced by “document” in each place where it appears. 5
- (3) In section 20G(2), “book or document” is replaced by “document”.

57 Information requisitions in relation to offshore payments

In section 21(8), in the definition of **information requisition** 10
or **requisition**, paragraph (b), “books or documents” is replaced by “documents”.

58 Officers to maintain secrecy

- (1) Section 81(1) is replaced by the following:
- “(1) An Inland Revenue officer must maintain, and must assist in 15
maintaining, the secrecy of all matters relating to the legislation described in **subsection (1C)**, and the officer must not communicate any such matter, except for the purpose of carrying into effect that legislation or under **subsection (1B)**.
- “(1B) Despite **subsection (1)**, an Inland Revenue officer may communicate a matter if— 20
- “(a) the communication is for the purpose of executing or performing a duty of the Commissioner, or for the purpose of supporting the execution or performance of such a duty; and 25
- “(b) the Commissioner considers that such communication is reasonable (whether or not it is necessary) with regard to the relevant purpose described in **paragraph (a)**, and with regard to the following:
- “(i) the integrity of the tax system; and 30
- “(ii) the importance of promoting compliance by taxpayers, especially voluntary compliance; and
- “(iii) any personal or commercial impact of the communication; and
- “(iv) the resources available to the Commissioner; and 35
- “(v) the public availability of the information.”

- “(1C) For the purposes of **subsection (1)**, the legislation is—
- “(a) the Inland Revenue Acts, or another Act that is or was administered by or in Inland Revenue:
 - “(b) the Accident Compensation Act 2001, the Injury Prevention, Rehabilitation, and Compensation Act 2001, the Accident Insurance Act 1998, the Accident Rehabilitation and Compensation Insurance Act 1992, or the Accident Compensation Act 1982: 5
 - “(c) the New Zealand Superannuation Act 1974:
 - “(d) any Act that imposes taxes or duties payable to the Crown. 10
- “(1D) For the purposes of **subsection (1)**, before an Inland Revenue officer performs their first official duty as an officer, they must make a declaration of secrecy and fidelity in the form prescribed by the Commissioner. 15
- “(1E) The declaration may be made before—
- “(a) the Commissioner; or
 - “(b) an officer of Inland Revenue; or
 - “(c) a person authorised by or under the Oaths and Declarations Act 1957 to take statutory declarations. 20
- “(1F) An Inland Revenue officer who has made a declaration of secrecy or fidelity under an earlier taxation secrecy or fidelity section corresponding to this one, or who was treated as making such a declaration, is treated as having made a declaration to maintain secrecy and fidelity under this section.” 25
- (2) Section 81(2) is repealed.
- (3) In section 81(3),—
- (a) “subsection (1)” is replaced by “subsections (1) and **(1B)**”:
 - (b) “book or document” is replaced by “document”. 30
- (4) In section 81(4),—
- (a) in the words before the paragraphs, “subsection (1) or subsection (3)” is replaced by “subsection (1), **(1B)** or (3)”:
 - (b) in paragraphs (b) and (c), “book or document” is replaced by “document” in each place where it appears: 35
 - (c) paragraph (j) is repealed:

- (d) in paragraph (l), “book, document, or information” is replaced by “document or information” in each place where it appears.
- (5) After section 81(7), the following is added:
- “(8) In this section,— 5
- “(a) **Inland Revenue officer**,—
- “(i) means a person who is employed in the service of Inland Revenue; and
- “(ii) includes—
- “(A) a person employed in the service of the 10
Government of an overseas country or territory who is for the time being attached or seconded to Inland Revenue:
- “(B) a person formerly employed in the service of Inland Revenue: 15
- “(b) **duty of the Commissioner** includes a power of the Commissioner and also a function of the Commissioner, as well as anything done to—
- “(i) administer the tax system:
- “(ii) implement the tax system: 20
- “(iii) improve, research, or reform the tax system.”
- 59 New section 81BA inserted**
- After section 81, the following is inserted:
- “81BA Government agency communication**
- “(1) Despite **section 81**, the Commissioner may communicate information held by the Inland Revenue Department to another government agency if it is reasonable and practicable for the Commissioner to retrieve the information, and— 25
- “(a) the government agency is lawfully able to collect the information, but the provision, collection, and verification of the information to or by the government agency is uneconomic; and 30
- “(b) the government agency and the nature, type, or class of the information are specified in an Order in Council made under **subsection (2)**; and 35
- “(c) the communication of the information complies with the conditions specified in an Order in Council made under **subsection (2)**.

- “(2) The Governor-General may from time to time, by Order in Council made on the recommendation of the Minister of Revenue, specify the following, for the purposes of **subsection (1)**:
- “(a) a government agency to whom the Commissioner may communicate information, and the nature, type, or class of the information that may be communicated to that government agency: 5
 - “(b) the conditions that a government agency specified under **paragraph (a)** and the Commissioner must comply with for the communication of the information specified under **paragraph (a)**, including a date from which or in relation to which the communication may take place. 10
- “(3) Before recommending the making of an Order in Council under **subsection (2)**, the Minister of Revenue must— 15
- “(a) decide that the communication of the information under the proposed Order in Council will not unduly inhibit the provision of further information to Inland Revenue in the future; and
 - “(b) consult— 20
 - “(i) the Privacy Commissioner; and
 - “(ii) the government agency that may be affected by the proposed Order in Council; and
 - “(iii) any organisation considered by the Minister of Revenue to represent the interests likely to be substantially affected by the proposed Order in Council; and 25
 - “(c) take the results of the consultation under **paragraph (b)** into account.
- “(4) After the expiry of 5 years, but before the expiry of 6 years, after the commencement of **subsection (2)**, the Commissioner must— 30
- “(a) review the operation of this section; and
 - “(b) assess the impact of this section, in consultation with the Privacy Commissioner; and 35
 - “(c) consider whether any amendments to the law are necessary or desirable and, in particular, whether this section is needed; and
 - “(d) report the findings to the Minister of Revenue.

- “(5) The Minister of Revenue must present a copy of a report provided under **subsection (4)** to the House of Representatives as soon as practicable after receiving it.
- “(6) The communication of information under this section is not subject to the Privacy Act 1993.” 5
- 60 Other persons to maintain secrecy**
In section 86(2), “book or document” is replaced by “document”.
- 61 Further secrecy requirements**
In section 87(2), “book or document” is replaced by “document”. 10
- 62 Notices of proposed adjustment required to be issued by Commissioner**
After section 89C(1), the following is inserted:
“(lb) the assessment extinguishes all or part of a taxpayer’s tax loss in accordance with section 177C(5); or”. 15
- 63 Section 89E repealed**
(1) Section 89E is repealed.
(2) **Subsection (1)** applies for a dispute or challenge, in relation to which there has been no election into the small claims jurisdiction of a Taxation Review Authority before the day that the Taxation (Tax Administration and Remedial Matters) Act **2010** receives Royal assent. 20
- 64 Late actions deemed to occur within response period**
(1) Section 89K(1)(a) is replaced by the following: 25
“(a) the Commissioner—
“(i) considers that an exceptional circumstance has prevented a disputant from doing one or more of the actions described in **subsection (1B)**; or
“(ii) considers that the disputant has a demonstrable intention to enter into or continue the disputes process at the time the disputant fails in doing 1 30

or more of the actions described in **subsection (1B)**; and”.

- (2) In section 89K(1)(b)(i)(A), “paragraph (a)(i)” is replaced by “**subsection (1B)(a)**”.
- (3) In section 89K(1)(b)(ii)(A), “paragraph (a)(ii)” is replaced by “**subsection (1B)(b)**”.
- (4) After section 89K(1), the following is inserted:
 “(1B) For the purposes of **subsection (1)(a)**, the actions are
 - “(a) rejecting, within the applicable response period, an adjustment contained in a notice of proposed adjustment issued by the Commissioner: 10
 - “(b) issuing, within the applicable response period, a notice of proposed adjustment under section 89D or 89DA in respect of a disputable decision:
 - “(c) issuing, within the applicable response period, a statement of position.” 15
- (5) After section 89K(3), the following is added:
 “(4) If the Commissioner refuses (the **refusal**) to issue a notice in favour of the disputant under **subsection (1)**, the disputant is entitled to challenge the refusal by filing proceedings, in accordance with the Taxation Review Authority Regulations 1994, within the response period that arises if the Commissioner’s refusal is treated as a notice of disputable decision.” 20

65 Application to High Court
 Section 89L(3)(b) is repealed. 25

66 Disclosure notices
 After section 89M(6), the following is inserted:
 “(6BA) The Commissioner must issue a statement of position, described in subsection (4), in response to the disputant’s statement of position, if the Commissioner is not required to issue a statement of position when issuing a disclosure notice.” 30

67 Completing the disputes process
 (1) Section 89N(1)(vii) is repealed.
 (2) In section 89N(2), in the words before the paragraphs, “the Commissioner may not amend an assessment” is replaced by 35

- “the Commissioner may not amend an assessment nor issue a challenge notice for the purposes of **section 138B(3)(b)**”.
- (3) Section 89N(2)(b) is replaced by the following:
- “(b) whichever is the later of—
- “(i) the Commissioner issuing a statement of position: 5
- “(ii) the Commissioner considering a statement of position issued by the disputant.”
- (4) **Subsection (1)** applies for a dispute or challenge, in relation to which there has been no election into the small claims jurisdiction of a Taxation Review Authority before the day that the Taxation (Tax Administration and Remedial Matters) Act **2010** receives Royal assent. 10
- 68 Time bar for amendment of income tax assessment** 15
- After section 108(2), the following is added:
- “(2B) A period equal to the number of days in the period described in this subsection is added to the 4 years under subsection 108(1), if a taxpayer successfully challenges a Commissioner’s refusal under **section 89K(4)**. The relevant period—
- “(a) starts on the day of the refusal: 20
- “(b) finishes on the day on which the challenge is finally judged successful by the relevant Taxation Review Authority or court, or the day on which the Commissioner concedes.”
- 69 Time bar for amending GST assessment** 25
- After section 108A(3), the following is added:
- “(3B) A period equal to the number of days in the period described in this subsection is added to the 4 years under subsection 108A(1), if a taxpayer successfully challenges a Commissioner’s refusal under **section 89K(4)**. The relevant period— 30
- “(a) starts on the day of the refusal:
- “(b) finishes on the day on which the challenge is finally judged successful by the relevant Taxation Review Authority or court, or the day on which the Commissioner concedes.” 35

70 When disputant entitled to challenge assessment

Section 138B(3) is replaced by the following:

- “(3) Subject to **subsection (4)**, a disputant is entitled to challenge an assessment by commencing proceedings in a hearing authority if—
 - “(a) the assessment was the subject of an adjustment proposed by the disputant which the Commissioner has rejected by written notice within the applicable response period; and
 - “(b) the Commissioner has issued a challenge notice to the disputant; and
 - “(c) the disputant files the proceedings, in accordance with the Taxation Review Authority Regulations 1994 (or any regulations made in substitution for those regulations) or High Court Rules within the response period that would arise if the challenge notice were a disputable decision.
- “(4) Despite **subsection (3)**, the disputant is entitled to challenge an assessment by commencing proceedings in a hearing authority if—
 - “(a) the assessment was the subject of an adjustment (the **adjustment**) notified to the Commissioner in writing specifying the adjustment and sufficient details to identify how the adjustment meets **paragraph (c)**; and
 - “(b) the Commissioner has issued a challenge notice to the disputant; and
 - “(c) the adjustment—
 - “(i) is in relation to a matter for which the material facts and relevant law are identical to those for another assessment for the taxpayer, for another period, that is at the time of proposing the adjustment the subject of court proceedings; or
 - “(ii) corrects a tax position taken by the taxpayer or an associated person as a consequence or result of an incorrect tax position taken by another taxpayer and, at the time of proposing the adjustment, the Commissioner has made, or is able to make, an assessment for that other taxpayer for the correct amount of tax payable by that other taxpayer; and

“(d) the disputant files the proceedings, in accordance with the Taxation Review Authority Regulations 1994 (or any regulations made in substitution for those regulations) or High Court Rules within the response period that would arise if the challenge notice were a disputable decision.” 5

71 Certain rights of challenge not conferred

In section 138E(1)(e)(iv), “89M” is replaced by “89L, 89M, 89N(1)(c)(viii) and (3)”.

72 Effect of disclosure notice: exclusion of evidence 10

(1) In the heading to section 138G, “: exclusion of evidence” is omitted.

(2) Section 138G(1) is replaced by the following:

“(1) Unless **subsection (2)** applies, if the Commissioner issues a disclosure notice to a disputant, and the disputant challenges the disputable decision, the Commissioner and the disputant may raise in the challenge only the issues and the propositions of law that are disclosed in the Commissioner’s and disputant’s statements of position.” 15

(3) In section 138G(2),— 20

(a) in the words before the paragraphs, “new facts and evidence, and” is omitted:

(b) in paragraph (a), “discovered those facts or evidence; or” is omitted:

(c) in paragraph (b), “the admission of those facts or evidence or” is omitted. 25

(4) **Subsections (1) to (3)** apply for a dispute or challenge, in relation to which a disclosure notice is issued on or after the day that the Taxation (Tax Administration and Remedial Matters) Act **2010** receives Royal assent. 30

73 Proceedings may be transferred to different hearing authorities

(1) Section 138N(2) is replaced by the following:

- “(2) If a disputant commences a challenge in a Taxation Review Authority, the Commissioner may apply to the High Court to have the challenge transferred to the High Court.”
- (2) **Subsection (1)** applies for a dispute or challenge, in relation to which there has been no election into the small claims jurisdiction of a Taxation Review Authority before the day that the Taxation (Tax Administration and Remedial Matters) Act **2010** receives Royal assent. 5
- 74 Section 138O repealed**
- (1) Section 138O is repealed. 10
- (2) **Subsection (1)** applies for a dispute or challenge, in relation to which there has been no election into the small claims jurisdiction of a Taxation Review Authority before the day that the Taxation (Tax Administration and Remedial Matters) Act **2010** receives Royal assent. 15
- 75 Absolute liability offences**
- (1) In section 143(1)(a), “books and documents” is replaced by “documents”.
- (2) In section 143(1B), “books and documents” is replaced by “documents”. 20
- 76 Knowledge offences**
- In section 143A(1)(a), “books and documents” is replaced by “documents”.
- 77 Evasion or similar offence**
- In section 143B(1)(a), “books and documents” is replaced by “documents”. 25
- 78 Evidence in proceedings for failure to furnish returns or information**
- In section 150D,—
- (a) “books or documents” is replaced by “documents”: 30
- (b) “books, or documents” is replaced by “documents” in each place where it appears.

- 79 Deduction of tax from payments due to defaulters**
In section 157(10), in the definition of **amount payable**, paragraph (c), after the paragraphs, “uplift the money;—” is replaced by “uplift the money:”, and the following is added as paragraph (cb),— 5
“(cb) where the person is a tax pooling intermediary, money that is paid to the Commissioner, on the date the Commissioner receives the payment;—”.
- 80 New section 226C added**
After section 226B, the following is added: 10
“**226C Secure credit card payments and fees**
“(1) The Commissioner may offer to taxpayers the service of paying an amount to the Commissioner by secure internet credit card transfer or secure telephone credit card transfer.
“(2) The Commissioner may charge the taxpayer, at the time that the taxpayer uses the service, a fee for the service. The fee, if it is charged, must be paid on top of the amount, and as part of the same payment (using the same service). 15
“(3) The fee for the service is 1.42% of the amount.
“(4) Despite **subsection (3)**, the Governor-General may from 20 time to time, by Order in Council, change the fee, with effect from a date specified in the Order in Council.”

Part 3

Remedial matters and abolition of gift duty

25

Amendments to Income Tax Act 2004

- 81 Income Tax Act 2004**
Sections 82 to 87 amend the Income Tax Act 2004.
- 82 Taxes, other than GST, and penalties**
The cross heading before section DB 1 is replaced by “**Taxes and other amounts**”. 30
- 83 New section DB 3B**
(1) After section DB 3, the following is inserted:

“DB 3B Use of money interest

“Deduction

- “(1) A person is allowed a deduction for an amount of interest they are liable to pay under Part 7 of the Tax Administration Act 1994. 5

“Timing of deduction

- “(2) Interest to which this section applies is allocated under section EF 5 (Use of money interest payable by person).

“Link with subpart DA

- “(3) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply. 10

“Defined in this Act: amount, capital limitation, deduction, general limitation, general permission”.

- (2) **Subsection (1)** applies for the 2005–06 and later income years but only in relation to an amount of interest imposed under Part 7 of the Tax Administration Act 1994 that the person has treated as a deduction in a return of income that they have furnished on or before the date of introduction of the Taxation (Tax Administration and Remedial Matters) Act **2010**. 15

84 Disposal of petroleum mining asset to associate 20

- (1) In section DT 9(1)(b), “section EJ 11 (Petroleum development expenditure)” is replaced by “section EJ 14 (Disposal of petroleum mining asset to associate)”.

- (2) Section DT 9(2), other than the heading, is replaced by the following: 25

“(2) The miner is denied a deduction for the amount that section EJ 15(2) (Partnership interests and disposal of part of asset) prevents from being allocated to the income year in which the miner disposes of the asset.”

- (3) **Subsections (1) and (2)** apply for the 2005–06 and later income years. 30

85 What is included when spreading methods used

- (1) In section EW 15(1)(a)(ii), “or the equity-free fair value method in section EW 15E” is added after “EW 15C”.

- (2) In section EW 15(1)(b)(ii), “or the equity-free fair value method in section EW 15E” is added after “EW 15C”.
- (3) **Subsections (1) and (2)** apply for—
- (a) the 2007–08 and later income years, if **paragraphs (b) and (c)** do not apply; or 5
 - (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; 10
or
 - (c) the 2008–09 and later income years, if a person’s 2008–09 income starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007. 15

86 Further eligibility requirements relating to investments

After section HL 10(2)(b)(vii), the following is added:

- “(viii) an amount of income under section CW 4 (Annuities under life insurance policies) or CX 34 (Superannuation fund deriving amount from life insurance policy).” 20

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

- (1) Section OD 5(8)(b) is replaced by the following:
- “(b) the failure, but for that concessionary application, to meet the requirements would have occurred in the absence of transactions of the following types: 25
 - “(i) the sale of shares in a company in the ordinary course of trading on a recognised exchange between persons, each of which is not a company associated with the company and has a direct voting interest or direct market value interest of less than 10%, calculated before the application of sections OD 3(3)(d) and OD 4(3)(d): 30
 - “(ii) the redemption or other cancellation of shares in a company which is a unit trust that falls within any of paragraphs (a), (b), and (c) of the definition of 35

the term **widely-held trust** in section OB 1, held by persons, each of which is not a company associated with the company and has a direct voting interest or direct market value interest of less than 10% calculated before the application of sections OD 3(3)(d) and OD 4(3)(d): 5

“(iii) the redemption or other cancellation of shares in a company which is a unit trust that falls within any of paragraphs (a), (b), and (c) of the definition of the term **widely-held trust** in section OB 1, which were acquired by the manager or trustee of the unit trust in the ordinary course of the manager’s or trustee’s activities in respect of the unit trust from persons, each of which is not a company associated with the company and has a direct voting interest or direct market value interest of less than 10% calculated before the application of sections OD 3(3)(d) and OD 4(3)(d): 10 15

“(iv) the sale of shares in a company other than in the ordinary course of trading on a recognised exchange between persons, each of which is not a company associated with the company and has a direct voting interest or direct market value interest of less than 5%, calculated before the application of sections OD 3(3)(d) and OD 4(3)(d): 20 25

“(v) transfers, between a company and the company’s shareholders, of shares in the company that in total for the company’s income year would be a direct voting interest or direct market value interest of less than 5% if held by a single person; and”. 30

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

*Amendment to New Zealand Superannuation
and Retirement Income Act 2001***88 Section 76 of New Zealand Superannuation and
Retirement Income Act 2001 repealed**

- (1) Section 76 of the New Zealand Superannuation and Retirement Income Act 2001 is repealed. 5
- (2) The repeal of section 76 of the New Zealand Superannuation and Retirement Income Act 2001 does not result in the liquidation or creation of any entity or person.
- (3) **Subsection (1)** applies for the 2011–12 and later income 10 years.

*Amendment to KiwiSaver Act 2006***89 New section 81B of KiwiSaver Act 2006 inserted**

After section 81 of the KiwiSaver Act 2006, the following is inserted: 15

“81B Residual refunds

If the Commissioner can not process an amount held in the holding account in accordance with this Act, or the amount is in excess of what this Act or a Revenue Act requires to be in the holding account, then the Commissioner may refund the amount to the person that the Commissioner considers has the best claim to it.” 20

*Amendments to Taxation Review Authorities Act
1994***90 Taxation Review Authorities Act 1994** 25

Sections 91 to 94 amend the Taxation Review Authorities Act 1994.

91 General jurisdiction of Authorities

- (1) Section 13A(b)(ii) is repealed.
- (2) **Subsection (1)** applies for a dispute or challenge, in relation to which there has been no election into the small claims jurisdiction of a Taxation Review Authority before the day that the Taxation (Tax Administration and Remedial Matters) Act **2010** receives Royal assent. 30

- 92 Section 13B repealed**
- (1) Section 13B is repealed.
- (2) **Subsection (1)** applies for a dispute or challenge, in relation to which there has been no election into the small claims jurisdiction of a Taxation Review Authority before the day that the Taxation (Tax Administration and Remedial Matters) Act **2010** receives Royal assent. 5
- 93 An Authority to be a commission of inquiry**
- In section 15(2), “book or document” is replaced by “document”. 10
- 94 Challenges appealed to High Court**
- (1) Section 26A(2) is replaced by the following:
- “(2) The determination by an Authority of a challenge may not be appealed to the High Court if the determination was made by the Authority under a tax law that provides for the Authority’s determination to be final.” 15
- (2) **Subsection (1)** applies for a dispute or challenge, in relation to which there has been no election into the small claims jurisdiction of a Taxation Review Authority before the day that the Taxation (Tax Administration and Remedial Matters) Act **2010** receives Royal assent. 20

Amendments to Income Tax Act 1994

- 95 Income Tax Act 1994**
- Sections 96 and 97** amend the Income Tax Act 1994.
- 96 Certain deductions not allowed** 25
- The subpart heading before section DB 1 is replaced by “Subpart B—Taxes, levies, and other amounts”.
- 97 New section DB 2**
- (1) After section DB 1, the following is added:

“DB 2 Deduction for use of money interest

“(1) Despite section DB 1, a person is allowed a deduction for an amount of interest they are liable to pay under Part 7 of the Tax Administration Act 1994.

“(2) Interest to which this section applies is allocated under section ED 6(1) and (3) or ED 7, as applicable.” 5

(2) **Subsection (1)** applies for the 1997–98 and later income years but only in relation to an amount of interest imposed under Part 7 of the Tax Administration Act 1994 that the person has treated as a deduction in a return of income that they have furnished on or before the date of introduction of the Taxation (Tax Administration and Remedial Matters) Act **2010**. 10

*Amendments to Taxation Review Authorities
Regulations 1998*

98 Taxation Review Authorities Regulations 1998 15
Sections 99 to 108 amend the Taxation Review Authorities Regulations 1998.

99 Interpretation

(1) In regulation 2, in the definition of **notice of claim**, “or small claims jurisdiction” is omitted. 20

(2) **Subsection (1)** applies for a dispute or challenge, in relation to which there has been no election into the small claims jurisdiction of a Taxation Review Authority before the day that the Taxation (Tax Administration and Remedial Matters) Act **2010** receives Royal assent. 25

100 Application of District Court Rules 1992

(1) In the heading to regulation 4, “**1992**” is replaced by “**2009**”.

(2) In regulation 4, “1992” is replaced by “2009”.

101 Proceedings generally

(1) In regulation 5, “both the general jurisdiction and the small claims jurisdiction” is replaced by “the general jurisdiction”. 30

(2) **Subsection (1)** applies for a dispute or challenge, in relation to which there has been no election into the small claims jurisdiction of a Taxation Review Authority before the day that

the Taxation (Tax Administration and Remedial Matters) Act
2010 receives Royal assent.

102 Form

- (1) In regulation 7, “either the general jurisdiction or the small claims jurisdiction” is replaced by “the general jurisdiction”. 5
- (2) **Subsection (1)** applies for a dispute or challenge, in relation to which there has been no election into the small claims jurisdiction of a Taxation Review Authority before the day that the Taxation (Tax Administration and Remedial Matters) Act **2010** receives Royal assent. 10

103 Notice of defence

- (1) Regulation 11(2) is replaced by the following:
- “(2) The notice of defence must be filed and served by the Commissioner within 25 working days of the service of the notice of claim.” 15
- (2) **Subsection (1)** applies for a dispute or challenge, in relation to which there has been no election into the small claims jurisdiction of a Taxation Review Authority before the day that the Taxation (Tax Administration and Remedial Matters) Act **2010** receives Royal assent. 20

104 Interlocutory applications

- (1) Regulation 12(2) is revoked.
- (2) **Subsection (1)** applies for a dispute or challenge, in relation to which there has been no election into the small claims jurisdiction of a Taxation Review Authority before the day that the Taxation (Tax Administration and Remedial Matters) Act **2010** receives Royal assent. 25

105 Part 3 revoked

- (1) Part 3 is revoked.
- (2) **Subsection (1)** applies for a dispute or challenge, in relation to which there has been no election into the small claims jurisdiction of a Taxation Review Authority before the day that the Taxation (Tax Administration and Remedial Matters) Act **2010** receives Royal assent. 30

- 106 Requirement for directions hearings**
- (1) Regulation 27(2) is revoked.
- (2) **Subsection (1)** applies for a dispute or challenge, in relation to which there has been no election into the small claims jurisdiction of a Taxation Review Authority before the day that the Taxation (Tax Administration and Remedial Matters) Act **2010** receives Royal assent. 5
- 107 Time for directions hearing**
- (1) Regulation 28(b) is revoked.
- (2) **Subsection (1)** applies for a dispute or challenge, in relation to which there has been no election into the small claims jurisdiction of a Taxation Review Authority before the day that the Taxation (Tax Administration and Remedial Matters) Act **2010** receives Royal assent. 10
- 108 Schedule** 15
- (1) In the schedule, in form 1, on the first page, “*Jurisdiction [specify general or small claims]*” is omitted.
- (2) In the schedule, in form 1, clause 3 “*facts, evidence, issues,*” is replaced by “*issues*”.
- (3) **Subsection (1)** applies for a dispute or challenge, in relation to which there has been no election into the small claims jurisdiction of a Taxation Review Authority before the day that the Taxation (Tax Administration and Remedial Matters) Act **2010** receives Royal assent. 20
- (4) **Subsection (2)** applies for a dispute or challenge, in relation to which a disclosure notice is issued on or after the day that the Taxation (Tax Administration and Remedial Matters) Act **2010** receives Royal assent. 25
- Amendment to Goods and Services Tax Act 1985*
- 109 Interpretation** 30
- In section 2(1) of the Goods and Services Tax Act 1985, the definition of **document** is replaced by the following:
“**document** means a document as defined in the Tax Administration Act 1994”.

Abolition of gift duty

110 Estate and Gift Duties Act 1968

- (1) No gift duty is payable under the Estate and Gift Duties Act 1968 in relation to a gift made on or after 1 October 2011.
 - (2) In section 2(2) of the Estate and Gift Duties Act 1968, in the 5
definition of **gift**, “disposition of property” is replaced by “dis-
position of property before 1 October 2011”.
 - (3) In section 61 of the Estate and Gift Duties Act 1968, “made
after the commencement of this Act” is replaced by “made
after the commencement of this Act and before 1 October 10
2011”.
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