



Taxation (GST and Remedial Matters) Act 2010

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Commencement see section 2

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Taxation (GST and Remedial Matters) Act 2010.
- 2 Commencement**
- (1) This Act comes into force on the day after the date on which it receives the Royal assent, except as provided in this section.
 - (2) Section 184 is treated as coming into force on 1 January 2005.
 - (3) Sections 164, 165, 168, and 170 are treated as coming into force on 1 April 2005.
 - (4) Section 169 is treated as coming into force on 1 April 2006.
 - (5) Sections 166 and 167 are treated as coming into force on 1 October 2007.

- (6) Section 12 is treated as coming into force on 30 November 2007.
- (7) Sections 28, 30, 37(1), 38, 41, 51, 52, 65, 66, 82, 83, 84, 106, 108, 113, 117, 118, 119, 125, 126(1) and (3), 127, 128, 132(30), (32), and (46), 133, 141, 146(2), (4), (5), and (9), 147, 156, 160, and 188 are treated as coming into force on 1 April 2008.
- (8) Section 114 is treated as coming into force on 1 October 2008.
- (9) Sections 132(39) and 146(1), (6), and (8) are treated as coming into force on 1 April 2009.
- (10) Sections 132(31) and 151 are treated as coming into force on 6 October 2009.
- (11) Sections 43, 44, 57, 72, 75, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 97, 98, 99, 100, 101, 105, 110, 130(2), 132(3), (13), and (22), and 146(3) and (7) are treated as coming into force on 1 April 2010.
- (12) Sections 49 and 50 are treated as coming into force on 20 May 2010.
- (13) Sections 10(2), 11, 27, 47, 48, 58, 59, 132(35), and 180 are treated as coming into force on 1 July 2010.
- (14) Sections 145, 182, and 183 come into force on 1 August 2010.
- (15) Section 34 comes into force on 5 August 2010.
- (16) Section 23 comes into force on 7 September 2010.
- (17) Sections 22, 35, 42, 56(1) and (3), 116, 120 to 124, 131, and 157 come into force on 1 October 2010.
- (18) Section 186 comes into force on 31 October 2010.
- (19) Section 138 comes into force on 1 November 2010.
- (20) Sections 4, 5, 6, 7, 8, 9, 10(1), (3), and (4), 14, 15, 16, 17, 19, 20, 21, 24, 26, 29, 31, 36, 37(2) and (3), 39, 40, 45, 46, 53, 54, 56(2), (4), and (5), 61, 62, 63, 67, 68, 69, 70, 71, 73, 74, 76, 77, 78, 79, 81, 96(1), 104, 111, 112, 126(2) and (4), 132(2), (4), (5), (6), (7), (8), (9), (11), (12), (14), (15), (16), (19), (21), (23), (24), (25), (26), (27), (28), (33), (34), (36), (37), (38), (40), (41), (42), (44), (45), (47), (48), and (50), 134, 135, 136, 137, 139(1)(b), (c), and (d), 140, 144, 148, 149, 152, 153, 154, 155, 158, 162, and 172 come into force on 1 April 2011.
- (21) Section 96(2) comes into force on 1 April 2013.

- (22) Section 115 comes into force on the first day of the second month after the month in which the Governments of Australia and New Zealand exchange notes, as provided by clause 21 of the Arrangement between them on trans-Tasman retirement savings portability.

Part 1

Amendments to Goods and Services Tax Act 1985

3 Goods and Services Tax Act 1985

Sections 4 to 24 amend the Goods and Services Tax Act 1985.

4 Interpretation

- (1) The following amendments are made to section 2(1).
- (2) The following is inserted in its appropriate alphabetical order:
“**adjustment period**, for a supply of goods or services to which sections 8(4B)(b), 9(2)(h), 20(3C) to (3J), and 21 to 21H apply, means a first or subsequent adjustment period referred to in section 21G(2).”
- (3) The definition of **commercial dwelling** is replaced by the following:
“**commercial dwelling**—
“(a) means—
“(i) a hotel, motel, homestay, farmstay, bed and breakfast establishment, inn, hostel, or boardinghouse:
“(ii) a serviced apartment managed or operated by a third party for which services in addition to the supply of accommodation are provided and in relation to which a resident does not have quiet enjoyment, as that term is used in section 38 of the Residential Tenancies Act 1986:
“(iii) a convalescent home, nursing home, rest home, or hospice:
“(iv) a camping ground:
“(v) premises of a similar kind to those referred to in subparagraphs (i) to (iv); and
“(b) excludes—

- “(i) a hospital except to the extent to which the hospital is a residential establishment:
 - “(ii) a dwelling situated in a retirement village or rest home if the consideration paid or payable for the supply of accommodation in the dwelling is for the right to occupy the dwelling.”
- (4) The definition of **dwelling** is replaced by the following:
- “**dwelling**, for a person,—
- “(a) means premises, as defined in section 2 of the Residential Tenancies Act 1986,—
 - “(i) that the person occupies, or that it can reasonably be foreseen that the person will occupy, as their principal place of residence; and
 - “(ii) in relation to which the person has quiet enjoyment, as that term is used in section 38 of the Residential Tenancies Act 1986; and
 - “(b) includes—
 - “(i) accommodation provided to a person who is occupying the same premises, or part of the same premises, as the supplier of the accommodation and who meets the requirements of paragraph (a)(i):
 - “(ii) any appurtenances belonging to or used with the premises; and
 - “(c) excludes a commercial dwelling.”
- (5) The following is inserted in its appropriate alphabetical order:
- “**land**, in sections 5(24), 11(1)(mb), 21E, 21G(5), 21H(3), 60B(6), 75(3B), and 78F,—
- “(a) includes—
 - “(i) an estate or interest in land:
 - “(ii) a right that gives rise to an interest in land:
 - “(iii) an option to acquire land or an estate or interest in land:
 - “(iv) a share in the share capital of a flat-owning or office-owning company, as defined in section 121A of the Land Transfer Act 1952:
 - “(b) does not include—
 - “(i) a mortgage:
 - “(ii) a lease of a dwelling:

- “(iii) an interest in land in circumstances where the supply is made periodically and 25% or less of the total consideration specified in the agreement, in addition to any regular payments, is paid or payable under the agreement in advance of or contemporaneously with the supply being made”.
- (6) The following are inserted in their appropriate alphabetical order:
- “**percentage actual use** is defined in section 21G(1)(a) for the purposes of sections 8(4B)(b), 9(2)(h), and 21 to 21H
- “**percentage difference** is defined in section 21G(1)(c) for the purposes of sections 21 to 21H
- “**percentage intended use** is defined in section 21G(1)(b) for the purposes of sections 8(4B)(b), 20(3H), and 21 to 21H
- “**previous actual use** has the meaning given in section 21C(b)(i)”.
- (7) The following is inserted in its appropriate alphabetical order:
- “**principal place of residence**, in the definition of **dwelling** and in sections 5(15), 11(1)(mb), and 78F(2), means a place that a person occupies as their main residence for the period to which the agreement for the supply of accommodation relates”.
- (8) Subsections (2) to (7) apply to supplies made on or after 1 April 2011.

5 Meaning of input tax

- (1) Section 3A(1)(a) and (b) are replaced by the following:
- “(a) tax charged under section 8(1) on a supply of goods or services acquired by the person:
- “(b) tax levied under section 12(1) on goods entered for home consumption under the Customs and Excise Act 1996 by the person.”.
- (2) Section 3A(2)(c) is replaced by the following:
- “(c) the goods acquired by the person for making taxable supplies are either—
- “(i) not charged with tax at the rate of 0% under section 11A(1)(q) or (r); or

“(ii) charged with tax at the rate of 0% under section 11A(1)(q) or (r) and, before the acquisition, have never been owned or used by the person or an associated person.”

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

“(3B) Despite subsection (3)(a), if a supply wholly or partly consists of land, and is part of an arrangement involving more than 2 associated parties and more than 1 supply, the amount of input tax for the supply must not be more than the amount accounted for as output tax for all supplies that are part of the arrangement.

“(3C) For a supply of goods or services to which section 21B applies, when the goods or services have been acquired from an associated person, the amount of input tax must not be more than the amount accounted for as output tax by the supplier of the goods or services.”

(4) Section 3A(4A) is repealed.

6 Meaning of term supply

(1) Section 5(15) is replaced by the following:

“(15) When a principal place of residence is included in a supply, the supply of the residence is deemed to be a separate supply from the supply of any other real property included in the supply.”

(2) Section 5(17) is repealed.

(3) After section 5(21), the following are added:

“(22) In relation to a supply to which subsection (2) applies, if the supply by the first person would be zero-rated under section 11(1)(mb), the second person must zero-rate the supply in the same way.

“(23) If section 11(1)(mb) is treated as applying to a supply of goods and, after the date on which the relevant transaction is settled, it is found that the provision does not apply, the recipient of the supply is treated as if they were a supplier making, on the date of settlement, a supply of those goods that is chargeable with tax under section 8(1).

“(24) If a supply that wholly or partly consists of land is made, and the supply includes the provision of services, the supply of

the services is treated as a supply of goods for the purposes of section 11(1)(mb).”

- (4) Subsections (1), (2), and (3) apply to supplies made on or after 1 April 2011.

7 Imposition of goods and services tax on supply

- (1) Section 8(4B)(b) is replaced by the following:

“(b) the recipient of the supply—

“(i) estimates at the time of acquisition that the percentage intended use of the services is less than 95%; or

“(ii) determines at the end of an adjustment period that the percentage actual use of the services is less than 90%; and”.

- (2) Subsection (1) applies to supplies made on or after 1 April 2011.

8 Time of supply

- (1) In section 9(2)(g), “takes place.” is replaced by “takes place:” and the following is added:

“(h) if section 8(4B)(b)(ii) applies, the supply is treated as having been made on the first day in the adjustment period when the percentage actual use of the services falls below 90%.”

- (2) In section 9(6), “and section 21C” is omitted.
- (3) Subsections (1) and (2) apply to supplies made on or after 1 April 2011.

9 Value of supply of goods and services

- (1) After section 10(7A), the following is inserted:

“(7B) If goods and services are treated as supplied by a person under section 5(23), the value of the supply is an amount equal to the consideration for the supply first made to the recipient.”

- (2) In section 10(8), “or, where goods and services are treated as being supplied under section 21” is omitted.
- (3) Subsections (1) and (2) apply to supplies made on or after 1 April 2011.

10 Zero-rating of goods

- (1) After section 11(1)(m), the following is inserted:
- “(mb) the supply wholly or partly consists of land, being a supply—
- “(i) made by a registered person to another registered person who acquires the goods with the intention of using them for making taxable supplies; and
 - “(ii) that is not a supply of land intended to be used as a principal place of residence of the recipient of the supply or a person associated with them under section 2A(1)(c); or”.
- (2) Section 11(1)(o) is replaced by the following:
- “(o) the goods are supplied to or by the Crown as consideration for a supply—
- “(i) for which there is no payment of a price; and
 - “(ii) that is chargeable at the rate of 0% under section 11A(1)(s) or (t).”
- (3) After section 11(8), the following is inserted:
- “(8B) Whether a supply of goods is zero-rated under subsection (1)(mb) is determined at the time of settlement of the transaction relating to the supply.
- “(8C) Despite subsections (1)(mb) and (8B), a supplier may choose to apply the provisions of this Act applying before the changes made by the Taxation (GST and Remedial Matters) Act 2010 if they enter into a binding agreement before 1 April 2011 for which the time of supply is after that date.”
- (4) Subsections (1) and (3) apply to supplies made on or after 1 April 2011.

11 Zero-rating of services

Section 11A(1)(u) is replaced by the following:

- “(u) the services are supplied to or by the Crown as consideration for a supply—
- “(i) for which there is no payment of a price; and
 - “(ii) that is chargeable at the rate of 0% under paragraph (s) or (t); or”.

12 Special returns

- (1) In section 17(1B), “A return that a person is required to furnish to the Commissioner under subsection (1) must be furnished on or before” is replaced by “The actions required of a person under subsection (1)(a) to (c) must be completed, on or before”.
- (2) Subsection (1) applies to taxable periods ending on or after 30 November 2007.

13 Invoice basis for supplies over \$225,000

After section 19D(2), the following is inserted:

- “(2B) Subsection (1) does not apply if the supplier is a non-profit body that determines on the basis of reasonable information that, at the time of supply, the recipient—
- “(a) is not a registered person; and
 - “(b) is either—
 - “(i) not intending to use the goods and services for the purposes of carrying on a taxable activity; or
 - “(ii) intending to use the goods and services for the purposes of carrying on a taxable activity but only after the full consideration for the supply is paid to the supplier.”

14 Calculation of tax payable

- (1) In section 20(2)(d), “the supply:” is replaced by “the supply; or”, and the following is inserted:
 - “(e) the supply is a supply of goods and services that is treated as made under section 60B to a nominated person and that person maintains sufficient records as required by section 24(7B):”.
- (2) Section 20(3)(e) is replaced by the following:
 - “(e) any amount calculated under sections 21D(1) and (3)(a), and 21F; and”.
- (3) Before section 20(4), the following is inserted:

“(3C) For the purposes of subsection (3), input tax may be deducted only to the extent to which the goods or services are used for, or are available for use in, making taxable supplies. Subsection (3D) overrides this subsection.

- “(3D) A registered person is not required to apportion input tax in an adjustment period if they make both taxable and exempt supplies and have reasonable grounds to believe that the total value of their exempt supplies will not be more than the lesser of—
- “(a) \$90,000;
 - “(b) 5% of the total consideration for all their taxable and exempt supplies for the adjustment period.
- “(3E) A registered person who principally makes supplies of financial services may choose to use a fair and reasonable method of apportionment, as agreed with the Commissioner, in relation to the supply for an apportionment on acquisition. For this purpose,—
- “(a) the method must have regard to the tenor of subsections (3C) to (3J);
 - “(b) the person may include a group of companies.
- “(3F) The method used to calculate the amount that may be deducted on acquisition is set out in subsections (3C) to (3J). The rules for calculating adjustments are set out in sections 21 to 21H.
- “(3G) In determining the extent to which goods or services are used for making taxable supplies, a person must estimate at the time of acquisition how they intend to use the goods or services, choosing a determination method that provides a fair and reasonable result. The determination is expressed as a percentage of the total use.
- “(3H) The extent to which a deduction for input tax is allowed is calculated using the formula—
- $$\text{full input tax deduction} \times \text{percentage intended use.}$$
- “(3I) In the formula in subsection (3H),—
- “(a) **full input tax deduction** is the total amount of input tax on the supply;
 - “(b) **percentage intended use** has the meaning set out in section 21G(1)(b).
- “(3J) For a supply to which section 11(1)(mb) applies, the recipient must,—
- “(a) on acquisition,—
 - “(i) identify the nominal amount of tax (the **nominal GST component**) that would be chargeable on

- the value of the supply, as if the value were equal to the consideration charged for the supply, at the rate set out in section 8(1); and
- “(ii) determine the extent to which they intend to use the goods or services as described in subsection (3G); and
 - “(iii) account for output tax under section 20(4) for the proportion of the nominal GST component for any non-taxable use of the goods; and
- “(b) for later adjustment periods, make adjustments under the apportionment rules set out in sections 21 to 21H in relation to the taxable supply referred to in paragraph (a).
- “(3K) For the purposes of subsections (3) and (3C), to the extent to which a non-profit body uses goods or services other than for making exempt supplies, the goods or services are treated as being used for making taxable supplies.”
- (4) In section 20(4)(b)(ii), “applies.” is replaced by “applies; or,” and the following is added:
- “(c) in the case of a registered person who is required to account for tax payable under section 21D(1) and (3)(b), for the relevant adjustment period.”
- (5) After section 20(4), the following is inserted:
- “(4B) A person who is treated under section 5(23) as a supplier of goods under section 11(1)(mb) is denied a deduction under subsection (3) in relation to the supply. However, this subsection does not apply to a person required to account for tax under section 5(23) who later becomes a registered person under section 51 and uses the relevant goods for making taxable supplies.”
- (6) Subsections (1) to (5) apply to supplies made on or after 1 April 2011.

15 Sections 21 to 21H replaced

- (1) Sections 21 to 21H are replaced by the following:

“21 Adjustments for apportioned supplies

- “(1) A registered person must ascertain at the end of an adjustment period whether an adjustment is required to be made for any

percentage difference in a supply of goods or services for the period in relation to the actual use of those goods or services for making taxable supplies.

- “(2) Despite subsection (1), the person is not required to make an adjustment if—
- “(a) section 20(3D) applies to them;
 - “(b) the value of the goods or services, excluding GST, is \$5,000 or less;
 - “(c) the difference between the percentage intended use on acquisition and the percentage actual use for the relevant adjustment period is less than 10 percentage points, but this paragraph does not apply if the adjustment amounts to more than \$1,000;
 - “(d) the difference between the previous actual use calculated for the most recent adjustment period in which an adjustment was made and the percentage actual use for the relevant adjustment period is less than 10 percentage points, but this paragraph does not apply if the adjustment amounts to more than \$1,000.
- “(3) An adjustment arises on the last day of the relevant adjustment period.
- “(4) For an adjustment to which sections 21A to 21H apply, a registered person who principally makes supplies of financial services may choose to use a fair and reasonable method, as agreed with the Commissioner, for making adjustments in subsequent adjustment periods. For this purpose,—
- “(a) the method must have regard to the tenor of sections 21A to 21H;
 - “(b) the person may include a group of companies.

“21A When adjustments required

A registered person must, at the end of an adjustment period,—

- “(a) identify the percentage actual use of the goods or services in making taxable supplies in the period; and
- “(b) compare the percentage actual use with percentage intended use or previous actual use, as applicable; and
- “(c) if a percentage difference arises and section 21(2)(c) does not apply, make an adjustment for any percentage difference for the adjustment period.

“21B Adjustments when person becomes registered after acquiring goods and services

- “(1) This section applies when—
- “(a) before becoming a registered person, a person acquires goods or services that were chargeable with tax under section 8(1); and
 - “(b) at the time of registration or at a later time, the person uses the goods or services for making taxable supplies.
- “(2) The person may make an adjustment under sections 21 and 21A, treating as the first adjustment period, the period that—
- “(a) starts on the date of the acquisition of the goods or services; and
 - “(b) ends on the first balance date that falls after the events referred to in subsection (1)(b).
- “(3) For the purposes of this section,—
- “(a) the person must either—
 - “(i) provide a tax invoice in relation to the supply, as required by section 20(2); or
 - “(ii) have adequate records that enable the identification of the particulars of an invoice as required by section 24(3);
 - “(b) in identifying the percentage actual use of the goods or services in the first adjustment period referred to in subsection (2), the person may use a method that provides a fair and reasonable result.
- “(4) This section does not apply if the original cost of the goods or services, excluding GST, was \$5,000 or less.

“21C Adjustments for first and subsequent adjustment periods

For the purposes of section 21A(b),—

- “(a) for the first adjustment period applying to the goods or services, the person must compare the percentage intended use of the goods or services with their percentage actual use:
- “(b) for a subsequent adjustment period, the person must compare the percentage actual use of the goods or services with—

- “(i) their percentage actual use in an earlier period that is the most recent period in which an adjustment has been made (the **previous actual use**):
- “(ii) their percentage intended use, if no adjustment has been made in an earlier period.

“21D Calculating amount of adjustment

- “(1) If a percentage difference arises for an adjustment period, a registered person must make a positive or negative adjustment for the period of an amount calculated using the formula—

full input tax deduction × percentage difference.

- “(2) In the formula,—

- “(a) **full input tax deduction** is the total amount of input tax on the supply, including any nominal GST component chargeable under section 20(3J)(a)(i):
- “(b) **percentage difference** has the meaning set out in section 21G(1)(c).

- “(3) For the purposes of subsection (1),—

- “(a) if the adjustment is positive and the percentage actual use is more than the person’s percentage intended use or previous actual use, as applicable, the person is entitled to an additional deduction under section 20(3)(e):
- “(b) if the adjustment is negative and the percentage actual taxable use is less than the person’s percentage intended use or previous actual use, as applicable, the person must treat the amount as a positive amount of output tax and account for it under section 21A.

“21E Concurrent uses of land

- “(1) This section applies when a registered person uses all or part of an area of land during an adjustment period for making concurrent taxable and non-taxable supplies. The percentages determined under this section apply for the purposes of sections 21A and 21G.
- “(2) This section does not apply if the Commissioner agrees that the registered person may use another calculation method.

“(3) The extent to which the land is used for making taxable supplies is calculated as a percentage using the formula—

$$\frac{\text{consideration for taxable supply}}{\text{total consideration for supply}} \times 100.$$

“(4) In the formula in subsection (3),—

“(a) **consideration for taxable supply** is,—

“(i) on a disposal of the land in the adjustment period, the amount paid or payable; or

“(ii) the market value of the land at the time of making the adjustment:

“(b) **total consideration for supply** is the sum of the amount referred to in paragraph (a) and the amount of—

“(i) all rental income that is the consideration for the supply of a dwelling paid or payable since the land was acquired; and

“(ii) if no rental income is paid or payable in relation to the non-taxable use of the land, the market value of rental income that would have been paid or payable since the land was acquired if the land had been used for this purpose.

“(5) For the purposes of subsection (4), if the person disposes of the land to an associated person, or if the amount of rental income is not an arm’s length amount, subsection (4)(a)(i) and (b)(i) do not apply, and the amount of the consideration is measured under subsection (4)(a)(ii) and (b)(ii).

“(6) For the purposes of subsection (4)(a)(ii) and (b)(ii), if the market value of the land or the market value of rental income is not readily identifiable, the person may use another method to provide a fair and reasonable estimate of the market value.

“(7) If a person is required to estimate the extent of taxable use of the land under this section and the land has at any time been used in a month solely for making non-taxable supplies, the person must calculate the percentage use for the adjustment period on a month by month basis, calculated using the formula—

$$\frac{\text{months}}{\text{total months}} \times \text{result under subsection (3)}.$$

- “(8) In the formula in subsection (7),—
- “(a) **months** is the number of months since acquisition in which all or part of the land is used to some extent for making taxable supplies:
- “(b) **total months** is the total number of months since acquisition.

“21F **Treatment on disposal**

- “(1) This section applies when a registered person—
- “(a) acquires goods or services in relation to which they do not have a full deduction, taking into account any adjustments made to input tax in adjustment periods after acquisition; and
- “(b) subsequently disposes, or is treated as disposing, of the goods or services in the course or furtherance of a taxable activity.
- “(2) The person must make a final adjustment of an amount calculated using the formula—

$$\text{tax fraction} \times \text{consideration} \times \left[1 - \frac{\text{actual deduction}}{\text{full input tax deduction}} \right]$$

- “(3) For the purposes of the formula,—
- “(a) **tax fraction** has the meaning given in section 2(1):
- “(b) **consideration** is the amount of consideration received, or treated as received, for the supply:
- “(c) **actual deduction** is the amount of deduction already claimed, taking into account adjustments made up to the date of disposal:
- “(d) the amount, when added to any deduction already claimed, must not be more than the amount of the **full input tax deduction** on acquisition referred to in section 21D(2).

“21G Definitions and requirements for apportioned supplies and adjustment periods

- “(1) For the purposes of this section and sections 8(4B)(b), 9(2)(h), 20(3H), 21 to 21F, and 21H,—
- “(a) **percentage actual use**, for a registered person and an adjustment period,—
- “(i) means the extent to which the goods or services are actually used by the person for making taxable supplies; and
- “(ii) is calculated for the period that starts when the goods or services are acquired and finishes at the end of the relevant adjustment period; and
- “(iii) is expressed as a percentage of total use:
- “(b) **percentage intended use**, for a registered person, means the extent to which the goods or services are intended to be used by the person for making taxable supplies, estimated at the time of acquisition under section 20(3G) and expressed as a percentage of total use:
- “(c) **percentage difference** means the difference between the percentage actual use determined under paragraph (a) and, as applicable,—
- “(i) the percentage intended use determined under paragraph (b); or
- “(ii) for a subsequent adjustment period following a period in which a person has made an adjustment, the previous actual use of the goods or services in the earlier period.
- “(2) For the purposes of this section and sections 21 to 21F and 21H,—
- “(a) the first adjustment period is a period that—
- “(i) starts on the date of acquisition; and
- “(ii) ends on the date as the person chooses that either corresponds to the person’s first balance date described in section 15B(6) that falls after the date of acquisition, or corresponds to the person’s first balance date that falls at least 12 months after the date of acquisition:

- “(b) a subsequent adjustment period is a period of 12 months that—
 - “(i) starts on the day after the end of an earlier adjustment period; and
 - “(ii) ends on the last day of the equivalent taxable period in which the first adjustment period ended.
- “(3) For the purposes of subsection (2)(b), a registered person who chooses under section 38(1) of the Tax Administration Act 1994 to change their balance date at some time in an income year may realign their subsequent adjustment periods with the new balance date. However, an affected adjustment period must be of at least 12 months duration and, if the new balance date causes an adjustment period to be shorter than 12 months, the relevant period is extended to the balance date of the following income year.
- “(4) The number of adjustment periods in which a registered person must determine whether an adjustment is required under section 21A may, as the person chooses, be limited to—
 - “(a) one of the following based on the value of the goods or services, excluding GST:
 - “(i) 2 adjustment periods for goods or services valued at more than \$5,000 but not more than \$10,000;
 - “(ii) 5 adjustment periods for goods or services valued at more than \$10,000 but not more than \$500,000;
 - “(iii) 10 adjustment periods for goods or services valued at more than \$500,000; or
 - “(b) the relevant adjustment periods that is equal to the number of years for the estimated useful life of the relevant asset as determined under the Tax Depreciation Rates Determinations set by the Commissioner under section 91AAF of the Tax Administration Act 1994.
- “(5) Subsection (4) does not apply in relation to a supply of land.
- “(6) An election by a registered person under subsection (4) to limit the number of adjustment periods applying to goods or services acquired by them cannot subsequently be changed.
- “(7) Despite subsection (4) if, after making adjustments for goods or services for the number of adjustment periods, the person subsequently disposes, or is treated as disposing, of the rele-

vant asset, they must make a final adjustment under section 21F in the taxable period in which the disposal occurs.

- “(8) If a person does not choose the number of adjustment periods for an apportioned supply, the limits set out in subsection (4)(a) apply.

“**21H Transitional accounting rules**

- “(1) This section applies in relation to goods or services acquired before 1 April 2011, when a registered person determines the extent to which goods or services are applied for the purposes of making supplies other than taxable supplies under sections 21A to 21H (the **old apportionment rules**) as they were before the enactment of the Taxation (GST and Remedial Matters) Act 2010.

- “(2) The person must continue to apply the old apportionment rules in relation to the supply. However, the making of these adjustments is limited as follows:

“(a) for goods or services whose market value or book value on 1 April 2011 is \$5,000 or less, no adjustment under the old apportionment rules may be, or may be required to be, made after 1 April 2011:

“(b) for goods or services whose market value or book value on 1 April 2011 is more than \$5,000 but not more than \$10,000, no adjustment under the old apportionment rules may be, or may be required to be, made after 1 April 2013:

“(c) for other goods or services, no adjustment under the old apportionment rules may be, or may be required to be, made after 1 April 2016.

- “(3) Subsection (2)(a) to (c) do not apply to a supply that wholly or partly consists of land.”

- (2) Subsection (1) applies to supplies made on or after 1 April 2011.

16 Tax invoices

- (1) After section 24(7), the following is inserted:

“(7B) Despite subsections (1) and (3), if a tax invoice is not available in relation to a supply of goods to which section 60B(3) to (5)

apply, the nominated person must maintain sufficient records to enable the following particulars to be ascertained:

- “(a) the name and address of the supplier; and
- “(b) the date on which payment for the supply was made; and
- “(c) a description of the goods supplied; and
- “(d) the consideration for the supply.”

- (2) Subsection (1) applies to supplies made on or after 1 April 2011.

17 Credit and debit notes

- (1) After section 25(1)(aa), the following is inserted:

“(ab) section 11(1)(mb) was incorrectly applied to the treatment of the supply, so that the supply was either zero-rated when it should not have been, or not zero-rated when it should have been; or”.

- (2) After section 25(3)(e), the following is added:

“(f) in the case of a supply to which subsection (1)(ab) applies, a credit note may not be issued after 7 years from the date of settlement of the transaction relating to the supply.”

- (3) Subsections (1) and (2) apply to supplies made on or after 1 April 2011.

18 Deduction of tax from payment due to defaulters

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

- “(1B) For the purposes of the definition of **amount payable** in subsection (1), money that is on deposit or is deposited to the credit of a registered person includes money that—

- “(a) is held in a joint bank account in the name of the registered person and 1 or more other persons; and
- “(b) can be withdrawn from the account by or on behalf of the registered person without a signature or other authorisation being required at the time of the withdrawal from, or on behalf of, the other person or persons.

- “(1C) Subsection (1B) does not apply when the joint bank account is an account of a partnership that files a return of income under section 33(1) of the Tax Administration Act 1994.”

19 Persons treated as registered

- (1) After section 51B(3), the following is added:
- “(4) For the purposes of this Act, in relation to a supply to which section 11(1)(mb) applies, a recipient who is treated as a supplier under section 5(23)—
- “(a) is treated as registered from the date of the supply under section 5(23); and
 - “(b) must apply under section 51(2) to the Commissioner for registration.
- “(5) A person who is treated as registered under subsection (4)(b) may ask the Commissioner to cancel their registration under section 52(2) once they have accounted for output tax as required under section 5(23).
- “(6) For the purposes of subsection (5), section 5(3) does not apply if—
- “(a) the person seeks cancellation of their registration by the end of the taxable period in which they have accounted for the output tax under section 5(23); or
 - “(b) the Commissioner so determines, on application by the person.”
- (2) Subsection (1) applies to supplies made on or after 1 April 2011.

20 New section 60B

- (1) After section 60, the following is inserted:
- “60B Nominated recipients of supplies**
- “(1) This section applies when a person (**person A**) enters into a contract to supply goods and services to another person (**person B**), and person B directs person A to provide the goods and services to a nominated person (**person C**) who is not party to the contract.
- “(2) If person B pays the full consideration for the supply, the supply is treated as a supply from person A to person B and the existence of person C is ignored.
- “(3) If person C pays the full consideration for the supply, the supply is treated as a supply from person A to person C and the existence of person B is ignored.

- “(4) If person B and person C each pay part of the consideration for the supply, the supply is treated as a supply from person A to person B. However, person B and person C may agree in writing that the supply is to be treated as a supply made to person C, but no such agreement can be made if person B has claimed input tax in relation to the supply.
- “(5) Despite subsections (2) to (4), if the registration status of person B differs from the registration status of person C, the supply must be treated as a supply from person A to person C. For the purposes of this subsection, registration status differs when—
- “(a) person B is a registered person and person C is not a registered person; or
 - “(b) person C is a registered person and person B is not a registered person.
- “(6) Despite subsections (2) to (5), for a supply that wholly or partly consists of land, the supply is treated as made by person A to person C.
- “(7) Section 60 overrides this section.”
- (2) Subsection (1) applies to supplies made on or after 1 April 2011.

21 Keeping of records

- (1) After section 75(3), the following is inserted:
- “(3B) For the purposes of section 11(1)(mb), the supplier must maintain sufficient records to enable the following particulars in relation to the supply to be ascertained:
- “(a) the name and address of the recipient; and
 - “(b) the registration number of the recipient; and
 - “(c) a description of land; and
 - “(d) the consideration for the supply.”
- (2) Subsection (1) applies to supplies made on or after 1 April 2011.

22 Effect of imposition or alteration of tax

In section 78(3), in the second proviso, “required to be paid by any public authority to any other person by virtue of that Act or regulation” is replaced by “required by virtue of that Act

or regulation to be paid by any public authority to any person other than a public authority”.

23 Exceptions to effect of increase of tax

- (1) In section 78AA(5), “take place after” is replaced by “take place on or after”.
- (2) In section 78AA(12), “sections 25(3) and (3C) and 143A(1)(f)” is replaced by “section 25(3) and (3C), and section 143A(1)(f) of the Tax Administration Act 1994”.

24 New section 78F inserted

- (1) After section 78E, the following is inserted:
“78F Liability in relation to supplies of land
“(1) This section applies in relation to a supply that wholly or partly consists of land.
“(2) At or before settlement of the transaction relating to the supply, the recipient is required to provide a statement in writing to the supplier as to whether, at the date of settlement,—
“(a) they are, or expect to be, a registered person; and
“(b) they are acquiring the goods with the intention of using them for making taxable supplies; and
“(c) they do not intend to use the land as a principal place of residence for them or a person associated with them under section 2A(1)(c).
“(3) The supplier may rely on the information provided by the recipient in determining the tax treatment of the supply.
“(4) For the purposes of section 5(2), the statement referred to in subsection (2) must be provided to the second person referred to in section 5(2).
“(5) For the purposes of section 60B and a transaction that wholly or partly consists of land, subsection (2) is modified in relation to the nominated person so that the information provided by the recipient relates to their expectation of the nominated person’s circumstances.”
- (2) Subsection (1) applies to supplies made on or after 1 April 2011.

Part 2
Amendments to Income Tax Act 2007

25 Income Tax Act 2007

Sections 26 to 141 amend the Income Tax Act 2007.

26 New heading and sections CB 32B and CB 32C inserted

(1) After section CB 32, the following is inserted:

“Look-through companies

“CB 32B Owners of look-through companies

A person who has an effective look-through interest for a look-through company has an amount of income to the extent to which an amount of income results from the application of subpart HB (Look-through companies) to them and the look-through company.

“Defined in this Act: amount, effective look-through interest, income, look-through company

“CB 32C Income for first year of look-through company

“Income

“(1) A person has an amount of income for an income year equal to the amount given by the formula in subsection (3) if the income year is one in which the person has,—

“(a) on the first day of that year, an effective look-through interest for a look-through company (**LTC**), and the company existed in the previous income year, but was not a look-through company in that previous year:

“(b) on the day after a look-through company amalgamates in that year with a company that ceases to exist after the amalgamation (the **amalgamating company**), an effective look-through interest for the LTC, and the amalgamating company was not a look-through company immediately before the amalgamation.

“Exclusion

“(2) A person does not have income under this section if the income year is 1 of the first or second income year that starts on or after 1 April 2011, and—

- “(a) the LTC was a qualifying company that first becomes a look-through company for the income year; and
 “(b) subsection (1)(b) does not apply for the income year.

“Income formula

- “(3) For the purposes of subsection (1), the amount of income is a positive amount calculated using the following formula:

$$\text{untaxed reserves} \times \text{effective interest.}$$

“Definition of items in formula

- “(4) In the formula in subsection (3),—
 “(a) **untaxed reserves** is the amount given by the formula in subsection (5):
 “(b) **effective interest** is the person’s effective look-through interest for a look-through company on the relevant day under subsection (1)(a) or (b).

“Untaxed reserves formula

- “(5) For the purposes of subsections (3) and (4), the amount of untaxed reserves is calculated using the following formula:

$$\text{dividends} + \text{balances} - \text{assessable income} - \frac{\text{balances}}{\text{tax rate}} - \text{exit exemption.}$$

“Definition of items in formula

- “(6) The items in the formula in subsection (5) are defined in subsections (7) to (11).

“Dividends

- “(7) **Dividends** is the sum of the amounts that would be dividends if the following events occurred for the company or the amalgamating company (the **company**), immediately before it became a look-through company or amalgamated with a look-through company:
 “(a) it disposed of all of its property, other than cash, to an unrelated person at market value for cash; and
 “(b) it met all of its liabilities at market value, excluding income tax payable through disposing of the property or meeting the liabilities; and

“(c) it was liquidated, with the amount of cash remaining being distributed to shareholders without imputation credits or FDP credits attached.

“*Balances*

“(8) **Balances** is the sum of the following amounts:

“(a) the balance in the company’s imputation credit account:

“(b) the balance in the company’s FDP account:

“(c) an amount of income tax payable for an earlier income year but not paid before the relevant date, less refunds due for the earlier income year but paid after the relevant date.

“*Assessable income*

“(9) **Assessable income** is the total assessable income that the company would derive by taking the actions described in subsection (7)(a) and (b) less the amount of any deduction that the company would have for taking those actions.

“*Tax rate*

“(10) **Tax rate** is the basic tax rate for the income year of the company that contains the relevant day described in subsection (12).

“*Exit exemption*

“(11) **Exit exemption** is the amount given by the formula in section CX 63(2) (Dividends derived after ceasing to be look-through company), treating the amount described in subsection (7) as a dividend paid by the company for the purposes of section CX 63(1), if section CX 63 would apply to a dividend paid by the company.

“*Relevant day*

“(12) In subsections (7) to (9) and (11), the relevant day for measuring items in the formula is—

“(a) the last day of the income year before the income year described in subsection (1)(a), as applicable; or

“(b) the day of the amalgamation described in subsection (1)(b) as applicable.

“*Income tax and refund*

“(13) For the purposes of subsection (8)(c),—

“(a) income tax payable is income tax that would, when paid, give rise to a credit in the company’s imputation credit account under sections OB 4 to OB 29 (which relate to imputation credits):

“(b) a refund of income tax due is the amount that would, when paid, give rise to a debit to the company’s imputation credit account under sections OB 30 to OB 59 (which relate to imputation debits).

“Defined in this Act: amalgamating company, amalgamation, amount, assessable income, basic tax rate, company, deduction, dispose, dividend, effective look-through interest, FDP account, FDP credit, imputation credit, imputation credit account, income, income tax, income year, liquidation, look-through company, qualifying company”.

(2) Subsection (1) applies for income years beginning on or after 1 April 2011.

27 Disposal of emissions units

Section CB 36(7), other than the heading, is replaced by the following:

“(7) The person is treated as selling a unit that is not a forest land emissions unit for an amount equal to the unit’s market value if—

“(a) the person surrenders the unit when it has a value of zero; and

“(b) the unit was transferred to the person under Part 4, subpart 2 of the Climate Change Response Act 2002 at a price of zero.”

28 Returns of capital: on-market share cancellations

(1) In section CD 24(2)(a)(i), “section CD 29” is replaced by “section CD 40”.

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

29 Available subscribed capital (ASC) amount

(1) In section CD 43(1), in the formula, “returns” is replaced by “returns – look-through company returns”.

(2) In section CD 43(2)(b), “the share” is replaced by “the share, ignoring section HB 1 (Look-through companies are transparent)”.

- (3) In section CD 43(2)(c), “Act.” is replaced by “Act:” and the following is added:
- “(d) **look-through company returns** is the total amount of consideration that the company paid, before the calculation time, on the cancellation or buyback of shares in the relevant class while the company was a look-through company, ignoring section HB 1.”
- (4) In section CD 43, in the list of defined terms, “look-through company” is inserted.
- (5) Subsections (1), (2), and (3) apply for income years beginning on or after 1 April 2011.

30 Amounts derived in connection with employment

- (1) Section CE 1(1)(c) is repealed.
- (2) After section CE 1(1), the following is inserted:
- “*Benefit of accommodation*
- “(1B) The market value of the following benefits provided to a person is income of the person if the benefit is provided in relation to an office or position held by them:
- “(a) the provision of accommodation:
- “(b) the provision of an accommodation allowance instead of accommodation.”
- (3) Subsections (1) and (2) apply for the 2008–09 and later income years.

31 Adjustment for GST

- (1) In section CH 5(1), “An amount calculated under sections 21F and 21G” is replaced by “An adjustment taken into account under section 20(3)(e)”.
- (2) Section CH 5(2), other than the heading, is replaced by the following:
- “(2) This section does not apply to an adjustment made in relation to a capital asset.”
- (3) In section CH 5, in the list of defined terms, “taxable supply” is omitted.
- (4) Subsections (1) and (2) apply to taxable supplies made on or after 1 April 2011.

32 Income of non-resident general insurer

- (1) In section CR 3(1), “derived from New Zealand” is replaced by “having a source in New Zealand”.
- (2) In section CR 3, in the list of defined terms,—
 - (a) “derived from New Zealand” is omitted:
 - (b) “source in New Zealand” is inserted.

33 Non-resident film renters

- (1) In section CV 17(2), “derived from New Zealand by the non-resident person” is replaced by “that have a source in New Zealand”.
- (2) In section CV 17, in the list of defined terms,—
 - (a) “derived from New Zealand” is omitted:
 - (b) “source in New Zealand” is inserted.

34 Benefits provided on premises

In section CX 23(1), “received or used” is replaced by “used or consumed” in each place where it appears.

35 Government grants to businesses

- (1) Section CX 47(1)(a) to (d) are replaced by the following:
 - “(a) a local authority or a public authority makes a payment to a person for a business that the person carries on; and
 - “(b) the payment—
 - “(i) is in the nature of a grant or subsidy to the person; or
 - “(ii) is a grant-related suspensory loan to the person; and
 - “(c) the payment is not in the nature of an advance or loan other than a grant-related suspensory loan; and
 - “(d) the payment corresponds to—
 - “(i) expenditure that they incur and for which they would be allowed a deduction in the absence of section DF 1 (Government grants to businesses):
 - “(ii) expenditure that they incur in acquiring, constructing, installing, or extending an asset for which they would have an amount of depreciation loss in the absence of section DF 1.”

- (2) After section CX 47(3), the following is added:
- “Further exclusion*
- “(4) A person may choose that this section not apply to a payment under a grant to the extent to which—
- “(a) the grant is made to the person for the person’s business as a technology development grant or under a technology transfer voucher; and
- “(b) the payment is withheld until the conditions of the grant are satisfied; and
- “(c) in the absence of section DF 1, the person would be allowed for an income year before the income year of the payment,—
- “(i) a deduction for expenditure to which the payment corresponds:
- “(ii) depreciation loss resulting from expenditure to which the payment corresponds.”

36 New heading and section CX 63 added

- (1) After section CX 62, the following is added:

“Look-through companies

“CX 63 Dividends derived after company ceased to be look-through company

“Dividends

- “(1) A dividend derived by a person from a company after it has ceased to be a look-through company is excluded income of the person to the extent to which it is equal to or less than the amount given by subsection (2).

“Excluded income formula

- “(2) For the purposes of subsection (1), the amount is calculated using the following formula:

exit dividends – dividends after look-through.

“Definition of items in formula

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

“Exit dividends

- “(4) **Exit dividends** is the sum of the amounts that would be dividends if the company, immediately after it ceased to be a look-through company,—
- “(a) disposed of all of its property, other than cash, to an unrelated person at market value for cash; and
 - “(b) met all its liabilities at market value, excluding income tax payable through disposing of the property or meeting the liabilities; and
 - “(c) were liquidated, with the amount of cash remaining being distributed to its shareholders without imputation credits or FDP credits attached.

“Dividends after look-through

- “(5) **Dividends after look-through** is the total dividends paid by the company after it ceases to be a look-through company and before it pays the dividend described in subsection (1) to the person.
- “Defined in this Act: amount, company, dispose, dividend, excluded income, FDP credit, imputation credit, income tax, liquidation, look-through company, shareholder”.
- (2) Subsection (1) applies for income years beginning on or after 1 April 2011.

37 Goods and services tax

- (1) In section DB 2(2), “a supply of goods or services that section 21 or 21I(1) to (3)” is replaced by “a supply of goods or services that section 5B, 21, or 21I(1) to (3)”.
- (2) In section DB 2(2), “output tax on a supply of goods or services that section 21 or 21I(1) to (3) of the Goods and Services Tax Act 1985 treats them as making,” is replaced by “deductible output tax”.
- (3) Section DB 2(3), other than the heading, is replaced by the following:
- “(3) Subsection (2) does not apply to an adjustment made in relation to a capital asset.”
- (4) In section DB 2, in the defined terms list,—
- (a) “deductible output tax” is inserted:
 - (b) “taxable supply” is omitted.

- (5) Subsection (1) applies for the 2008–09 and later income years.
- (6) Subsections (2) and (3) apply to taxable supplies made on or after 1 April 2011.

38 Avoiding, remedying, or mitigating effects of discharge of contaminant

- (1) In section DB 46(1)(b)(i), “schedule 19, part B” is replaced by “schedule 19, in either part A or B”.
- (2) Subsection (1) applies for the 2008–09 and later income years.

39 New section DB 65 added

- (1) After section DB 64, the following is added:

“DB 65 Allowance for certain commercial buildings

“When this section applies

- “(1) This section applies when—
 - “(a) a person owns an item that is a commercial building (the **building**), and the building is depreciable property with an annual rate of 0%, in an income year; and
 - “(b) the item starting pool described in subsection (3)(a) is greater than the total of all deductions allowed under this section for income years before the income year; and
 - “(c) the person has been allowed a deduction for an amount of depreciation loss for the building for the 2010–11 income year and the person has not disposed of it since then; and
 - “(d) the person has never had a deduction for an amount of depreciation loss for a separate item of depreciable property that is commercial fit-out and that was acquired at the same time as the building and relates to the building; and
 - “(e) the building was acquired in the 2010–11 or earlier income years; and
 - “(f) the person is not allowed a deduction under any other provision in relation to the building, for the income year.

“Deduction

- “(2) Except as provided by subsection (6), the person is treated as having a loss for the income year equal to the amount calculated using the formula—

$$\text{starting pool} \times 0.02 \times \frac{\text{whole months}}{12}.$$

“Definition of items in formula

- “(3) In the formula in subsection (2),—
- “(a) **starting pool** is the amount given by the formula in subsection (4):
- “(b) **whole months** is the number of whole months in the income year in which the item is used, or is available for use, by the person in deriving assessable income or carrying on a business for the purpose of deriving assessable income.

“Starting pool: formula

- “(4) For the purposes of subsection (3)(a), the amount is calculated using the formula—

$$(0.15 \times \text{building atv}) - \text{fitout atv}.$$

“Definition of items in formula

- “(5) In the formula in subsection (4),—
- “(a) **building atv** is the adjusted tax value of the building that results for the 2010–11 income year after all relevant amounts for that income year have been subtracted under subpart EE (Depreciation):
- “(b) **fitout atv** is the total adjusted tax value of all items of commercial fit-out that results for the 2010–11 income year after all relevant amounts for that income year have been subtracted under subpart EE, if—
- “(i) the items of commercial fit-out relate to the building and were acquired after the building was acquired; and
- “(ii) the person has had a deduction for an amount of depreciation loss for the items of commercial fit-out.

“Exception: deductible amount

- “(6) Despite subsection (2), if the item starting pool described in subsection (3)(a), reduced by the total of all deductions allowed under this section for income years before the income year, is equal to an amount (the **deductible amount**) that is smaller than the amount given by the formula in subsection (2) (the **formula amount**), then the person is treated as having a loss for the income year equal to the deductible amount instead of the formula amount.

“Treatment of amounts under specific and general rules for deductions

- “(7) The capital limitation does not apply to a loss under this section merely because the item of property is itself of a capital nature.

“Defined in this Act: adjusted tax value, amount, assessable income, building, capital limitation, commercial building, commercial fit-out, deduction, depreciable property, depreciation loss, dispose, estimated useful life, income year”.

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

40 New section DC 3B inserted

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

“DC 3B Payments to working owners*“Deduction*

- “(1) A person who has an effective look-through interest for a look-through company (an **owner**) is allowed a deduction for their share of a payment made under a contract of employment to a working owner.

“Amount of deduction

- “(2) The amount of the deduction is limited to the amount of the payment authorised by the contract of employment and any bonus, whether or not the payment of a bonus is authorised by the contract.

“Meaning of contract of employment

- “(3) In this section, **contract of employment**, for a working owner, means an agreement that—
- “(a) specifies the terms and conditions of the services to be performed by the working owner; and

“(b) specifies the amount payable to the working owner for the performance of the services; and

“(c) is in writing.

“Link with subpart DA

“(4) This section supplements the general permission. The general limitations still apply.

“Defined in this Act: amount, contract of employment, deduction, effective look-through interest, general limitation, general permission, look-through company, pay, supplement, working owner”.

(2) Subsection (1) applies for income years beginning on or after 1 April 2011.

41 Variance during logbook term

(1) In section DE 10, “20%” is replaced by “20 percentage points”.

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

42 Government grants to businesses

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

“When this section applies

“(1) This section applies when—

“(a) a local authority or a public authority makes a payment to a person for a business that the person carries on; and

“(b) the payment—

“(i) is in the nature of a grant or subsidy to the person; or

“(ii) is a grant-related suspensory loan to the person; and

“(c) the payment is not in the nature of an advance or loan other than a grant-related suspensory loan; and

“(d) the person does not make an election that section CX 47(4) (Government grants to businesses) apply to the payment.

“When subsection (2) applies

“(1B) Subsection (2) applies when, in the absence of this section, the person would be allowed a deduction for expenditure by the person to which the payment by the local or public authority corresponds.”

- (2) Section DF 1(3), other than the heading, is replaced by the following:
- “(3) Subsection (4) applies when—
- “(a) expenditure by the person in the acquisition, construction, installation, or extension of an item of depreciable property is expenditure to which the payment by the local or public authority corresponds; and
 - “(b) in the absence of this section, the person would be allowed a deduction for an amount of depreciation loss for the item of depreciable property.”

43 Transfer of expenditure to master fund

In section DV 2, in the defined terms list, “investor interest” is omitted.

44 Investment funds: transfer of expenditure to master funds

In section DV 5, in the defined terms list, “investor interest” is omitted.

45 New sections DV 21 to DV 24 added

- (1) After section DV 20, the following is added:

“DV 21 Losses for QCs entering partnership regime

“When this section applies

- “(1) This section applies to a person when,—
- “(a) for an income year, a person’s partnership (the **partnership**) has effectively replaced a qualifying company or companies under a QCP transitional process; and
 - “(b) ignoring the application of section HZ 4B(3) (Qualifying companies: transition into partnership), the company or companies would have had loss balances to carry forward to the first or second income year, as applicable, starting on or after 1 April 2011 (the **relevant transitional income year**).

“Losses extinguished

- “(2) Despite section HZ 4B(3), for the relevant transitional income year and subsequent income years, a loss balance under Part I (Treatment of tax losses) is cancelled if the loss balance arose

in relation to an income year before the relevant transitional income year.

“Deduction

- “(3) The person is allowed a deduction for an amount equal to an amount given by the formula in subsection (4), to the extent to which it is equal to or less than the net income the person would have for the income year if they were treated as having only income and deductions arising from the application of subpart HG (Joint venturers, partners, and partnerships) for the partnership.

“Deduction formula

- “(4) For the purposes of subsection (3), the amount is calculated using the formula—

(loss balance extinguished – subsequent deductions) × partnership share.

“Definition of items in formula

- “(5) In the formula,—

“(a) **loss balance extinguished** is the loss balance cancelled under subsection (2):

“(b) **subsequent deductions** is the total amount of deductions allowed for previous income years under this section for all persons with a partnership share in the partnership:

“(c) **partnership share** is the person’s average partnership share for the partnership for the income year.

“Exception

- “(6) Despite subsection (3), a person is not allowed a deduction for an amount in subsection (4) to the extent to which—

“(a) it arises from an amount carried forward under subparts IA and IQ (which relate to the treatment of foreign losses); and

“(b) it is greater than the maximum amount they may subtract from their net income under subpart IQ, treating the amount as an attributed CFC net loss or a FIF net loss carried forward under subpart IQ, and the person as having the net income they would have for the income year if they were treated as having only income and de-

ductions arising from the application of subpart HG for the partnership.

“Link with subpart DA

“(7) This section overrides the general permission and the general limitations.

“Defined in this Act: amount, attributed CFC net loss, company, deduction, FIF net loss, general limitation, general permission, income, income year, loss balance, net income, partnership, partnership share, QCP transitional process, qualifying company

“Look-through companies

“DV 22 Owners of look-through companies

A person who has an effective look-through interest for a look-through company has a deduction to the extent to which a deduction results from the application of subpart HB (Look-through companies) to them and the look-through company.

“Defined in this Act: deduction, effective look-through interest, look-through company

“DV 23 Losses for QCs entering look-through companies rules

“When this section applies

“(1) This section applies to a person who has an effective look-through interest for a look-through company (the **LTC**) for an income year when—

“(a) the LTC was a qualifying company that first becomes a look-through company for the first or second income year that starts on or after 1 April 2011; and

“(b) but for becoming a look-through company and the application of section HB 3 (Loss balances extinguished), there would have been a loss balance to carry forward to the first or second income year that starts on or after 1 April 2011 (the **relevant transitional income year**).

“Deduction

“(2) The person is allowed a deduction for an amount equal to an amount given by the formula in subsection (3), to the extent to which it is equal to or less than the net income the person would have for the income year if they were treated as having

only income and deductions arising from the application of subpart HB (Look-through companies) for the LTC.

“Deduction formula

“(3) For the purposes of subsection (2), the amount is calculated using the formula—

(loss balance extinguished – subsequent deductions) × effective interest.

“Definition of items in formula

“(4) In the formula,—

“(a) **loss balance extinguished** is the loss balance that would have been carried forward to the relevant transitional income year:

“(b) **subsequent deductions** is the total amount of deductions allowed for previous income years under this section for all persons with an effective look-through interest for the LTC:

“(c) **effective interest** is the person’s average effective look-through interest for the income year for the LTC.

“Exception

“(5) Despite subsection (2), a person is denied a deduction for an amount in subsection (3) to the extent to which—

“(a) it arises from an amount carried forward under subparts IA and IQ (which relate to the treatment of foreign losses); and

“(b) it is greater than the maximum amount they may subtract from their net income under subpart IQ, treating the amount as an attributed CFC net loss or a FIF net loss carried forward under subpart IQ, and the person as having the net income they would have for the income year if they were treated as having only income and deductions arising from the application of subpart HB for the LTC.

“Link with subpart DA

“(6) This section overrides the general permission and the general limitations.

“Defined in this Act: amount, attributed CFC net loss, deduction, effective look-through interest, FIF net loss, general limitation, general permission, income, income year, look-through company, loss balance, net income, qualifying company

*“Sole traders***“DV 24 Losses for QCs becoming sole traderships***“When this section applies*

- “(1) This section applies to a person when,—
- “(a) for an income year, the person’s sole tradership has effectively replaced a qualifying company under a QCST transitional process; and
 - “(b) ignoring the application of section HZ 4D(3) (Qualifying companies: transition into sole traderships), the company would have had a loss balance to carry forward to the first or second income year, as applicable, starting on or after 1 April 2011 (the **relevant transitional income year**).

“Losses extinguished

- “(2) Despite section HZ 4D(3), for the relevant transitional income year and subsequent income years, a loss balance under Part I (Treatment of tax losses) is cancelled if the loss balance arose in relation to an income year before the relevant transitional income year.

“Deduction

- “(3) The person is allowed a deduction for an amount equal to an amount given by the formula in subsection (4).

“Deduction formula

- “(4) For the purposes of subsection (3), the amount is calculated using the following formula:

loss balance extinguished – subsequent deductions.

“Definition of items in formula

- “(5) In the formula,—
- “(a) **loss balance extinguished** is the loss balance cancelled under subsection (2):
 - “(b) **subsequent deductions** is the total amount of deductions allowed for previous income years under this section.

“Exception

- “(6) Despite subsection (3), a person is denied a deduction for an amount in subsection (4) to the extent to which—

- “(a) it arises from an amount carried forward under subparts IA and IQ (which relate to the treatment of foreign losses); and
- “(b) it is greater than the maximum amount they may subtract from their net income under subpart IQ, treating the amount as an attributed CFC net loss or a FIF net loss carried forward under subpart IQ.

“Link with subpart DA

- “(7) This section overrides the general permission and the general limitations.
“Defined in this Act: amount, attributed CFC net loss, deduction, FIF net loss, general limitation, general permission, income, income year, loss balance, net income, QCST transitional process, qualifying company”.
- (2) Subsection (1) applies for income years beginning on or after 1 April 2011.

46 Interests in livestock

- (1) After section EC 12(4), the following is added:
“Look-through company owners’ interests
- “(5) For the purposes of an election under this section, a person’s interest for a look-through company that owns livestock is treated separately from any other interest that the person has in livestock. Separate elections are required for the person’s owner’s interest and for their other livestock interests. The person is not required to choose the same valuation method in both cases.”
- (2) In section EC 12, in the list of defined terms, “look-through company” and “owner’s interests” are inserted.
- (3) Subsection (1) applies for income years beginning on or after 1 April 2011.

47 Valuation of excepted financial arrangements

- (1) Section ED 1(7B)(a) is replaced by the following:
 - “(a) an emissions unit transferred under section 64, or Part 4, subpart 2, of the Climate Change Response Act 2002 in an income year for no payment of a price, and to which section ED 1B does not apply, has a value of zero for the

period beginning with the transfer and ending before the end of the income year.”.

- (2) After section ED 1(7B)(c), the following is inserted:
- “(cb) a fishing quota emissions unit has a value at the end of each income year of—
- “(i) the market value of the unit at the end of the income year, if the holder of the unit would derive income, other than exempt income and excluded income, from a disposal of the individual transferable quota to which the units relate; or
- “(ii) zero, if subparagraph (i) does not apply.”.
- (3) In section ED 1, in the list of defined terms, “pay” is inserted.

48 Section ED 1B replaced

Section ED 1B is replaced by the following:

“ED 1B Valuation of emissions units issued for zero price

“What this section applies to

- “(1) This section applies to emissions units held by a person in an income year that—
- “(a) are transferred to the person at a price of zero—
- “(i) under Part 4, subpart 2, of the Climate Change Response Act 2002;
- “(ii) by a public authority under a supplementary agreement to a negotiated greenhouse agreement; and
- “(b) have been held continuously by the person from the time of the transfer; and
- “(c) have not been valued under either of subsections (4)(a) and (8)(a) before the income year; and
- “(d) are not forest land emissions units; and
- “(e) are not replacement forest land emissions units; and
- “(f) are not fishing quota emissions units.

“Value of units transferred to person if no earlier emissions unit shortfall year

- “(2) If an emissions unit is transferred to the person in the income year and there is no earlier income year that is an emissions unit shortfall year for the person under subsections (9) and

(10), the emissions unit is assigned a value of zero at the time of the transfer.

“Value of units transferred to person in income year after emissions unit shortfall year

- “(3) If an earlier income year is an emissions unit shortfall year for the person immediately before an emissions unit (the **transferred unit**) is transferred to the person in the income year, the value of the transferred unit at the time of the transfer is given by the application of the paragraphs in subsection (4) in alphabetical order to transferred units until all the transferred units are assigned a value.

“Valuation method at transfer for transferred units

- “(4) If emissions units are transferred to the person in an income year when there is a unit shortfall under subsections (9) and (10) for an earlier emissions unit shortfall year,—
- “(a) for each emissions unit shortfall year in date order, transferred units, up to the number corresponding to the unit shortfall relating to the emissions unit shortfall year, are each assigned a value equal to the market value of an emissions unit at the end of the emissions unit shortfall year:
- “(b) transferred units are each assigned a value equal to zero.

“Value of units with zero value immediately before end of income year

- “(5) If the value of an emissions unit (the **revalued unit**) held by the person immediately before the end of the income year is zero, the value of the revalued unit at the end of the year is given by the application of the paragraphs in subsection (8) in alphabetical order to revalued units until all the revalued units are assigned a value.

“Limit on application of subsection (8)(a)

- “(6) The maximum number of units valued under subsection (8)(a) for the income year is the greater of zero and the number calculated using the formula—

unit entitlement – disposals at zero value.

“Definition of items in formula

“(7) In the formula,—

“(a) **unit entitlement** is the total for the income year of amounts, each of which the person would have for the period of overlap between a calendar year ending 31 December and the income year if the period of overlap were treated as a year, of—

“(i) final allocation entitlement under section 83 of the Climate Change Response Act 2002:

“(ii) allocation entitlement under section 85 of that Act:

“(iii) emissions units corresponding to the actual emissions amount under a supplementary agreement to a negotiated greenhouse agreement:

“(b) **disposals at zero value** is the number of emissions units disposed of by the person in the income year that had a value of zero at the disposal.

“Valuation method at end of income year for revalued units

“(8) If the person holds revalued units immediately before the end of the income year, the units are each assigned a value—

“(a) equal to the market value of an emissions unit at the end of the income year:

“(b) equal to zero.

“Emissions unit shortfall year

“(9) If the number of units assigned a market value for an income year under subsection (8)(a) is less than the maximum number given by subsection (6) for the income year, at the end of the income year—

“(a) the income year is an **emissions unit shortfall year** and has 2 numbers (the **unit shortfall** and the **unit shortfall value**) associated with it:

“(b) the unit shortfall relating to the emissions unit shortfall year is the difference between the maximum number given by subsection (6) for the income year and the number of zero value units assigned a market value under subsection (8)(a) for the income year:

“(c) the unit shortfall value relating to the emissions unit shortfall year is the unit shortfall multiplied by the mar-

ket value of an emissions unit at the end of the income year.

“Reductions in unit shortfall and unit shortfall value

“(10) When an emissions unit held by a person is assigned a value under subsection (4)(a) in relation to a year that is an emissions unit shortfall year for the person,—

“(a) the unit shortfall relating to that year is reduced by the number of emissions units assigned a value in relation to that year:

“(b) the unit shortfall value relating to that year is reduced by an amount equal to the number of emissions units assigned a value in relation to that year multiplied by the value assigned to each of those emissions units:

“(c) the year ceases to be an emissions unit shortfall year, if the unit shortfall relating to the year is reduced to zero.

“Unit shortfall values treated as values of additional emissions units for purposes of adjustments

“(11) For the purposes of sections CH 1 and DB 49 (which relate to adjustments for values of excepted financial arrangements), the person is treated as holding at the end of the income year additional emissions units with a value equal to the total of the unit shortfall values relating to emissions unit shortfall years for the person.

“Defined in this Act: amount, emissions unit, emissions unit shortfall year, fishing quota emissions units, forest land emissions units, income year, public authority, replacement forest land emissions units, year”.

49 Annual rate for item acquired in person’s 1995–96 or later income year

(1) In section EE 31(1), the second sentence is replaced by “Subsection (2) applies to specify the annual rate for the item if the requirements in subsection (2A) are met, and subsection (3) applies to specify the annual rate for the item if subsections (2A) and (2) do not apply and the requirements in subsection (3A) are met.”

(2) After section EE 31(1), the following is inserted:

“Requirements for subsection (2) rate

“(2A) This subsection applies, and the rate is 1 of the rates given by subsection (2), if the person—

“(a) acquires the item on or before 20 May 2010; or

“(b) decides to purchase or construct the item, meets the administrative requirements in subsection (4), and—

“(i) enters into a binding contract for the purchase or construction of the item on or before 20 May 2010:

“(ii) after deciding to purchase or construct the item, incurs expenditure in relation to its purchase or construction on or before 20 May 2010.”

(3) In section EE 31(2), the words before the paragraphs are replaced by “If subsection (2A) applies, the rate is 1 of the following:”.

(4) After section EE 31(2), the following is inserted:

“Requirements for subsection (3) rate

“(3A) This subsection applies, and the rate is 1 of the rates given by subsection (3), if subsections (2A) and (2) do not apply and the person—

“(a) acquires the item after 20 May 2010; or

“(b) decides to purchase or construct the item, and—

“(i) enters into a binding contract for the purchase or construction of the item after 20 May 2010:

“(ii) incurs expenditure in relation to the item’s purchase or construction after 20 May 2010.”

(5) In section EE 31(3), the words before the paragraphs are replaced by “If subsection (3A) applies, the rate is 1 of the following:”.

(6) After section EE 31(3), the following is added:

“Administrative requirements

“(4) For the purposes of subsection (2A)(b), a person must—

“(a) have available for the Commissioner documents dated on or before 20 May 2010 that evidence that the person had, on or before 20 May 2010, decided to purchase or construct the relevant item:

“(b) send to the Commissioner a statutory declaration that the person had, on or before 20 May 2010, decided to purchase or construct the relevant item.”

- (7) In section EE 31, in the list of defined terms, “Commissioner” is inserted.

50 Improvements

Section EE 37(3)(ab)(i) is replaced by the following:

- “(i) treating the improvement as an item, section EE 31(2A) does not apply, but section EE 31(3A) does apply; and”.

51 Application of sections EE 48 to EE 52

In section EE 44(1), in the words before the paragraphs, “person derives consideration” is replaced by “person has consideration”.

52 Consideration for purposes of section EE 44

- (1) Section EE 45(1) and (2) are replaced by the following:

“General rule

- “(1) For the purposes of section EE 44, the **consideration** equals the amount that a person derives excluding any GST charged if the person is a registered person, as modified by subsections (3) to (11) minus the amount (the **disposal cost**) that they incur in deriving that amount, to the extent to which the disposal cost—

“(a) is not allowed as a deduction to the person other than as a deduction for an amount of depreciation loss; and

“(b) is not counted in ‘the amount that a person derives’.

“GST for disposal costs

- “(1B) All amounts deducted or deductible by the person under section 20(3) of the Goods and Services Tax Act 1985 in relation to the disposal cost described in subsection (1) are subtracted from the disposal costs under that subsection.

“Consideration may be zero or negative

- “(2) For the purposes of section EE 44, the **consideration** may be zero or a negative amount.”

- (2) In section EE 45(3), in the words before the paragraphs, “derives a consideration that is not the item’s market value, the consideration for the purposes of section EE 44” is replaced by “has consideration that is not the item’s market value, the amount that the person derives”.
- (3) In section EE 45(6), “consideration that a person derives” is replaced by “amount that a person derives”.
- (4) In section EE 45(7), “consideration that a person derives” is replaced by “amount that a person derives”.
- (5) In section EE 45(8), “consideration that a person derives” is replaced by “amount that a person derives”.
- (6) In section EE 45(9),—
 - (a) in the words before the paragraphs, “consideration that a person derives” is replaced by “amount that a person derives”:
 - (b) in paragraph (a), “consideration that the person derives” is replaced by “amount that a person derives”.
- (7) In section EE 45(10), in the words before the paragraphs, “consideration that a person derives” is replaced by “amount that a person derives”.
- (8) In section EE 45(11), “consideration that a person derives” is replaced by “amount that a person derives”.

53 Events for purposes of section EE 44

- (1) In section EE 47(2), in the second sentence, “income year.” is replaced by “income year, and includes a change in use of an item for the purposes of the definition of **commercial fit-out** and a change in the status of a building related to an item for the purposes of that definition.”
- (2) Subsection (1) applies for the 2011–12 and later income years.

54 Cost: GST

- (1) In section EE 54(2), “subsection (3)” is replaced by “subsections (3) and (4)”.
- (2) Section EE 54(3) and (4) are replaced by the following:

“Deductions from output tax

- “(3) The item’s cost is reduced by the amount of any adjustment taken into account in the income year under section 20(3)(e) of the Goods and Services Tax Act 1985.

“Adjustments for output tax

- “(4) The item’s cost is increased by adding an amount of deductible output tax that the person has for the income year.”
- (3) In section EE 54, in the list of defined terms,—
- (a) “deductible output tax” is inserted:
 - (b) “taxable supply” is omitted.
- (4) Subsection (2) applies to taxable supplies made on or after 1 April 2011.

55 Election to use balance date used in foreign country

- (1) In section EG 1(10), in the definition of **foreign source income**, “that is not derived from New Zealand” is replaced by “that does not have a source in New Zealand”.
- (2) In section EG 1, in the list of defined terms,—
- (a) “derived from New Zealand” is omitted:
 - (b) “source in New Zealand” is inserted.

56 What is an excepted financial arrangement?

- (1) After section EW 5(3C), the following is inserted:

“Research and development agreement

- “(3D) An agreement between a person and another person (the **provider**) that the provider will provide property or services to the person in consideration for a payment to the provider by a public authority under a technology development grant, or technology transfer voucher, for the benefit of the person is an excepted financial arrangement for the person.”

- (2) After section EW 5(11), the following is inserted:

“Look-through companies

- “(11B) A look-through interest for a look-through company is an excepted financial arrangement.”

- (3) In section EW 5, in the list of defined terms, “public authority” is inserted.

- (4) In section EW 5, in the list of defined terms, “look-through interest” and “look-through company” are inserted.
- (5) Subsection (2) applies for income years beginning on or after 1 April 2011.

57 Superannuation schemes providing life insurance

- (1) Section EY 11(5) is replaced by the following:

“Nature of funds

- “(5) At all times in the income year, the fund must be 1 of the following kinds:
 - “(a) a fund established by an employer, or a group of employers who are associated, to provide benefits only to persons who are employees of, or related by employment to, such an employer, or to another associated employer who agrees after the fund’s establishment to make contributions to it:
 - “(b) a fund constituted under the Government Superannuation Fund Act 1956 that provides benefits only to persons who are employees of, or related by employment to, an employer who agrees or is required to contribute, or on whose behalf contributions are made, to the fund:
 - “(c) a fund constituted under the National Provident Fund Act 1950, the National Provident Fund Restructuring Act 1990, or the National Provident Fund Restructuring Amendment Act 1997 that has as its trustee the Board of Trustees of the National Provident Fund.”
- (2) Subsection (1) applies for the 2010–11 and later income years.

58 Outstanding claims reserving amount: non-participation policies not annuities

- (1) In section EY 24(2)(a)(ii) “but including amounts that were included in the closing sum insured for the calculation of mortality profit for the prior year or an earlier income year” is replaced by “but using a basis consistent with the one that the insurer used for tax purposes in that prior year (for example, if IBNR liability was not accounted for, for tax purposes, in the prior year, the opening balance calculation does not take into account IBNR liability)”.

- (2) Subsection (1) applies—
 - (a) on and after 1 July 2010, unless paragraph (b) applies:
 - (b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 in a return of income for the tax year corresponding to the first relevant income year.

59 Transitional adjustments: life risk

- (1) In section EY 30(3)(b), “subsection (5)(a) or (b)” is replaced by “subsection (5)(a), (b), or (c)”.
- (2) Section EY 30(3)(e) is replaced by the following:
 - “(e) either—
 - “(i) to the extent to which, looking through to the individual lives covered, the amount of life insurance cover at the finish of a cover review period, or at the finish of any shorter period if the life insurer chooses to measure within the cover review period, has not increased by more than the greater of 10% and the percentage change in the consumer price index for the relevant period, as compared to the amount of life insurance cover at the beginning of the relevant cover review period; or
 - “(ii) in the case of a policy that is life reinsurance, to the extent to which a relevant underlying life insurance policy is, or would be ignoring section EY 10(2), one that this subsection or subsection (2) applies to.”
- (3) In section EY 30(8)(b), “sections EY 24 to EY 27” is replaced by “section EY 25 or EY 26 (as applicable)”.
- (4) Subsections (1), (2), and (3) apply—
 - (a) on and after 1 July 2010, unless paragraph (b) applies:
 - (b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 in a return of income for the tax year corresponding to the first relevant income year.

60 Non-resident life insurers with life insurance policies in New Zealand

- (1) In section EY 48(2), the subsection heading is replaced by “*Income having source in New Zealand*”.
- (2) In section EY 48(2), “derived from New Zealand” is replaced by “that has a source in New Zealand”.
- (3) In section EY 48, in the list of defined terms,—
 - (a) “income derived from New Zealand” is omitted;
 - (b) “source in New Zealand” is inserted.

61 What this subpart does

- (1) After section FB 1(3), the following is added:
“*Look-through interests*”
- “(4) For the purposes of this subpart, **property** includes a look-through interest for a look-through company.”
- (2) In section FB 1, in the list of defined terms, “look-through interest” and “look-through company” are inserted.
- (3) Subsection (1) applies for income years beginning on or after 1 April 2011.

62 New section FB 10B inserted

- (1) After section FB 10, the following is inserted:
“**FB 10B Look-through companies**
“*When this section applies*”
“(1) This section applies for the purposes of sections HB 4 to HB 10 (which relate to transfers of interests) when a look-through interest for a look-through company is transferred on a settlement of relationship property.
“*Transferee treated as holding interest*”
“(2) The transferee is treated as having acquired the look-through interest on the date it was acquired by the transferor, and to have held it at all times up to the date of transfer.
“Defined in this Act: date of transfer, look-through interest, look-through company, settlement of relationship property”.
- (2) Subsection (1) applies for income years beginning on or after 1 April 2011.

63 What this subpart does

- (1) In section FC 1(2), the following is inserted in its appropriate alphabetical order:
“**property** includes a look-through interest for a look-through company”.
- (2) In section FC 1, in the list of defined terms, “look-through interest” and “look-through company” are inserted.
- (3) Subsection (1) applies for income years beginning on or after 1 April 2011.

64 What this subpart does

- (1) In section FE 1(1), “derived from New Zealand” is replaced by “that has a source in New Zealand”.
- (2) In section FE 1, in the list of defined terms,—
 - (a) “income derived from New Zealand” is omitted;
 - (b) “source in New Zealand” is inserted.

65 Threshold for application of interest apportionment rule

- (1) In section FF 4(1)(a), “\$50,000 or more; or” is replaced by “\$50,000 or more; and”.
- (2) Subsection (1) applies for the 2008–09 and later income years.

66 When amalgamating companies are parties to financial arrangement

- (1) Section FO 18(2) to (4) are replaced by the following:
“*Financial arrangement discharged*”
- “(2) The financial arrangement is, for the purposes of section EW 31 (Base price adjustment formula), treated as having been discharged immediately before the amalgamation. The consideration for the discharge is as follows:
“(a) on a resident’s restricted amalgamation,—
 - “(i) if the amalgamating company is solvent, the consideration is the accrued balance for the financial arrangement:
 - “(ii) if the amalgamating company is insolvent but is likely to be able to meet its obligations under the financial arrangement, the consideration is the accrued balance for the financial arrangement:

- “(iii) if the amalgamating company is insolvent and is unlikely to be able to meet its obligations under the financial arrangement, the consideration is the market value of the financial arrangement on the date of the amalgamation:
- “(b) on an amalgamation other than a resident’s restricted amalgamation, the consideration is the market value of the financial arrangement on the date of the amalgamation.
- “*When subsection (4) applies*
- “(3) Subsection (4) applies when an amalgamating company that is the borrower under the financial arrangement—
- “(a) is solvent; or
- “(b) is insolvent but is likely to be able to meet its obligations under the financial arrangement.
- “*No remission*
- “(4) The other party to the financial arrangement is not regarded as remitting an amount in excess of the consideration treated as paid for the discharge under subsection (2)(a)(i) or (ii) or (b), as applicable, merely by virtue of the discharge.
- “*When subsection (6) applies*
- “(5) Subsection (6) applies when an amalgamating company that is the borrower under the financial arrangement is insolvent and is unlikely to meet its financial obligations under the financial arrangement.
- “*Market value treated as paid*
- “(6) For the purposes of section EW 31, the financial arrangement is treated as discharged immediately before the amalgamation and the market value of the financial arrangement is treated as being paid by the amalgamating company to the other party to the financial arrangement.
- “*Amount remitted*
- “(7) For the purposes of subsection (6), the other party to the financial arrangement is treated as having remitted an amount equal to the excess over market value of the outstanding accrued balance for the financial arrangement, *see* section FO 20.”
- (2) In section FO 18, in the list of defined terms, “pay” is inserted.

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

67 Excessive remuneration to relatives

- (1) In section GB 23(2)(a), “in partnership” is replaced by “in partnership or has an effective look-through interest for a look-through company”.
- (2) In section GB 23(2)(b), “the partnership” is replaced by “the partnership or look-through company”.
- (3) In section GB 23, in the list of defined terms, “effective look-through interest” and “look-through company” are inserted.
- (4) Subsections (1) and (2) apply for income years beginning on or after 1 April 2011.

68 New section GB 25B inserted

- (1) After section GB 25, the following is inserted:

“GB 25B Excessive effective look-through interests

“When this section applies

- “(1) This section applies to the extent to which, for an income year,—
- “(a) a person (an **owner**) has an effective look-through interest for a look-through company (the **LTC**); and
- “(b) for the LTC, 2 or more owners are relatives, 1 of whom is under 20 years old (the **relevant relative**); and
- “(c) the Commissioner considers that the income arising from the application of section HB 1 (Look-through companies are transparent) for the relevant relative is excessive.

“Reallocation of effective look-through interests

- “(2) Despite section HB 1, the effective look-through interests for the person are the interests that the Commissioner considers reasonable for the income year or part of the income year, as applicable, without taking into account an amount provided to the relevant relative.

“Matters for Commissioner’s consideration

- “(3) The Commissioner may take into account each of the following matters when applying this section:

- “(a) the nature and extent of services rendered by the relevant relative:
- “(b) the value of the contributions made by the respective owners, by way of services, capital, or otherwise:
- “(c) any other relevant matters.

“Defined in this Act: effective look-through interest, income year, look-through company, relative”.

- (2) Subsection (1) applies for income years beginning on or after 1 April 2011.

69 Attribution rule: calculation

- (1) In section GB 29(2)(b), “apply.” is replaced by “apply:”, and the following is added:

“(c) if the associated entity is a look-through company, the associated entity is treated as a taxpayer and section HB 1 (Look-through companies are transparent) does not apply.”

- (2) In section GB 29, in the list of defined terms, “look-through company” is inserted.
- (3) Subsection (1) applies for income years beginning on or after 1 April 2011.

70 What this subpart does

- (1) Section HA 1(1)(b) is repealed.
- (2) Subsection (1) applies for income years beginning on or after 1 April 2011.

71 Section HA 3 repealed

- (1) Section HA 3 is repealed.
- (2) Subsection (1) applies for income years beginning on or after 1 April 2011.

72 Elections to become qualifying company

- (1) In section HA 5(1), “choose that the company is to become a qualifying company” is replaced by “choose, before the start of the grandparenting income year, that the company is to become a qualifying company”.
- (2) After section HA 5(1), the following is inserted:

“Extension of time in some cases

- “(1B) An election is treated as made before the start of the grandparenting income year for the purposes of subsection (1), if the relevant persons choose before the end of the time allowed by section 37 of the Tax Administration Act 1994 for providing a return for the company’s first income year, and—
- “(a) that income year is—
 - “(i) the grandparenting income year; and
 - “(ii) nominated under section HA 30(3); and
 - “(b) the company has not previously been required to provide a return of income.”
- (3) After section HA 5(4), the following is added:
- “Meaning of grandparenting income year*
- “(5) In this section, **grandparenting income year** means the income year before the first income year that starts on or after 1 April 2011.”
- (4) In section HA 5, in the list of defined terms, “grandparenting income year” is inserted.
- (5) Subsections (1), (2), and (3) apply for income years beginning on or after 1 April 2010.

73 New section HA 7B inserted

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

“HA 7B Grandparenting requirement

A qualifying company must have been a qualifying company at the end of the income year before the first income year that starts on or after 1 April 2011.

“Defined in this Act: income year, qualifying company”.

- (2) Subsection (1) applies for income years beginning on or after 1 April 2011.

74 Sections HA 10, HA 11(4), and HA 20, heading, and sections HA 24 to HA 27 repealed

- (1) Sections HA 10, HA 11(4), and HA 20, the heading before section HA 24, and sections HA 24 to HA 27 are repealed.
- (2) Subsection (1) applies for income years beginning on or after 1 April 2011.

75 When elections take effect

- (1) In section HA 30(3), “take effect” is replaced by “take effect, subject to section HA 5(1B)”.
- (2) Subsection (1) applies for income years beginning on or after 1 April 2010.

76 New section HA 33B inserted

- (1) After section HA 33, the following is inserted:

“HA 33B Transitional rules for look-through companies, partnerships, and sole traderships*“LTC election*

- “(1) All elections by shareholders under section HA 5 are revoked if, for the company and the relevant shareholders, a LTC election has been received by the Commissioner under section HB 13(3)(c) and (4) (LTC elections) for the first or second income year that starts on or after 1 April 2011.

“When revocation takes effect

- “(2) The revocation of the elections under subsection (1) takes effect at the beginning of the relevant income year.

“Notice of intention

- “(3) All elections by shareholders under section HA 5 are revoked if, for the company and the relevant shareholders, a notice of intention has been received by the Commissioner for the first or second income year that starts on or after 1 April 2011 under section HZ 4B(7)(a) or HZ 4D(4)(a) (which relate to transitions to partnerships and sole traderships).

“When revocation takes effect

- “(4) The revocation of the elections under subsection (3) takes effect at the beginning of the relevant income year.

“Defined in this Act: Commissioner, company, income year, shareholder”.

- (2) Subsection (1) applies for income years beginning on or after 1 April 2011.

77 Heading and sections HA 38 and HA 39 repealed

- (1) The heading before section HA 38 and sections HA 38 and HA 39 are repealed.

- (2) Subsection (1) applies for income years beginning on or after 1 April 2011.

78 New subpart HB inserted

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

“Subpart HB—Look-through companies

“**HB 1 Look-through companies are transparent**

“*When this section applies*

- “(1) This section applies for the purposes of this Act, other than the PAYE rules, the FBT rules, the NRWT rules, the RWT rules, the ESCT rules, and the RSCT rules, for a person in their capacity of owner of an effective look-through interest for a look-through company (the **LTC**), for an income year, if—

“(a) for the LTC, an LTC election described in section HB 13(1) and (2) has been received by the Commissioner under section HB 13(3) and (4) for the income year; and

“(b) the LTC meets the requirements in the definition of **look-through company** at all times in the income year; and

“(c) the election has not been revoked for the income year by an owner of a look-through interest for the LTC by notice received by the Commissioner before the start of the income year.

“*When this section applies: Commissioner’s discretion as to revocation*

- “(2) A revocation notice that is received by the Commissioner after the start of the income year is treated as received before the start of the income year if the Commissioner decides that exceptional circumstances are the sole cause of the lateness.

“*When this section applies: revocation ignored*

- “(3) An owner’s revocation notice for the income year is ignored for the purposes of this section and section HB 13(4)(a) if the owner stops having a look-through interest in the LTC and the new owner reverses the revocation notice before the start of the income year by notice to the Commissioner.

“Look-through for effective look-through interest

- “(4) For a person, unless the context requires otherwise,—
- “(a) the person is treated as carrying on an activity carried on by the LTC, and having a status, intention, and purpose of the LTC, and the LTC is treated as not carrying on the activity or having the status, intention, or purpose:
 - “(b) the person is treated as holding property that the LTC holds, in proportion to the person’s effective look-through interest, and the LTC is treated as not holding the property:
 - “(c) the person is treated as being party to an arrangement to which the LTC is a party, in proportion to the person’s effective look-through interest, and the LTC is treated as not being a party to the arrangement:
 - “(d) the person is treated as doing a thing and being entitled to a thing that the LTC does or is entitled to, in proportion to the person’s effective look-through interest, and the LTC is treated as not doing the thing or being entitled to the thing.

“Effective look-through interest

- “(5) For the purposes of this section, **effective look-through interest** means for a person and an LTC, treating the LTC as a company for the purposes of this subsection,—
- “(a) a person’s average daily look-through interest for the company for the income year, if there is no market value circumstance for the LTC and paragraph (b) does not apply:
 - “(b) a person’s look-through interest for the relevant time of look-through under subsection (4), if there is no market value circumstance for the LTC, and—
 - “(i) the assessable income of the LTC, ignoring this subpart, is or will be \$3,000,000 or more in a 12-month period including the relevant time of look-through, and the Commissioner has notified the LTC that look-through interests for the relevant time of look-through under subsection (4) must be used under this section:

- “(ii) all persons with look-through interests have agreed to use their look-through interests for the relevant time of look-through.
- “(c) if there is a market value circumstance for the LTC and paragraph (d) does not apply, the average of the following 2 amounts:
 - “(i) a person’s average daily look-through interest for the income year:
 - “(ii) a person’s average daily market value interest for the income year:
- “(d) if there is a market value circumstance for the LTC, and the assessable income and notification requirements described in paragraph (b)(i) are met, the average of the following 2 amounts:
 - “(i) a person’s look-through interest for the time of look-through under subsection (4):
 - “(ii) a person’s market value interest for the time of look-through under subsection (4).

“Defined in this Act: arrangement, assessable income, Commissioner, company, effective look-through interest, ESCT rules, FBT rules, income year, look-through company, look-through interest, market value circumstance, market value interest, NRWT rules, PAYE rules, RSCT rules, RWT rules

“HB 2 Previous income and expenditure or loss

Despite a person who has an effective look-through interest for a look-through company (the LTC) not having an interest at the relevant time, the person may be treated as deriving income or incurring an expenditure or loss which the LTC derived or incurred ignoring section HB 1, or would have derived or incurred ignoring section HB 1 if it had not ceased to exist. This section does not allow 2 deductions for 1 expenditure or loss, and may apply to income derived before the LTC becomes a look-through company.

“Defined in this Act: effective look-through interest, income, income year, look-through company

“HB 3 Loss balances extinguished

Despite sections HB 1 and HB 2, a loss balance under Part I (Treatment of tax losses) is cancelled if the loss balance arose in relation to an income year when a company was not a look-

through company, or when a company that amalgamates with a look-through company was not a look-through company.

“Defined in this Act: amalgamation, company, income year, look-through company, loss balance

“HB 4 General provisions relating to disposals

“Relationship between disposal under this section, disposal safe harbours, and subpart FB

- “(1) This section overrides sections HB 5 to HB 9. This section does not apply, and sections HB 5 to HB 9 do not apply, for disposals of owners’ interests under transactions to which subpart FB (Transfers of relationship property) applies or is treated as applying.

“Election for specified livestock disposed of to new owner

- “(2) Section HB 10 applies for an entering owner if the entering owner furnishes a return of income that applies the section.

“Permanent cessation

- “(3) A person is treated as disposing of all of their owner’s interests for a look-through company to a single third party for a payment equal to the interests’ market value, if the look-through company ceases to exist as an entity through liquidation, court order, or otherwise.

“Capital reduction

- “(4) A person is treated as disposing of all of their owner’s interests for a look-through company to a single third party for a payment equal to the interests’ market value to the extent to which an owner’s capital is reduced by a cancellation or a buy-back by the look-through company that is not pro rata for all owners.

“Receipt upon permanent cessation

- “(5) Anything received by an owner in relation to permanent cessation or capital reduction, as described in subsection (3) or (4), is ignored.

“Cessation due to revocation or otherwise

- “(6) A person is treated as disposing of all of their owner’s interests for a look-through company to a single third party for a payment equal to the interests’ market value, if the look-through company ceases to be a look-through company because of a

revocation or otherwise, but excluding cessation as described in subsection (3). The company is treated as acquiring all of the person's interests immediately after the cessation, from the third party, for a payment equal to the interests' market value, and for the purposes of section CB 15 (Transactions between associated persons), the person disposing of, and the company acquiring, the interests are treated as associated persons.

“Defined in this Act: associated person, dispose, look-through company, owner's interests, pay, return of income

“HB 5 Disposal of owner's interests

“*When this section applies*

- “(1) This section applies when a person (the **exiting owner**) disposes of some or all of their owner's interests (the **current interests**) for a look-through company, if the amount calculated using the formula is less than zero—

disposal payment + previous payments – (gross tax value – liabilities) – \$50,000.

“*Definition of items in formula*

- “(2) In the formula,—

“(a) **disposal payment** is the total amount of consideration paid or payable to the exiting owner for the current interests:

“(b) **previous payments** is the total amount of consideration paid or payable to the exiting owner for other disposals of some or all of their owner's interests (the **other interests**) that have occurred in the year before the disposal of the current interests:

“(c) **gross tax value** is the total of—

“(i) the value under this Act of the current interests and other interests at the time the relevant interest is disposed of, to the extent to which the interests are revenue account property or depreciable property or financial arrangements:

“(ii) the market value of the current interests and other interests at the time the relevant interest is disposed of, to the extent to which the interests are not revenue account property or depreciable property or financial arrangements:

“(d) **liabilities** is the amount of liabilities under generally accepted accounting practice at the time the relevant interest is disposed of, calculated by reference to the exiting owner’s ownership share for the relevant interest.

“Exiting owner: excluded payment

“(3) The disposal payment described in subsection (2)(a) is excluded income of the exiting owner.

“Exiting owner: no deduction

“(4) The exiting owner is denied a deduction in relation to the current interests for the income year in which the disposal of the interests occurs and later income years to the extent to which the entering owner is allowed a deduction because of subsection (6).

“Entering owner: no deduction

“(5) An entering owner is denied a deduction for the disposal payment described in subsection (2)(a).

“Entering owner: stepping in

“(6) For the purposes of calculating the income and deductions of an entering owner for the part of the income year after the disposal of the interests occurs and later income years (the **post-disposal periods**), the entering owner is treated for the post-disposal periods as if they had originally acquired and held the current interests, not the exiting owner. However, this subsection does not apply to a deduction carried forward under section HB 12.

“Relationship with section HB 4

“(7) Section HB 4 overrides this section.

“Defined in this Act: deduction, depreciable property, dispose, entering owner, excluded income, financial arrangement, income tax liability, look-through company, owner’s interests, pay, return of income, revenue account property, year

“**HB 6 Disposal of trading stock**

“When this section applies

“(1) This section applies when a person (the **exiting owner**) disposes of some or all of their owner’s interests for a look-through company, to the extent to which those interests in-

clude trading stock that is not livestock, and, for the income year of disposal, the total turnover of the look-through company, ignoring section HB 1, is \$3,000,000 or less.

“Exiting owner: excluded payment

- “(2) The amount of consideration paid or payable to the exiting owner for the trading stock is excluded income of the exiting owner.

“Exiting owner: no deduction

- “(3) The exiting owner is denied a deduction in relation to the trading stock for the income year in which the disposal of the trading stock occurs and later income years, to the extent to which the entering owner is allowed a deduction because of subsection (5).

“Entering owner: no deduction

- “(4) The entering owner is denied a deduction for the amount of consideration paid or payable to the exiting owner for the trading stock.

“Entering owner: stepping in

- “(5) For the purposes of calculating the income tax liability of an entering owner, the entering owner is treated as if they had acquired and held the trading stock, not the exiting owner.

“Relationship with section HB 4

- “(6) Section HB 4 overrides this section.

“Defined in this Act: deduction, dispose, entering owner, excluded income, income tax liability, income year, look-through company, owner’s interests, pay, trading stock, turnover

“HB 7 Disposal of depreciable property

“When this section applies

- “(1) This section applies when a person (the **exiting owner**) disposes of some or all of their owner’s interests for a look-through company, to the extent to which those interests include an item of depreciable property that is not depreciable intangible property, and the total cost of the item when it was first acquired by the look-through company (whether or not it was at that time a look-through company) is \$200,000 or less.

“Exiting owner: excluded payment

- “(2) The amount of consideration paid or payable to the exiting owner for the depreciable property is excluded income of the exiting owner.

“Exiting owner: no deduction

- “(3) The exiting owner is denied a deduction in relation to the depreciable property for the income year in which the disposal of the depreciable property occurs and later income years, to the extent to which the entering owner is allowed a deduction because of subsection (5).

“Entering owner: no deduction

- “(4) The entering owner is denied a deduction for the amount of consideration paid or payable to the exiting owner for the depreciable property.

“Entering owner: stepping in

- “(5) For the purposes of calculating the income tax liability of an entering owner for the part of the income year after the disposal of the depreciable property occurs and later income years (the **post-disposal periods**), the entering owner is treated for the post-disposal periods as if they had originally acquired and held the depreciable property, not the exiting owner.

“Relationship with section HB 4

- “(6) Section HB 4 overrides this section.

“Defined in this Act: acquire, amount, deduction, depreciable intangible property, depreciable property, dispose, entering owner, excluded income, income tax liability, income year, look-through company, owner’s interests, pay

“HB 8 Disposal of financial arrangements and certain excepted financial arrangements

“When this section applies

- “(1) This section applies when a person (the **exiting owner**) disposes of some or all of their owner’s interests for a look-through company, to the extent to which those interests include a financial arrangement or an excepted financial arrangement described in section EW 5(10) (What is an excepted financial arrangement?) and, ignoring section HB 1,—

- “(a) the purpose for which the financial arrangement or excepted financial arrangement was entered into was necessary and incidental to the business of the look-through company; and
- “(b) the owners do not derive income from a business of holding financial arrangements.

“Exiting owner: excluded payment

- “(2) The amount of consideration paid or payable to the exiting owner for the relevant financial arrangement or excepted financial arrangement is excluded income of the exiting owner. The exiting owner is, for the relevant financial arrangement, a party that is not required to calculate a base price adjustment, despite section EW 29 (When calculation of base price adjustment required).

“Exiting owner: no deduction

- “(3) The exiting owner is denied a deduction in relation to the relevant financial arrangement or excepted financial arrangement for the income year in which the disposal of the financial arrangement or excepted financial arrangement occurs and later income years.

“Entering owner: no deduction

- “(4) The entering owner is denied a deduction for the amount of consideration paid or payable to the exiting owner for the relevant financial arrangement or excepted financial arrangement.

“Entering owner: stepping in

- “(5) For the purposes of calculating the income tax liability of an entering owner for the part of the income year after the disposal of the relevant financial arrangement or excepted financial arrangement occurs and later income years (the **post-disposal periods**), the entering owner is treated for the post-disposal periods as if they had acquired and held the financial arrangement or excepted financial arrangement, not the exiting owner.

“Relationship with section HB 4

- “(6) Section HB 4 overrides this section.

“Defined in this Act: business, deduction, dispose, entering owner, excepted financial arrangement, excluded income, financial arrangement, income tax liability, income year, look-through company, owner’s interests, pay

“HB 9 Disposal of short-term agreements for sale and purchase

“When this section applies

- “(1) This section applies when a person (the **exiting owner**) disposes of some or all of their owner’s interests for a look-through company, to the extent to which those interests include a short-term agreement for sale and purchase.

“Exiting owner: excluded payment

- “(2) The amount of consideration paid or payable to the exiting owner for the short-term agreement for sale and purchase is excluded income of the exiting owner.

“Exiting owner: no deduction

- “(3) The exiting owner is denied a deduction in relation to the short-term agreement for sale and purchase, to the extent to which the entering owner is allowed a deduction because of subsection (5).

“Entering owner: no deduction

- “(4) The entering owner is denied a deduction for the amount of consideration paid or payable to the exiting owner for the short-term agreement for sale and purchase.

“Entering owner: stepping in

- “(5) For the purposes of calculating the income tax liability of an entering owner for the part of the income year after the disposal of the short-term agreement for sale and purchase occurs and later income years (the **post-disposal periods**), the entering owner is treated for the post-disposal periods as if they had originally acquired and held the short-term agreement for sale and purchase, not the exiting owner.

“Relationship with section HB 4

- “(6) Section HB 4 overrides this section.

“Defined in this Act: deduction, dispose, entering owner, excluded income, income tax liability, income year, look-through company, owner’s interests, pay, short-term agreement for sale and purchase

“HB 10 Disposal of livestock

“When this section applies

- “(1) This section applies when a person disposes of some or all of their owner’s interests to an entering owner and section

HB 4(2) applies, to the extent to which those interests include specified livestock and that specified livestock includes female breeding livestock and, for the income year, the owners use—

- “(a) the national standard cost scheme for specified livestock, described in section EC 22 (National standard cost scheme); or
- “(b) the cost price method for specified livestock, described in section EC 25 (Cost price, replacement price, or market value).

“Entering owner’s cost base

- “(2) Section EC 26B (Entering partners’ cost base) may apply to the entering owner for the purposes of determining the value of the specified livestock at the end of an income year for the purposes of section EC 2 (Valuation of livestock), treating the entering owner as an entering partner and making other necessary modifications to section EC 26B to give effect to the purpose of this section (for example, references in section EC 26B to ‘partners’ should be modified to references to ‘owners’ and references to ‘section HG 10’ should be modified to references to ‘section HB 10’).

“Defined in this Act: amount, cost price, dispose, entering owner, entering partner, income year, look-through company, national standard cost scheme, owner’s interests, specified livestock

“HB 11 Limitation on deductions by persons with interests in look-through companies

“When this section applies

- “(1) This section applies for a look-through company (the LTC) and an income year when, but for this section, a deduction by virtue of section HB 1 or HB 12(2) or (3) would be allowed to a person who has an effective look-through interest for the LTC.

“No deduction

- “(2) The person is denied the deduction for an income year to the extent to which their look-through company deduction for the income year is greater than the amount (the **owner’s basis**) calculated using the formula in subsection (3) at the end of the income year.

“Owner’s basis

- “(3) For the purposes of subsection (2), the amount that is the owner’s basis is calculated using the following formula:

investments – distributions + income – deductions – disallowed amount.

“Definition of items in formula

- “(4) The items in the formula are defined in subsections (5) to (9).

“Investments

- “(5) **Investments** is the total of—

- “(a) the market value of a person’s shares in the LTC at the time that the person purchases or subscribes for them;
- “(b) amounts that the LTC is debtor for in relation to the person, including a loan to the LTC and a credit balance in a current account;
- “(c) the secured amounts, if not accounted for under paragraph (b).

“Distributions

- “(6) **Distributions** is the market value of distributions to the person from the LTC, including loans made to the person from the LTC and payments to which section DC 3B (Payments to working owners) does not apply.

“Income

- “(7) **Income** is the total of—

- “(a) income that the person has by virtue of section HB 1 in the income year and previous income years, excluding dividends paid by a FIF for which the person has FIF income to the extent to which those dividends are equal to or less than the person’s FIF income for the relevant income year;
- “(b) capital gain amounts under section CD 44(7)(a) (Available capital distribution amount) that the person would have by virtue of section HB 1 in the income year and previous income years, if the person were treated as a company for the purposes of section CD 44(7)(a), unless the gain is accounted for under paragraph (a);
- “(c) assessable income that the person has in previous income years from goods and services they contributed to

the LTC, if the income is not accounted for under subsection (5) or paragraph (a) or (b) of this subsection.

“Deductions

“(8) **Deductions** is the total of—

“(a) expenditure or loss in previous income years, to the extent to which the expenditure or loss is incurred by virtue of section HB 1 in the person deriving income by virtue of section HB 1, excluding any deductions denied in those previous years under this section:

“(b) capital loss amounts under section CD 44(9) that the person would have by virtue of section HB 1 in the income year and previous income years, if the person is treated as a company for the purposes of section CD 44(9), unless the loss is accounted for under paragraph (a):

“(c) deductions that the person is allowed in previous income years in relation to assessable income described in subsection (7)(c), if the deduction is not accounted for under subsection (6) or paragraph (a) or (b) of this subsection.

“Disallowed amount

“(9) **Disallowed amount** is the amount of investments, as defined in subsection (5), made by the person within 60 days of the end of the income year, if those investments are or will be distributed or reduced within 60 days of the end of the income year, but an amount of investment made by the person within 60 days of the end of the income year is not a disallowed amount if the total amount distributed or reduced within 60 days of the end of the income year is \$10,000 or less.

“Exclusion

“(10) This section does not deny a person (the **exiting person**) a deduction that is equal to or less than the amount of net income that the exiting person has for the amount paid or payable to the exiting person for the disposal of their owner’s interests, ignoring other transactions.

“Relationship with subject matter

“(11) This section is modified by section HZ 4C (Qualifying companies: transition into look-through companies).

“Some definitions

“(12) In this section,—

“**look-through company deduction** means, for the person and the income year, the amount of the deductions that the person would be allowed if they were treated as having only income and deductions arising from the application of this sub-part

“**secured amounts** means, for the person, the lesser of—

“(a) the amount of the look-through company’s debt ignoring section HB 1 (the **debt**) that the person or an associated person secures by a guarantee or indemnity:

“(b) the amount that results from dividing the amount described in paragraph (a) by the number of persons who secure by guarantee or indemnity on similar terms to the 1 described in paragraph (a), excluding the look-through company:

“(c) the amount that is the market value of property against which the guarantee or indemnity described in paragraph (a) may be enforced, treating the person’s owner’s interests as having a market value of zero:

“(d) the proportion of the amount described in paragraph (c) that is attributable to the person in the case of a number of persons securing the debt by guarantee or indemnity on similar terms to the 1 described in paragraph (a), excluding the look-through company.

“Defined in this Act: amount, assessable income, associated person, company, deduction, dispose, dividend, effective look-through interest, FIF, FIF income, income, income year, loan, look-through company, look-through company deduction, loss, net income, net loss, owner’s interests, pay, secured amounts, share

“**HB 12 Limitation on deductions by owners of look-through companies: carry-forward**

“When this section applies

“(1) This section applies when, for an income year, a person is denied a deduction under section HB 11.

“Carry-forward: conditional on continued existence of look-through company and holding of effective look-through interest

- “(2) The person is allowed a deduction, for an amount for which the person is denied a deduction under section HB 11, for the income year (the **later year**) after the income year for which it is denied under section HB 11, unless—
- “(a) the look-through company ceases to be a look-through company in the later year:
 - “(b) the person ceases to have an effective look-through interest in the later year.

“Carry-forward: resumption

- “(3) If a person would have been allowed a deduction for an amount but for the application of subsection (2)(a) or (b) for the later year, they are allowed a deduction for the amount for the first income year after the later year in which either they resume an effective look-through interest for the look-through company, or the relevant company resumes being a look-through company. However, the amount of that deduction is reduced by the total amount allowed as a deduction under subsections (4) and (5).

“Exception for deductions against continuing company dividends

- “(4) Despite subsection (2), the person is allowed a deduction for the later year for an amount (the **protected amount**) for which they would have been allowed a deduction but for the application of subsection (2)(a) or (b) for the later year to the extent to which the protected amount is equal to or lesser than the dividends received by the person from the company for the later year.

“Further deductions against continuing company dividends

- “(5) For an income year after the later year, an amount equal to the protected amount reduced by the total of deductions allowed in income years before the income year under subsection (4) and this subsection, is allowed as a deduction for the person to the extent to which the amount is equal to or less than the dividends received by the person from the company for the income year.

“Relationship with subject matter

- “(6) A deduction allowed under this section, other than under subsection (4) or (5), is subject to section HB 11, to the extent to which that section applies to the deduction and the relevant person.

“Defined in this Act: amount, deduction, dividend, effective look-through interest, income year, look-through company

“HB 13 LTC elections*“LTC elections*

- “(1) For the purposes of section HB 1, an LTC election (the **election**) is a notice that—
- “(a) is signed and dated by a director of the company that becomes a look-through company (the **LTC**) or other agent with appropriate authority; and
 - “(b) is in the form prescribed by the Commissioner; and
 - “(c) specifies an income year beginning on or after 1 April 2011 for which it may first operate; and
 - “(d) has attached to it notices—
 - “(i) signed and dated by all persons who, on the date of signing the election, own look-through interests in the LTC; and
 - “(ii) evidence unanimous agreement of the owners in choosing to apply section HB 1.

“Legal incapacities

- “(2) If a person owns a look-through interest in the LTC, and either they are under 18 years old with a guardian or a contract they enter into could be unenforceable, cancelled, void, or voidable due to any legal incapacity other than age, the notice requirement in subsection (1)(d) is modified so as to require a guardian, person with power of attorney, or other legal representative to sign and date the written notice, instead of the person.

“Time of receipt of LTC elections

- “(3) For the purposes of section HB 1, the election—
- “(a) must be received by the Commissioner before the start of the income year specified in the election; or

- “(b) in the case of a company that has not previously been required to file a return of income for a year before the income year specified in the election, must be received by the Commissioner before the last day for filing the return of income required by section 42B of the Tax Administration Act 1994 for the year specified in the election; or
- “(c) in the case of a company that was a qualifying company that first becomes a look-through company for the first or second income year that starts on or after 1 April 2011, must be received by the Commissioner within 6 months of the start of the relevant transitional income year described in section HZ 4C(1) (Qualifying companies: transition into look-through companies).

“Income year for which LTC elections are treated as received

- “(4) For the purposes of section HB 1, the election is treated as received for the first relevant income year described in subsection (3) and for each income year after that one, except it is treated as not received by the Commissioner for an income year (the **income year**) and subsequent income years if—
 - “(a) the election has been revoked for the income year under section HB 1:
 - “(b) the LTC does not meet the requirements in the definition of **look-through company** at all times in the income year:
 - “(c) the income year is 1 of the 2 income years straight after an income year for which either the LTC ceases to be a look-through company or the relevant election for the LTC is revoked.

“Commissioner’s discretion as to LTC elections

- “(5) An election that is late or does not have each person signing and dating as required by subsections (1)(b) and (2) is treated as an election that has been received by the Commissioner for the income year under subsection (3) but subject to subsection (4), if all relevant persons sign and date it during the income year it may first operate, and the Commissioner decides

that exceptional circumstances are the sole cause of the lateness or failure to sign and date.

“Defined in this Act: Commissioner, company, director, income year, look-through company, look-through interest, notice, qualifying company, return of income”.

- (2) Subsection (1) applies—
- (a) for income years beginning on or after 1 April 2011:
 - (b) for the purposes of the Commissioner receiving LTC elections, on and after the date of enactment of the Taxation (GST and Remedial Matters) Act 2010.

79 Who is a settlor?

After section HC 27(1)(c), the following is inserted:

“(cb) section MB 7 (Family scheme income of settlor of trust); and”.

80 Persons buying goods from overseas

- (1) In section HD 29(2)(c), “derived from New Zealand” is replaced by “having a source in New Zealand”.
- (2) In section HD 29, in the list of defined terms,—
- (a) “derived from New Zealand” is omitted:
 - (b) “source in New Zealand” is inserted.

81 Limitation on deductions by partners in limited partnerships

- (1) In section HG 11(11), “sections HZ 3 and HZ 4” is replaced by “sections HZ 3, HZ 4, and HZ 4B”.
- (2) Subsection (1) applies for income years beginning on or after 1 April 2011.

82 Limitation on deductions by partners in limited partnerships: carry-forward

- (1) In section HG 12(2), “the income year after the one for which it is denied under section HG 11” is replaced by “the income year (the **later income year**) after the one for which it is denied under section HG 11, unless—”, and the following is added:
- (a) the limited partnership ceases to be a limited partnership in the later year:

“(b) the partner ceases to be a partner in the later year”.

(2) After section HG 12(2), the following is inserted:

“Carry-forward: resumption

“(2B) If a person would have been allowed a deduction but for the application of subsection (2)(b) for the later year, they are allowed a deduction for the amount for the first income year after the later year in which they resume being a partner in the limited partnership.”

83 Investor interest size requirement

(1) Section HL 9(3), other than the heading, is replaced by the following:

“(3) An entity with an investor holding of more than 20% of the total portfolio investor interests in a class does not breach the investor interest size requirement if the investor is listed in subsection (4).”

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

84 New section HL 19B inserted

(1) After section HL 19, the following is inserted:

“HL 19B Treatment of certain provisions made by portfolio tax rate entity

“When this section applies

“(1) This section applies for the purposes of section HL 19 when—

“(a) a portfolio tax rate entity—

“(i) is likely to have future income:

“(ii) makes a provision for future expenditure or loss; and

“(b) the amount—

“(i) is reflected in the entity’s valuation of portfolio investor interests; or

“(ii) if subparagraph (i) does not apply, is shown in its financial statements.

“Future amounts

“(2) For the purposes of determining an amount for a portfolio allocation period under section HL 19(3), a portfolio tax rate entity may take account of an amount of future income or future expenditure or loss that is—

- “(a) for future income, an amount that, when derived, would be class assessable income under section HL 19(4)(a):
- “(b) for future expenditure or loss,—
 - “(i) an expense likely to be incurred by the entity in the tax year in which the portfolio allocation period falls, or within 93 days after the end of the tax year; and
 - “(ii) an amount that, when incurred, would be a class deduction under section HL 19(4)(b).

“Reasonable estimation

- “(3) For the purposes of subsection (2), the entity must make a reasonable estimate of the amount and must be able to demonstrate, if required, the reasonableness of the estimation by—
 - “(a) explaining why and when the income is likely to be derived or the expense is likely to be incurred, as applicable; and
 - “(b) providing the calculation method and actual calculations used to determine the amount, with details showing why the method is appropriate.

“Credit impairment provisions

- “(4) A portfolio tax rate entity may take account of a credit impairment provision under this section but only if the provision is counted as a credit impairment provision under NZIAS 39. However, the time limit set out in subsection (2)(b)(i) does not apply in relation to a credit impairment provision.

“Defined in this Act: amount, deduction, income, NZIAS 39, portfolio allocation period, portfolio investor interest, portfolio tax rate entity, tax year”.

- (2) Subsection (1) does not apply to a portfolio tax rate entity in relation to a tax position taken by the entity—
 - (a) in the period from 1 April 2008 to the date of Royal assent of this Act; and
 - (b) in relation to the attribution of income to investors in the entity and the determination of net amounts in section HL 19; and
 - (c) relying on the rules related to portfolio investment entities as they were before the amendment made by subsection (1).

85 Foreign PIE equivalents

- (1) Section HM 3(e) is replaced by the following:
 - “(e) if it has investors who are resident in New Zealand, those investors meet the requirements relating to investor interests in section HM 15 taking into account the limitations under sections HM 21(2) to (4) and HM 22.”
- (2) Subsection (1) applies for the 2010–11 and later income years.

86 What is an investor class?

- (1) In section HM 5(4)(a), “amount contributed to it:” is replaced by “amount contributed to it; and”.
- (2) In section HM 5, in the defined terms list, “investor interest” is omitted.
- (3) Subsection (1) applies for the 2010–11 and later income years.

87 Intended effects for multi-rate PIEs and investors

- (1) In section HM 6(2)(b), “for which the PIE has a tax liability” is replaced by “for which the PIE has no tax liability”.
- (2) Subsection (1) applies for the 2010–11 and later income years.

88 Collective schemes

- (1) In section HM 9(d), “held in the fund.” is replaced by “held in the fund:”, and the following is added:
 - “(e) the trustees of a group investment fund in relation to income derived by them to the extent to which the income is not treated as income derived by a company under paragraph (a).”
- (2) Subsection (1) applies for the 2010–11 and later income years.

89 Maximum investors’ interests

- (1) In section HM 15, in the section heading, “investors’ interests” is replaced by “investor interests”.
- (2) In section HM 15(1), “total interests of investors in the class” is replaced by “total investor interests in the class”.
- (3) In section HM 15, in the list of defined terms, “investor interest” is inserted.

90 Exceptions for certain investors

- (1) In section HM 21(2), in the subsection heading “*in non-listed PIEs*” is omitted.
- (2) In section HM 21(2), “other than a listed PIE” is omitted.
- (3) Section HM 21(3) is repealed.
- (4) Subsections (1) to (3) apply for the 2010–11 and later income years.

91 Exceptions for certain funds

- (1) In section HM 22(1), “a PIE” is replaced by “an entity”.
- (2) Subsection (1) applies for the 2010–11 and later income years.

92 Exceptions for foreign PIE equivalents

In section HM 23(1)(b), “investors’ interests” is replaced by “investor interests”.

93 Rules for multi-rate PIEs

In section HM 31(1)(c), “investors’ interests” is replaced by “investor interests of investors”.

94 Determining net amounts and taxable amounts

- (1) Section HM 35(3)(a) is replaced by the following:
 - “(a) **assessable income** is the total amount of the PIE’s assessable income attributed to the class for the attribution period in the manner referred to in subsection (8), including any tax credits received for the income:”.
- (2) In section HM 35(8)(a), “investors’ interests” is replaced by “investor interests”.
- (3) Subsections (1) and (2) apply for the 2010–11 and later income years.

95 New section HM 35B inserted

- (1) After section HM 35, the following is inserted:

“HM 35B Treatment of certain provisions made by multi-rate PIEs

“When this section applies

- “(1) This section applies for the purposes of section HM 35 when—

- “(a) a multi-rate PIE—
 - “(i) is likely to have future income:
 - “(ii) makes a provision for future expenditure or loss; and
- “(b) the amount—
 - “(i) is reflected in the PIE’s valuation of portfolio investor interests; or
 - “(ii) if subparagraph (i) does not apply, is shown in its financial statements.

“*Future amounts*

- “(2) For the purposes of determining a net amount under section HM 35(2) for an attribution period, a multi-rate PIE may take account of an amount of future income or future expenditure or loss that is—
 - “(a) for future income, an amount that, when derived, would be assessable income under section HM 35(3)(a):
 - “(b) for future expenditure or loss,—
 - “(i) an expense likely to be incurred by the PIE in the tax year in which the attribution period falls, or within 93 days after the end of the tax year; and
 - “(ii) an amount that, when incurred, would be a deduction under section HM 35(3)(b).

“*Reasonable estimation*

- “(3) For the purposes of subsection (2), the PIE must make a reasonable estimate of the amount and must be able to demonstrate, if required, the reasonableness of the estimation by—
 - “(a) explaining why and when the income is likely to be derived or the expense is likely to be incurred, as applicable; and
 - “(b) providing the calculation method and actual calculations used to determine the amount, with details showing why the method is appropriate.

“*Credit impairment provisions*

- “(4) A multi-rate PIE may take account of a credit impairment provision under this section but only if the provision is counted as a credit impairment provision under NZIAS 39. However,

the time limit set out in subsection (2)(b)(i) does not apply in relation to a credit impairment provision.

“Defined in this Act: amount, attribution period, deduction, income, investor interest, multi-rate PIE, NZIAS 39, tax year”.

- (2) Subsection (1) applies for the 2010–11 and later income years. However, subsection (1) does not apply to a multi-rate PIE in relation to a tax position taken by the PIE—
- (a) in the period from 1 April 2010 to the date of Royal assent of this Act; and
 - (b) in relation to the attribution of income to investors in the PIE and the determination of net amounts in section HM 35; and
 - (c) relying on the PIE rules as they were before the amendment made by subsection (1).

96 When income cannot be attributed

- (1) After section HM 37(2), the following is added:

“Relationship with section CS 1

- “(3) For the purposes of subsection (1), income derived under section CS 1 (Withdrawals) by a multi-rate PIE that is a superannuation fund is treated as income in which no investor has an investor interest.”
- (2) Section HM 37(3) is repealed.

97 Quarterly calculation option

- (1) In section HM 43(3) and (4), “an investor’s interest” is replaced by “the investor interest of an investor” in each place where it appears.
- (2) Subsection (1) applies for the 2010–11 and later income years.

98 Calculation of tax liability or tax credit of multi-rate PIEs

- (1) In section HM 47(2)(a), “an interest” is replaced by “an investor interest”.
- (2) Subsection (1) applies for the 2010–11 and later income years.

99 Adjustments to investors’ interests or to distributions

- (1) In section HM 48, in the section heading, “investors’ interests” is replaced by “investor interests”.

- (2) In section HM 48(1), in the introductory words before paragraph (a), “an adjustment to an investor’s interest” is replaced by “an adjustment to the investor interest of the investor”.
- (3) In section HM 48(1)(a), “the investor’s interest” is replaced by “the investor interest of the investor”.
- (4) Subsections (1) to (3) apply for the 2010–11 and later income years.

100 Certain exiting investors zero-rated

- (1) In section HM 61(a), “the interest of the investor” is replaced by “the investor interest of the investor”.
- (2) Subsection (1) applies for the 2010–11 and later income years.

101 Exit levels for investors

- (1) In section HM 62, “the investor’s interest” is replaced by “the investor interest of the investor”.
- (2) Subsection (1) applies for the 2010–11 and later income years.

102 Bankruptcy-remote property during application of section HR 9

- (1) In section HR 9B, “the extent that” is replaced by “the extent to which”.
- (2) In section HR 9B(a), “such tax debt” is replaced by “the tax debt”.
- (3) In section HR 9B(b), “such property” is replaced by “the property”.

103 Trusts that may become complying trusts

- (1) In section HZ 2(2), “that is derived from outside New Zealand, or derived from New Zealand” is replaced by “having a source outside New Zealand, or having a source in New Zealand”.
- (2) In section HZ 2, in the list of defined terms,—
 - (a) “derived from New Zealand” is omitted:
 - (b) “source in New Zealand” is inserted.

104 New sections HZ 4B to HZ 4D inserted

- (1) After section HZ 4, the following is inserted:

“HZ 4B Qualifying companies: transition into partnership

“When this section applies

- “(1) This section applies when a QCP transitional process is carried out for a qualifying company or companies for the first or second income year that starts on or after 1 April 2011, whichever is relevant (the **transitional income year**).

“QCP transitional process: retrospective rule

- “(2) From the first day of the transitional income year to the first day of existence for the partnership that effectively replaces the qualifying company or companies under a QCP transitional process, the partnership is treated as existing and having the assets and liabilities of the qualifying company or companies, and associated rights and obligations, for that period. On and after the first day of the transitional year, the existence of the qualifying company or companies is ignored for the purposes of the Inland Revenue Acts except to the extent necessary to give effect to this section.

“Taxation continuity

- “(3) The moving to the partnership of the assets, liabilities, and associated rights and obligations, under a QCP transitional process is treated for the purposes of the Inland Revenue Acts as a unique form of transference for such assets, liabilities, rights, and obligations, with the following effects:
- “(a) the moving to the partnership of the assets, liabilities, and associated legal rights and obligations, is treated as not being a transfer of such assets, liabilities, rights, and obligations:
 - “(b) the qualifying company or companies has, before the first day of the transitional income year, the relevant tax position in relation to the assets and liabilities, and associated rights and obligations (the **historical tax positions**):
 - “(c) the partnership is treated as stepping into the place of the qualifying company or companies, and as having, on and after the first day of the transitional income year,—
 - “(i) the qualifying company’s or companies’ historical tax positions; and

- “(ii) the tax position in relation to the assets and liabilities, and associated rights and obligations, that it would have if it had always had the historical tax positions:
 - “(d) the qualifying company has no tax position in relation to the assets and liabilities, and associated rights and obligations, on and after the first day of the transitional income year:
 - “(e) all memorandum account balances and other tax accounting amounts for the qualifying company before the first day of the transitional income year are ignored and have no effect on and after that day (for example, the qualifying company has no effective ASC on and after the first day of the transitional income year).
- “*Transparency*
- “(4) Subsections (2) and (3) are applied immediately before section HG 2 (Partnerships are transparent) applies.
- “*Initial basis*
- “(5) For the purposes of applying sections HG 11 and HG 12 (which relate to limited partnership deduction rules) to the partners of a limited partnership described in subsection (2), all of the partners must choose 1 of the 2 following methods for calculating their partner’s basis under section HG 11(3):
 - “(a) they may choose to use the market value or the accounting book value of the amounts described in section HG 11(3), as at the end of the income year before the transitional income year; or
 - “(b) they may choose to apply section HG 11(3) as if the qualifying company had always been a limited partnership and all relevant rules relating to limited partnerships had always existed, applying those rules with any necessary modifications.
- “*Initial basis not less than zero*
- “(6) If the application of sections HG 11 and HG 12, as modified by this section, calculates a partner’s basis as less than zero, then the partner’s basis is treated as being zero.

“Meaning of QCP transitional process

“(7) **QCP transitional process** means a process, for which all outcomes are achieved in an income year (the **transitional income year**), by which a company or companies that are all qualifying companies at the end of the income year before the transitional income year transform into a partnership. The process must have the following outcomes:

“(a) the Commissioner receives a notice from the qualifying company or companies before the day that is 6 months after the start of the transitional income year, stating an intention to revoke the company’s or companies’ qualifying company status and to complete the QCP transitional process relating to the partnership for the transitional income year; and

“(b) the partners, or in the case of a limited partnership, the partners other than a company that is a general partner, are the same persons who, at the end of the income year before the transitional income year, were the shareholders of the qualifying company or companies, ignoring any person who dies in the transitional year; and

“(c) all assets and liabilities, and associated rights and obligations, of the qualifying companies are moved to the partnership, excluding those that are inappropriate for a partnership; and

“(d) each partner must have the same net position in the partnership as to relevant assets and liabilities, and associated rights and obligations, as would arise on the winding up of the qualifying company or companies at the end of the income year before the transitional income year, treating any person who dies in the transitional year as still being a partner.

“Defined in this Act: ASC, Commissioner, company, income year, Inland Revenue Acts, limited partnership, memorandum account, partner, partnership, QCP transitional process, qualifying company, tax position, transfer

“HZ 4C Qualifying companies: transition into look-through companies

“When this section applies

- “(1) This section applies when a qualifying company first becomes a look-through company for the first or second income year, whichever is relevant, that starts on or after 1 April 2011 (the **transitional year**).

“Initial basis

- “(2) For the purposes of applying sections HB 11 and HB 12 (which relate to look-through company deduction rules) to a person with an effective look-through interest for the look-through company, all of the persons who hold owner’s interests must choose 1 of the 2 following methods for calculating their basis under section HB 11(3):

- “(a) they may choose to use the market value or the accounting book value of the amounts described in section HB 11(3), as at the end of the income year before the transitional income year; or
- “(b) they may choose to apply section HB 11(3) as if the qualifying company had always been a look-through company and all relevant rules relating to look-through companies had always existed, applying those rules with any necessary modifications.

“Initial basis not less than zero

- “(3) If the application of sections HB 11 and HB 12, as modified by this section, calculates an owner’s basis as less than zero, then the owner’s basis is treated as being zero.

“Defined in this Act: effective look-through interest, income year, look-through company, owner’s interests, qualifying company

“HZ 4D Qualifying companies: transition into sole traderships

“When this section applies

- “(1) This section applies when a QCST transitional process is carried out for a qualifying company for the first or second income year, whichever is relevant, that starts on or after 1 April 2011 (the **transitional income year**).

“QCST transitional process: retrospective rule

- “(2) From the first day of the transitional income year to the first day of existence for the sole tradership that effectively replaces the qualifying company under a QCST transitional process, the sole tradership is treated as existing and having the assets and liabilities of the qualifying company, and associated rights and obligations, for that period. On and after the first day of the transitional year, the existence of the qualifying company is ignored for the purposes of the Inland Revenue Acts except to the extent necessary to give effect to this section.

“Taxation continuity

- “(3) The moving to the sole tradership of the assets, liabilities, and associated rights and obligations, under a QCST transitional process is treated for the purposes of the Inland Revenue Acts as a unique form of transference for such assets, liabilities, rights, and obligations, with the following effects:
- “(a) the moving to the sole tradership of the assets, liabilities, and associated rights and obligations, is treated as not being a transfer of such assets, liabilities, rights, and obligations:
 - “(b) the qualifying company has, before the first day of the transitional income year, the tax position in relation to the assets and liabilities, and associated rights and obligations (the **historical tax position**):
 - “(c) the sole tradership is treated as stepping into the place of the qualifying company, and as having, on and after the first day of the transitional income year,—
 - “(i) the qualifying company’s historical tax position; and
 - “(ii) the tax position in relation to the assets and liabilities, and associated rights and obligations, that it would have if it had always had the historical tax position:
 - “(d) the qualifying company has no tax position in relation to the assets and liabilities, and associated rights and obligations, on and after the first day of the transitional income year:
 - “(e) all memorandum account balances and other tax accounting amounts for the qualifying company before

the first day of the transitional income year are ignored and have no effect on and after that day (for example, the qualifying company has no effective ASC on and after the first day of the transitional income year).

“Meaning of QCST transitional process

“(4) **QCST transitional process** means a process, for which all outcomes are achieved in an income year (the **transitional income year**), by which a company that is a qualifying company at the end of the income year before the transitional income year is transformed into a sole tradership. The process must have the following outcomes:

- “(a) the Commissioner receives a notice from the qualifying company before the day that is 6 months after the start of the transitional income year, stating an intention to revoke the company’s qualifying company status and to complete the QCST transitional process relating to the sole tradership for the transitional income year; and
- “(b) the sole tradership is the same natural person who, at the end of the income year before the transitional income year, is the sole shareholder of the qualifying company; and
- “(c) all assets and liabilities, and associated rights and obligations, of the qualifying company are moved to the sole tradership, excluding those that are inappropriate for a sole tradership.

“Defined in this Act: ASC, Commissioner, company, income year, Inland Revenue Acts, memorandum account, notice, QCST transitional process, qualifying company, tax position, transfer”.

(2) Subsection (1) applies for income years beginning on or after 1 April 2011.

105 Common ownership: group of companies

- (1) In section IC 3(1), “portfolio tax rate entity” is replaced by “multi-rate PIE”.
- (2) Subsection (1) applies for the 2010–11 and later income years.

106 Tax credits for transitional circumstances

- (1) In section LC 4(1)(c), “subpart MB (Adjustment of net income for family scheme)” is replaced by “subpart MD, ME, or MZ (which relate to tax credits under the family scheme)”.
- (2) In section LC 4(1)(d), “subpart MB” is replaced by “subpart MD, ME, or MZ”.
- (3) Subsections (1) and (2) apply for the 2008–09 and later income years.

107 Assessment when person is non-resident

- (1) In section LC 12(1)(b), “assessable income from New Zealand” is replaced by “assessable income having a source in New Zealand”.
- (2) In section LC 12, in the list of defined terms,—
 - (a) “derived from New Zealand” is omitted:
 - (b) “source in New Zealand” is inserted.

108 Credits for persons who are non-resident or who receive exempt income

- (1) Section LF 8(1), other than the heading, is replaced by the following:

“(1) This section applies for a tax year when a company resident in New Zealand pays a dividend with an FDP credit attached to a person as shareholder if—

 - “(a) the person is non-resident; or
 - “(b) the person is resident in New Zealand and the dividend is exempt income other than under sections CW 9 to CW 11 (which relate to dividends that are exempt income).”
- (2) Subsection (1) applies for the 2008–09 and later income years.

109 What this subpart does

- (1) In section LJ 1(2)(a), “that is not derived from New Zealand” is replaced by “that does not have a source in New Zealand”.
- (2) In section LJ 1, in the list of defined terms,—
 - (a) “derived from New Zealand” is omitted:
 - (b) “source in New Zealand” is inserted.

110 Tax credits for certain exiting investors

In section LS 4(2), “investor’s interest” is replaced by “investor interest of the investor”.

111 Adjustments for calculation of family scheme income

(1) Section MB 1(2), except for the heading, is replaced by the following:

“(2) For the purposes of subsection (1), an amount derived by the person in the income year is not treated as exempt income if it is—

“(a) an amount referred to in section CW 28(1)(e) or CW 32 (which relate to overseas pensions and maintenance payments):

“(b) an amount of salary or wages that is exempt from income tax under an Act, or under a regulation or Order in Council made under an Act, that is listed in schedule 38 (Acts exempting income from tax: income included in family scheme income).”

(2) Section MB 1(5) is replaced by the following:

“Income from portfolio investment entities

“(5) For the purposes of subsection (1),—

“(a) an amount of income attributed by a portfolio investment entity to the person for an income year—

“(i) is not included in family scheme income of the person for the income year if the portfolio investment entity is a superannuation fund or retirement savings scheme:

“(ii) is included in family scheme income of the person for the income year if subparagraph (i) does not apply:

“(b) a distribution from a listed PIE that is derived by the person in an income year is included in family scheme income of the person for the income year.”

(3) After section MB 1(5C), the following is inserted:

“Refunds from main income equalisation accounts

“(5D) For the purposes of subsection (1), a refund under sections EH 8 to EH 26 (which relate to refunds from main income equalisation accounts) of a deposit made on or after 1 April

2011 is not included in family scheme income of a person, except to the extent that the refund is interest payable to the person under section EH 6 (Interest on deposits in main income equalisation account).”

- (4) Section MB 1(6) is repealed.
- (5) In section MB 1, in the list of defined terms, “income tax”, “listed PIE”, “main income equalisation account”, “retirement savings scheme”, “salary or wages”, and “superannuation fund” are inserted.

112 New sections MB 7 to MB 13 added

After section MB 6, the following is added:

“MB 7 Family scheme income of settlor of trust

“When this section applies

- “(1) This section applies for the purpose of determining the amount that represents the family scheme income of a person for an income year when the person is the settlor of a trust (the **person’s trust**) at a time in the income year, other than solely as a result of providing personal services for less than market value in the administration of the trust or the maintenance of trust property.

“Exception for some trusts

- “(2) This section does not apply if—
 - “(a) the trustee of the person’s trust is registered as a charitable entity under the Charities Act 2005:
 - “(b) the person’s trust is solely for the benefit of a local authority:
 - “(c) interest and dividends derived by the trustee of the person’s trust would be exempt income of the trustee under section CW 45 (Funeral trusts):
 - “(d) the person’s trust is a superannuation fund:
 - “(e) the person and the members of the person’s family are not permitted to benefit from the person’s trust except under an order of a court.

“What is included in family scheme income

- “(3) The person’s family scheme income for the income year includes an amount calculated using the formula—

$$\frac{\text{trustee} + \text{company} - \text{dividends}}{\text{settlor number.}}$$

“Definition of items in formula

“(4) In the formula—

“(a) **trustee** is the net income of the trustee of the person’s trust for the income year reduced, to not less than zero, by the amount of the trustee’s income that vests or is paid by the trustee as beneficiary income for the income year:

“(b) **company** is the total of amounts calculated for companies in which, at the end of the company’s income year, the trustee of the person’s trust and associated persons hold voting interests of 50% or more, or market value interests of 50% or more if there is a market value circumstance, with the amount for each company being calculated by multiplying the company’s net income for the income year by the trustee’s voting interest or market value interest in the company at the end of the income year:

“(c) **dividends** is the total amount, not exceeding the item company, of dividends that are derived by the trustee of the person’s trust in the income year from companies referred to in paragraph (b):

“(d) **settlor number** is the number of settlors of the person’s trust, including the person, for which this section applies.

“Defined in this Act: amount, beneficiary income, company, dividend, exempt income, family scheme income, income, income year, interest, local authority, market value, market value circumstance, market value interest, net income, settlor, superannuation fund, trustee, trustee income, voting interest

“MB 8 Family scheme income from fringe benefits

“When this section applies

“(1) This section applies for the purpose of determining the amount that represents the family scheme income of a person for an income year when—

“(a) the person is an employee of a company in which the person and associated persons hold—

- “(i) voting interests of 50% or more:
- “(ii) market value interests of 50% or more, if a market value circumstance exists; and
- “(b) the company provides a fringe benefit that must be attributed to the person under section RD 47 (Attribution of certain fringe benefits).

“*What is included in family scheme income*

- “(2) The person’s family scheme income for the income year includes an amount equal to the total of the following amounts:
 - “(a) the taxable value of the fringe benefits that the company must attribute to the person under sections RD 47 to RD 49 for the income year; and
 - “(b) the company’s FBT liability in relation to the person under section RD 50 (Employer’s liability for attributed benefits) for the income year.

“Defined in this Act: associated person, company, employee, family scheme income, FBT, fringe benefit, income year, market value circumstance, market value interest, voting interest

“**MB 9 Family scheme income from deposits in main income equalisation accounts**

The family scheme income of a person for an income year includes the amount of a deduction under section DQ 1 (Main income equalisation scheme) allowed for a payment made to the Commissioner under section EH 4 (Main deposit) for an accounting year, corresponding to the same tax year as does the income year, and for a business of—

- “(a) the person:
- “(b) a company that meets the requirements of section MB 4 for the person’s family scheme income to be affected by net income of the company for the accounting year:
- “(c) a trustee of a trust that meets the requirements of section MB 7 for the person’s family scheme income to be affected by net income of the trustee for the accounting year:
- “(d) a company in which a trustee referred to in paragraph (c) and associated persons hold a voting interest of 50% or

more, or a market value interest of 50% or more if a market value circumstance exists.

“Defined in this Act: accounting year, business, close company, Commissioner, company, family scheme income, income year, market value circumstance, market value interest, net income, pay, voting interest

“MB 10 Family scheme income from certain pensions and annuities

“When this section applies

- “(1) This section applies for the purpose of determining the amount that represents the family scheme income of a person for an income year when the person derives in the income year a pension or annuity that is exempt income of the person under section CW 4 (Annuities under life insurance policies) or is a pension from a superannuation fund.

“Half of pension or annuity included in family scheme income

- “(2) The family scheme income of the person for the income year—
- “(a) includes half of the amount of pension or annuity derived in the income year; and
 - “(b) does not include the other half of the amount of pension or annuity derived in the income year.

“Defined in this Act: amount, excluded income, exempt income, family scheme income, income year

“MB 11 Family scheme income from amounts derived by dependent children

“When this section applies

- “(1) This section applies for the purpose of determining the amount that represents the family scheme income of a person for an income year when a dependent child of the person derives in the income year an amount that is—
- “(a) resident passive income:
 - “(b) a royalty:
 - “(c) rent:
 - “(d) beneficiary income that is not an amount referred to in section HC 35(4)(b)(i), (ii), or (v) (Beneficiary income of minors):

- “(e) attributed income from a portfolio investment entity that is not a superannuation fund or retirement savings scheme:
 - “(f) a distribution from a listed PIE.
- “(2) The family scheme income of the person for the income year includes the amount by which the total of amounts derived by the dependent child in the income year and referred to in subsection (1) exceeds \$500.
- “Defined in this Act: beneficiary income, dependent child, excluded income, family scheme income, income year, listed PIE, portfolio investment entity, resident passive income, retirement savings scheme, royalty, superannuation fund

“MB 12 Family scheme income from non-residents’ foreign-sourced income

The family scheme income of a person for an income year includes the non-residents’ foreign-sourced income for the income year of the person’s spouse, civil union partner, or de facto partner.

“Defined in this Act: civil union partner, de facto partner, family scheme income, income year, non-residents’ foreign-sourced income, spouse

“MB 13 Family scheme income from other payments

- “(1) The family scheme income of a person for an income year includes the value of payments—
- “(a) paid or provided to the person from any source; and
 - “(b) used by the person to—
 - “(i) replace lost or diminished income of the person or the person’s family:
 - “(ii) meet usual living expenses of the person or the person’s family; and
 - “(c) not excluded from family scheme income under subsection (2).
- “Payments and benefits excluded from family scheme income*
- “(2) A payment to a person is not included under subsection (1) in the family scheme income of the person if it is—
- “(a) a loan under ordinary commercial terms and conditions:
 - “(b) from an amount that is—
 - “(i) proceeds of the disposal of property; and

- “(ii) not assessable income of the person disposing of the property:
 - “(c) a payment on behalf of the person by a local authority or public authority:
 - “(d) a forgiveness of debt by a public authority:
 - “(e) a charitable distribution from a charitable entity registered under the Charities Act 2005:
 - “(f) an educational scholarship:
 - “(g) a student loan under the Student Loan Scheme Act 1992:
 - “(h) a grant for the payment of expenses relating to medical treatment or a funeral:
 - “(i) a payment under an insurance contract, other than a payment for a loss of income:
 - “(j) compensation for a loss other than a loss of income:
 - “(k) lump sum compensation under the Accident Compensation Act 2001:
 - “(l) a monetary benefit under the Social Security Act 1964 that is exempt income:
 - “(m) a pension or allowance under the War Pensions Act 1954 that is exempt income:
 - “(n) a payment that is exempt income under section CW 33(1)(c), (e), or (f) (Allowances and benefits):
 - “(o) an amount that is declared not to be income for the purposes of the Social Security Act 1964 by a regulation under section 132 of that Act:
 - “(p) included in the family scheme income of the person under another section:
 - “(q) expressly excluded from the family scheme income of the person under another section.
- “*Exception for total value of payments less than threshold*
- “(3) If, in the absence of this subsection, the total value of payments that would be included under subsection (1) in the family scheme income for the year of the person and the person’s spouse, civil union partner, or de facto partner is less than or equal to \$5,000, then the payments paid or provided to the per-

son are not included in the person's family scheme income for the income year.

“Defined in this Act: assessable income, dispose, exempt income, family scheme income, income, income year, insurance contract, land, loan, local authority, pay, public authority”.

113 Minimum family tax credit

- (1) In section ME 1(2), the formula is replaced by the following:

$$(\text{prescribed amount} - \text{net family scheme income}) \times \frac{\text{weekly periods}}{52}.$$

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

114 Orders in Council

In section MF 7(1)(a)(i), “Consumer Price Index” is replaced by “Consumer Price Index that has not yet been taken into account by an increase”.

115 Treatment of tax credits on permanent emigration other than to Australia

- (1) In the heading to section MK 8(1), “other than to Australia” is omitted.
- (2) In section MK 8(1), “to a place other than Australia” is omitted.

116 Tax credit for redundancy payments

In section ML 2(1), “1 October 2010” is replaced by “1 April 2011”, in each place where it appears.

117 ICA debit for loss of shareholder continuity

- (1) After section OB 41(3), the following is inserted:
“*Qualifying companies*
“(3B) This section does not apply to a qualifying company in circumstances other than those set out in section HA 18 (Treatment of dividends when qualifying company status ends), and that section overrides subsections (1) to (3).”
- (2) In section OB 41, in the defined terms list, “qualifying company” is inserted.

- (3) In section OB 41, in the compare note, “s ME 5(1)(i), (2)(h)” is replaced by “ss HG 13(6), ME 5(1)(i), (2)(h)”.
- (4) Subsections (1) to (3) apply for the 2008–09 and later income years.

118 FDPA debit for loss of shareholder continuity

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

“Qualifying companies

“(3B) This section does not apply to a qualifying company in circumstances other than those set out in section HA 18 (Treatment of dividends when qualifying company status ends), and that section overrides subsections (1) to (3).”

- (2) In section OC 24, in the defined terms list, “qualifying company” is inserted.
- (3) In section OC 24, in the compare note, “s MG 5(1)(i), (2)(g), (3), (4)” is replaced by “ss HG 13(6), MG 5(1)(i), (2)(g), (3), (4)”.
- (4) Subsections (1) to (3) apply for the 2008–09 and later income years.

119 Subpart OZ—Terminating provisions

In sections OZ 7 to OZ 17, the compare notes are omitted.

120 New section OZ 7B inserted

After section OZ 7, the following is inserted:

“OZ 7B Maori authority credit ratios for transitional period

“When this section applies

- “(1) This section applies when a Maori authority makes a taxable Maori authority distribution in the transitional period referred to in section OZ 7.

“Application of modified sections OZ 8 to OZ 15

- “(2) Sections OZ 8 to OZ 11 and OZ 13 apply for the transitional period to the Maori authority and the taxable Maori authority distribution as if,—
 - “(a) for each section,—
 - “(i) a reference to a company had been replaced by a reference to a Maori authority:

- “(ii) a reference to a dividend had been replaced by a reference to a taxable Maori authority distribution:
- “(iii) a reference to an imputation credit account had been replaced by a reference to a Maori authority credit account:
- “(iv) a reference to an imputation credit had been replaced by a reference to a Maori authority credit:
- “(v) a reference to a benchmark dividend had been replaced by a reference to a benchmark distribution:
- “(vi) a reference to an imputation ratio had been replaced by a reference to a Maori authority credit ratio:
- “(vii) a reference to an FDP account or FDP credit or FDP ratio had been omitted:
- “(b) in section OZ 8(2), the reference to 30% had been replaced by a reference to 19.5%:
- “(c) in section OZ 9,—
 - “(i) in subsection (1)(b), the reference to sections OB 61(4) and OC 28(4) had been replaced by a reference to section OK 20(3):
 - “(ii) in subsection (1)(c)(ii), the reference to a ratio of 30/70 had been replaced by a reference to a ratio of 19.5/80.5:
 - “(iii) in subsection (3)(b), the reference to a ratio of 28/72 had been replaced by a reference to a ratio of 17.5/82.5:
- “(d) in section OZ 10,—
 - “(i) in subsection (1)(b), a reference to a ratio of 28/72 had been replaced by a reference to a ratio of 17.5/82.5 and a reference to a ratio of 30/70 had been replaced by a reference to a ratio of 19.5/80.5:
 - “(ii) subsection (1)(b)(ii) and (iii) were omitted:
 - “(iii) in subsection (2), the reference to sections LE 8, LE 9, LF 6, and LF 7 had been replaced by a reference to section LO 3:

- “(iv) in subsection (2), the reference to a ratio of 30/70 had been replaced by a reference to a ratio of 19.5/80.5:
- “(e) in section OZ 11,—
 - “(i) in subsection (1)(b)(i), the reference to a ratio of 28/72 had been replaced by a reference to a ratio of 17.5/82.5 and the reference to a ratio of 30/70 had been replaced by a reference to a ratio of 19.5/80.5:
 - “(ii) subsection (1)(b)(ii) and (iii) had been omitted:
 - “(iii) in subsection (1)(c), a reference to a new company tax rate person had been replaced by a reference to a Maori authority that uses a 17.5% basic tax rate for the 2011–12 income year or later income years:
 - “(iv) in subsection (2), in the formula, the figure 0.28 had been replaced by the figure 17.5:
 - “(v) in subsection (3), the reference to section LE 1(1) or LF 1(1) had been replaced by a reference to section LO 1(1):
 - “(vi) subsections (4) and (5) had been omitted:
- “(f) in section OZ 13,—
 - “(i) in subsection (1), the reference to the ratio of 28/72 had been replaced by a reference to a ratio of 17.5/82.5 and the reference to a ratio of 30/70 had been replaced by a reference to a ratio of 19.5/80.5:
 - “(ii) in subsection (2), the reference to the ratio of 28/72 had been replaced by a reference to a ratio of 17.5/82.5.

“Defined in this Act: benchmark distribution, income year, Maori authority, Maori authority credit, Maori authority credit account, Maori authority credit ratio, taxable Maori authority distribution”.

121 Methods for calculating provisional tax liability

In section RC 5(4), “Section RZ 3 (Standard method: 2010–11 to 2012–13 income years) modifies” is replaced by “Sections RZ 3 (Standard method: 2010–11 to 2012–13 income years) and RZ 5D (Standard method or GST method: transition for Maori authorities) modify”.

122 GST ratio method

In section RC 8(9), “Section RZ 4 (GST ratio method: 2010–11 to 2013–14 income years) modifies” is replaced by “Sections RZ 4 (GST ratio method: 2010–11 to 2013–14 income years) and RZ 5D (Standard method or GST method: transition for Maori authorities) modify”.

123 Calculating amount of instalment under standard and estimation methods

In section RC 10(3)(a),—

- (a) in subparagraph (i), “section RZ 5 (Calculating amounts under standard method: 2010–11 to 2012–13 income years)” is replaced by “sections RZ 5 (Calculating amounts under standard method: 2010–11 to 2012–13 income years) and RZ 5D (Standard method or GST method: transition for Maori authorities)”;
- (b) in subparagraph (ii), “section RZ 5” is replaced by “sections RZ 5 and RZ 5D”.

124 Calculating amount of instalment using GST ratio

In section RC 11(4), “Section RZ 4 (GST ratio method: 2010–11 to 2013–14 income years) modifies” is replaced by “Sections RZ 4 (GST ratio method: 2010–11 to 2013–14 income years) and RZ 5D (Standard method or GST method: transition for Maori authorities) modify”.

125 Payment of amounts of tax to Commissioner

- (1) In section RD 4(2), “withheld and paid under subsection (1)” is replaced by “withheld under subsection (1)”.
- (2) Subsection (1) applies for the 2008–09 and later income years.

126 Salary or wages

- (1) In section RD 5(1)(c)(v), “subsection (8)” is replaced by “subsection (9)”.
- (2) After section RD 5(3), the following is inserted:
“*Payments to working owners*
“(3B) A payment to a working owner under section DC 3B (Payments to working owners) is included in their salary or wages.”

- (3) Subsection (1) applies for the 2008–09 and later income years.
- (4) Subsection (2) applies for income years beginning on or after 1 April 2011.

127 Returns for amounts of tax paid to Commissioner

- (1) In section RD 22(2), “employer monthly schedule and” is omitted.
- (2) After section RD 22(2), the following is inserted:
“Employer monthly schedule
“(2B) The employer or PAYE intermediary must provide the employer monthly schedule referred to in subsection (1) by the 5th day of the month following that in which they withhold an amount of tax for a PAYE income payment, or if the month is December, by the 15th day of January.”
- (3) In section RD 22(3) and (4), “subsection (2)” is replaced by “subsections (2) and (2B)” in each place where it appears.
- (4) Subsections (1) to (3) apply for the 2008–09 and later income years.

128 Repayment of employment-related loans

- (1) Section RD 36(2)(b) is replaced by the following:
“(b) is payable to the employee without any amount of tax withheld under the PAYE rules, the RWT rules, or the NRWT rules; and”.
- (2) In section RD 36, in the list of defined terms,—
 - (a) “amount of tax”, “NRWT rules”, and “RWT rules” are inserted;
 - (b) “non-resident passive income” and “resident passive income” are omitted.
- (3) Subsection (1) applies for the 2008–09 and later income years.

129 Resident passive income

- (1) In section RE 2(5)(f), “dividend derived from New Zealand” is replaced by “dividend that has a source in New Zealand”.
- (2) In section RE 2, in the list of defined terms,—
 - (a) “derived from New Zealand” is omitted;
 - (b) “source in New Zealand” is inserted.

130 Non-resident passive income

- (1) In section RF 2(1), “income derived from New Zealand by a non-resident consisting of” is replaced by “income having a source in New Zealand that a non-resident derives and that consists of”.
- (2) In section RF 2(2)(c), “section CX 56 (Distributions to investors by listed PIEs)” is replaced by “sections CX 56B and CX 56C (which relate to attributed PIE income), as applicable”.
- (3) In section RF 2, in the list of defined terms,—
 - (a) “derived from New Zealand” is omitted:
 - (b) “source in New Zealand” is inserted.
- (4) Subsection (2) applies for the 2010–11 and later income years.

131 New section RZ 5D inserted

Before the heading before section RZ 6, the following is inserted:

“RZ 5D Standard method or GST method: transition for Maori authorities

“When this section applies

- “(1) This section applies when the provisional tax liability of a Maori authority is calculated for the 2011–12 and 2012–13 income years (the **transitional period**).

“Application of modified sections RZ 3 to RZ 5

- “(2) Sections RZ 3 to RZ 5 apply for the transitional period to the Maori authority and the Maori authority’s provisional tax liability as if—
- “(a) the Maori authority were a new company tax rate person:
 - “(b) in section RZ 3,—
 - “(i) in subsection (2)(b)(ii), 100% had been replaced by 95%:
 - “(ii) in subsection (3)(b)(ii), 105% had been replaced by 100%:
 - “(iii) in subsection (3)(c)(ii), 105% had been replaced by 100%:
 - “(c) in section RZ 4,—

- “(i) in subsection (2)(d), 0.95 had been replaced by 0.9 in each place where it appears:
- “(ii) in subsection (2)(e), 0.95 had been replaced by 0.9 in each place where it appears:
- “(d) in section RZ 5,—
 - “(i) in subsection (2)(b)(ii), a reference to no uplift had been replaced by a reference to a 5% reduction:
 - “(ii) in subsection (3)(b)(ii), a reference to a 5% uplift had been replaced by a reference to no uplift:
 - “(iii) in subsection (3)(c)(ii), a reference to a 5% uplift had been replaced by a reference to no uplift.

“Defined in this Act: Maori authority, new company rate person, provisional tax liability”.

132 Definitions

- (1) This section amends section YA 1.
- (2) The following is inserted in its appropriate alphabetical order:
“**beneficial interest** includes an interest that is contingent, discretionary or unvested”.
- (3) In the definition of **boutique investor class**, in paragraph (d), “the interests of investors” is replaced by “the investor interests of investors”.
- (4) The definition of **building** is replaced by the following:
“**building**, in subparts EE and EZ, does not include—
“(a) a grandparented structure:
“(b) commercial fit-out”.
- (5) The following is inserted in its appropriate alphabetical order:
“**commercial building** means a building that is not, in part or in whole, a dwelling, unless use as a dwelling is a secondary and minor use”.
- (6) The following is inserted in its appropriate alphabetical order:
“**commercial fit-out** means an item to the extent to which it is—
“(a) plant attached to a commercial building, but not used inside a dwelling within the commercial building:

- “(b) attached to, and non-structural in relation to, a building, if the item is not used for weatherproofing the building and—
- “(i) is not used in relation to, and is not part of, a dwelling within the building; or
 - “(ii) is used in relation to, but is not part of, a dwelling within the building, and the building is a commercial building”.
- (7) In the definition of **company**, after paragraph (ab), the following is inserted:
- “(abb) does not include a look-through company, except in the PAYE rules, the FBT rules, the NRWT rules, the RWT rules, the ESCT rules, the RSCT rules, and for the purposes of subpart FO (Amalgamation of companies):”.
- (8) The following is inserted in its appropriate alphabetical order:
- “**contract of employment** is defined in section DC 3B(3) (Payments to working owners) for the purposes of that section and the definition of **working owner**”.
- (9) The following is inserted in its appropriate alphabetical order:
- “**deductible output tax**, in sections DB 2 (Goods and services tax) and EE 54 (Cost: GST) the sum of the following amounts, as applicable:
- “(a) an amount of output tax charged in relation to a supply of goods and services that the Goods and Services Tax Act 1985 treats a registered person as making under—
 - “(i) section 5(23) of that Act;
 - “(ii) section 5B of that Act when they have no deduction for any input tax on the acquisition of the goods or services;
 - “(iii) the old apportionment rules referred to in section 21H of that Act; and
 - “(b) an amount that is the result of an apportionment of input tax made in relation to the supply under section 20(3C) to (3I) of that Act to the extent to which the person does not have a deduction from output tax for the full amount of input tax:

- “(c) an amount of output tax accounted for in relation to the supply under section 20(3J) of that Act:
 - “(d) an amount of output tax that is the result of adjustment made in relation to the supply under sections 21 to 21H of that Act”.
- (10) The definition of **derived from New Zealand** is repealed.
- (11) The following is inserted in its appropriate alphabetical order:
“**dwelling**—
- “(a) means any place used predominantly as a place of residence or abode, including any appurtenances belonging to or enjoyed with the place; but
 - “(b) does not include any of the following:
 - “(i) a hospital:
 - “(ii) a hotel, motel, inn, hostel, or boardinghouse:
 - “(iii) a serviced apartment for which paid services in addition to the supply of accommodation are provided to a resident, and in relation to which a resident does not have quiet enjoyment, as that term is used in section 38 of the Residential Tenancies Act 1986:
 - “(iv) a convalescent home, nursing home, or hospice:
 - “(v) a rest home or retirement village, except to the extent that, in relation to a relevant place, it is, or can reasonably be foreseen to be, occupied as a person’s principal place of residence for independent living:
 - “(vi) a camping ground”.
- (12) The following is inserted in its appropriate alphabetical order:
“**effective look-through interest** is defined in section HB 1(5) (Look-through companies are transparent)”.
- (13) The following is inserted in its appropriate alphabetical order:
“**emissions unit shortfall year**, for a person means an income year that—
- “(a) is an emissions unit shortfall year for the person under section ED 1B(9)(a) (Valuation of emissions units issued for zero price); and
 - “(b) has not ceased to be an emissions unit shortfall year for the person under section ED 1B(10)(c)”.

- (14) In the definition of **employee**, after paragraph (d), the following is inserted:
“(db) does not include an owner of a look-through company or a person who has a look-through interest for a look-through company, unless the owner or person is a working owner.”.
- (15) In the definition of **employer**, after paragraph (b)(ii), the following is inserted:
“(iib) a look-through company, to the extent that paragraph (db) of the definition of **employee** does not apply.”.
- (16) The following is inserted in its appropriate alphabetical order:
“**entering owner**—
“(a) means a person who acquires an owner’s interests for a look-through company:
“(b) includes a person who already has owner’s interests for a look-through company when they acquire another owner’s interests”.
- (17) In the definition of **financial institution special purpose vehicle**,—
(a) paragraph (c) is replaced by the following:
“(c) receives only funds that—
“(i) relate to financial arrangements described in paragraph (b):
“(ii) are incidental to the company’s or trustees’s sole purpose described in paragraph (e); and
(b) in paragraph (d)(ii), “in respect of” is replaced by “in relation to”.
- (18) The definition of **foreign non-dividend income** is replaced by the following:
“**foreign non-dividend income** means income that—
“(a) does not have a source in New Zealand; and
“(b) is not a dividend; and
“(c) is not FIF income calculated under the fair dividend rate method”.
- (19) The following is inserted in its appropriate alphabetical order:
“**grandparenting income year** is defined in section HA 5(5) (Elections to become qualifying company)”.

- (20) The definition of **income derived from New Zealand** is repealed.
- (21) The following is inserted in its appropriate alphabetical order:
“**independent living** means occupancy of a place under an arrangement that—
“(a) does not have a level of compulsory care:
“(b) has a level of compulsory care that is merely incidental to the occupancy”.
- (22) The definition of **land investment company** is replaced by the following:
“**land investment company** means a company that, in a tax year,—
“(a) is not a portfolio investment entity; and
“(b) on 80% or more of the days in the corresponding income year on which the company has property with a market value of \$100,000 or more, owns property that—
“(i) consists of interests in land or shares in a land investment company that does not own, directly or indirectly, shares in the company; and
“(ii) has a market value of 90% or more of the market value of all the property of the company; and
“(c) meets the requirements of section HM 12 (Income sources)”.
- (23) The definition of **LAQC** is repealed.
- (24) The following is inserted in its appropriate alphabetical order:
“**look-through company** means an entity—
“(a) that is described in paragraph (a) of the definition of **company**; and
“(b) that, treating the entity as a company for the purposes of this definition, is resident in New Zealand under section YD 2 (Residence of companies); and
“(c) that is not treated under, or for the purposes of, a double tax agreement as not resident in New Zealand; and
“(d) for which there are 5 or fewer look-through counted owners, treating look-through counted owners who are relatives, ignoring any later death or dissolution of marriage, union, or relationship, as 1 person; and

- “(e) for which all owners have only look-through interests; and
 - “(f) that is not a flat-owning company; and
 - “(g) for which an election under section HB 13 (Valid elections) has been received by the Commissioner”.
- (25) The following is inserted in its appropriate alphabetical order:
“**look-through company deduction** is defined in section HB 11(12) (Limitation on deductions by persons with interests in look-through companies)”.
- (26) The following is inserted in its appropriate alphabetical order:
“**look-through counted owner** means, for an entity, a person who—
- “(a) is a natural person that—
 - “(i) is not a trustee; and
 - “(ii) has a look-through interest for the entity:
 - “(b) is a natural person who has derived, as beneficiary income of a trust, income that arose from a direct or indirect beneficial interest in a look-through interest for the entity for the current income year or 1 of the last 3 income years:
 - “(c) is a trustee of a trust that—
 - “(i) has a look-through interest for the entity or that has a direct or indirect beneficial interest in a look-through interest for the entity, treating co-trustees as 1 person; and
 - “(ii) has not distributed, as beneficiary income, all income that arose from a direct or indirect beneficial interest in a look-through interest for the entity for the current income year and all of the last 3 income years:
 - “(d) is a natural person that has a voting interest or a market value interest in relation to a company that has derived, as beneficiary income from a trust, income that arose from a direct or indirect beneficial interest in a look-through interest for the entity for the current income year or 1 of the last 3 income years”.
- (27) The following is inserted in its appropriate alphabetical order:

- “**look-through interest** means a person’s shares in an entity, or in a look-through company (**LTC**) treating the look-through company as a company for the purposes of this definition, if—
- “(a) every other shareholder in the entity or LTC has the same rights, proportionally, as the person to vote or participate in any decision-making concerning—
 - “(i) the distributions to be made by the entity or LTC; and
 - “(ii) the entity’s or LTC’s constitution; and
 - “(iii) varying the capital of the entity or LTC; and
 - “(iv) appointing or electing directors of the entity or LTC; and
 - “(b) every other shareholder has the same rights, proportionally, as the person in relation to when the entity or LTC distributes its profits or its assets if the entity or LTC acquires, redeems, or cancels its shares, or reduces or returns its share capital, whether on liquidation or not; and
 - “(c) the entity or LTC has only shareholders that are natural persons, or corporate trustees”.
- (28) The definition of **loss-attributing qualifying company** is repealed.
- (29) In the definition of **non-filing taxpayer**, in paragraph (b), “derived from New Zealand” is replaced by “having a source in New Zealand”.
- (30) The following is inserted in its appropriate alphabetical order:
“**non-resident seasonal worker** means a non-resident worker employed under the recognised seasonal employment scheme to undertake work in New Zealand”.
- (31) The definition of **non-resident seasonal worker** inserted by subsection (30) is repealed.
- (32) In the definition of **outstanding claims reserve**, paragraph (a), “insurer’s financial statements” is replaced by “insurer’s financial statements less the amount of reinsurance and non-reinsurance recoveries receivable, as measured for the financial statements”.
- (33) The following is inserted in its appropriate alphabetical order:

- “**owner’s interests** means the relevant interests in rights and obligations and other property, status, and things that a person who has an effective look-through interest for a look-through company has as a result of applying section HB 1 (Look-through companies are transparent) or otherwise”.
- (34) The following is inserted in its appropriate alphabetical order:
“**plant** does not include an item that is structural in relation to a building”.
- (35) In the definition of **profit participation policy**, paragraph (b)(ii), “relates” is replaced by “relates:”, and the following is added:
“(c) does not include a life insurance policy that covers life risk and is—
“(i) life reinsurance:
“(ii) a multiple life policy, as defined in section EY 30(14) (Transitional adjustments: life risk):
“(iii) a workplace group policy, as defined in section EY 30(15)”.
- (36) In the definition of **property**, after paragraph (a), the following is inserted:
“(ab) in subpart FB (Transfers of relationship property), is defined in section FB 1(4) (What this subpart does):
“(ac) in subpart FC (Distribution, transmission, and gifts of property), is defined in section FC 1(2) (What this subpart does):”.
- (37) The following is inserted in its appropriate alphabetical order:
“**QCP transitional process** is defined in section HZ 4B(7) (Qualifying companies: transition into partnership)”.
- (38) The following is inserted in its appropriate alphabetical order:
“**QCST transitional process** is defined in section HZ 4D(4) (Qualifying companies: transition into sole traderships)”.
- (39) In the definition of **residual income tax**, after paragraph (b)(iiib), the following is inserted:
“(iiic) section LC 13 (Tax credits for independent earners):”.
- (40) The definition of **secured amounts** is replaced by the following:

“secured amounts—

“(a) is defined in section HB 11(12) (Limitation on deductions by persons with interests in look-through companies) for the purposes of that section:

“(b) is defined in section HG 11(12) (Limitation on deductions by partners in limited partnerships) for the purposes of that section”.

- (41) In the definition of **settlor**, “section MB 7 (Family scheme income of settlor of trust),” is inserted after “Niue),”.
- (42) In the definition of **shareholder-employee**, in paragraph (b)(ii), “applies” is replaced by “applies:” and the following is added:
- “(c) does not include an owner of a look-through company or a person who has a look-through interest for a look-through company”.
- (43) In the definition of **source in New Zealand**, “New Zealand source)” is replaced by “New Zealand source) and section YZ 1 (Source rule for interest)”.
- (44) The following is inserted in its appropriate alphabetical order:
- “**tax position** means, for the purposes of sections HZ 4B and HZ 4D (which relate to the transition of a qualifying company into a partnership or sole tradership), a status, right, obligation, liability, asset, or other thing authorised or arising under, required or imposed by, or necessary to comply with an Inland Revenue Act, and includes tax assets and accounting positions in relation to an Inland Revenue Act, and debts payable to the Commissioner”.
- (45) The following is inserted in its appropriate alphabetical order:
- “**transfer** means, for the purposes of sections HZ 4B and HZ 4D (which relate to the transition of a qualifying company into a partnership or sole tradership), a sale, purchase, disposal, acquisition, cessation, assumption, discharge, assignment, vesting, divesting, gift, supply, or other transfer in relation to liabilities and assets, and associated legal rights and obligations”.
- (46) In the definition of **transfer of value**, in paragraph (b)(ii), “paragraph (a)” is replaced by “subparagraph (i)”.
- (47) The following is inserted in its appropriate alphabetical order:

“**working owner** means a person who, in relation to a look-through company that is not wholly or mainly engaged in investing money or in holding, or dealing in, shares, securities, investments, or estates or interests in land, ignoring section HB 1 (Look-through companies are transparent),—

“(a) is an owner of the look-through company; and

“(b) personally and actively performs duties that—

“(i) are required to be performed in carrying on the business of the look-through company; and

“(ii) are performed by the person during the currency of, and as required by, a contract of employment”.

- (48) Subsections (2), (7), (8), (12), (14), (15), (16), (23), (24), (25), (26), (27), (28), (33), (36), (37), (38), (40), (41), (42), (44), (45), and (47) apply for income years beginning on or after 1 April 2011.
- (49) Subsections (3), (13), and (22) apply for the 2010–11 and later income years.
- (50) Subsections (4), (5), (6), (11), (21), and (34) apply for the 2011–12 and later income years.
- (51) Subsection (32) applies—
- (a) for the 2009–10 and later income years, unless paragraph (b) applies:
- (b) for the first income year for which an insurer adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2009–10 income year and the person chooses to use IFRS 4 in a return of income for that first year.
- (52) Subsection (35) applies—
- (a) on and after 1 July 2010, unless paragraph (b) applies:
- (b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 in a return of income for the tax year corresponding to the first relevant income year.
- (53) Subsection (46) applies for the 2008–09 and later income years.

133 Meaning of income tax varied

- (1) In section YA 2(5), “tax imposed by another country” is replaced by “tax of another country, whether imposed by a central, state, or local government”.
- (2) Subsection (1) applies for the 2008–09 and later income years.

134 New section YB 13 inserted

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

“YB 13 Look-through companies and owners of interests*“Association*

- “(1) A look-through company and a person who has a look-through interest for the look-through company (an **owner**) and who is a director or employee for the look-through company are associated persons.

“Some owners

- “(2) If subsection (1) does not apply to a look-through company and an owner, then they are associated persons if the owner has effective look-through interests of 25% or more in a right, obligation, or other property status, or thing of the look-through company.

“Some owners: general aggregation rule

- “(3) For the purposes of subsection (2), if a person (**person A**) and another person (**person B**) are associated under any of sections YB 2 to YB 11 and YB 14, person A is treated as holding anything held by person B.

“Some owners: aggregation rule for land provisions

- “(4) For the purposes of subsection (2), if a person (**person A**) and another person (**person B**) are associated under any of sections YB 2, YB 3, YB 4(1)(b) and (2) to (4), YB 7, YB 8, YB 10, YB 11, and YB 14, person A is treated as holding anything held by person B.

“Defined in this Act: associated person, director, effective look-through interest, employee, look-through company, look-through interest”.

- (2) Subsection (1) applies for income years beginning on or after 1 April 2011.

135 Tripartite relationship

- (1) In section YB 14(1),—
 - (a) in paragraph (a), “YB 12” is replaced by “YB 13”;
 - (b) in paragraph (b), “YB 12” is replaced by “YB 13”.
- (2) Subsection (1) applies for income years beginning on or after 1 April 2011.

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

- (1) In schedule 1, part A, clause 7, “0.195” is replaced by “0.175”.
- (2) In schedule 1, part D, table 4, row 1, “0.195” is replaced by “0.175”.

137 Schedule 2—Basic tax rates for PAYE income payments

- (1) In schedule 2, part A, clause 8, “the rate of 0.15” is replaced by “the rate of 0.105”.
- (2) Subsection (1) applies for the 2011–12 and later income years.

138 Schedule 29—Portfolio investment entities: listed investors

In schedule 29, part A, item 7, “Auckland Regional Holdings” is replaced by “Auckland Council”.

139 Schedule 32—Recipients of charitable or other public benefit gifts

- (1) In schedule 32,—
 - (a) after the entry for “Surf Aid International Incorporated”, an entry for “Te Tuao Tawahi: Volunteer Service Abroad Incorporated” is inserted;
 - (b) after the entry for “The Band Aid Box”, an entry for “The Bouganville Library Trust” is inserted;
 - (c) before the entry for “The Commonwealth Foundation”, an entry for “The Branch Foundation” is inserted;
 - (d) after the entry for “The Leprosy Mission New Zealand Incorporated”, an entry for “The Mutima Charitable Trust” is inserted;
 - (e) the entry for “The Volunteer Service Abroad (Incorporated)” is repealed.

- (2) Subsection (1)(b) applies for the 2011–12 to 2018–19 tax years.
- (3) Subsection (1)(d) applies for the 2011–12 to 2016–17 tax years.

140 New schedule 38 inserted

After schedule 37, the schedule included in schedule 2 of this Act is inserted.

141 Schedule 51—Identified changes in legislation

- (1) In schedule 51, before the entry for section FA 3(2), the following is inserted:

CD 39(9)(b), (c)	A dividend payable to a shareholder by a company when the amount is applied under section CD 39(9)(a) by the shareholder against a loan from the company to the shareholder includes a dividend that is paid without any withholding of an amount of resident withholding tax or non-resident withholding tax.
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- (2) In schedule 51, after the entry for MC 6, the following is inserted:

RD 36(2)	A dividend payable to a shareholder by a company when the amount is applied under section RD 36(1) by the shareholder against a loan from the company to the shareholder includes a dividend that is paid without any withholding of an amount of resident withholding tax or non-resident withholding tax.
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- (3) Subsections (1) and (2) apply for the 2008–09 and later income years.

Part 3
Amendments to Tax Administration Act
1994

142 Tax Administration Act 1994

Sections 143 to 162 amend the Tax Administration Act 1994.

143 Interpretation

- (1) This section amends section 3(1).
- (2) In the definition of **late payment penalty**, paragraph (b)(iv) is repealed.
- (3) The definition of **tax payable** is removed and reinserted in its correct alphabetical order after the definition of **tax paid**.

144 Notification requirements for multi-rate PIEs

Section 31C (3) and (4) are replaced by the following:

- “(3) For an investor not referred to in subsection (2) who invests in a PIE that calculates and pays tax using the provisional tax calculation option under section HM 44 of that Act, the PIE must notify the investor—
- “(a) by 31 May after the end of the tax year, if the PIE is not a superannuation fund or retirement savings scheme and has an income year ending before 31 May; or
 - “(b) by 30 June after the end of the tax year, if the PIE is a superannuation fund or retirement savings scheme and has an income year ending before 30 June; or
 - “(c) within 2 months after the end of the PIE’s income year, if neither of paragraphs (a) and (b) applies.
- “(4) For an investor not referred to in subsections (2) and (3) who invests in a PIE that calculates and pays tax using the quarterly or exit calculation options under sections HM 42 and HM 43 of that Act, the PIE must notify the investor—
- “(a) by 31 May after the end of the tax year, if the PIE is not a superannuation fund or retirement savings scheme; or
 - “(b) by 30 June after the end of the tax year, if the PIE is a superannuation fund or retirement savings scheme.”

145 Persons with approved issuer status

- (1) Section 32M(1) and (2) are replaced by the following:
 - “(1) A person who borrows, has borrowed, or will borrow money is eligible to elect to pay approved issuer levy in relation to a security for the purposes of—
 - “(a) the NRWT rules;
 - “(b) an exemption under a double tax agreement.

- “(2) For the purposes of subsection (1), the person elects to pay approved issuer levy in relation to a security by—
- “(a) either being an approved issuer or becoming an approved issuer under subsection (2B); and
 - “(b) applying under section 86G of the Stamp and Cheque Duties Act 1971 to register the security; and
 - “(c) paying the amount of the levy for the security under section 86I of that Act.
- “(2B) To become an approved issuer, the person must notify the Commissioner that they wish to have approved issuer status.”
- (2) After section 32M(4), the following is inserted:
- “(4B) If the Commissioner revokes a person’s approved issuer status under subsection (3) within 20 working days of having been notified under subsection (2B), the revocation applies from the date of notification.”
- (3) In section 32M(5), “for the purposes of the NRWT rules and Part 6B of the Stamp and Cheque Duties Act 1971” is replaced by “for the purposes of the NRWT rules, an exemption under a double tax agreement, and Part 6B of the Stamp and Cheque Duties Act 1971, as applicable”.

146 Annual returns of income not required

- (1) Section 33A(1)(b)(ixb) is repealed.
- (2) Section 33A(1)(b)(ixc) is repealed.
- (3) In section 33A(1)(b)(xi), “portfolio investor allocated income” is replaced by “attributed PIE income”.
- (4) Section 33A(1)(j) is repealed.
- (5) After section 33A(1), the following is inserted:

“(1B) A natural person is not required to furnish a return of income for a tax year and will not receive an income statement from the Commissioner for the year if, in the corresponding income year, the person is a non-resident seasonal worker employed under the recognised seasonal employment scheme.”
- (6) Section 33A(2)(a) is replaced by the following:

“(a) is a non-resident; or”.
- (7) Subsection (3) applies for the 2010–11 and later income years.

- (8) Subsections (1) and (6) apply for the 2009–10 and later income years.
- (9) Subsections (2), (4), and (5) apply for the 2008–09 and later income years.

147 Consequential adjustments on change in balance date

- (1) In section 39(5), the formula is replaced by the following:

$$\frac{365}{\text{income year days}} \times \text{taxable income.}$$

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

148 New section 42B inserted

After section 42, the following is inserted:

“42B Returns by look-through companies and owners of interests

- “(1) This section applies to persons who have effective look-through interests for a look-through company, and to their look-through company.
- “(2) The company must make a return of income that ignores subpart HB of the Income Tax Act 2007 and that includes—
- “(a) the total amount of income derived by the company;
- “(b) the amount of that income for each owner under subpart HB of that Act;
- “(c) a summary of the deductions for each owner under subpart HB and section DV 22 of that Act.
- “(3) There is no assessment of the company, but each owner must make a separate return of income under section 33 taking into account the amounts in subsection (2). Each owner is assessed separately.”

149 Return requirements for multi-rate PIEs

Section 57B(7)(a) is replaced by the following:

- “(a) by the 31 May after the end of the tax year if—
- “(i) the PIE has a corresponding income year that does not end after the end of the tax year; and

- “(ii) the PIE is not a superannuation fund or retirement savings scheme; and
- “(iii) the PIE continues to meet the requirements for PIE status at the end of the corresponding income year; or
- “(ab) by the 30 June after the end of the tax year if—
 - “(i) the PIE has a corresponding income year that does not end after the end of the tax year; and
 - “(ii) the PIE is a superannuation fund or retirement savings scheme; and
 - “(iii) the PIE continues to meet the requirements for PIE status at the end of the corresponding income year; or”.

150 Officers to maintain secrecy

After section 81(4)(t), the following is added:

- “(u) communicating to a person’s fund provider under section 220B of the KiwiSaver Act 2006 any information specified in that section for the purposes set out in the section.”

151 Disclosure of information for verification of government screen production payment entitlement

In section 85F(3), “**large budget screen production grant**” is replaced by “**government screen production payment**”.

152 Notices of proposed adjustment required to be issued by Commissioner

After section 89C(k), the following is inserted:

- “(ka) the assessment corrects a tax position taken by the taxpayer in relation to a tax position taken by a look-through company in a return of income under section 42B, and the Commissioner and the company have completed the disputes process for that return of income and that tax position; or”.

153 Taxpayers and others with standing may issue notices of proposed adjustment

In section 89D(1), in the words after the paragraphs, “assessment” is replaced by “assessment except to the extent to which the assessment takes into account amounts arising under subpart HB of the Income Tax Act 2007”.

154 Taxpayer may issue notice of proposed adjustment for taxpayer assessment

(1) In section 89DA(1), “if the Commissioner has not previously issued a notice of proposed adjustment to the taxpayer in respect of the assessment” is replaced by “except,—”, and the following is added:

“(a) to the extent to which the assessment takes into account amounts arising under subpart HB of the Income Tax Act 2007:

“(b) if the Commissioner has previously issued a notice of proposed adjustment to the taxpayer in respect of the assessment.”

(2) After section 89DA(3), the following is added:

“(4) A look-through company may issue a notice of proposed adjustment in respect of a return it makes under section 42B for a tax year if the Commissioner has not previously issued a notice of proposed adjustment to the taxpayer in respect of the return. For the purposes of section 89AB(3), the return is treated as a notice of assessment.”

155 When disputant entitled to challenge assessment

(1) In section 138B(1)(a), “the disputant” is replaced by “the disputant or their look-through company”.

(2) In section 138B(3)(a), “the disputant” is replaced by “the disputant or their look-through company”.

156 Non-electronic filing penalty

(1) In section 139AA(1)(a), “section RD 22(2)” is replaced by “section RD 22(2) and (2B)”.

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

157 Late payment penalty

- (1) In section 139B(1)(b), “penalty” is replaced by “penalty or interest”.
- (2) In section 139B(1)(c), “penalty” is replaced by “penalty or interest”.

158 Unacceptable tax position

- (1) After section 141B(8)(a)(i), the following is inserted:
“(ib) a look-through company; or”.
- (2) In section 141B(8)(a), in the words after the subparagraphs, “partnership” is replaced by “partnership, effective look-through interest holder for the look-through company,”.
- (3) In section 141B(8)(b), “partnership” is replaced by “partnership or a look-through company”.

159 Shortfall penalty for not taking reasonable care or for taking unacceptable tax position may not be more than \$50,000

In section 141JAA(1), “if the taxpayer voluntarily discloses the shortfall,” is replaced by “if the taxpayer voluntarily discloses the shortfall under section 141G,”.

160 Due date for payment of late filing penalty

- (1) In section 142(1A), “section RD 22(2)(b)” is replaced by “section RD 22(2B)”.
- (2) Subsection (1) applies for the 2008–09 and later income years.

161 Deduction of tax from payments due to defaulters

After section 157(10), the following is added:

- “(11) For the purposes of the definition of **amount payable** in subsection (10), money that is on deposit or is deposited to the credit of a taxpayer includes money that—
- “(a) is held in a joint bank account in the name of the taxpayer and 1 or more other persons; and
 - “(b) can be withdrawn from the account by or on behalf of the taxpayer without a signature or other authorisation being required at the time of the withdrawal from, or on behalf of, the other person or persons.

“(12) Subsection (11) does not apply when the joint bank account is an account of a partnership that files a return of income under section 33(1).”

162 New section 225C inserted

After section 225B, the following is inserted:

“225C Order in Council amending schedule 38 of Income Tax Act 2007

The Governor-General may, from time to time, by Order in Council, amend schedule 38 of the Income Tax Act 2007 by—

- “(a) adding a statute, if the statute provides for an exemption from income tax, for salary or wages, that is to be ignored in determining the family scheme income of a person for an income year:
- “(b) removing a statute.”

Part 4

Amendments to Income Tax Act 2004

163 Income Tax Act 2004

Sections 164 to 170 amend the Income Tax Act 2004.

164 Amounts derived in connection with employment

- (1) Section CE 1(1)(c) is repealed.
- (2) After section CE 1(1), the following is inserted:

“Benefit of accommodation

“(1B) The market value of the following benefits provided to a person is income of the person if the benefit is provided in relation to an office or position held by them:

 - “(a) the provision of accommodation:
 - “(b) the provision of an accommodation allowance instead of accommodation.”
- (3) Subsections (1) and (2) apply for the 2005–06 and later income years.

165 GST

- (1) In section DB 2(2), “a supply of goods or services that section 21 or 21I(1) to 21I(3)” is replaced by “a supply of goods or services that section 5B, 21, or 21I(1) to (3)”.
- (2) Subsection (1) applies for the 2005–06 and later income years.

166 Investor interest size requirement

Section HL 9(3), other than the heading, is replaced by the following:

- “(3) An entity with an investor holding of more than 20% of the total portfolio investor interests in a class does not breach the investor interest size requirement if the investor is listed in subsection (4).”

167 New section HL 19B inserted

- (1) After section HL 19, the following is inserted:

“HL 19B Treatment of certain provisions made by portfolio tax rate entity

“When this section applies

- “(1) This section applies for the purposes of section HL 19 when—
- “(a) a portfolio tax rate entity—
- “(i) is likely to have future income;
- “(ii) makes a provision for future expenditure or loss; and
- “(b) the amount—
- “(i) is reflected in the entity’s valuation of portfolio investor interests; or
- “(ii) if subparagraph (i) does not apply, is shown in its financial statements.

“Future amounts

- “(2) For the purposes of determining an amount for a portfolio allocation period under section HL 19(3), a portfolio tax rate entity may take account of an amount of future income or future expenditure or loss that is—
- “(a) for future income, an amount that, when derived, would be class assessable income under section HL 19(4)(a):
- “(b) for future expenditure or loss,—

- “(i) an expense likely to be incurred by the entity in the tax year in which the portfolio allocation period falls, or within 93 days after the end of the tax year; and
- “(ii) an amount that, when incurred, would be a class deduction under section HL 19(4)(b).

“Reasonable estimation

- “(3) For the purposes of subsection (2), the entity must make a reasonable estimate of the amount and must be able to demonstrate, if required, the reasonableness of the estimation by—
 - “(a) explaining why and when the income is likely to be derived or the expense is likely to be incurred, as applicable; and
 - “(b) providing the calculation method and actual calculations used to determine the amount, with details showing why the method is appropriate.

“Credit impairment provisions

- “(4) A portfolio tax rate entity may take account of a credit impairment provision under this section but only if the provision is counted as a credit impairment provision under NZIAS 39. However, the time limit set out in subsection (2)(b)(i) does not apply in relation to a credit impairment provision.

“Defined in this Act: amount, deduction, income, NZIAS 39, portfolio allocation period, portfolio investor interest, portfolio tax rate entity, tax year”.

- (2) Subsection (1) does not apply to a portfolio tax rate entity in relation to a tax position taken by the entity—
 - (a) in the period from 1 October 2007 to the date of Royal assent of this Act; and
 - (b) in relation to the attribution of income to investors in the entity and the determination of net amounts in section HL 19; and
 - (c) relying on the rules related to portfolio investment entities as they were before the amendment made by subsection (1).

168 Employment-related loans: repayment

- (1) Section ND 1E(2)(b) is replaced by the following:

“(b) is payable to the employee without any tax deduction under the PAYE rules, the RWT rules, or the NRWT rules; and”.

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

169 Definitions

- (1) In section OB 1, in the definition of **outstanding claims reserve**, “insurer’s financial statements” is replaced by “insurer’s financial statements less the amount of reinsurance and non-reinsurance recoveries receivable, as measured for the financial statements”.
- (2) Subsection (1) applies for the first income year for which an insurer adopts IFRSs for the purposes of financial reporting and later income years, if the person chooses to use IFRS 4 in a return of income for that first year.

170 Schedule 22A—Identified policy changes

- (1) In schedule 22A, after the entry for section CB 9(1)(b), the following is inserted:

CD 28(9)(b)	A dividend payable to a shareholder by a company when the amount is applied under section CD 28(9)(a) by the shareholder against a loan from the company to the shareholder includes a dividend that is paid without any withholding of an amount of resident withholding tax or non-resident withholding tax.
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- (2) In schedule 22A, after the entry for section FC 21, the following is added:

ND 1E(2)	A dividend payable to a shareholder by a company when the amount is applied under section ND 1E(1) by the shareholder against a loan from the company to the shareholder includes a dividend that is paid without any withholding of an amount of resident withholding tax or non-resident withholding tax.
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- (3) Subsections (1) and (2) apply for the 2005–06 and later income years.

Part 5

Amendments to KiwiSaver Act 2006

171 KiwiSaver Act 2006

Sections 172 to 180 amend the KiwiSaver Act 2006.

172 Automatic enrolment rules do not apply

After section 14(1)(a)(ii), the following is inserted:

“(iib) section RD 5(3B) (which relates to payments to working owners):”.

173 Commissioner provisionally allocates certain people to default KiwiSaver schemes and sends investment statement

- (1) In section 50(4), in the words before the paragraphs, “a person if the Commissioner receives” is replaced by “a person when”.
- (2) In section 50(4)(a) “notice” is replaced by “the Commissioner receives notice”.
- (3) Section 50(4)(b) is replaced by the following:

“(b) the Commissioner receives notice under section 173(1)(b) that the person must transfer to another scheme on a scheme’s winding up and paragraph (bb) does not apply; or

“(bb) a scheme winds up, if that winding up is after the Commissioner receives notice under section 173(1)(b) that the person must transfer to another scheme on the scheme’s winding up; or”.
- (4) In section 50(4)(c) “notice” is replaced by “the Commissioner receives notice”.
- (5) In section 50(4)(d) “notice” is replaced by “the Commissioner receives notice”.

174 Completion of allocation to default KiwiSaver scheme if person does not choose his or her own KiwiSaver scheme

- (1) After section 51(1), the following is inserted:

“(1B) Despite subsection (1), subsections (4) and (5) do not apply if section 50(4)(b) or (bb) applies. Instead, the allocation under

section 50(3) is treated as completed on the day on which it occurs.”

- (2) In section 51(4)(b), “section 50(4)” is replaced by “section 50(4)(a), (c), or (d)”.

175 Involuntary transfers

Section 57(1)(b) is replaced by the following:

“(b) the Commissioner has received notice under section 173(1)(b) that the person must transfer to another scheme on a scheme’s winding up and paragraph (bb) does not apply; or

“(bb) a scheme winds up, if that winding up is after the Commissioner has received notice under section 173(1)(b) that the person must transfer to another scheme on the scheme’s winding up; or”.

176 Commissioner must send information to involuntary transferees

In section 59(a), “information pack” is replaced by “information pack, but not if section 57(1)(b) applies”.

177 Initial steps in winding up of KiwiSaver scheme

In section 173(1)(b), “name” is replaced by “name, tax file number,”.

178 New section 220B inserted

Before the heading before section 221, the following is inserted:

“220B Information sharing

The Commissioner and a provider may, for the purposes of administering this Act or a KiwiSaver scheme, communicate to each other by electronic means a person’s name, address, date of birth, and tax file number.”

179 Crown contribution

In section 226(1), “a member” is replaced by “a member before they reach the New Zealand superannuation qualification age”.

180 Schedule 1—KiwiSaver scheme rules

- (1) In schedule 1, in clause 8(5), in the words before the paragraphs, “either” is replaced by “any”.
- (2) In schedule 1, after clause 8(5)(a), the following is inserted:
“(ab) the estate in land is a leasehold estate.”
- (3) In schedule 1, in clause 8(6), “fee simple estate” is replaced by “fee simple estate, a leasehold estate”.

Part 6
Amendments to Stamp and Cheque
Duties Act 1971

181 Stamp and Cheque Duties Act 1971

Sections 182 and 183 amend the Stamp and Cheque Duties Act 1971.

182 Section 86I replaced

Section 86I is replaced by the following:

“86I Application of approved issuer levy and zero-rating

- “(1) This section applies for the purposes of—
- “(a) the NRWT rules of the Income Tax Act 2007;
 - “(b) an exemption under a double tax agreement;
 - “(c) section 86J.
- “(2) Despite the NRWT rules, a payment of interest under a registered security is treated as paid by an approved issuer only to the extent to which—
- “(a) approved issuer levy in relation to the security is paid by or on behalf of the approved issuer; and
 - “(b) the amount of the levy, based on the leviable value of the registered security at the time of the payment of the interest, is paid—
 - “(i) at the rate set out in section 86J; and
 - “(ii) by the date set out in section 86K or 86KA or, subject to the payment of interest or penalties imposed under Part 7 or 9 of the Tax Administration Act 1994, by a later date.”

183 Refund of levy paid in error or in excess

Section 86L(2) is replaced by the following:

- “(2) For the purposes of the NRWT rules of the Income Tax Act 2007 or an exemption under a double tax agreement, as applicable, if an amount is refunded under subsection (1), the payment of interest to which the approved issuer levy relates is treated as not having been paid by an approved issuer in relation to a registered security.”

Part 7**Amendments to other legislation***Income Tax Act 1994***184 Accounting for goods and services tax**

In section ED 4(3) of the Income Tax Act 1994, “under section 21 or section 21I(1) to 21I(3)” is replaced by “under section 5B, 21, or 21I(1) to (3)”.

*Gaming Duties Act 1971***185 Deduction of duty from payments due to defaulters**

After section 12L(1B) of the Gaming Duties Act 1971, the following is inserted:

- “(1C) For the purposes of subsection (1), an amount payable or becoming payable includes money that—
- “(a) is held in a joint bank account in the name of the defaulter and 1 or more other persons; and
 - “(b) can be withdrawn from the account by or on behalf of the defaulter without a signature or other authorisation being required at the time of the withdrawal from, or on behalf of, the other person or persons.
- “(1D) Subsection (1C) does not apply when the joint bank account is an account of a partnership that files a return of income under section 33(1) of the Tax Administration Act 1994.”

*Local Government (Auckland Transitional
Provisions) Act 2010*

186 Tax

After section 83(18) of the Local Government (Auckland Transitional Provisions) Act 2010, the following are added:

- “(19) If an Order in Council under section 37(1) of the Local Government (Tamaki Makaurau Reorganisation) Act 2009 provides that Watercare Services Limited is liable for a debt to the Auckland Council as at 1 November 2010, for the purposes of the financial arrangements rules as defined in section YA 1 of the Income Tax Act 2007, the Auckland Council is treated as paying to Watercare Services Limited on 1 November 2010 consideration equal to the debt.
- “(20) If a council-controlled organisation of the Auckland Council is established by the Transition Agency under section 19B or 19C of the Local Government (Tamaki Makaurau Reorganisation) Act 2009 and is liable for a debt to the Auckland Council as at 1 November 2010, for the purposes of the financial arrangements rules as defined in section YA 1 of the Income Tax Act 2007, the Auckland Council is treated as paying to the council-controlled organisation on 1 November 2010 consideration equal to the debt.”

*Student Loan Scheme (Charitable
Organisations) Regulations 2006*

187 Schedule—Charitable organisations for purposes of section 38AE(1)(b) of Student Loan Scheme Act 1992

In the schedule to the Student Loan Scheme (Charitable Organisations) Regulations 2006,—

- (a) after the entry for “Te Ora Hou Aotearoa Incorporated”, an entry for “Te Tuao Tawahi: Volunteer Service Abroad Incorporated” is inserted:
- (b) the entry for “Volunteer Service Abroad Inc” is repealed.

*Health Entitlement Cards Regulations 1993***188 Interpretation**

- (1) In the Health Entitlement Cards Regulations 1993, regulation 2, definition of **net income**, paragraph (d), “section EX 37(2) and (3) of the Income Tax Act 2007” is replaced by “section EX 43(2) and (3) of the Income Tax Act 2007”.
- (2) Subsection (1) applies for the 2008–09 and later income years.

*Inland Revenue Acts***189 Consequential amendments to Inland Revenue Acts:****ACC change**

The provisions in the enactments listed in the schedule are amended by replacing “Injury Prevention, Rehabilitation, and Compensation Act 2001” by “Accident Compensation Act 2001”.

Schedule 1
**Consequential amendments to Inland
Revenue Acts: ACC change**

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Enactment	Provision	Definitions
<i>Income Tax Act 2007</i>	CF 1(2)(f)–(h) in each place where it appears CW 33(1)(b) CW 35(a) DF 4(1) EF 3(5) in each place where it appears EW 13(2) EZ 35(9)(c)(i) LB 7(1)(a)(i) LB 8(1)(a) LC 5(4) in each place where it appears MD 9(3)(e), (4)(b), (c) in each place where it appears OB 1(2)(e) RA 22(2)(d) YA 1, in the definition of—	ACC accident compensation earnings-related payment, paragraph (d) combined tax and earner-related payment, paragraph (b)(iii)

Enactment	Provision	Definitions
<i>Tax Administration Act 1994</i>	schedule 4, part I, clause 1	<p>exempt interest, paragraph (f)</p> <p>income from employment, paragraph (b)(iv)</p> <p>personal service rehabilitation payment, paragraph (a)</p>
	3, in the definition of—	tax law , paragraph (d)
	4A(3)(aa)	
	33A(1)(a)(iiic), (2)(d)(i)(B) in each place where it appears	
	33C	
	81(1)(a)(iia), (3)(a)(ii) in each place where it appears	
	82(9), in the definition of—	earnings related compensation , paragraph (c)
	85E(1), (3) in each place where it appears	
	86(1), (2), (5)(a), (b), (f) in each place where it appears	
	142(1)(c)	
	156A(2)	
	157(10), in the definition of—	income tax , paragraph (b)

Enactment	Provision	Definitions
	167(1), (2) 168(1) 169(1)	
<i>Goods and Services Tax Act 1985</i>	5(13), proviso, paragraph (b) 20(3)(d)(v)	
<i>KiwiSaver Act 2006</i>	4, in the definition of—	salary or wages, paragraph (a)(v)(B)

s 140

Schedule 2
New schedule 38

s MB 1

Schedule 38
**Acts exempting income from tax: income
included in family scheme income**

- 1 Arbitration (International Investment Disputes) Act 1979
- 2 Consular Privileges and Immunities Act 1971
- 3 Diplomatic Privileges and Immunities Act 1968
- 4 International Finance Agreements Act 1961
- 5 Pitcairn Trials Act 2002

Legislative history

5 August 2010	Introduction (Bill 182–1)
19 August 2010	First reading and referral to Finance and Expenditure Committee
15 November 2010	Reported from Finance and Expenditure Committee (Bill 182–2)
24 November 2010	Second reading
9 December 2010	Committee of the whole House, third reading
20 December 2010	Royal assent

This Act is administered by the Inland Revenue Department.
