

Taxation (Annual Rates, GST, Trans-Tasman Imputation and Miscellaneous Provisions) Bill

Government Bill

Explanatory note

General policy statement

This bill introduces a number of significant changes to current taxation laws. Amendments to the Income Tax Act 1994 will make New Zealand income tax imputation credits available to Australian companies. This is a significant initiative in terms of facilitating trans-Tasman investment.

Further amendments to the Income Tax Act 1994 will permit employers the option of replacing the current flat rate of 33% of specified superannuation contributions withholding tax on their contributions to superannuation funds for the benefit of employees with variable rates of income tax that match employees' marginal rates of income tax.

Amendments to the Goods and Services Tax Act 1985 will permit the zero-rating of business-to-business supplies of financial services and also introduce a "reverse charge" mechanism that makes certain imports of services subject to GST. These initiatives, respectively, address in large part the current over-taxation of suppliers of financial services and the competitive disadvantage imposed on New Zealand resident suppliers of services by virtue of imported services not being subject to GST.

The bill also contains a large number of remedial and consequential amendments. Some of these amendments have retrospective application. This is to ensure that the intended policy of the provisions, as amended, applies to all taxpayers intended to be subject to that

policy. Clauses with retrospective effect are identified in the clause by clause analysis.

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

Part 1

Annual Rates of Income Tax for 2003–04

The proposed amendment confirms the annual income tax rates that will apply for the 2003–04 income year. The annual income tax rates to be confirmed will be the same as the rates that applied for the 2002–03 income year.

Part 2

Amendments to Income Tax Act 1994

Trans-Tasman imputation

Australia and New Zealand are reforming their imputation laws to reduce a long-standing problem of the double taxation of certain trans-Tasman investments, known as “triangular tax”.

Under this reform, Australian and New Zealand shareholders of trans-Tasman companies that choose to take up these reforms will be allocated imputation credits representing New Zealand tax paid and franking credits representing Australian tax paid, in proportion to their ownership of the company. However each country’s credits can only be claimed by its residents.

As part of a joint Australia/New Zealand initiative, amendments are proposed that permit Australian companies to join New Zealand’s imputation credit rules.

Additionally, the amendments permit a new form of grouping for imputation purposes only, which Australian companies may also join. This is an attempt to mitigate the problem that imputation credits cannot be passed through intermediate companies that are resident in neither Australia nor New Zealand.

Imputation grouping will enable any Australian or New Zealand company within a wholly-owned group to pay an imputed dividend, if tax has been paid or imputation credits have been received from companies outside the group by any Australian or New Zealand company within the group. It will not, therefore, be necessary to pay a dividend up the chain of companies for the parent company to

access imputation credits created further down the chain of companies.

The amendments enabling Australian companies to elect to maintain an imputation credit account apply from 1 April 2003 but the amendments allowing Australian companies to pay imputed dividends will apply from 1 October 2003. The imputation grouping rules also come into force from 1 April 2003.

Amendments relating to tax pooling provisions

Four amendments are proposed relating to the tax pooling provisions recently enacted. The most significant amendment is a change to the imputation provisions to allow taxpayers who, through an intermediary, deposit an amount in a tax pooling account with Inland Revenue to receive an imputation credit when the amount is deposited and not when that amount is allocated from the pooling account to the company's income tax account. The amendment should remove a disincentive for taxpayers to pay tax through a pooling account.

Deferred deduction rule

The deferred deduction rule is designed to combat aggressive tax arrangements, many of which are mass-marketed. Such arrangements provide taxpayers with excessive tax advantages, as illustrated in the following example:

Jo invests \$100 in a tax-driven arrangement. \$20 is Jo's own money and the remaining \$80 is financed through the promoter of the arrangement. Jo is not liable to repay the \$80 loan if the arrangement is a failure. The result is:

Losses generated by the arrangement: \$100

Tax effect at 39 cents in the dollar: \$39

Therefore, subject to complying with current tax law, for an investment of only \$20 Jo reduces her tax bill by \$39 and is not liable to repay the \$80 loan.

The tax saving occurs regardless of the success of the arrangement. Typical arrangements cover a range of projects from films to forestry and the commercialisation of concepts. Most involve depreciation deductions from fixed life intangible property, but other types of deductions are also used.

While the central problem with the arrangements in question is of asset valuation, targeting valuation is difficult in practice given the forecasts of income that underpin such valuations are inherently difficult to verify or challenge and are very subjective. Hence, the rule focuses on loans that the taxpayer is not at risk of having to repay.

The consequences of these arrangements include:

- a loss of revenue to the government; and
- an inefficient use of Inland Revenue's resources; and
- in terms of the individual investors in these arrangements, unexpected exposure to interest and penalties on any resulting unpaid tax.

The income tax at stake to date in the arrangements of which Inland Revenue is currently aware is in the order of \$400 to \$450 million. This could continue to increase in the absence of a targeted response. However, so far about a quarter of this has been recovered by audit activity, which is ongoing.

The deferred deduction rule uses the concept of money that the investor is not at risk of having to repay as a proxy for valuation. It defers tax deductions relating to money that is not at risk to the extent the loans are outstanding.

The rule will apply only where the following criteria are met:

- an arrangement has a promoter; and
- the arrangement produces losses in its early years; and
- the money not at risk constitutes 50% or more of the net assets of the arrangement; and
- the arrangement's net assets consist of less than 70% of tangible property that consists of land, buildings, or substantial plant and machinery.

"Money that is not at risk" is defined in terms of:

- loans that are explicitly or economically limited recourse;
- loans where interest or repayments of principal are not required for 10 years;
- other loans that have the same effect.

A loan is an economically limited recourse loan when it is made to an arrangement specific entity (which is typically a company, but

could also be a special partnership) and is not secured other than over the assets and shares of that company.

Loans where the terms are on an arm's-length basis, where the lender regularly lends money on arm's-length terms and carries on business in New Zealand are excluded from the definition of "money that is not at risk". Also excluded are loans by associated persons who are not otherwise parties to an arrangement and whose money is genuinely "at risk".

Specified Superannuation Contribution Withholding Tax

Contributions by employers to superannuation funds for the benefit of their employees are generally subject to SSCWT at a flat rate of 33%. This effectively over-taxes employees with income of \$38,000 or less. The proposed progressive rates for SSCWT will allow for the appropriate taxation of employer contributions to employer-based superannuation funds for these employees earning \$38,000 or less.

The rate of SSCWT for each employee will be based on the sum of the employee's annual salary or wages and superannuation contributions received by the employee in the previous year. Employees with salary or wages and superannuation contributions totalling \$38,000 or less will have the opportunity to pay 21% and employees with salary or wages and superannuation contributions totalling more than \$38,000 will continue to be subject to 33% on their contributions. Progressive rates for SSCWT are voluntary at the discretion of the employer and will apply to employer contributions made after 1 April 2004.

Community Trusts

The bill introduces an income tax exemption for community trusts established under the Trustee Banks Restructuring Act 1988 from the commencement of the 2004–05 income tax year. The exemption is being introduced to reduce compliance costs on these community trusts who distribute most of their income to tax exempt entities. Income tax will still need to be accounted for on distributions of income from community trusts to tax-paying beneficiaries. This income tax will be accounted for by the beneficiaries rather than the community trust.

Repeal of sick, accident or death benefit fund income tax exemption

An amendment is proposed to repeal the income tax exemption for the investment earnings of a sick, accident or death benefit fund (SAD fund). A SAD fund is defined in the Income Tax Act 1994 as a fund established for the benefit of the employees of any employer, or the members of an incorporated society, and the surviving spouses and dependants of any such employees and members.

A closely targeted exemption will be made for the investment earnings of funds established exclusively for the purpose of paying for the funeral expenses of the employees of an employer and the surviving spouses and dependants of deceased employees.

The Committee of Experts on Tax Compliance considered that the income tax exemption for SAD funds was anomalous in terms of current tax policy and that there was no public policy justification for its continuance. Accordingly, the Committee recommended the repeal of this exemption.

The income tax exemption for the investment earnings of SAD funds is inconsistent with the current policy for the taxation of savings. Because of the open-ended nature of the SAD definition, SAD funds can be used as savings vehicles. The exemption effectively allows earnings on personal savings to be exempt from income tax. The exemption therefore provides concessionary treatment that is not available to other forms of savings.

The income tax exemption for SAD funds is also inconsistent with the treatment of insurance policies entered into for protection against sickness, accident or death. The earnings on contributions or premiums paid on such policies are generally taxable.

The current SAD fund income tax exemption also raises tax base maintenance concerns.

The repeal of the SAD fund income tax exemption will apply to income derived after the date of enactment.

Branch equivalent tax accounts and foreign losses

The branch equivalent tax account rules are being amended to clarify that attributed foreign losses and foreign investment fund losses cannot create branch equivalent tax account credits. The amendments will apply from 1 April 1995 except when a taxpayer has filed

an income tax return based on the current law before the date of introduction of this bill, when it shall apply from that date.

Further income tax

The amendments provide for relief from double taxation and extra penalties in relation to further income tax liabilities which arise when imputation credit accounts are overdrawn.

Further income tax is charged when a company has a debit in its imputation credit account at 31 March in any year. The amount charged is equal to the debit balance in the imputation credit account and is due and payable on 20 June. Any payments of further income tax can be credited to an income tax liability, as well as further income tax, but only to an income tax liability that arose after the date of payment. This can produce inappropriate results.

Under the proposed amendments payments of further income tax may be credited, at the taxpayer's request, against income tax liabilities, for any year the company is an imputation credit account company. Likewise, payments of income tax may be credited to further income tax. In addition, late payment penalties and use-of-money interest charged on further income tax liabilities will be remitted where there is effectively a double charging of penalties because income tax liabilities are also outstanding.

The amendments apply from the date of enactment, but a window of 2 calendar months is allowed for taxpayers to request retrospective adjustments for further income tax liabilities incurred in prior years.

Application date of new tax codes

The amendment clarifies that a new tax code for an employee is to apply from the start of the pay period in which it is received by the employer, rather than from the start of the succeeding pay period. The rule will apply only if the new tax code is received by the employer before the payroll preparation date for that pay period. The amendment is intended to reduce compliance costs and increase the accuracy of the PAYE system.

Part 3 Amendments to Tax Administration Act 1994

Shortfall penalties

The amendment provides for the removal of the double incidence of shortfall penalties when loss attributing qualifying companies and their shareholders are penalised for what is effectively the same underlying offence.

Net losses of loss attributing qualifying companies (LAQCs) are attributed to shareholders. The High Court ¹ has recently held that where a loss of an LAQC has been overstated causing a tax shortfall to both the company and the shareholders, shortfall penalties can be imposed on both the company and shareholders because they have taken separate tax positions. The decision is under appeal.

From a policy perspective, a single shortfall penalty should be paid in such a case.

If the LAQC pays its penalty in full, the shareholder will receive an offset to his or her penalty.

The amendment will apply to penalties charged from 1 April 1998.

Procedure for issuing notices

The amendments clarify that notices may be posted to an address nominated by the taxpayer or by the taxpayer's agent, whether a physical address or a post box. The amendments are in response to the High Court decision in *Hieber v CIR* ², which held that a valid notice could be given by post to a post box. These amendments remove uncertainties with the procedure for issuing notices for taxpayers who are not covered by the High Court decision. The amendments are backdated to ensure that notices already posted in this manner are valid.

The amendments will apply from 1 April 1995, the date the Tax Administration Act 1994 came into force.

¹ (*Chapman v CIR* (HC M402-SD02))

² (2002) 20 NZTC 17,774.

Specified home-based services

The amendments authorise the Commissioner to determine standard costs for the provision of specific home-based services. They introduce an exemption for the income of specified taxpayers from providing such services. The amendments recognise the need for practicality and the minimisation of compliance costs while providing a consistent framework for taxation in this industry.

Specifically, the Commissioner may determine standard costs for specified home-based services and individuals may use these standard costs instead of actual costs. The requirement to file a return is removed for individuals whose income from providing the home-based services is less than the standard costs. An individual who uses standard costs may not take advantage of, or transfer, any resultant losses.

Part 4

Amendments to other Acts

Goods and Services Tax Act 1985

Zero-rating business-to-business supplies of financial services

Amendments are proposed to zero-rate business-to-business supplies of financial services as set out in the discussion document *GST and Financial Services*, released in October 2002.

The changes are a response to the problem that the current exempt treatment of financial services is distortionary relative to the supply of other goods and services. The distortion arises because GST is not charged on the supply of financial services and, therefore, financial service providers are unable to claim a credit or “input tax” for GST paid on purchases used to supply the services. This leads to the potential for GST to cause over-taxation or “cascade” from the financial services sector to business customers. The cascade may result in higher than optimal prices or restructuring in a less than efficient manner by some financial service providers to lower their GST burden.

The key amendments zero-rate the supply of financial services by a GST registered person to another GST registered person if: the recipient’s predominant activity is the making of taxable supplies; or under certain conditions, the recipient is an entity that is part of a

group that makes predominately taxable supplies. Supplies of financial services between financial services providers will not be zero-rated but a formula will allow a deduction to the supplier to reflect the level of taxable supplies made by the recipient.

The treatment of financial services supplied to final consumers is not changed by the amendments as these supplies do not give rise to over-taxation and will therefore remain exempt from GST.

The amendments will come into effect from a date to be set by Order-in-Council which will not be earlier than 12 months before the date of enactment.

The amendments will apply not less than 12 months after their enactment to ensure that affected parties have time to adjust their accounting, computer and similar technical systems for the changes. An Order-in-Council is needed because the application date must coincide with the beginning of a GST taxable period; an appropriate date cannot be identified until after the bill is enacted. The Order-in-Council process provides the necessary flexibility.

GST on imported services

The amendments will introduce a “reverse charge” mechanism to tax certain imports of services. The reverse charge is intended to alleviate the current distortion in favour of imported services created by the non-taxation of imported services compared to the taxation of domestically supplied services. It also aligns New Zealand’s GST system with that of most other countries with a VAT or GST system and the treatment of services with that of goods.

The reverse charge will require GST registered recipients of supplies of imported services to self-assess GST on the value of the services if:

- the services are acquired for purposes other than that of making taxable supplies (generally that of making exempt supplies); and
- the supply of those services, if made in New Zealand by a registered person, would be a taxable supply.

This means that if a registered person acquires services that would be subject to GST if supplied in New Zealand and for which the recipient would not generally have received an input tax credit, the

recipient will be required to add GST to the price of the services and return the GST to Inland Revenue.

The recipient of a supply of imported services will be treated as the person who made the supply for the purpose of imposing and enforcing the reverse charge and for determining whether the GST registration threshold is exceeded. For all other purposes in the GST Act the recipient of a supply of imported services will remain the recipient, rather than the supplier, of the services.

Amendments are also made for the purpose of applying the reverse charge to related-party internal charges between head offices and branches or parent companies and subsidiaries.

The amendments will come into effect from a date to be set by Order-in-Council which will not be earlier than 12 months before the date of enactment.

The amendments will apply not less than 12 months after their enactment to ensure that affected parties have time to adjust their accounting, computer and similar technical systems for the changes. An Order-in-Council is needed because the application date must coincide with the beginning of a GST taxable period; an appropriate date cannot be identified until after the bill is enacted. The Order-in-Council process provides the necessary flexibility.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides for the commencement of the bill. *Subclause (1)* provides that clauses not referred to in *subclauses (2) to (15)* are to come into force on the date on which the bill receives the Royal assent.

Part 1

Annual Rates of Income Tax for 2003–04

Clause 3 confirms that income tax imposed by section BB 1 of the Income Tax Act 1994 must be paid at the basic rates specified in Schedule 1 of that Act.

Part 2 Amendments to Income Tax Act 1994

Clause 4 states that *Part 2* amends the Income Tax Act 1994.

Clause 5 amends *section CB 4(1)(l)* by adding amounts derived by the trustees of a community trust to the list of charities' exempt income.

Clause 6 amends *section CB 5(1)* by classifying as exempt income the interest and dividends derived by a trustee of a fund for the funerals of employees and employees' families.

Clause 7 amends *section CB 9(g)* to exempt amounts derived by natural persons from providing a standard-cost household service, to the extent given in a determination of the Commissioner under *section 91AA* of the Tax Administration Act 1994.

Clause 8 repeals *section CF 3(1)(ga)* which excluded from the term *dividends* certain income distributed by a group investment fund to a trustee company.

Clause 9 inserts *section CF 5B* which relates to the calculation of imputation credits for dividends paid in Australian dollars by Australian companies, with effect from 1 October 2003.

Clause 10 inserts *section CI 1(eb)* which classifies contributions to certain funds as fringe benefits.

Clause 11 amends *section CI 3(8)* by consequentially correcting a cross reference.

Clause 12 repeals *section DI 3A* which relates to expenditure by group investment funds.

Clause 13 repeals *section DK 1* which relates to deductions for certain film expenditure, consequential to the enactment of *subpart ES*.

Clause 14 inserts *subpart ES* which relates to arrangements involving money not at risk.

Clause 15 inserts *subpart FDB* which relates to companies that may constitute an imputation group, with effect from 1 April 2003.

Clause 16 amends *section HE 2*, consequential to the repeal of *section DI 3A*.

Clause 17 amends *section HH 3* by including some distributions by a community trust in the gross income assessable to beneficiaries.

Clause 18 amends *section HH 4(1)*, consequential to the repeal of *section DI 3A*.

Clause 19 corrects 2 internal cross reference errors in *table HI 8*, with effect from 26 March 2003.

Clause 20 amends *section ID 1*, by preventing the use of net losses by some suppliers of standard-cost household services.

Clause 21 amends *section IG 2(11)(b)(i)* by replacing “an agreement” with “a double tax agreement”.

Clause 22 amends *section KC 5(1)* by the addition of 9 new charities to the list of donee organisations in that section.

Clause 23 amends *section KD 2* by increasing the thresholds for the calculation of Part KD credits.

Clause 24 amends *section KD 3(2)* which relates to the calculation of family tax credit consequential to *section KD 7B*.

Clause 25 amends *section KD 5B* by increasing the rates for interim instalments of family tax credit.

Clause 26 inserts *section KD 7B* which addresses the effects of extra instalments of family tax credits and Part KD credits paid in years with 27 fortnightly, and 53 weekly, interim instalment dates.

Clause 27 amends *section LC 4(11)(e)* by replacing “notice of the assessment” with “notice of assessment”.

Clause 28 amends *section LD 1(2A)* by replacing “closed company” with “close company”, and by replacing “the year to which the tax deductions were made” with “the year in which tax deductions were made”, with effect from 1 April 1999.

Clause 29 amends *section LF 1(1)* by replacing “New Zealand company” with “New Zealand resident company”, with application for the 1995–96 and subsequent income years.

Clause 30 amends *section MB 8(1)* by replacing “or otherwise” with “or, in the absence of a request, in such order or manner as the Commissioner may determine”, with application for the 2002–03 and subsequent income years.

Clause 31 amends *section MB 9(1)* by clarifying that the section is subject to *section MD 2*.

Clause 32 amends *section MBB 4(3)* by limiting the notices that a pooling intermediary must give to a taxpayer, with effect from 1 April 2003.

Clause 33 repeals *section MBB 6(8)*, which is superseded by the provisions prescribing the treatment in a company's imputation credit account of payments under the tax pooling provisions. It comes into force on 1 April 2003, the date on which the tax pooling provisions came into effect.

Clause 34 replaces *section MBB 9* so as to clarify the tax treatment of certain payments that are made under the tax pooling system. It comes into force on 1 April 2003, the date on which the tax pooling provisions came into effect.

Clause 35 amends *section MD 1(3)* to clarify the treatment of refunds.

Clause 36 consequentially amends *section MD 2* which concerns refunds to companies that maintain imputation credit accounts.

Clause 37 repeals *section MD 4*, with effect from 1 April 2003.

Clause 38 inserts *section MD 5* which prevents an entry in a company's imputation credit account for income tax or dividend withholding tax that is not refunded, with effect from 1 April 2003.

Clause 39 inserts *section ME 1B* which provides for an election by an Australian company to establish and maintain an imputation credit account, although the company is not required by *section ME 1* to do so, with effect from 1 April 2003.

Clause 40 inserts *section ME 3B*, which allows a company that pays provisional tax through a tax pooling account to choose between alternative sets of rules for operating its imputation credit account. The company may choose a basic set of imputation rules, which does not distinguish between pooling credits and debits and ordinary credits and debits, or a set that makes such a distinction. The advantage for a company of choosing the latter set of rules is that the company will not lose imputation credits for payments of tax made after a breach of continuity in the control of the company. The new section comes into force on 1 April 2003, the date on which the tax pooling provisions came into effect.

Clause 41 amends *section ME 4* to provide for imputation credits to arise when amounts are deposited in a tax pooling account or an

Australian company pays non-resident withholding tax. It comes into force on 1 April 2003.

Clause 42 amends *section ME 5* to provide for imputation debits to arise when there is a refund from a tax pooling account, a transfer from a tax pooling account to another taxpayer or a refund of non-resident withholding tax to an Australian company. It comes into force on 1 April 2003.

Clause 43 amends *section ME 9* as it relates to the treatment of payments of further income tax. Taxpayers have 2 months within which to request adjustments for periods between 1 April 1998 and the date on which the Act receives the Royal assent. The clause also provides for the treatment of a payment of further income tax by an Australian imputation credit account company. It comes into force on 1 April 2003.

Clause 44 amends a heading before *section ME 10*, with effect from 1 April 2003.

Clause 45 amends *section ME 10* to provide for a consolidated imputation group to keep an imputation credit account, with effect from 1 April 2003.

Clause 46 inserts *section ME 10B* which allows a consolidated group that pays provisional tax through a tax pooling account to choose either a basic set of imputation rules which does not distinguish between pooling credits and debits and ordinary credits and debits, or a set that will make such a distinction so that taxpayers do not lose imputation credits for tax paid after any breach of continuity. It comes into force on 1 April 2003.

Clause 47 amends *section ME 11* which relates to credits in a group's imputation credit account consequential to the trans-Tasman imputation provisions, with effect from 1 April 2003. It also provides for imputation credits to arise when amounts are deposited in a tax pooling account by a consolidated group. It comes into force on 1 April 2003.

Clause 48 amends *section ME 12* consequential to the trans-Tasman imputation provisions. It also provides for imputation debits to arise when amounts deposited into a tax pooling account by a consolidated group are refunded to the group from the tax pooling account or transferred to another taxpayer. It comes into force on 1 April 2003.

Clause 49 amends *section ME 13* to ensure that when a consolidated group receives an imputation credit for an amount deposited into a tax pooling account, an individual company in the group does not also receive a credit in its imputation credit account. It also makes an amendment consequential to the trans-Tasman imputation provisions. It comes into force on 1 April 2003.

Clause 50 amends *section ME 14* consequential to the trans-Tasman imputation provisions, with effect from 1 April 2003.

Clauses 51 to 54 amend the Branch Equivalent Tax Account (BETA) rules to ensure that an attributed foreign loss cannot create a credit in the BETA account.

Clause 51 amends *section MF 4(1)(b)*, as it read before being amended by section 385 of the Taxation (Core Provisions) Act 1996, by replacing the definition of item “e”, with effect from 20 December 1994, subject to exceptions.

Clause 52 amends the BETA rules in *section MF 4(1)(b)*, with effect from 26 July 1996, subject to exceptions.

Clause 53 amends *section MF 8(2)(b)* as it read after being amended by section 49 of the Income Tax Act 1994 Amendment (No.4) Act 1995 and before being amended by section 387 of the Taxation (Core Provisions) Act 1996, by replacing item “f” with effect from 20 December 1994, subject to exceptions.

Clause 54 amends *section MF 8(2)(b)* by replacing *subparagraph (ii)* of item “f”, with effect from 26 July 1996, subject to exceptions.

Clause 55 amends *section NC 8* by inserting subsection (1AA) relating to collection codes under other statutes, with application to pay periods ending on and after the date on which this Act receives the Royal assent. It also amends *section NC 8(1A)* and replaces *section NC 8(4)*, which provides for the time at which an employer must apply a tax code declaration or tax code certificate from an employee. The amendment to *subsection (4)* applies to pay periods ending on and after 1 April 2004.

Clause 56 amends *section ND 7(4)* by repealing paragraph (e), with effect from 1 April 2003.

Clause 57 amends *section NE 2(1)* by inserting a reference to *section NE 2AB(2)*.

Clause 58 inserts *section NE 2AB*, which relates to an employer's election that progressive rates of specified superannuation contribution withholding tax apply.

Clause 59 amends *section NE 3* by inserting a reference to *section NE 2AB*.

Clause 60 amends *section NF 1(2)(a)* by inserting *subparagraph (x)* which provides that the Commissioner need not deduct RWT from interest paid to an intermediary, with effect from 1 April 2003.

Clause 61 amends *section NF 7(5)* to clarify the basis on which refunds of deductions are payable, with application for the 2002–03 and subsequent income years.

Clause 62 amends *section NF 9* by repealing *subsection (1)(c)*, consequentially amending *subsection (1)(i)* and amending *subsection (11)*, with various applications.

Clause 63 amends *section NG 16(4)* by clarifying the treatment of non-resident withholding tax deducted in error, with application for the 2002–03 and subsequent income years.

Clause 64 amends *section NH 2(1)* by replacing item “c”, with effect from 1 April 2003.

Clause 65 amends *section NH 3(7)* by replacing “additional tax” with “late payment penalty”, with application for the 1997–98 and subsequent income years.

Clause 66 amends *section OB 1* as follows:

- the insertion of a definition of *Australian imputation credit account company*
- in the definition of *certificate of exemption*, “section NF 11” is replaced with “section NF 9”
- in the definition of *commercial bill*, or *bill*, “and FF 5” is replaced with “DJ16, FF5, and GC 14A”
- the insertion of a definition of *community trust*
- the insertion of a definition of *consolidated imputation group*
- amending the definition of *continuity provisions*
- repealing the definition of *determination*
- amending the definition of *emergency call*
- amending the definition of *employment*

- amending the definition of *imputation credit account*
- amending the definition of *imputation credit account company*
- inserting a definition of *imputation group*
- repealing the definition of *limited recourse loan*
- repealing the definition of *management fees*
- amending the definition of *Maori authority*
- amending the definition of *money*
- inserting a definition of *money that is not at risk*
- repealing the definition of *non-recourse loan*
- amending the definition of *PAYE intermediary*
- inserting a definition of *pooling credit recorder*
- inserting a definition of *promoter*, for the purpose of *subpart ES*
- inserting a definition of *resident imputation subgroup*
- inserting a definition of *resident in Australia*
- amending the definition of *resident in New Zealand*
- amending the definition of *salary or wages*
- amending the definition of *schedular gross income*
- repealing the definition of *specified office holder*
- inserting a definition of *standard-cost household service*
- inserting a definition of *trans-Tasman imputation group*.

The amendments come into force on various dates.

Clause 67 amends *section OB 2(1)* by omitting “a payment made to a specified office holder in respect of the activities of a specified office”, with effect from 1 April 2003.

Clause 68 amends *section OD 5(3)* to clarify the references to “trustee” and “trustee company”.

Clause 69 amends *section OE 2(3)* by replacing “liable to pay income tax” with “liable to income tax”.

Clause 70 amends *section OZ 1*, with various applications.

Clause 71 amends *Schedule 1*, with various applications.

Clause 72 amends *Schedule 12* consequentially, by replacing “\$20,000” wherever it appears with “\$20,356”.

Part 3

Amendments to Tax Administration Act 1994

Clause 73 states that *Part 3* amends the Tax Administration Act 1994.

Clause 74 amends *section 3(1)* by inserting a definition of *standard-cost household service*.

Clause 75 amends *section 14(1)* by inserting *paragraphs (bb) and (e)* which provide for the giving of notices by post.

Clause 76 amends *section 17(1B)* consequentially.

Clause 77 amends *section 29(1)* amending the requirements for shareholder dividend statements from an Australian imputation credit account company by requiring the inclusion of the term “New Zealand imputation credit”.

Clause 78 corrects the numbering of subparagraphs in *section 33A(1)* and amends *section 33A(2)* to clarify the list of taxpayers who are excluded from the list of taxpayers who are not required to file returns of income, with various applications.

Clause 79 inserts *section 33B* which excludes natural persons who derive schedular gross income from providing a standard-cost household service from the requirement to furnish a return of income for their schedular gross income.

Clause 80 amends *section 43A* to clarify that “a company” means a company that is resident in New Zealand.

Clause 81 amends the company dividend statement requirements in *section 67(1)* by inserting *paragraph (eb)*, which requires the inclusion of the exchange rate between the New Zealand dollar and the Australian dollar that was used to calculate the imputation ratio.

Clause 82 amends the annual imputation return requirements in *section 69(1)* and inserts *subsection (1B)* which provides for imputation credit account companies that are not required to furnish a return of income.

Clause 83 consequentially amends the requirements contained in *section 74(b)* relating to the cessation of consolidated imputation groups and adds *subsection (2)* which excuses a residual imputation

subgroup from making a return if the subgroup is not required to pay further income tax or penalty imputation tax.

Clause 84 amends the requirements in *section 80D(1)* relating to the circumstances in which the Commissioner must issue an income statement to a taxpayer.

Clause 85 repeals *section 80H(2)* which has become redundant.

Clause 86 inserts *section 91AA* which permits the Commissioner to make determinations in respect of standard-cost household services in prescribed circumstances.

Clause 87 amends *section 91E(4)(j)* to correct a reference to “generally accepted accounting practice”, with effect from 17 October 2002.

Clause 88 amends *section 91F(4)(h)* to correct a reference to “generally accepted accounting practice”, with effect from 17 October 2002.

Clause 89 amends *section 94(2)(a)* to replace an incorrect reference to “additional tax” with “late payment penalty”, with application for the 1997–98 and subsequent income years.

Clause 90 amends *section 100(2)* to replace an incorrect reference to “on objection” with “in proceedings challenging the assessment”, with effect from 1 October 1996.

Clause 91 amends *section 106(1B)* to correct internal subsection references, with application to specified income years.

Clause 92 amends the definition of *interest period* contained in *section 120C(1)*, with application to refunds that arise from income statements that are issued on or after 15 May 2003 and relate to the 2002–03 or a subsequent income year.

Clause 93 amends *section 139A(1)* to apply to an imputation credit account company that is not required to furnish a return of income, with effect from 1 April 2003.

Clause 94 amends *section 141C(4)* by adding *subsection (5)* which clarifies the application of *section 141C(4)* and *141B(1B)*.

Clause 95 inserts *section 141FC* which provides for the reduction, in certain circumstances, of shortfall penalties imposed on shareholders of loss attributing qualifying companies as a result of the attribution of net losses that are subsequently disallowed.

Clause 96 amends *section 142(1)(c)* to clarify the due date for payment of a late filing penalty by a company that is not required to furnish a return of income for an income year, with effect from 1 April 2003.

Clause 97 amends *section 165A(2)* by clarifying that the sections referred to in that section are in the Income Tax Act 1994, with effect from 26 March 2003.

Clause 98 amends *section 169* to reflect the commencement of the Personal Property Securities Act 1999.

Clause 99 inserts *section 181C* which requires the Commissioner to remit interest and late payment penalties relating to further income tax, with effect from 1 April 1998.

Part 4

Amendments to other Acts

Amendments to Goods and Services Tax Act 1985

Clause 100 states that *clauses 101 to 124* amend the Goods and Services Tax Act 1985.

Coming into force of clauses 101 to 124:

- *clauses 101(1) and (3), 104(1), 106(1), 109(1), 109(4), 112, 113(4), 116(2), 120, 121, 122(2), 122(3) and 124* will come into force on the date on which the Act receives the Royal assent;
- *clause 103* will come into force on 1 July 1994;
- *clauses 101 to 124* otherwise will come into force on a date, not less than 1 year after the date of the Royal assent, that is to be appointed by the Governor-General by Order in Council. The requirement for an Order-in-Council is explained in the general policy statement relating to Part 4 of the bill.

Clause 101 amends *section 2* by amending the definition of *goods* and inserting a definition of *non-resident*.

Clause 102 inserts new *section 2A(1)(bb)*, consequential to new *section 56B*.

Clause 103 amends *section 3(3)(c)* to replace an incorrect reference to the Companies Amendment Act 1964 with a reference to the Land Transfer Act 1952.

Clause 104 amends *section 3A(2)* by replacing “not resident in New Zealand” with “is a non-resident” and restricts the availability of input tax from a purchase of secondhand goods, consequential to the amendments to *section 11A*.

Clause 105 inserts *section 5B* which treats certain imported services as being made in New Zealand by the recipient.

Clause 106 amends *section 8(2), (3) and (4)* by replacing “not resident in New Zealand” with “a non-resident” and inserts *subsection (4B)* which treats certain supplies of services as not being made in New Zealand in prescribed circumstances.

Clause 107 inserts *section 9(2)(a)(iv)* which provides for the time of supply of services treated as being made in New Zealand.

Clause 108 amends *section 10* by inserting provisions relating to the valuation of a supply of services.

Clause 109 amends *section 11A(1)(k), (l), (m) and (ma)(ii)* by replacing “not resident in New Zealand” with “non-resident”, and introduces further provisions relating to the zero-rating of certain supplies of financial services.

Clause 110 amends *section 11AB(a)* by replacing “resident in New Zealand” with “who is a resident”.

Clause 111 inserts *section 11C* which relates to an election concerning the zero-rating of certain supplies of financial services and *section 11D* which relates to figures for the proportions of taxable supplies made by other persons.

Clause 112 amends *section 18* by replacing “and 19 of this Act” with “and 19B”.

Clause 113 inserts into *section 20* a record-keeping requirement relating to an imported supply of services and consequentially amends *sections 20(3)(a)(iii), 20(3)(b)(iv), 20(3)(d), 20(3)(g) and 20(4)(b)*.

Clause 114 inserts *section 20C* which relates to input deductions in respect of certain supplies of financial services.

Clause 115 amends *section 21G(1A)* which relates to the timing of deductions under *section 21F*.

Clause 116 amends *section 21H(2)* which provides for the making of single deductions under *section 21F* and in *section 21H(3)(d)*

replaces “section 21” with “section 21(1)” with application to supplies made on or after 10 October 2000.

Clause 117 inserts *section 24B* which prescribes the records to be kept by the recipient of imported services.

Clause 118 inserts *section 25AA* which provides for the consequences of change in contracts for imported services.

Clause 119 inserts *section 26B* which requires a registered person to make adjustments to deductions based on customer characteristics.

Clause 120 amends *section 46(6)* to clarify rights to set off and refund, with application to goods and services tax paid in excess, being goods and services tax payable on supplies made in taxable periods beginning on or after 1 April 2002.

Clause 121 amends *section 51(1)(e)* by replacing “resident in New Zealand” with “residents”.

Clause 122 clarifies the language of *section 55(7)* and inserts *section 55(7B)* which provides for a supply of imported services between members of a group.

Clause 123 inserts *section 56B* which provides for the treatment of branches and divisions in relation to certain imported services.

Clause 124 amends *sections 60(6) and (7)* by replacing “not resident in New Zealand” with “a non-resident”, and in *section 60(7)(b)*, replaces “resident in New Zealand” with “a resident”.

Amendments to Student Loan Scheme Act 1992

Clause 125 states that *clauses 126 to 131* amend the Student Loan Scheme Act 1992.

Clause 126 amends *section 2* by inserting a definition of *repayment code*.

Clause 127 amends *section 17* consequentially by replacing “Sections 18 to 25” with “Sections 17B to 25”.

Clause 128 inserts *section 17B* which gives a repayment code for application in the PAYE rules.

Clause 129 replaces *section 18*. The new *section 18* gives the requirements for a borrower’s notice to an employer relating to the existence of a student loan repayment obligation.

Clause 130 amends *section 25* by correcting cross-references to other Acts, so that the offences and penalties for employers relating to PAYE deductions also apply for student loan deductions, and providing for the repayment code in *section 17B*.

Clause 131 makes various amendments to *section 44A* to clarify the nature of the repayments referred to in that section, with application to estimated interim repayment obligations arising in respect of the 1998–99 and subsequent income years.

Amendment to Personal Property Securities Act 1999

Clause 132 states that *clause 133* amends the Personal Property Securities Act 1999.

Clause 133 makes a consequential amendment to *section 23(b)* of the Personal Property Securities Act 1999.

Regulatory impact and compliance cost statement

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

Compliance cost statement

The following proposals in the bill will reduce compliance costs:

Community trusts: Currently, community trusts established under the Trustee Banks Restructuring Act 1988 must calculate their own income tax position, even though most of the income that they receive can be distributed without a tax liability. The income tax exemption proposed for these community trusts in this bill will therefore significantly reduce the tax compliance costs incurred by them.

Home-based services: The Commissioner of Inland Revenue will be authorised to determine standard costs for specific home-based services, thus removing the current requirement for some home-based workers to file tax returns. Income calculations for those who elect,

or are (for other reasons) required, to file returns will also be simplified. There will also be an associated general increase in certainty and consistency of tax treatment of home-based workers.

Imputation credit account overdrawn: Currently, a company whose imputation credit account is overdrawn at the end of an imputation year is liable to pay an amount of “further income tax”, as well as late payment penalties and use-of-money interest if the further income tax is not paid by the due date. In future, companies in these circumstances will be able to require the Commissioner to off set further income tax payments against income tax liabilities, and vice versa. Late payment penalties and use-of-money interest on further income tax can be remitted if income tax is outstanding as well.

Loss attributing qualifying company (LAQC)—shortfall penalties on shareholders: An amendment will remove the double incidence of shortfall penalties when, as a result of the disallowance of a deduction that reduces or extinguishes a net loss incurred by an LAQC, shortfall penalties are imposed on shareholders of the LAQC.

The following proposals in the bill will increase compliance costs:

GST—imported and financial services: Unlike supplies of imported goods, most supplies of imported services are not subject to GST. Overseas suppliers are consequently not required to charge GST when they supply services in New Zealand. This places New Zealand suppliers of similar services at a disadvantage because a New Zealand supplier is required to charge GST. Supplies of financial services are currently exempt from GST. As a consequence, financiers are unable to claim back GST costs paid. Provisions in the bill address both these economic issues. While some increase in compliance costs is inevitable, the policy options adopted in each case is likely to minimise the amount of additional compliance costs.

Progressive SSCWT: Contributions by employers to superannuation funds for the benefit of their employees are subject to specified superannuation contribution withholding tax (SSCWT) at a flat rate of 33%. This rate over-taxes employees earning \$38,000 or less. The amount of over-taxation, estimated to be in the order of \$29 million, arises because employees earning \$38,000 or less pay the flat rate of 33% on employer contributions to superannuation funds, whereas their marginal tax rate is 21%. Provisions in the bill introduce an option for the employer or fund manager to calculate the amount of tax to pay by ascertaining the sum of the employee’s annual salary or

wages and superannuation contribution for the previous year. If the combined total was over \$38,000, the rate is 33%. If the total was \$38,000 or less, the rate is 21%. Progressive rates will necessarily be more difficult to administer than the current flat rate and will therefore increase employers' and superannuation funds' compliance costs. Employees' potential benefits are of the order of \$29 million.

Trans-Tasman Imputation: At present, Australian companies which have paid income tax in New Zealand are unable to pass New Zealand imputation credits through to their shareholders. Similarly, New Zealand companies which have paid income tax in Australia are unable to pass Australian franking credits through to their shareholders. Provisions in the bill permit the attaching of New Zealand imputation credits to dividends paid by Australian companies according to the normal imputation rules that apply to New Zealand companies. Increased compliance costs can be expected to be incurred by Australian companies that elect into the New Zealand imputation system. These costs are expected to reduce over time as Australian companies become more familiar with the New Zealand imputation rules.

Sick, accident or death benefit fund income tax exemption: The investment earnings of a sick, accident or death benefit (SAD) fund are currently exempt from income tax. The exemption no longer has a public policy justification and is inconsistent with the general tax treatment of savings and premiums paid on insurance policies. The removal of the exemption will also protect the tax base. The SAD fund exemption has been exploited by high income individuals to reduce the amount of tax they pay. It is expected that many SAD funds will be wound up when the benefit of the income tax exemption is removed. Remaining SAD funds will incur increased compliance costs resulting from their being required to file income tax returns.

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

Annual rates: The provision to confirm the annual rates of income tax for the 2002–03 income year has no impact on compliance costs.

Deduction deferral: Aggressive tax minimisation arrangements typically provide taxpayers with tax deductions that exceed the amount

of money the taxpayer contributes to (or has at risk) in an arrangement. Current law dealing with tax avoidance can produce uncertainty for taxpayers who enter into such arrangements. Shortfall penalties and significant “use-of-money” interest are often imposed on such taxpayers. By providing greater certainty as to the application of tax laws, the deduction deferral provisions are expected to increase protection for taxpayers from avoidable shortfall penalties and interest.

Remedial provisions: Provisions that make remedial amendments to—

- prevent attributed foreign losses being used to create branch equivalent tax account credits.
- match penalties and offences by employers relating to student loan deductions, with those relating to PAYE.
- enable the Commissioner of Inland Revenue to instruct an employer to make student loan repayment deductions when a borrower fails to notify the borrower’s employer of the borrower’s student loan liability.
- permit the posting of notices by the Commissioner to post box addresses.
- grant charitable donee status to 9 additional organisations.
- provide for the Commissioner of Inland Revenue to determine standard costs for specific home-based services, and removing the requirement to file tax returns for certain home-based workers.
- ensure that new tax codes for source deduction payments apply from the start of the pay period during which they are delivered to the employer.
- clarify a number of provisions in order to ensure that Judges receive the same tax treatment as employees in respect of income received from judicial duties.
- correct an internal cross reference in the definition of *emergency call* in section OB 1 of the Income Tax Act 1994.
- clarify the section cross-references in section 165A of the Tax Administration Act 1994.

- replace references to “generally accepted accounting principles” in sections 91E(4)(j) and 91F(4)(h) of the Tax Administration Act 1994 with “generally accepted accounting practice”.
- amend sections MB 8(1) and (2), MD 1(3), NF 7(5) and NG 16(4) of the Income Tax Act 1994 and section 46(6) of the Goods and Services Tax Act 1985 to clarify the basis on which certain amounts of tax paid in excess are to be refunded or set off.
- amend section 44A of the Student Loan Scheme Act 1992 to clarify whether the repayments referred to are interim or residual.
- amend section 106(1B) of the Tax Administration Act 1994 to correct an internal cross reference.
- amend section 169 of the Tax Administration Act 1994 (which deals with charges over employers’ property to recover unpaid tax deductions), and section 23(b) of the Personal Property Securities Act 1999, consequential to the commencement of the latter Act.
- amend the imputation provisions of the Income Tax Act 1994 to allow taxpayers who pay their provisional tax through a tax pooling account to receive imputation credits when funds are deposited into the pooling account.
- make provision in the Income Tax Act 1994 for income years in which recipients of Part KD credits or family tax credits receive either 27 fortnightly instalments or 53 weekly instalments.
- amend section 17(1B) of the Tax Administration Act 1994 to ensure that the effect of this information gathering provision carries through to the relevant offence provisions as intended.
- amend section 8(8) of the Goods and Services Tax Act 1985 to replace “a telecommunications supplier not resident in New Zealand” with “a non-resident”.
- repeal section 80H(2) of the Tax Administration Act 1994 because it is redundant.

Consultation

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

GST and financial services

GST and imported services

Mass-marketed tax schemes: The deferred deduction rule

Trans-Tasman triangular tax

Specific consultation was undertaken with a number of professional groups, industry representatives and individual taxpayers, according to their expertise or membership, including groups in Australia for trans-Tasman imputation. These consultations included:

- Institute of Chartered Accountants of New Zealand
- Investment Savings and Insurance Association of New Zealand
- New Zealand Law Society
- New Zealand Bankers' Association
- Business New Zealand
- Film Commission
- Forest Enterprises Limited
- Ministry of Research, Science and Technology
- Ministry of Culture and Heritage
- NZ Council of Trade Unions
- Screen Producers and Directors Association

A detailed commentary, providing a thorough analysis of the bill's provisions and their intended application, is available at www taxpolicy.ird.govt.nz

Hon Dr Michael Cullen

Taxation (Annual Rates, GST, Trans-Tasman Imputation and Miscellaneous Provisions) Bill

Government Bill

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**Taxation (Annual Rates,
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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the **Taxation (Annual Rates, GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003**.

2 Commencement

- (1) This Act comes into force on the date on which it receives the Royal assent, except as provided in this section.
- (2) **Section 103** is treated as coming into force on 1 July 1994.
- (3) **Sections 51(2) and 53(2)** are treated as coming into force on 20 December 1994.
- (4) **Section 75** is treated as coming into force on 1 April 1995.
- (5) **Sections 52(2) and 54(2)** are treated as coming into force on 26 July 1996.
- (6) **Section 90** is treated as coming into force on 1 October 1996.
- (7) **Sections 130(1) and (3)** are treated as coming into force on 1 April 1997.

- (8) **Sections 43(1), 95 and 99** are treated as coming into force on 1 April 1998.
- (9) **Sections 87 and 88** are treated as coming into force on 17 October 2002.
- (10) **Sections 19, 66(16), 78(1) to (3) and 97** are treated as coming into force on 26 March 2003.
- (11) **Sections 32 to 34, 37 to 42, 43(2), 44 to 50, 56, 60, 64, 66(1), 66(2), 66(6), 66(7), 66(10) to (13), 66(21), 66(23), 66(25), 66(27), 66(29), 67, 70(1), 77, 80 to 83, 93 and 96** are treated as coming into force on 1 April 2003.
- (12) **Section 15** is treated as coming into force—
 - (a) on 1 April 2003, except for the purpose of section ME 6 of the Income Tax Act 1994:
 - (b) on 1 October 2003, for the purpose of section ME 6 of the Income Tax Act 1994.
- (13) **Section 9** is treated as coming into force on 1 October 2003.
- (14) **Sections 55(2), 57 to 59, 71(3) and 71(4)** come into force on 1 April 2004.
- (15) **Sections 101(2), 102, 104(2), 105, 106(2), 106(3), 107, 108, 109(2), 109(3), 111, 113(1) to (3), 113(5), 113(6), 114, 115, 116(1), 117 to 119, 122(1), 122(4) and 123** come into force on a date, not less than 1 year after the date on which this Act receives the Royal assent, that is to be appointed by the Governor-General by Order in Council.

Part 1

Annual Rates of Income Tax for 2003–04

- 3 Rates of income tax for 2003–04 income year**
 - (1) Income tax imposed by section BB 1 of the Income Tax Act 1994 must, for the 2003–04 income year, be paid at the basic rates specified in Schedule 1 of that Act.
 - (2) The Taxation (Annual Rates of Income Tax 2002–03) Act is repealed.

Part 2

Amendments to Income Tax Act 1994

- 4 Income Tax Act 1994**

This part amends the Income Tax Act 1994.

5 Non-profit bodies' and charities' exempt income

- (1) In section CB 4(1)(l), “trust.” is replaced by “trust:” and the following is added:

“(m) any amount derived by the trustee of a community trust.”

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

6 Certain pensions, benefits, and other compensation exempt

- (1) In section CB 5(1)—

(a) paragraph (i) is repealed:

(b) before paragraph (j), the following is inserted:

“(ib) any interest or dividend derived by any trustee in trust for a fund, if when the interest or dividend is derived by the trustee—

“(i) the sole purpose of the fund is for the payment of the expenses associated with the funerals of employees of an employer, of spouses and dependants of employees of the employer, and of surviving spouses and surviving dependants of deceased employees of the employer; and

“(ii) the employer has no fewer than 10 employees; and

“(iii) all potential beneficiaries of the fund are equally eligible for benefits from the fund; and

“(iv) no contributions to the fund are made by a person who is not the employer or an employee of the employer; and

“(v) the fund is approved by the Commissioner.”

- (2) **Subsection (1)** applies to amounts that are derived after the date on which this Act receives the Royal assent.

7 Other exempt income

In section CB 9(g), “grant.” is replaced by “grant:” and the following is added:

“(h) any amount derived by a natural person from providing a standard-cost household service, to the extent given by any determination under **section 91AA** of the Tax

Administration Act 1994 that provides for the application of this paragraph.”

8 Exclusions from term “dividends”

- (1) Section CF 3(1)(ga) is repealed.
- (2) **Subsection (1)** applies for the 2004–05 and subsequent income years.

9 New section CF 5B inserted

After section CF 5, the following is inserted:

“CF 5B Amount of dividend for imputation rules if paid in Australian currency

For the purpose of the imputation rules, the amount of a dividend that is paid in Australian currency by an Australian imputation credit account company is given by—

$$a \times b$$

where—

- a is the amount of the dividend expressed in Australian currency:
- b is the close of trading spot exchange rate for the Australian dollar—
 - (a) for the date on which the dividend is declared, if that date precedes the date of the payment of the dividend by 3 months or less:
 - (b) for the date on which the dividend is paid, if that date follows the date of the declaration of the dividend by more than 3 months.”

10 Meaning of “fringe benefit”

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

“(eb) in relation to an employer of an employee, any contribution to a fund that satisfies **sections CB 5(1)(ib)(i) to (v)**.”.
- (2) **Subsection (1)** applies to contributions made after the date on which this Act receives the Royal assent.

11 Value of fringe benefit

- (1) In section CI 3(8), “as specified in paragraphs (e) and (f)” is replaced by “referred to in paragraph (e), **(eb)** or (f)”.

- (2) **Subsection (1)** applies to contributions made after the date on which this Act receives the Royal assent.

12 Expenditure by group investment fund

- (1) Section DI 3A is repealed.
- (2) **Subsection (1)** applies for the 2004–05 and subsequent income years.

13 Limitation of deduction for certain film expenditure to amount at risk

- (1) Section DK 1 is repealed.
- (2) Unless **subsection (3)** applies, **subsection (1)** applies for the 2004–05 and subsequent income years.
- (3) **Subsection (1)** does not apply to a person who entered into an arrangement to which **subpart ES** of the Income Tax Act 1994, as inserted by this Act, applies if in an income year preceding the person’s 2004–05 income year—
- (a) the taxpayer can reasonably expect that 10 or more persons hold or will hold an interest in the arrangement; or
 - (b) the circumstances described in **section ES 1(1)(b)** of the Income Tax Act 1994 (as inserted by this Act) exist and not less than 70% of the allowable deductions arising from the person’s interest in the arrangement (calculated under **section ES 1(2)** of the Income Tax 1994, as inserted by this Act) arise from the ownership of fixed life intangible property or software.

14 New subpart S inserted into Part E

- (1) After subpart R of Part E, the following is inserted:

“Subpart S—Arrangements involving money not at risk

“ES 1 **Application of subpart**

- “(1) This subpart applies to a person and an arrangement if—
- “(a) the arrangement has a promoter at any time; and
 - “(b) the arrangement results, for the person and any affected associated persons, when considered together, in a total amount of allowable deductions which exceeds the total amount of gross income—

- “(i) for the income year in which the person or any affected associated person first acquired an interest in the arrangement; or
 - “(ii) for the period from the start of the income year to which **subparagraph (i)** refers to the end of the next following income year; or
 - “(iii) for the period from the start of the income year to which **subparagraph (i)** refers to the end of the second following income year; and
 - “(c) at the end of a period for which **paragraph (b)** is satisfied, less than 70% of the property that is subject to the arrangement is tangible property that is land, buildings or major plant or machinery; and
 - “(d) the arrangement involves money that is not at risk for the person or an affected associated person; and
 - “(e) at the end of a period for which **paragraph (b)** is satisfied, the total of the money that is not at risk for the person and any affected associated persons is 50% or more of the total cost of the property held by those persons as part of the arrangement at that time.
- “(2) When **subsection (1)(b)** is applied—
- “(a) it is assumed that the person and any affected associated person has no amount of allowable deductions or gross income other than that resulting from the arrangement; and
 - “(b) a loss arising under section HG 16(1) is ignored to the extent necessary to prevent double counting; and
 - “(c) it is assumed that no gross income or allowable deduction arises under this subpart.
- “(3) When **subsection (1)(c)** is applied—
- “(a) property is measured at cost; and
 - “(b) the person and any affected associated person are considered together as a group; and
 - “(c) the cost of property subject to the arrangement is calculated on a consolidated basis for elimination of intra-group balances, equivalent to that used for companies under generally accepted accounting practice of New Zealand.

- “(4) When **subsection (1)(e)** is applied—
- “(a) the person and any affected associated persons are considered together as a group; and
 - “(b) the total cost of the property held by the group is calculated on a consolidated basis for elimination of intra-group balances, equivalent to that used for companies under generally accepted accounting practice of New Zealand.

“ES 2 **Definitions for subpart**

- “(1) In this subpart—

“**affected associated person** means an associated person that is a party to or affected by the relevant arrangement

“**arrangement specific loan**, in respect of an arrangement and a person, means a loan made to the person or an affected associated person as part of or for the purposes of the arrangement

“**arrangement specific person**, in respect of an arrangement, means—

- “(a) a person established or acquired as part of or for the purposes of the arrangement; but
- “(b) does not include a partnership only comprising natural persons or the trustees of a trust

“**associated person** means an associated person as defined in any provision of section OD 7 or OD 8(3)

“**loan** means a financial arrangement under which a person provides money to another person, but does not include an excepted financial arrangement

“**promoter** means a person—

- “(a) who is—
 - “(i) a party to, or is significantly involved in formulating, a plan or programme from which an arrangement is offered; or
 - “(ii) aware of material and relevant aspects of the arrangement and who sells, issues or promotes the selling or issuing of, the arrangement, whether or not for remuneration; and
- “(b) who is not a person whose involvement with the arrangement is limited to:

- “(i) providing legal, accounting, clerical or secretarial services to a promoter; or
 - “(ii) providing or locating finance in the ordinary course of the person’s business.
- “(2) In this subpart, **money that is not at risk** means any outstanding obligation under—
- “(a) an arrangement specific loan made on terms that have the effect of relieving the person to whom the loan is made from the obligation to repay all or some of the money provided under the loan, whether the relief is contingent or not; or
 - “(b) an arrangement specific loan made on terms that have the effect of relieving the person to whom the loan is made from the obligation to make any material payment in respect of the loan for a period of 10 or more years from the date the loan is made; or
 - “(c) an arrangement specific loan made to an arrangement specific person that is unsecured or is in substance secured only over assets that are employed in the arrangement; or
 - “(d) a loan that is entered into as part of or for the purposes of the arrangement and that has the purpose or effect of achieving the same or a substantially similar economic effect as occurs under a loan described in any of **subparagraphs (a) to (c)**.
- “(3) Despite **subsection (2)**, the following financial arrangements are excluded from the definition of **money that is not at risk**—
- “(a) a loan provided by one associated person to another, where the first associated person has not obtained any of the money necessary in order to make the loan under an arrangement to which this subpart might apply; or
 - “(b) a loan made on arm’s-length terms by a lender that—
 - “(i) regularly lends money to persons on arm’s length terms other than as part of arrangements to which this subpart applies; and
 - “(ii) is resident in New Zealand under section OE 1 or OE 2 or carrying on business in New Zealand through a fixed establishment in New Zealand.

“(4) When **subsection (2)(b)** is applied, a payment is treated as not being material to the extent it is made for a purpose of defeating the intent and application of this subpart.

“ES 3 **Deferral of net losses available for offset if money not at risk**

“(1) This section applies for an income year if—

“(a) there is an arrangement to which this subpart applies; and

“(b) the arrangement results, for a person and any affected associated persons, when considered together, in a total amount of allowable deductions which exceeds the total amount of gross income for the income year (calculated under **section ES 1(2)** but including any allowable deduction arising under **subsection (4)**); and

“(c) at the end of the income year, the arrangement involves an amount of money that is not at risk.

“(2) The person and the affected associated persons are, jointly but not severally, treated as deriving an amount of gross income in the income year equal to the lesser of—

“(a) the amount of the excess referred to in **subsection (1)(b)**; or

“(b) the amount of money not at risk referred to in **subsection (1)(c)**.

“(3) If more than one person is subject to the same adjustment required by **subsection (2)**, the amount of gross income is allocated amongst—

“(a) those persons in the group who individually have a total amount of allowable deductions which exceeds their total amount of gross income for the income year (calculated under **section ES 1(2)**); and

“(b) in proportion to their respective excess allowable deductions.

“(4) A person who has an amount of gross income under **subsection (2)** is treated as having an allowable deduction of an equal amount in the following income year.

“(5) When **subsection (1)(c)** is applied, an amount repaid is treated as still being outstanding to the extent that—

- “(a) the amount is repaid as a result of a transaction, involving the use of put or call options (excluding a contract for the sale for future delivery of goods at market value) or a contract of insurance or guarantee, that comprises part of the arrangement; and
 - “(b) the transaction does not give rise to gross income.”
- (2) **Subsection (1)** applies to the **2004–05** and subsequent income years but, in the case of a person who enters into the relevant arrangement before the 2004–05 income year, only if either—
- (a) it can reasonably be expected that 10 or more persons have or will acquire an interest in the arrangement; or
 - (b) in an income year for which **section ES 1(1)(b)** of the Income Tax Act 1994 (as inserted by this Act) is satisfied, 70% or more of the allowable deductions from the person’s interest in the arrangement (calculated under **section ES 1(2)** of the Income Tax Act 1994, as inserted by this Act) arise from ownership of—
 - (i) fixed life intangible property; or
 - (ii) software.

15 New subpart DB inserted into Part F

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

“Subpart DB—Imputation Group of Companies

“FDB 1 **Companies that may constitute imputation group**

A company is eligible at a time to be a member of an imputation group with other companies if, assuming the company and the other companies to be members of the group, at the time—

- “(a) each member of the group is a company that is resident in New Zealand or Australia and—
 - “(i) is not, for a purpose of taxation in Australia or New Zealand, treated by a double tax agreement as being resident in a country that is not Australia or New Zealand; and
 - “(ii) is required by section ME 1 to maintain an imputation credit account or is subject to an election under **section ME 1B** to maintain an imputation credit account; and
 - “(iii) is not a loss attributing qualifying company; and

- “(b) the members of the group are a wholly-owned group of companies; and
- “(c) no member of the group is a qualifying company or all members of the group are qualifying companies; and
- “(d) no member of the group is a mining company or all members of the group are mining companies; and
- “(e) no member of the group is a member of a consolidated group or all members of the consolidated group are members of the group; and
- “(f) no member of the group has shares that, for purposes including the purpose of enabling a company to be a member of the same imputation group as another member of the group so as to defeat the intent and application of the imputation rules, have—
 - “(i) been subject to an arrangement or series of related or connected arrangements:
 - “(ii) had rights attaching to them that have been extinguished or altered, directly or indirectly, by any means whatever.

“FDB 2 Formation of imputation group

- “(1) Any 2 or more companies that are eligible to be members of an imputation group may give to the Commissioner, in a form that is acceptable to the Commissioner, a notice of election to form the imputation group.
- “(2) A notice given under **subsection (1)** must nominate one of the companies as agent of the imputation group for the purposes of the imputation rules.

“FDB 3 Membership of groups

- “(1) A resident imputation subgroup is associated with a trans-Tasman imputation group and consists of the members of the trans-Tasman imputation group that are not Australian imputation credit account companies.
- “(2) An imputation group or resident imputation subgroup may continue to exist if the number of its members is reduced to 1.
- “(3) If at any time an imputation group or resident imputation subgroup has no member company, that imputation group or resident imputation subgroup ceases to exist.

“FDB 4 Liability of members of imputation group

A company that is a member of an imputation group is jointly and severally liable, with the other members of the imputation group, for further income tax, civil penalties, and interest under Part 7 of the Tax Administration Act 1994 arising from the operation of the imputation credit account of the imputation group.

“FDB 5 Nominated company

- “(1) The nominated company for an imputation group at any time must be a member of the imputation group at the time.
- “(2) The nominated company for a trans-Tasman imputation group—
- “(a) must not be an Australian imputation credit account company:
 - “(b) is also the nominated company for the resident imputation subgroup that is associated with the trans-Tasman imputation group.
- “(3) The nominated company for an imputation group at any time is the agent at that time of the imputation group for the purpose of the imputation rules and of each company that is at that time a member of the imputation group.
- “(4) A nominated company for an imputation group may at any time give notice to the Commissioner, in a form acceptable to the Commissioner, that on a specified date the company is to cease to be the agent for the imputation group and that another company is to become the nominated company for the imputation group.
- “(5) A notice under **subsection (4)** has effect from the date that is 30 days after the date on which the Commissioner receives the notice.

“FDB 6 Leaving an imputation group

- “(1) A company that is a member of an imputation group ceases to be a member of that group if—
- “(a) the company elects to cease to be a member of the group, by notice in writing to the Commissioner in a form acceptable to the Commissioner:

- “(b) the company ceases to be eligible to be a member of the group:
 - “(c) the company is not the nominated company for the group and ceases to be entitled to be a member of the same imputation group as the nominated company:
 - “(d) the company is a member of an imputation group that ceases to have a nominated company, subject to **subsection (6)**.
- “(2) A company that elects to cease to be a member of an imputation group ceases to be a member of the group with effect from—
- “(a) if the notice of election specifies a date on which the election is to take effect and on that date the company would otherwise be a member of the group, the beginning of the day specified in the notice of election:
 - “(b) otherwise, the later of—
 - “(i) the beginning of the imputation year in which the notice of election is received by the Commissioner:
 - “(ii) the time at which the company becomes a member of the group.
- “(3) A company that ceases to be eligible to be a member of an imputation group ceases to be a member of the group with effect from—
- “(a) if **subsection (7)** is satisfied, the beginning of the day on which the company’s eligibility ceases:
 - “(b) otherwise, the later of—
 - “(i) the beginning of the imputation year in which the company’s eligibility ceases:
 - “(ii) the time at which the company becomes a member of the group.
- “(4) A company that is not the nominated company for a group and that ceases to be entitled to be a member of the same group as the nominated company ceases to be a member of the group with effect from—
- “(a) if **subsection (7)** is satisfied in respect of the company, the beginning of the day on which the company’s entitlement ceases:
 - “(b) otherwise, the later of—

- “(i) the beginning of the imputation year in which the company’s entitlement ceases:
 - “(ii) the time at which the company becomes a member of the group:
- “(5) If at any time during an imputation year there is no nominated company for an imputation group and a replacement nominated company is not appointed under **subsection (6)**, all the companies in the group cease to be members of the group with effect from the beginning of the imputation year.
- “(6) If the nominated company for an imputation group is liquidated and the other companies of the group select another company as a replacement, the replacement company is the nominated company for the group from the date of the liquidation if the Commissioner is notified of the selection within 30 days after that date, or within such further period as the Commissioner may allow.
- “(7) Despite **subsection (3) or (4)**, if a company that ceases to be eligible to be a member of an imputation group, or ceases to be entitled to be a member of the same group as a nominated company, elects that this subsection should apply with respect to the company, the group and the imputation year, the company shall be treated for the purposes of this Act as ceasing to be a member of the imputation group with effect from the time at which the eligibility or entitlement ceases.
- “(8) An election under **subsection (7)** is valid if—
- “(a) the election is made by notice in writing to the Commissioner in a form that is acceptable to the Commissioner and is received by the Commissioner within—
 - “(i) 30 days after the time at which the company ceases to be eligible to be a member of the group or ceases to be entitled to be a member of the same group as the nominated company;
 - “(ii) such further period as the Commissioner may allow as reasonable in all the circumstances; and
 - “(b) the Commissioner cannot reasonably conclude that an arrangement has been entered into for the purpose, or for purposes including the purpose, of enabling the company to meet the requirements of **subsection (7)** so as to defeat the intent and application of the imputation rules.

“(9) If a company ceases to be a member of an imputation group by virtue only of being liquidated, nothing in **subsections (2) to (4)** applies to treat the company as having so ceased to be a member with effect from the beginning of the income year in which the liquidation occurred.”

16 Group investment funds

- (1) In section HE 2(1A), “DI 3A,” is omitted.
- (2) **Subsection (1)** applies for the 2004–05 and subsequent income years.

17 Gross income assessable to beneficiaries

- (1) In section HH 3(2), “unless the trustee is the trustee of a community trust” is inserted after “agent of the beneficiary”.
- (2) In section HH 3(5), “, subject to **subsection (5B)**” is inserted after “the beneficiary”.
- (3) After section HH 3(5), the following is inserted:

“(5B) If the trustee of a community trust makes in an income year a distribution to a person as a beneficiary of the trust and the distribution is not beneficiary income of the person, the distribution is gross income of the person in the income year to the extent that the distribution does not represent—

 - “(a) trustee income derived by the trustee of the trust in or before the 2003–04 income year:
 - “(b) the corpus of the trust:
 - “(c) capital profits or capital gains derived by the trustee of the trust.”
- (4) **Subsections (1) to (3)** apply for the 2004–05 and subsequent income years.

18 Trustee income

- (1) In section HH 4(1), “, DI 3 and DI 3A” is replaced by “and DI 3”.
- (2) **Subsection (1)** applies for the 2004–05 and subsequent income years.

19 Consequences of change in entity status for purpose of Maori authority rules

In row 5 and row 6 of table HI 8, “HI 7” is replaced by “HI 9”.

20 No offset in calculating some schedular income tax liabilities

(1) In the heading to section ID 1, “**schedular**” is omitted.

(2) In section ID 1, the following is added:

“(2) A taxpayer who in an income year derives schedular gross income from an activity of providing a standard-cost household service must not take a net loss from the activity into account in calculating the income tax liability of the taxpayer for any income year if the net loss is obtained by using for an allowable deduction a figure that is, or a figure that is calculated using a method that is, given by a determination of the Commissioner under **section 91AA** of the Tax Administration Act 1994.”

21 Net loss offset between group companies

In section IG 2(11)(b)(i)—

(a) “an agreement” is replaced by “a double tax agreement”:

(b) “the agreement” is replaced by “the double tax agreement”.

22 Rebate for gifts of money

(1) In section KC 5(1)(cb), “Trust.” is replaced by “Trust:” and the following is added:

“(cc) Books for Africa:

“(cd) Bright Hope International Trust:

“(ce) Help a Child Foundation New Zealand:

“(cf) Greater Mekong Subregion Tertiary Education Consortium Trust:

“(cg) The Sir Edmund Hillary Trust:

“(ch) Cheboche Area Trust Inc:

“(ci) Sampoerna Foundation Limited:

“(cj) Surf Aid International Incorporated:

“(ck) Plan New Zealand.”

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

23 Calculation of Part KD credit

- (1) In section KD 2(1), “, subject to **section KD 7B**” is inserted after “subsection (2)”.
- (2) In section KD 2(6), in the definition of the item “abatement rate”—
- (a) “\$20,000”, wherever it appears in paragraphs (a)(i) and (ii) and (b)(i) and (ii), is replaced by “\$20,356”:
 - (b) “\$27,000”, wherever it appears in paragraphs (a)(ii) and (iii) and (b)(ii) and (iii), is replaced by “\$27,481”:
 - (c) “\$1,260”, wherever it appears in paragraphs (a)(iii) and (b)(iii), is replaced by “\$1,282.50”.
- (3) **Subsection (1)** applies for the 2003–04 and subsequent income years.
- (4) **Subsection (2)** applies for the 2004–05 and subsequent income years.

24 Calculation of family tax credit

- (1) In section KD 3(2), “, subject to **section KD 7B**” is inserted after “subsection (3)”.
- (2) **Subsection (1)** applies for the 2003–04 and subsequent income years.

25 Rates for interim instalments for period ending on or after 1 July 1998

- (1) In the heading for section KD 5B, “**ending**” is replaced by “**beginning**”.
- (2) In section KD 5B(5), in the definition of the item “f”—
- (a) “\$20,000”, wherever it appears in paragraphs (a)(i) and (ii) and (b)(i) and (ii), is replaced by “\$20,356”:
 - (b) “\$27,000”, wherever it appears in paragraphs (a)(ii) and (iii) and (b)(ii) and (iii), is replaced by “\$27,481”:
 - (c) “\$1,260”, wherever it appears in paragraphs (a)(iii) and (b)(iii), is replaced by “\$1,282.50”.
- (3) **Subsection (2)** applies for the 2004–05 and subsequent income years.

26 New section KD 7B inserted

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

“KD 7B Effect of extra interim instalment on entitlement to tax credit

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

“(a) is entitled to a Part KD credit or family tax credit for the whole or part of an income year; and

“(b) receives in the income year—

“(i) a payment under section KD 7 of an interim instalment of the credit for each period of a fortnight in the income year; or

“(ii) payments under section KD 6 of interim instalments of the credit for periods of a week in the income year and no payment under section KD 7 in the income year; and

“(c) as a consequence of the calendar year not being divided into an exact number of fortnights or weeks—

“(i) receives in the income year 27 interim instalments corresponding to a period of a fortnight; or

“(ii) may have received in the income year 53 interim instalments corresponding to a period of a week.

“(2) For the purpose of section KD 4(2)(c), a person who has received payments under section KD 7 for the whole of an income year is entitled to a credit of tax for the income year of the amount given by the following formula:

$$a + \left((b - c) \times \frac{13}{14} \right)$$

where—

a is the amount of the credit of tax for the income year calculated for the person under—

(a) section KD 2, if the person is entitled to a Part KD credit of tax:

(b) section KD 3, if the person is entitled to the family tax credit:

b is the amount of the final interim instalment received by the person in the income year:

c is the amount of any parental tax credit that is included in the final interim instalment received by the person in the income year.

“(3) For the purpose of section KD 4(2)(c), a person who has received payments under section KD 6 for the whole of an income year and no payment under section KD 7 for the income year is entitled to a credit of tax for the income year of the amount given by the following formula:

$$a + \left(\frac{b}{53} \right)$$

where—

a is the amount of the credit of tax for the income year calculated for the person under—

(a) section KD 2, if the person is entitled to a Part KD credit of tax:

(b) section KD 3, if the person is entitled to the family tax credit:

b is the total amount of the interim instalments received by the person in the income year.”

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

27 Foreign tax credits—controlled foreign companies

In section LC 4(11)(e), “notice of the assessment” is replaced by “notice of assessment”.

28 Tax deductions to be credited against tax assessed

(1) In section LD 1(2A), in the words preceding paragraph (a), “closed company” is replaced by “close company”.

(2) In section LD 1(6), in the words following paragraph (b), “the year to which the tax deductions were made” is replaced by “the year in which the tax deductions were made”.

(3) **Subsections (1) and (2)** apply to tax deductions from source deduction payments made on and after 1 April 1999.

29 Underlying foreign tax credits generally, and interpretation

- (1) In section LF 1(1)(a), “New Zealand company’s” is replaced by “New Zealand resident company’s”.
- (2) In section LF 1(1)(b)(i) “New Zealand company” is replaced by “New Zealand resident company”.
- (3) **Subsections (1) and (2)** apply for the 1995–96 and subsequent income years.

30 Refund of overpaid provisional tax

- (1) In section MB 8(1), in the words following paragraph (c), “or otherwise” is replaced by “or, in the absence of a request, in such order or manner as the Commissioner may determine”.
- (2) In section MB 8(2), in the words following paragraph (c), “or otherwise” is replaced by “or, in the absence of a request, in such order or manner as the Commissioner may determine”.
- (3) **Subsections (1) and (2)** apply for the 2002–03 and subsequent income years.

31 Payments to be set off within wholly-owned group

In section MB 9(1), “This section” is replaced by “Subject to section MD 2, this section”.

32 Tax pooling account

In section MBB 4(3), “, if the intermediary has not already given such notice to the taxpayer” is inserted after “Commissioner”.

33 Transfers from tax pooling account

Section MBB 6(8) is repealed.

34 Tax treatment of payments of interest

Section MBB 9 is replaced by the following:

“**MBB 9 Tax treatment of payments of interest**

- “(1) This section applies to a payment that is made by an intermediary to a client of an intermediary or by a client of an intermediary to the intermediary and that represents a difference between—

- “(a) an amount of funds that has been held in a tax pooling account for a period of time; and
 - “(b) an amount that is paid for the entitlement to the funds.
- “(2) The payment is treated as—
- “(a) a payment of interest to the person who derives the payment, for the purposes of section CE 1, the RWT rules and the NRWT rules:
 - “(b) expenditure incurred in deriving the gross income of the person who makes the payment.”

35 Refund of excess tax

- (1) In section MD 1(3)—
- (a) “, in such order or manner as the Commissioner may determine or in accordance with a person’s, or their agent’s, request under section 173T of the Tax Administration Act 1994,” is omitted:
 - (b) “in accordance with a request under section 173T of the Tax Administration Act 1994 by a person or a person’s agent, or, in the absence of a request, in such order or manner as the Commissioner may determine” is inserted after “other amount due”.
- (2) **Subsection (1)** applies for the 2002–03 and subsequent income years.

36 Limits on refunds of tax

- (1) In section MD 2(1), the words preceding paragraph (a) are replaced by the following:
- “When an imputation credit account company becomes entitled at any time to a refund of income tax in accordance with section MD 1, or becomes entitled to make a set off within a wholly-owned group in accordance with section MB 9, the refund to be paid to the company or the set off to be made in accordance with section MB 9 must not exceed the credit balance (if any) of the company’s imputation credit account at the later of—”.
- (2) Sections MD 2(1A) to (4) are replaced by the following:
- “(1A) Despite subsection (1)(a), an imputation credit account company that furnishes its imputation return for an imputation year before the end of the next imputation year due to an

extension of time for furnishing the imputation return may be refunded income tax in accordance with section MD 1 or make a set off in accordance with section MB 9 if the refund or set off, or refund and set off, does not exceed the credit balance (if any) of the company's imputation credit account on the last day of the imputation year for which the imputation return was furnished.

- “(2) When a company that has ceased to be an imputation credit account company becomes entitled to a refund of income tax in accordance with section MD 1 or becomes entitled to make a set off within a wholly-owned group in accordance with section MB 9 in respect of any income year during which it was an imputation credit account company, the refund paid to the company, or the set off to be made by the company, or the refund and set off, must not exceed the credit balance (if any) of the company's imputation credit account that arose as a debit under section ME 5(1)(k) immediately before the company ceased to be an imputation credit account company.
- “(3) For the purposes of **subsections (1), (1A) and (2)**, a credit balance referred to in those subsections must be treated as reduced by an earlier refund paid to the company or a set off in accordance with section MB 9 during the same imputation year, being a refund of income tax or a refund of dividend withholding payment or set off under section MB 9 that may not, under this section or section NH 4, exceed that credit balance.
- “(4) For the purposes of **subsections (1), (1A) and (2)**, if the refund or set off referred to in those subsections is a refund of income tax for an income year made under section MD 1 or a set off for an income year under section MB 9, the credit balance referred to in those subsections must be treated as increased by an amount equal to any debit to the company's imputation credit account which arose under section ME 5(1)(i) after the date of payment of the first instalment of provisional tax for that income year and before the date on which the credit balance is to be determined in accordance with **subsection (1) or (2).**”

- (3) In section MD 2(5), the words preceding paragraph (b) are replaced by the following:
- “If income tax paid in excess is not refunded to a company or set off within a wholly-owned group by a company by reason of **subsections (1), (1A) or (2)**, the income tax not refunded or set off, or not refunded and not set off—
- “(a) must be credited in payment of any income tax or provisional tax that is payable by the company for the income year during which the entitlement to the refund or set off, or refund and set off arose, or for an income year commencing after 31 March 1988, whether before or after the income year in which the entitlement to the refund, or set off, or refund and set off arose:”.
- (4) In section MD 2(5A), “or set off within a wholly-owned group in accordance with section MB 9” is inserted after “refunded”.
- (5) In section MD 2(7), the words preceding paragraph (a) are replaced by the following:
- “Nothing in this section limits the amount of any refund or off set, or refund and off set of tax overpaid by a qualifying company unless—”.

37 Application of income tax or dividend withholding payments not refunded

Section MD 4 is repealed.

38 New section MD 5 inserted

After section MD 3, the following is inserted:

“MD 5 Application of income tax or dividend withholding payments not refunded

“(1) This section applies to—

“(a) transfers of tax paid in excess that is not refunded to which section MD 2(5) applies;

“(b) refunds of dividend withholding payments paid by a company and to which either section NH 4(2)(b) or NH 5(5)(b) applies.

“(2) If this section applies, no credit or debit may arise to an imputation account or to a dividend withholding payment account that a company is required to maintain.”

39 New section ME 1B inserted

After section ME 1, the following is inserted:

“ME 1B Companies electing to maintain imputation credit account

- “(1) A company that is excluded by section ME 1(2)(a) or (b), but not by section ME 1(2)(c) to (i), from the obligation under section ME 1 to establish and maintain an imputation credit account is eligible under this section to have an imputation credit account if the company is—
- “(a) resident in Australia; and
 - “(b) not treated by a double tax agreement as being resident in a country that is not Australia or New Zealand, for a purpose of taxation in Australia or New Zealand.
- “(2) A company that is eligible under this section to have an imputation credit account may make an election under this subsection by giving notice to the Commissioner in a form that is acceptable to the Commissioner.
- “(3) The Commissioner may decline to accept a notice under **subsection (2)** from a company if—
- “(a) an election by the company under this section has been revoked previously by the Commissioner; and
 - “(b) the company does not satisfy the Commissioner that the company has taken adequate steps to prevent the occurrence of situations of the type that gave rise to the revocation.
- “(4) A notice under **subsection (2)** is effective—
- “(a) for the purpose of section ME 6, from the later of—
 - “(i) the date that is 30 days after the date on which the Commissioner receives the notice; and
 - “(ii) 1 October 2003;
 - “(b) for the purpose of the other provisions in the imputation rules, from the beginning of the imputation year that contains the date that is 30 days after the date on which the Commissioner receives the notice.
- “(5) A company that makes an election under **subsection (2)** in an imputation year must establish and maintain an imputation credit account—

- “(a) until the date on which the company ceases to be eligible under **subsection (1)** or on which the election is revoked, for the purpose of section ME 6:
 - “(b) for the imputation year and for each subsequent imputation year at the beginning of which the company is eligible under **subsection (1)** and the election has not been revoked, otherwise.
- “(6) A company that is in a wholly-owned group of companies with a company that makes an election under **subsection (2)**, and is not prohibited by an independent regulatory body from having such liability, is jointly and severally liable with that company for further income tax, civil penalties and interest under Part 7 of the Tax Administration Act 1994 that arise from a breach of the imputation rules by the company that makes the election.
- “(7) A company that makes an election under **subsection (2)** may revoke the election by giving a notice to the Commissioner.
- “(8) A notice under **subsection (7)** is effective—
- “(a) from the date that the Commissioner receives the notice, for the purpose of section ME 6:
 - “(b) from the end of the imputation year in which the Commissioner receives the notice, otherwise.
- “(9) The Commissioner may give to a company a notice that revokes an election under **subsection (2)** by the company.
- “(10) A notice under **subsection (9)** is effective—
- “(a) from the date given in the notice, for the purpose of section ME 6:
 - “(b) from the end of the imputation year in which the date of the notice falls, otherwise.
- “(11) The revocation of an election does not affect the obligations of a company that arise while the company is an imputation credit account company.”

40 New section ME 3B inserted

After section ME 3, the following is inserted:

“ME 3B Company may be pooling credit recorder

- “(1) An imputation credit account company may, when recording credits and debits in the company’s imputation credit account for an imputation year, choose to distinguish between—

- “(a) credits and debits that relate to funds in a tax pooling account; and
 - “(b) other credits and debits.
- “(2) A company that chooses to record the distinction referred to in **subsection (1)** is a **pooling credit recorder**.”

41 Credits arising to imputation credit account

- (1) After section ME 4(1)(a)(ix), the following is added:
- “(x) a payment that is made by means of a transfer from a tax pooling account to the company’s account with the Commissioner, subject to **paragraph (ac)**.”
- (2) After section ME 4(1)(ab), the following is inserted:
- “(ac) the amount of a transfer from an intermediary’s tax pooling account to the company’s account with the Commissioner, if the company is a pooling credit recorder:
 - “(ad) the amount of any payment that is made by an intermediary into a tax pooling account from funds that are supplied by the company for that purpose, if the company is not a pooling credit recorder:
 - “(ae) the amount of any transfer by an intermediary to the company of an entitlement to funds that are held in a tax pooling account, if the company is not a pooling credit recorder.”
- (3) After section ME 4(1), the following is inserted:
- “(1B) There shall arise as credits (called **pooling imputation credits**) to be recorded by a pooling credit recorder in the imputation credit account of the company for any imputation year the following amounts:
- “(a) the amount of any payment that is made by an intermediary into a tax pooling account from funds that are supplied by the company for that purpose:
 - “(b) the amount of any transfer by an intermediary to the company of an entitlement to funds that are held in a tax pooling account.
- “(1C) There shall arise as credits to be recorded by an Australian imputation credit account company in the imputation credit

account of the company for any imputation year the following amounts:

- “(a) non-resident withholding tax that, under section NG 2, the company pays on non-resident withholding income:
- “(b) a payment of tax made under the Income Tax (Withholding Payments) Regulations 1979 from a withholding payment made to the company as a non-resident contractor:
- “(c) a payment of tax to meet the schedular income tax liability of the company for schedular gross income that the company derives under section CN 1, CN 2 or CN 4 in the income year corresponding to the imputation year.

“(1D) No amount may create more than 1 credit under subsections (1) and **(1C)**.”

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

- “(ac) in the case of a credit referred to in **paragraph (ac)** of that subsection, on the effective date of the transfer under section MBB 6(2):
- “(ad) in the case of a credit referred to in **paragraph (ad)** of that subsection, on the date of the payment into the tax pooling account:
- “(ae) in the case of a credit referred to in **paragraph (ae)** of that subsection, on the date in the intermediary’s books of account of the transfer of the credit for the funds:”.

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

“(2B) The credits referred to in **subsection (1B)** shall arise—

- “(a) in the case of a credit referred to in **paragraph (a)** of that subsection, on the date of the payment into the tax pooling account:
- “(b) in the case of a credit referred to in **paragraph (b)** of that subsection, on the date in the intermediary’s books of account of the transfer of the credit for the funds.

“(2C) The credits referred to in **subsection (1C)** shall arise—

- “(a) in the case of the credit referred to in **paragraph (a)** of that subsection, on the date that the non-resident withholding tax is paid:
- “(b) in the case of the credit referred to in **paragraph (b)** of that subsection, on the date that the tax payment is made:

“(c) in the case of the credit referred to in **paragraph (c)** of that subsection, on the date that the schedular income tax is paid.”

42 Debits arising to imputation credit account

(1) After section ME 5(1)(e), the following is inserted:

“(eb) in the case of a company that is not a pooling credit recorder, the amount of any refund that is made to the company by an intermediary from funds in a tax pooling account for which the company has received a credit under **section ME 4(1)(ad) or (ae)**:

“(ec) in the case of a company that is not a pooling credit recorder, the amount of the funds involved in any transfer from the company to another taxpayer by an intermediary of an entitlement to funds in a tax pooling account for which the company has received a credit under **section ME 4(1)(ad) or (ae)**.”

(2) In section ME 5(1)(i), “not being a credit which has before the specified time been cancelled out by a prior or subsequent debit” is replaced by “not being a pooling imputation credit and not being a credit which has before the specified time been cancelled out by a prior or subsequent debit that is not a pooling imputation debit”.

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

“(1B) There shall arise as debits (called **pooling imputation debits**) to be recorded by a pooling credit recorder in the imputation credit account of the company for any imputation year the following amounts:

“(a) the amount of any refund that is made to the company by an intermediary from funds in a tax pooling account for which the company has received a credit under **section ME 4(1B)(a) or (b)**:

“(b) the amount of the funds involved in any transfer from the company to another taxpayer by an intermediary of an entitlement to funds in a tax pooling account for which the company has received a credit under **section ME 4(1B)(a) or (b)**:

“(c) the amount of any funds, for which the company has received a credit under **section ME 4(1B)(a) or (b)**, that are

transferred from an intermediary's tax pooling account into the company's account with the Commissioner.

“(1C) There shall arise as debits to be recorded by an Australian imputation credit account company in the imputation credit account of the company for any imputation year the following amounts:

- “(a) any refund arising from an amount that—
 - “(i) is an overpayment of non-resident withholding tax on non-resident withholding income; and
 - “(ii) for which the company has received a credit under **section ME 4(1C)(a)**:
- “(b) any refund arising from an amount that—
 - “(i) is an overpayment of tax under the Income Tax (Withholding Payments) Regulations 1979 from a withholding payment made to the company as a non-resident contractor; and
 - “(ii) for which the company has received a credit under **section ME 4(1C)(b)**:
- “(c) any refund of tax arising from an amount that—
 - “(i) is an overpayment of the company's schedular income tax liability for schedular gross income that the company derived under section CN 1, CN 2 or CN 4; and
 - “(ii) for which the company has received a credit under **section ME 4(1C)(c)**.”

(4) After section ME 5(2)(e), the following is inserted:

- “(eb) in the case of a debit referred to in **paragraph (eb) or (ec)** of that subsection—
 - “(i) on the date on which the refund or transfer is made, if **subparagraph (ii)** does not apply:
 - “(ii) at the end of the last imputation year that finished before the date on which the refund or transfer is made, if the company is not a qualifying company and the company's imputation credit account would, without the refund or transfer, be in credit by less than the amount of the debit—
 - “(A) on the date on which the refund or transfer is made; and

“(B) at the end of the last imputation year that finished before the date on which the refund or transfer is made:”.

(5) After section ME 5(2), the following is inserted:

“(2B) The debits referred to in **subsection (1B)** shall arise—

“(a) in the case of a debit referred to in **paragraph (a) or (b)** of that subsection—

“(i) on the date on which the refund or transfer is made, if **subparagraph (ii)** does not apply:

“(ii) at the end of the last imputation year that finished before the date on which the refund or transfer is made, if the company is not a qualifying company and the company’s imputation credit account would, without the refund or transfer, be in credit by less than the amount of the debit—

“(A) on the date on which the refund or transfer is made; and

“(B) at the end of the last imputation year that finished before the date on which the refund or transfer is made:

“(b) in the case of a debit referred to in **paragraph (c)** of that subsection, on the effective date under section MBB 6(2) of the transfer.

“(2C) The debits referred to in **subsection (1C)** shall arise on the date that the refund is paid.”

43 Further tax payable where end of year debit balance, or when company ceases to be imputation credit account company

(1) Section ME 9(5) is replaced by:

“(5B) A company which pays an amount of further income tax for which it is liable under this section may, in relation to a year in which the company was an imputation credit account company, specify the income tax liability (including provisional tax) to which the amount paid is to be credited, and the amount so paid must be credited in the manner specified from the date on which the payment was received.

“(5C) A company that, after the end of an imputation year to which subsection (1) refers, pays an amount of income tax in relation

to a year in which the company was an imputation credit account company may specify that the payment may also be used to satisfy or partially satisfy a further income tax liability.

“(5D) In respect of further income tax charged in relation to the imputation years that commence between 1 April 1998 and 1 April 2002, a company to which **subsections (5B) and (5C)** would have applied if the insertion of those provisions by the **Taxation (Annual Rates, GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003** had applied for those income years may, within 2 calendar months of the date of the Royal assent to that Act, specify—

“(a) the income tax liability to which a payment of further income tax is to be credited; or

“(b) the further income tax liability to which a payment of income tax should be credited—

and the Commissioner must treat the payment as being a credit against the specified liability on the date on which the payment was received.”

(2) Before section ME 9(6), the following is inserted:

“(5E) If an Australian imputation credit account company pays in an income year further income tax to which it is liable under this section and, at the time of the payment, there is no possibility that the company will have in the future an income tax liability against which the payment may be credited, the company may elect that the payment be treated for the income year, and for a company in the same wholly-owned group, as being an available net less of an amount given by the following formula:

$$\frac{a}{b}$$

where—

a is the amount of further income tax that is paid by the company and not credited against an income tax liability:

b is the basic rate of income tax, expressed as a percentage, stated in—

- (a) Schedule 1, Part A, clause 5 if the company is not a Maori authority; or
- (b) Schedule 1, Part A, clause 2 if the company is a Maori authority.”

44 Heading replaced

The heading before section ME 10 is replaced by the following:

“*Consolidated imputation groups*”.

45 Consolidated group to maintain separate imputation credit account

- (1) In section ME 10, including the heading, “consolidated group”, wherever it occurs, is replaced by “consolidated imputation group”.

- (2) After section ME 10(1), the following is inserted:

“(1B) The members of a consolidated group that is a consolidated imputation group and that become an imputation group must, as an imputation group and for the purpose of subsection (1), continue to use and maintain the imputation credit account formerly used by the consolidated group.

“(1C) The members of an imputation group that cease to be an imputation group and become a consolidated group that is a consolidated imputation group must, as a consolidated group and for the purpose of subsection (1), continue to use and maintain the imputation credit account formerly used by the imputation group.

“(1D) A resident imputation subgroup that is formed when the members of a consolidated group or an imputation group become a trans-Tasman imputation group must record in the imputation credit account of the resident imputation subgroup all of the debits and credits that, immediately before the resident imputation subgroup is formed, are recorded in the imputation credit account of the consolidated group or imputation group.”

46 New section ME 10B inserted

After section ME 10, the following is inserted:

“ME 10B Group may be pooling credit recorder

- “(1) A consolidated imputation group may, when recording credits and debits in the company’s imputation credit account for an imputation year, choose to distinguish between—
- “(a) credits and debits that relate to funds in a tax pooling account; and
 - “(b) other credits and debits.
- “(2) A group that chooses to record the distinction referred to in **subsection (1)** is a **pooling credit recorder.**”

47 Credits arising to imputation credit account of group

- (1) In section ME 11(1), “consolidated group”, wherever it occurs, is replaced by “consolidated imputation group”.
- (2) In section ME 11(1)(a)(i), “and (x)” is inserted after “(viii)”.
- (3) After section ME 11(1)(a), the following is inserted:
 - “(ab) the amount of a transfer from an intermediary’s tax pooling account to the group’s account with the Commissioner, if the group is a pooling credit recorder:
 - “(ac) the amount of any payment that is made by an intermediary into a tax pooling account from funds that are supplied by the group for that purpose, if the group is not a pooling credit recorder:
 - “(ad) the amount of any transfer by an intermediary to the group of an entitlement to funds that are held in a tax pooling account, if the group is not a pooling credit recorder:”.
- (4) After section ME 11(1) the following is inserted:

“(1B) There shall arise as credits (called **pooling imputation credits**) to be recorded by a pooling credit recorder in the imputation credit account of the group for any imputation year the following amounts:

 - “(a) the amount of any payment that is made by an intermediary into a tax pooling account from funds that are supplied by the group for that purpose:
 - “(b) the amount of any transfer by an intermediary to the group of an entitlement to funds that are held in a tax pooling account.

- “(1C) If a consolidated imputation group has a member that is an Australian imputation credit account company, there shall arise as credits to be recorded in the imputation credit account of the consolidated imputation group for any imputation year the following amounts:
- “(a) non-resident withholding tax that, under section NG 2, the company pays on non-resident withholding income derived by the company when the company is a member of the consolidated imputation group:
 - “(b) a payment of tax made under the Income Tax (Withholding Payments) Regulations 1979 from a withholding payment made to the company as a non-resident contractor when the company is a member of the consolidated imputation group:
 - “(c) a payment of tax to meet the schedular income tax liability of the company for schedular gross income that the company derives under section CN 1, CN 2 or CN 4 when the company is a member of the consolidated imputation group.
- “(1D) No amount may create more than 1 credit under subsections (1) and **(1C)**.”
- (5) After section ME 11(2)(a), the following is inserted:
- “(ab) in the case of a credit referred to in **paragraph (ab)** of that subsection, on the effective date of the transfer under section MBB 6(2):
 - “(ac) in the case of a credit referred to in **paragraph (ac)** of that subsection, on the date of the payment into the tax pooling account:
 - “(ad) in the case of a credit referred to in **paragraph (ad)** of that subsection, on the date in the intermediary’s books of account of the transfer of the credit for the funds:”.
- (6) After section ME 11(2), the following is inserted:
- “(2B) The credits referred to in **subsection (1B)** shall arise—
- “(a) in the case of a credit referred to in **paragraph (a)** of that subsection, on the date of the payment into the tax pooling account:
 - “(b) in the case of a credit referred to in **paragraph (b)** of that subsection, on the date in the intermediary’s books of account of the transfer of the credit for the funds.

- “(2C) The credits referred to in **subsection (1C)** shall arise—
- “(a) in the case of the credit referred to in **paragraph (a)** of that subsection, on the date that the non-resident withholding tax is paid:
 - “(b) in the case of the credit referred to in **paragraph (b)** of that subsection, on the date that the tax is paid:
 - “(c) in the case of the credit referred to in **paragraph (c)** of that subsection, on the date that the schedular income tax is paid.”

48 Debits arising to imputation credit account of group

- (1) In section ME 12, “consolidated group”, wherever it occurs, is replaced by “consolidated imputation group”.
- (2) After section ME 12(1)(d), the following is inserted:
 - “(db) in the case of a group that is not a pooling credit recorder, the amount of any refund that is made to the group by an intermediary from funds in a tax pooling account for which the group has received a credit under **section ME 11(1)(ac) or (ad)**:
 - “(dc) in the case of a group that is not a pooling credit recorder, the amount of the funds involved in any transfer from the group to another taxpayer by an intermediary of an entitlement to funds in a tax pooling account for which the group has received a credit under **section ME 11(1)(ac) or (ad)**.”
- (3) After section ME 12(1), the following is inserted:
 - “(1B) There shall arise as debits (called **pooling imputation debits**) to be recorded by a pooling credit recorder in the imputation credit account of the group for any imputation year the following amounts:
 - “(a) the amount of any refund that is made to the group by an intermediary from funds in a tax pooling account for which the group has received a credit under **section ME 11(1B)(a) or (b)**:
 - “(b) the amount of the funds involved in any transfer from the group to another taxpayer by an intermediary of an entitlement to funds in a tax pooling account for which the group has received a credit under **section ME 11(1B)(a) or (b)**:

- “(c) the amount of any funds, for which the group has received a credit under **section ME 11(1B)(a) or (b)**, that are transferred from an intermediary’s tax pooling account into the group’s account with the Commissioner.
- “(1C) If a consolidated imputation group has a member that is an Australian imputation credit account company, there shall arise as debits to be recorded in the imputation credit account of the consolidated imputation group for any imputation year the following amounts:
- “(a) any refund arising from an amount that—
- “(i) is an overpayment of non-resident withholding tax on non-resident withholding income that is derived by the company when the company is a member of the consolidated imputation group; and
- “(ii) for which the consolidated imputation group receives a credit under **section ME 11(1C)(a)**:
- “(b) any refund arising from an amount that—
- “(i) is an overpayment of tax under the Income Tax (Withholding Payments) Regulations 1979 from a withholding payment that is made to the company as a non-resident contractor when the company is a member of the consolidated imputation group; and
- “(ii) for which the consolidated imputation group receives a credit under **section ME 11(1C)(b)**:
- “(c) any refund of tax arising from an amount that—
- “(i) is an overpayment of the company’s schedular income tax liability for schedular gross income that the company derives under section CN 1, CN 2 or CN 4 when the company is a member of the consolidated imputation group; and
- “(ii) for which the consolidated imputation group receives a credit under **section ME 11(1C)(c)**.”
- (4) After section ME 12(2)(d), the following is inserted:
- “(db) in the case of a debit referred to in **paragraph (db) or (dc)** of that subsection—
- “(i) on the date on which the refund or transfer is made, if **subparagraph (ii)** does not apply:

“(ii) at the end of the last imputation year that finished before the date on which the refund or transfer is made, if the group’s imputation credit account would, without the refund or transfer, be in credit by less than the amount of the debit—

“(A) on the date on which the refund or transfer is made; and

“(B) at the end of the last imputation year that finished before the date on which the refund or transfer is made.”.

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

“(2B) The debits referred to in **subsection (1B)** shall arise—

“(a) in the case of a debit referred to in **paragraph (a) or (b)** of that subsection—

“(i) on the date on which the refund or transfer is made, if **subparagraph (ii)** does not apply:

“(ii) at the end of the last imputation year that finished before the date on which the refund or transfer is made, if the group’s imputation credit account would, without the refund or transfer, be in credit by less than the amount of the debit—

“(A) on the date on which the refund or transfer is made; and

“(B) at the end of the last imputation year that finished before the date on which the refund or transfer is made:

“(b) in the case of a debit referred to in **paragraph (c)** of that subsection, on the effective date under section MBB 6(2) of the transfer.

“(2C) A debit referred to in **subsection (1C)** shall arise on the date that the refund is paid.”

49 Debiting and crediting between consolidated group and individual companies

(1) In section ME 13, including the heading, “consolidated group”, wherever it occurs, is replaced by “consolidated imputation group”.

(2) In section ME 13(1)(a), “payment into a tax pooling account,” is inserted after “any tax paid,”.

- (3) In section ME 13(1)(b), “refund of funds in a tax pooling account, transfer of an entitlement to funds in a tax pooling account,” is inserted after “any tax refunded,”.

50 Application of specific imputation provisions to consolidated groups

- (1) In the heading of section ME 14, “consolidated groups” is replaced by “consolidated imputation groups”.
- (2) In sections ME 14(1) to (4), “consolidated group”, wherever it appears, is replaced by “consolidated imputation group”.
- (3) In section ME 14(5)(a)—
- (a) in the words before subparagraph (i), “consolidated group” is replaced by “consolidated group that is a consolidated imputation group”:
 - (b) in subparagraph (ii), “exist” is replaced by “be a consolidated imputation group”.
- (4) In section ME 14(5)(b), “member of a consolidated group” is replaced by “member of a consolidated group that is a consolidated imputation group”.
- (5) After section ME 14(5), the following is added:
- “(6) If a company that is a member of an imputation group has an entitlement under section MD 1 to a refund of overpaid income tax—
- “(a) the company must apply for the refund by a notice in writing to the Commissioner that is in a form acceptable to the Commissioner:
 - “(b) section MD 2 applies to the entitlement as if—
 - “(i) the imputation credit account of the imputation group were the imputation credit account of the company:
 - “(ii) the credit in the imputation credit account for the purpose of section MD 2 were reduced by each refund to a member of the imputation group.”

51 Credits and debits arising to branch equivalent tax account of company

- (1) This section amends section MF 4(1)(b) as it read before being amended by section 385 of the Taxation (Core Provisions) Act 1996.

- (2) The definition of item “e” is replaced by the following:
- “e is the amount of any attributed foreign income derived by the company during the income year that is offset against losses that are not foreign investment fund losses or attributed foreign losses; and”.
- (3) **Subsection (2)** applies for the 1995–96 and 1996–97 income years, subject to **subsection (4)**.
- (4) **Subsection (2)** does not apply to a taxpayer for an income year if—
- (a) the taxpayer has filed before **16 June 2003** a return of income for the income year; and
 - (b) the return of income relies on the definition of item “e” in section MF 4(1)(b) of the Income Tax Act 1994 as the definition read before the enactment of section 385 of the Taxation (Core Provisions) Act 1996 and the enactment of this section.

52 Credits and debits arising to branch equivalent tax account of company

- (1) This section amends section MF 4(1)(b).
- (2) Subparagraph (ii) of the definition of item “f” is replaced by the following:
- “(ii) the amount (including zero) of available net losses that are not foreign investment fund net losses or attributed foreign net losses and that are offset by the company against the company’s net income for that income year; and”.
- (3) **Subsection (2)** applies for the 1997–98 and subsequent income years, subject to **subsection (4)**.
- (4) **Subsection (2)** does not apply to a taxpayer for an income year if—
- (a) the taxpayer has filed before **16 June 2003** a return of income for the income year; and
 - (b) the return of income relies on the definition of item “f” in section MF 4(1)(b) of the Income Tax Act 1994 as the definition read before the enactment of this section.

53 Debits and credits arising to group branch equivalent tax account

- (1) This section amends section MF 8(2)(b) as it read after being amended by section 49 of the Income Tax Act 1994 Amendment (No. 4) Act 1995 and before being amended by section 387 of the Taxation (Core Provisions) Act 1996.
- (2) The definition of item “f” is replaced by the following:

“f is the amount of any attributed foreign income derived by the consolidated group during the income year that is offset against losses that are not foreign investment fund losses or attributed foreign losses; and”.
- (3) **Subsection (2)** applies for the 1995–96 and 1996–97 income years, subject to **subsection (4)**.
- (4) **Subsection (2)** does not apply to a taxpayer for an income year if—
 - (a) the taxpayer has filed before **16 June 2003** a return of income for the income year; and
 - (b) the return of income relies on the definition of item “f” in section MF 8(2)(b) of the Income Tax Act 1994 as the definition read before the enactment of section 387 of the Taxation (Core Provisions) Act 1996 and the enactment of this section.

54 Debits and credits arising to group branch equivalent tax account

- (1) This section amends section MF 8(2)(b).
- (2) Subparagraph (ii) of the definition of item “f” is replaced by the following:

“(ii) the amount (including zero) of available net losses that are not foreign investment fund net losses or attributed foreign net losses and that are offset by the consolidated group against the consolidated group’s net income for the income year; and”.
- (3) **Subsection (2)** applies for the 1997–98 and subsequent income years, subject to **subsection (4)**.
- (4) **Subsection (2)** does not apply to a taxpayer for an income year if—

- (a) the taxpayer has filed before **16 June 2003** a return of income for the income year; and
- (b) the return of income relies on the definition of item “f” in section MF 8(2)(b) of the Income Tax Act 1994 as the definition read before the enactment of this section.

55 Applications of tax codes specified in tax code declarations or tax code certificates

- (1) After section NC 8(1), the following is inserted:

“(1AA) If other Acts require an employer to deduct amounts from a source deduction payment payable to an employee and to pay the amounts to the Commissioner, the tax code under subsection (1) that applies to the employee may be combined with codes that apply to the employee under the other Acts.”

- (2) In section NC 8(1A), “either clause 8(b) or 8(c) of Schedule 19” is replaced by “clause 8(b) of Schedule 19, if the employee’s taxable income for the year is expected to be no more than \$60,000, or in clause 8(c) of Schedule 19, otherwise.”

- (3) Section NC 8(4) is replaced by the following:

“(4) When an employee delivers a tax code declaration or a tax code certificate to the employee’s employer, the tax code applies to the employee in respect of all source deduction payments made by the employer to the employee—

“(a) if the declaration or certificate relates to a change in a tax code previously provided for the employee and is delivered to the employer before the date on which the employer calculates the employer’s payroll for the pay period in which the delivery is made, from the first day of that pay period and until the tax code ceases in accordance with subsection (7); or

“(b) if the declaration or certificate relates to a change in a tax code previously provided for the employee and is delivered to the employer after the date on which the employer calculates the employer’s payroll for the pay period in which the delivery is made, from the first day of the next pay period and until the tax code ceases in accordance with subsection (7); or

“(c) if the employee has not previously provided the employer with a declaration or certificate for the employment of the employee, from the date on which the declaration or certificate is delivered to the employer.”

- (4) **Subsection (1)** applies for pay periods ending on and after the date on which this Act receives the Royal assent.
- (5) **Subsection (3)** applies for pay periods ending on and after 1 April 2004.

56 Definition of cash remuneration

In section ND 7(4)—

- (a) in paragraph (d), “Withholding payments; and” is replaced by “withholding payments.”;
- (b) paragraph (e) is repealed.

57 Specified superannuation contribution withholding tax imposed

In section NE 2(1), “either section NE 2AA(2) or NE 2A(2)” is replaced by “section NE 2AA(2) or **NE 2AB(2)** or NE 2A(2)”.

58 New section NE 2AB inserted

After section NE 2AA, the following is inserted:

“NE 2AB **Employer election that progressive rates of specified superannuation contribution withholding tax apply**

- “(1) An employer who makes specified superannuation contributions on behalf of an employee for a year may pay specified superannuation contribution withholding tax on the specified superannuation contributions at the rate specified in Schedule 1, Part A, clause 10(ab) that corresponds to the amount given by the following formula:

$$a + b$$

where—

a is the total amount of salary or wages that—

- (a) is derived by the employee in the year that immediately precedes the year to which the specified superannuation contribution relates, if the employee was employed by the employer for all of that preceding year; or

- (b) the employer estimates will be derived by the employee in the year to which the specified superannuation contribution relates, otherwise:
 - b is the total amount of specified superannuation contribution that—
 - (a) is contributed by the employer on behalf of the employee in the year that immediately precedes the year to which the specified superannuation contribution relates, if the employee was employed by the employer for all of that preceding year; or
 - (b) the employer estimates will be contributed on behalf of the employee by the employer in the year to which the specified superannuation contribution relates, otherwise.
- “(2) An estimate, of a figure for salary or wages or for specified superannuation contributions, that is required by **subsection (1)** for an income year must be made on the basis that—
- “(a) the rate of salary or wages of the employee and the rate of specified superannuation contributions by the employer are the rates that relate to the first period in the year for which the employer makes a specified superannuation contribution on behalf of the employee; and
 - “(b) the employee receives the assumed rate of salary or wages, and the employer makes specified superannuation contributions, for all of the year.”

59 Specified superannuation contribution withholding tax to be deducted

In section NE 3, “either section NE 2 or NE 2AA” is replaced by “section NE 2 or NE 2AA or **NE 2AB**”.

60 Application of RWT rules

After section NF 1(2)(a)(ix), the following is added:

- “(x) interest paid under section MBB 5(5) to an intermediary by the Commissioner.”

61 Refunds of deductions

- (1) In section NF 7(5), “or otherwise” is replaced by “or, in the absence of a request, in such order or manner as the Commissioner may determine”.
- (2) **Subsection (1)** applies for the 2002–03 and subsequent income years.

62 Certificates of exemption

- (1) Section NF 9(1)(c) is repealed.
- (2) In section NF 9(1)(i), “section CB 5(1)(i),” is replaced by “**section CB 5(1)(ib)**”.
- (3) In section NF 9(11), in both places where it appears, “additional tax” is replaced by “late payment penalty”.
- (4) **Subsection (2)** applies to amounts that are derived after the date on which this Act receives the Royal assent.
- (5) **Subsection (3)** applies to late payment penalties that arise with respect to the 1997–98 and subsequent income years.

63 Non-resident withholding tax deducted in error

- (1) In section NG 16(4), “or otherwise” is replaced by “or, in the absence of a request, in such order or manner as the Commissioner may determine”.
- (2) **Subsection (1)** applies for the 2002–03 and subsequent income years.

64 Amount of dividend withholding payment to be deducted

In section NH 2(1), the definition of item “c” is replaced by the following:

“c is the amount of—

- (a) underlying foreign tax credit calculated with respect to the dividend under section LF 2, if that credit is not zero;
- (b) any imputation credit attached to the dividend, otherwise; and”.

65 Payment and recovery of dividend withholding payment, etc.

- (1) In section NH 3(7), “additional tax” is replaced by “late payment penalty”.
- (2) **Subsection (1)** applies to late payment penalties that arise with respect to the 1997–98 and subsequent income years.

66 Definitions

- (1) This section amends section OB 1.
- (2) After the definition of **attributed repatriation**, the following is inserted:

“**Australian imputation credit account company** means a company that is required by **section ME 1B** to maintain an imputation credit account”.
- (3) In the definition of **certificate of exemption**, “section NF 11” is replaced by “section NF 9”.
- (4) In the definition of **commercial bill**, or **bill**, “and FF 5” is replaced by “DJ 16, FF 5 and GC 14A”.
- (5) After the definition of **communal home**, the following is inserted:

“**community trust** has the meaning given in section 2 of the Community Trusts Act 1999”.
- (6) After the definition of **consolidated group**, the following is inserted:

“**consolidated imputation group** means—

 - “(a) an imputation group:
 - “(b) a resident imputation subgroup:
 - “(c) a consolidated group, no member of which is a member of an imputation group”.
- (7) In paragraph (b) of the definition of **continuity provisions** in section OB 1(1)—
 - (a) “MF 3(1)(d),” is omitted:
 - (b) “MF 4(3)(d),” is inserted after “MF 4(1)(e),”.
- (8) The definition of **determination** is repealed.
- (9) In the definition of **emergency call**, in paragraph (c), “paragraph (a)(iii)” is replaced by “paragraph (a)(iv)”.

- (10) In the definition of **employment**, after paragraph (d), the following is added:
- “(e) in this Act, includes the activities of the office of a judicial officer which, when performed by the judicial officer, give rise to an entitlement to the receipt of a source deduction payment in respect of that office:”.
- (11) In the definition of **imputation credit account**, “or **ME 1B**” is inserted after “section ME 1”.
- (12) In the definition of **imputation credit account company**, “or **ME 1B**” is inserted after “section ME 1”.
- (13) After the definition of **imputation credit account company**, the following is inserted:
- “**imputation group** means, at any time, an imputation group formed under section FDB 2 as it is constituted at that time”.
- (14) The definition of **limited recourse loan** is repealed.
- (15) The definition of **management fees** is repealed.
- (16) In the definition of **Maori authority**, “HI 1C” is replaced by “HI 3”.
- (17) In the definition of **money**, after the expression “section EH 22(1)(b),”, the expression “**subpart ES**” is inserted.
- (18) After the definition of **money lent**, the following is inserted:
- “**money that is not at risk** is defined in **section ES 2** for the purposes of **subpart ES**”.
- (19) The definition of **non-recourse loan** is repealed.
- (20) In paragraph (b)(ii) of the definition of **PAYE intermediary**, “section NBB 7(3)” is replaced by “section NBB 8(3)”.
- (21) After the definition of **poolable property**, the following is inserted:
- “**pooling credit recorder** means—
- “(a) a company that chooses under **section ME 3B** to be a pooling credit recorder:
- “(b) a consolidated imputation group that chooses under **section ME 10B** to be a pooling credit recorder”.
- (22) After the definition of **profit-sharing arrangement**, the following is inserted:
- “**promoter** is defined in **section ES 2** for the purpose of **subpart ES**”.

- (23) After the definition of **resident**, the following is inserted:
- “resident imputation subgroup** means, for a trans-Tasman imputation group, the group consisting of the members of the trans-Tasman imputation group that are not Australian imputation credit account companies
- “resident in Australia** means, for a company and for the purpose of the imputation rules—
- (a) incorporated in Australia:
- (b) carrying on business in Australia and—
- (i) having its central management and control in Australia:
- (ii) having its voting power controlled by Australian residents”.
- (24) In the definition of **resident in New Zealand**, “and OE 2” is replaced by “, OE 2 and OE 3”.
- (25) In the definition of **salary or wages**, after paragraph (ea), the following is inserted:
- “(eb) all payments of salary and principal allowances made to a judicial officer under a determination of the Remuneration Authority; and”.
- (26) After paragraph (f) of the definition of **schedular gross income**, the following is added:
- “(g) gross income derived in an income year by a natural person from providing a standard-cost household service”.
- (27) The definition of **specified office holder** is repealed.
- (28) After the definition of **standard balance date**, the following is inserted:
- “standard-cost household service** means a service that is a standard-cost household service under a determination that is made by the Commissioner under **section 91AA** of the Tax Administration Act 1994”.
- (29) After the definition of **transitional year**, the following is inserted:
- trans-Tasman imputation group** means an imputation group that has—
- (a) at least one member that is not an Australian imputation credit account company; and

- (b) at least one member that is an Australian imputation credit account company”.
- (30) **Subsection (9)** applies for the 2002–03 and subsequent income years.
- (31) **Subsections (5), (14), (15), (17), (18), (19) and (22)** apply for the 2004–05 and subsequent income years.
- (32) **Subsection (20)** applies for pay periods beginning on and after 1 April 2004.

67 Meaning of source deduction payment—shareholder-employees of close companies

In section OB 2(1), “a payment made to a specified office holder in respect of the activities of a specified office,” is omitted.

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

In section OD 5(3)—

- (a) in paragraph (b), “That trustee” is replaced by “the trustee”:
- (b) in paragraph (c), in both places where it occurs, “company” is omitted:
- (c) in the words after paragraph (c) and before paragraph (d)—
 - (i) “that trustee” is replaced by “the trustee”:
 - (ii) “the trustee company” is replaced by “the trustee”.

69 Determination of residence of company

In section OE 2(3), “liable to pay income tax” is replaced by “liable to income tax”.

70 References to particular regimes in former Act, etc.

- (1) In section OZ 1(1), in the definition of **imputation rules**—
 - (a) “CF 6(1) and (2), FC 12,” is replaced by “**CF 5B**, CF 6(1) and (2), FC 12, **subpart FDB**, sections”:
 - (b) “ME 9” is replaced by “ME 14”.
- (2) In section OZ 1(1)—

- (a) “139B, 143A(1)(d) and (e), 143B(1)(d),” is omitted from the definition of **NRWT rules**:
 - (b) “139B, 143A(1)(d) and (e), 143B(1)(d),” is omitted from the definition of **PAYE rules**:
 - (c) “139B, 143A(1)(d) and (e), 143B(1)(d),” is omitted from the definition of **RWT rules**:
 - (d) “, 139B, 143A(1)(d) and (e), 143B(1)(d)” is omitted from the definition of **SSCWT rules**.
- (3) In section OZ 1(1), in the definition of **trust rules**, “, DI 3A” is omitted.
 - (4) **Subsection (2)** applies for the 1997–98 and subsequent income years.
 - (5) **Subsection (3)** applies for the 2004–05 and subsequent income years.

71 Schedule 1—Basic rates of income tax and specified superannuation contribution withholding tax

- (1) This section amends Schedule 1.
- (2) In clause 9 of Part A, “clauses 1 to 10” is replaced by “clauses 1 to 8”.
- (3) In clause 10 of Part A, the following is inserted after paragraph (a):
 - “(ab) the rate specified in **Part C**, if the employee has not made an election under section NE 2AA and the employer has made an election under **section NE 2AB**; and”.
- (4) After Part B, the following is added:

“Part C

“Rates referred to in clause 10 of Part A

The amount given by the formula in section NE 2AB(2)	The rate of specified superannuation contribution withholding tax for every \$1 of the gross amount of a specified superannuation contribution (being the amount of the contribution before deduction of specified superannuation contribution withholding tax)
	Cents
An amount that is not more than \$38,000	21
An amount that is more than \$38,000	33”.

- (5) **Subsection (2)** applies for the 1997–98 and subsequent income years.

- 72 Schedule 12—Amount that, for purposes of section KD 5(6), is deemed to be equivalent of an annual amount**
- (1) In Schedule 12, wherever it appears, “\$20,000” is replaced by “\$20,356”.
 - (2) **Subsection (1)** applies for the 2004–05 and subsequent income years.

Part 3

Amendments to Tax Administration Act 1994

- 73 Tax Administration Act 1994**
This Part amends the Tax Administration Act 1994.
- 74 Interpretation**
In section 3(1), the following is inserted after the definition of **specified dividends**:
“**standard-cost household service** means a service that is a standard-cost household service under a determination that is made by the Commissioner under **section 91AA**”.
- 75 Giving of notices**
- (1) After section 14(1)(b), the following is inserted:
“(bb) sent to the person by post addressed to the person at a place given by the person as an address for communications in writing; or”.
 - (2) In section 14(1)(d), “business.” is replaced by “business; or” and the following is added:
“(e) sent to that other person by post addressed to the person or that other person at a place given by that other person as an address for communications in writing.”
- 76 Information to be furnished on request of Commissioner**
In section 17(1B), “and sections 143(2) and 143A(2)” is inserted after “subsection (1)”.

77 Shareholder dividend statement to be provided by company

After section 29(1), the following is inserted:

“(1B) An Australian imputation credit account company must use, in a shareholder dividend statement, the term “New Zealand imputation credit” to describe the quantity referred to in subsection (1)(g).”

78 Annual returns of income not required

(1) After section 33A(1)(a)(iii), the following is inserted:

“(iiib) a taxable Maori authority distribution; or”.

(2) Section 33A(1)(a)(iv), as inserted by section 90(1) of the Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003, is repealed.

(3) In section 33A(1)(a)(iv), as inserted by section 75(2) of the Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002, “subparagraphs (i) to (iii)” is replaced by “subparagraphs (i) to **(iiib)**”.

(4) After section 33A(2)(c), the following is inserted:

“(cb) received a total of more than \$200 of gross income that included—

“(i) a withholding payment, not being an amount or proportion of a withholding payment in respect of which the Commissioner has made a determination under regulation 7 of the Income Tax (Withholding Payments) Regulations 1979:

“(ii) interest or a dividend that did not have a New Zealand source and from which a withholding tax was not deducted at source:

“(iii) beneficiary income; or”.

(5) Sections 33A(2)(d), (e) and (g) are repealed.

(6) Section 33A(2)(h) is repealed.

(7) **Subsections (1) to (3)** apply for the 2004–05 and subsequent income years.

(8) **Subsections (4) and (5)** apply for the 2002–03 and subsequent income years.

(9) **Subsection (6)** applies for the 2003–04 and subsequent income years.

79 New section 33B inserted

After section 33A, the following is inserted:

“33B Return not required for certain schedular gross income

A natural person who derives schedular gross income in an income year from providing a standard-cost household service is not required to furnish a return of income for the schedular gross income if the person’s schedular income tax liability for the income year in respect of the schedular gross income is zero and is calculated using no figure for an allowable deduction incurred by the taxpayer in providing the standard-cost household service that is not—

- “(a) a figure that has been determined by the Commissioner under **section 91AA** of the Tax Administration Act 1994 to be appropriate for the taxpayer; or
- “(b) calculated using a method that has been determined by the Commissioner under **section 91AA** of the Tax Administration Act 1994 to be appropriate for the taxpayer.”

80 Non-active companies may be excused from filing returns

- (1) In section 43A(4), “that is resident in New Zealand” is inserted after “A company”.
- (2) In section 43A(5), “that is resident in New Zealand” is inserted after “A company”.

81 Company dividend statement when imputation credit account company declares dividend

After section 67(1)(e), the following is inserted:

- “(eb) if the dividend was paid in Australian currency by an Australian imputation credit account company, the exchange rate between the New Zealand dollar and the Australian dollar that was used to calculate the imputation ratio:”.

82 Annual imputation return

- (1) In section 69(1), the words before paragraph (a) are replaced by the following:
“Every imputation credit account company shall furnish to the Commissioner an annual imputation return in the prescribed form for each imputation year, showing—”.

- (2) After section 69(1), the following is inserted:
- “(1B) The annual imputation return required by subsection (1) must be furnished to the Commissioner not later than—
- “(a) the last day of the July that next follows the imputation year, if the imputation credit account company is not required to file a return of income for the income year that corresponds to the imputation year:
 - “(b) the last day on which the imputation credit account company is permitted by section 37 to file a return of income for the income year that corresponds to the imputation year, otherwise.”

83 Annual imputation return to be furnished in respect of consolidated groups

- (1) In the title of section 74, “**consolidated groups**” is replaced by “**consolidated imputation group**”.
- (2) The words before paragraph (a) of section 74 are replaced by the following:
- “(1) A nominated company for a consolidated imputation group must, subject to **subsection (2)**, comply in respect of the group with sections 69 and 70 as if—”.
- (3) In section 74(b), “consolidated group ceasing to exist” is replaced by the following:
- “consolidated imputation group—
 - “(i) ceasing to be a consolidated imputation group; or
 - “(ii) ceasing to be an imputation group and becoming a consolidated group that is a consolidated imputation group; or
 - “(iii) ceasing to be a consolidated group that is a consolidated imputation group and becoming an imputation group”.
- (4) In section 74(c), “consolidated groups” is replaced by “a consolidated imputation group”.
- (5) The following is added to section 74:
- “(2) The nominated company for a resident imputation subgroup is not required to furnish an annual imputation return under section 69 in respect of the group for an imputation year if the group has no liability to make a payment under section ME 14(3) for the imputation year.”

84 Commissioner must issue income statement

(1) Section 80D(1) is replaced by the following:

“(1) For each income year, the Commissioner must issue an income statement to a person who the Commissioner considers—

“(a) derived in the income year gross income that was—

“(i) income from employment:

“(ii) interest:

“(iii) dividends; and

“(b) did not derive in the income year any gross income that is not referred to in **paragraph (a)**; and

“(c) is a person—

“(i) to whom section 33A(1) does not apply:

“(ii) to whom section 33A(1) does apply and who requests the Commissioner to issue an income statement:

“(iii) to whom section 33A(1) does apply and who is required by section NC 16 of the Income Tax Act 1994 to furnish the Commissioner with an employer monthly schedule relating to a source deduction payment that the person derived in the income year.”

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

85 Income statement deemed assessment

(1) Section 80H(2) is repealed.

(2) In section 80H(3), “or (5)” is replaced by “or (6)”.

(3) **Subsection (2)** applies for the 2002–03 and subsequent income years.

86 New section 91AA inserted

After section 91, the following is added:

“91AA Determinations in relation to standard-cost household service

“(1) For the purpose of the Inland Revenue Acts, the Commissioner may determine that a service is a standard-cost household service if—

- “(a) the activity of providing the service is carried on by taxpayers who are natural persons; and
 - “(b) the activity of providing the service requires the use of each taxpayer’s domestic accommodation in activities that commonly occur in a family household; and
 - “(c) the Commissioner considers that the determination would result in a significant reduction in compliance costs for providers of the service without inappropriate—
 - “(i) risk to the revenue of the Crown:
 - “(ii) demands on the resources of the Commissioner as a result of the administrative and enforcement duties that would be associated with the determination:
 - “(iii) inaccuracy, for a significant number of providers, of any determination by the Commissioner of the costs of providing the service.
- “(2) For the purpose of calculating the income tax liability of natural persons who derive gross income in an income year from a standard-cost household service, the Commissioner may determine for the income year and the standard-cost household service—
- “(a) requirements for the exemption under **section CB 9(h)** of income that a taxpayer derives from providing the standard-cost household service:
 - “(b) a figure for a cost or costs that for the purpose of this Act may be treated as being incurred by a taxpayer in deriving exempt income from providing the standard-cost household service:
 - “(c) a method that a taxpayer may use to calculate a figure for a cost or costs that for the purpose of this Act may be treated as being incurred by a taxpayer in deriving exempt income from providing the standard-cost household service:
 - “(d) a figure for a cost or costs that for the purpose of this Act may be treated as being incurred by a taxpayer in deriving gross income from providing the standard-cost household service:
 - “(e) a method that a taxpayer may use to calculate a figure for a cost or costs that for the purpose of this Act may be

treated as being incurred by the taxpayer in deriving gross income from providing the standard-cost household service:

- “(f) requirements for the application of a determination under **paragraphs (a) to (e)**.
- “(3) A taxpayer who in an income year derives gross income from providing a standard-cost household service may, in calculating the taxpayer’s income tax liability for the income year, elect to use a figure for a cost or costs or a method of calculating such a figure that the Commissioner has determined under **subsection (2)** to be appropriate for the taxpayer.
- “(4) A taxpayer who makes an election under **subsection (3)** to use a figure or method must not use, in calculating the taxpayer’s income tax liability for the income year, any figure for an additional cost of providing the standard-cost household service if the figure or method in the Commissioner’s determination relates to a type of cost that includes the additional cost.
- “(5) If the Commissioner is satisfied that a determination that is made under this section should be varied or rescinded, or restricted or extended in scope, the Commissioner may make a fresh determination that varies, rescinds, restricts or extends that determination.
- “(6) A determination that is made by the Commissioner under this section must be published in the *Gazette* within 30 days of the making of the determination.
- “(7) A determination that is made by the Commissioner under this section may apply for income years that are specified in the determination.”

87 Commissioner to make private rulings on request

In section 91E(4)(j), “generally accepted accounting principle” is replaced by “generally accepted accounting practice”.

88 Commissioner may make product rulings

In section 91F(4)(h), “generally accepted accounting principle” is replaced by “generally accepted accounting practice”.

89 Assessment of qualifying company election tax and late payment penalty

- (1) In section 94(2), in paragraph (a), “additional tax” is replaced by “late payment penalty”.
- (2) **Subsection (1)** applies to late payment penalties that arise with respect to the 1997–98 and subsequent income years.

90 Assessment of non-resident withholding tax

In section 100(2), “on objection” is replaced by “in proceedings challenging the assessment”.

91 Assessment where default made in furnishing returns

- (1) In section 106(1B)—
 - (a) “this subsection” is replaced by “subsection (1A)”:
 - (b) “a return or an amended income statement under section 89D(2)” is replaced by “a return under section 89D(2) or an amended income statement under section 89D(2B)”.
- (2) **Subsection (1)(a)** applies for the 1999–2000 and subsequent income years.
- (3) **Subsection (1)(b)** applies for the 2002–03 and subsequent income years.

92 Definitions

- (1) In section 120C(1), in paragraph (b)(iii) of the definition of **interest period**, “has overpaid tax of \$50 or more” is replaced by “is required by section MD 1(1A) of the Income Tax Act 1994 to confirm an income statement as correct before the Commissioner may make the refund to the taxpayer”.
- (2) **Subsection (1)** applies to refunds that arise from income statements that—
 - (a) are issued on or after 15 May 2003; and
 - (b) relate to the 2002–03 or a subsequent income year.

93 Late filing penalties

- (1) In section 139A(1), “the annual imputation return required to be furnished under **section 69(1B)(a)** by a company that is not

required to furnish a return of income for an income year,” is inserted before “the reconciliation statement”.

- (2) Section 139A(2)(a), is replaced by the following:
 - “(a) the taxpayer does not complete and provide on time—
 - “(i) an annual tax return:
 - “(ii) an annual imputation return required to be furnished under **section 69(1B)(a)**:
 - “(iii) a reconciliation statement:
 - “(iv) an employer monthly schedule; and”.
- (3) In section 139A(4), “a” is replaced by “an annual imputation return or”.
- (4) In section 139A(5), “annual imputation return or” is inserted before “employer monthly schedule”.

94 Gross carelessness

- (1) After section 141C(4), the following is added:
 - “(5) Subsection (4) and section 141B(1B) do not exclude a taxpayer who makes a mistake in the calculation or recording of numbers in a return from being liable for a penalty for gross carelessness.”
- (2) **Subsection (1)** applies for—
 - (a) a tax position that a taxpayer takes for the 2004–05 or a subsequent income year, if the tax position relates to income tax:
 - (b) a tax position that a taxpayer takes on or after 1 April 2004, otherwise.

95 New section 141FC inserted

- (1) After section 141FB, the following is inserted:

**“141FC Loss attributing qualifying companies—reduction of
shortfall penalties**

 - “(1) This section applies if, as a consequence of the attribution of a net loss by a loss attributing qualifying company to a shareholder of the company and the subsequent disallowance of one or more deductions, shortfall penalties are imposed on the company and a shareholder of that company.
 - “(2) If a loss attributing qualifying company to which this section applies pays in full the amount of a shortfall penalty referred

to in **subsection (1)** and the shareholder gives a written notice to the Commissioner, requesting the application of this section, a shortfall penalty imposed on the shareholder must be reduced by an amount that bears to the shortfall penalty paid by the company the same ratio as the shares held by the shareholder bear to the total shares in the company that are on issue on the date of the tax shortfall.

- “(3) In this section, a share held by a shareholder in a loss attributing qualifying company means a share in that company held by the shareholder for the duration of the period commencing on the first day of the income year or period in which the tax shortfall occurred and ending on the date the penalty was imposed.”
- (2) **Subsection (1)** applies to shortfall penalties imposed on and after 1 April 1998.

96 Due date for payment of late filing penalty

In section 142(1)(c), “reconciliation statement.” is replaced by “reconciliation statement; or” and the following is added:

“(d) for an annual imputation return required to be furnished under **section 69(1B)(a)** by a company that is not required to furnish a return of income for an income year, the date by which the company is required to furnish the annual imputation return.”

97 Recovery of excess tax credits allowed

In section 165A(2), “of the Income Tax Act 1994” is inserted after “sections LC 3, LC 4(11) and LD 1(6)”.

98 Unpaid tax deductions, etc., to constitute charge on employer’s property

- (1) Sections 169(3) to (5) are replaced by the following:
- “(3) Despite section 23(b) of the Personal Property Securities Act 1999, if a charge affects property of a particular kind and the provisions of a registration Act applicable to the property provide for the registration of charges or security interests over property of that kind, the Commissioner may have particulars of that charge recorded on the register without payment of any fee.

- “(4) Particulars recorded under **subsection (3)** are to operate and take priority according to the provisions of the applicable registration Act.
- “(4B) If a mortgage that affects the same property is registered before the registration of the charge under this section, and further money secured by the mortgage is advanced, the charge has priority over the mortgage in respect of that money.
- “(5) On the satisfaction of a registered charge, the Commissioner must release the charge in the manner required by the Act under which it was registered, with such modifications as may be necessary, and without being required to pay a fee.”
- (2) In section 169(9), “and the order shall be subject to stamp duty accordingly;” is omitted.
- (3) In section 169(11)—
- (a) the words preceding paragraph (a) are replaced by—
“In this section, **registration Act applicable to the property**, in relation to any property, includes—”:
 - (b) in paragraph (a), “The Land Transfer Act 1952 or the Deeds Registration Act 1908, as the case may require,” is replaced by “the Statutory Land Charges Registration Act 1928,”:
 - (c) paragraph (b) is replaced by—
“(b) the Personal Property Securities Act 1999, in every case where a security interest over the property would require registration in order to be perfected under that Act.”

99 New section 181C inserted

After section 181B, the following is inserted:

“181C Remission of late payment penalties and interest incurred due to obligation to pay further income tax

- “(1) This section applies to a company that is liable—
- “(a) under section ME 9(1) of the Income Tax Act 1994 to pay an amount of tax by way of further income tax of an amount equal to a debit balance in the company’s imputation credit account at the end of an imputation year; and

- “(b) under section 139B to pay a late payment penalty on unpaid income tax.
- “(2) Subject to **subsection (3)**, the Commissioner must remit any interest under section 120D payable by the company and the late payment penalty relating to the further income tax, to the extent that the amount of further income tax charged in relation to that imputation year is equal to or is less than the amount of unpaid income tax referred to in **subsection (1)(b)**.
- “(3) The Commissioner must not make a remission under **subsection (2)** for an imputation year that commences between 1 April 1998 and 1 April 2002 if the company does not apply for the remission by a notice in writing that is received by the Commissioner within 2 calendar months of the date on which the **Taxation (Annual Rates, GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003** receives the Royal assent.”

Part 4 Amendments to other Acts

Amendments to Goods and Services Tax Act 1985

100 Goods and Services Tax Act 1985

Sections 101 to 124 amend the Goods and Services Tax Act 1985.

101 Interpretation

- (1) This section amends section 2.
- (2) In the definition of **goods**, “or money” is replaced by “, money or a product that is transmitted by a non-resident to a resident by a wire, cable, radio, optical or other electromagnetic system or by a similar technical system”.
- (3) After the definition of **non-profit body**, the following is inserted:

“**non-resident** means a person who is not resident in New Zealand”.

102 Meaning of associated persons

After section 2A(1)(b), the following is inserted:

“(bb) a person, or a branch or division of the person that is treated as a separate person under **section 56B**, and

another branch or division of the person that is treated as a separate person under **section 56B**.”.

103 Meaning of term financial services

In section 3(3)(c), “(as defined in section 2(1) of the Companies Amendment Act 1964)” is replaced by “(as defined in section 121A of the Land Transfer Act 1952)”.

104 Meaning of input tax

- (1) Section 3A(2)(b)(i) is replaced by—
“(i) is a non-resident; and”.
- (2) In section 3A(2)(c), “taxable supplies” is replaced by “taxable supplies that are not charged with tax at the rate of 0% under **section 11A(1)(q) or (r)**”.

105 New section 5B inserted

After section 5, the following is inserted:

“5B Supply of certain imported services

For the purpose of the definition of **output tax** and sections 8(1), 15, 15A, 19A, 20(4), 20B, **25AA**, 51, 52, 57, 75, 76(6), 78, 78B, 78BA and 78C, a supply of services that is treated by **section 8(4B)** as being made in New Zealand is treated as being made by the recipient of the supply in the course or furtherance of a taxable activity carried on by the recipient.”

106 Imposition of goods and services tax on supply

- (1) In section 8(2), (3) and (4), “not resident in New Zealand” is replaced by “a non-resident”.
- (2) After section 8(4), the following is inserted:
“(4B) Despite subsection (2), a supply of services that is not treated as being made in New Zealand by subsections (3)(b) and (4) is treated as being made in New Zealand if—
“(a) the services are supplied by a non-resident to a resident;
and
“(b) the services are acquired by a person who, in a 12-month period that includes the date of the supply of services, makes supplies of which less than 95% in total value are taxable supplies; and

- “(c) the supply, if made in New Zealand by a registered person in the course or furtherance of a taxable activity carried on by the person—
- “(i) would be a taxable supply; and
 - “(ii) would not be charged with tax at the rate of 0% under **section 11A(1)(q) or (r)**.”
- (3) In section 8(5), “Subsections (3) and (4)” is replaced by “Subsections (3), (4) and **(4B)**”.
- (4) In section 8(6), “not resident in New Zealand” is replaced by “a non-resident”.
- (5) In section 8(8), “a telecommunications supplier who is not resident in New Zealand” is replaced by “a non-resident”.

107 Time of supply

In section 9(2)(a)(iii), “performed:” is replaced by “performed, unless **subparagraph (iv)** applies; and” and the following is inserted:

“(iv) in the case of a supply of services that is treated by **section 8(4B)** as being made in New Zealand, at the end of the taxable period that includes the date that is 2 months after the first balance date of the recipient after the performance of the services:”.

108 Value of supply of goods and services

- (1) In section 10(3), “subsections (3A)” is replaced by “subsections (3A), **(3B)**”.
- (2) After section 10(3A), the following is inserted:
- “(3B) Subsection (3) does not apply to a supply of services that is treated by **section 8(4B)** as being made in New Zealand if—
- “(a) the amount of the consideration for the supply is a deduction under the Income Tax Act 1994 for the recipient of the supply; or
 - “(b) the amount of the consideration for the supply would have been a deduction under the Income Tax Act 1994 for the recipient of the supply if the recipient had given any consideration for the supply.
- “(3C) The value of a supply of services that is treated by **section 8(4B)** as being made in New Zealand is the amount that, before the

addition of the tax charged, is equal to the amount of the consideration for the supply.”

(3) After section 10(15B), the following is inserted:

“(15C) If a non-resident makes a supply of services to a resident who is a member of the same group of companies under section 55 as the supplier, or who is treated by **section 56B** as being a separate person from the supplier, and the supply is treated by **sections 5B and 8(4B)** as being made in New Zealand by the recipient of the supply, the value of the supply is determined as if the consideration for the supply did not include—

“(a) the amount of the consideration for the supply that represents salary or wages paid to an employee of—

“(i) the non-resident:

“(ii) a company that is in a wholly-owned group with the non-resident under section IG 1 of the Income Tax Act 1994; and

“(b) the amount of the consideration for the supply that represents interest incurred by—

“(i) the non-resident:

“(ii) a company that is in a wholly-owned group with the non-resident under section IG 1 of the Income Tax Act 1994.”

109 Zero-rating of services

(1) In section 11A(1)(k), (l), (m) and (ma)(ii), “not resident in New Zealand” is replaced by “a non-resident”.

(2) In section 11A(1)(p), “New Zealand.” is replaced by “New Zealand; or” and the following is inserted:

“(q) the services are financial services that are supplied in respect of a taxable period, by a registered person who has not made an election under **section 11C**, to a registered person who makes supplies of goods and services such that taxable supplies that are not charged with tax at the rate of 0% under this paragraph or under **paragraph (r)** make up not less than 75% of the total value of the supplies in respect of—

“(i) a 12-month period that includes the taxable period; or

- “(ii) a period acceptable to the Commissioner; or
- “(r) the services are financial services that are supplied in respect of a taxable period, by a person who has not made an election under **section 11C**, to a person who is a member of a group of companies for the purposes of section IG 1 of the Income Tax Act 1994 and—
 - “(i) the members of the group make supplies of goods and services to persons who are not members of the group in respect of—
 - “(A) a 12-month period that includes the taxable period; or
 - “(B) a period acceptable to the Commissioner; and
 - “(ii) not less than 75% of the total value of the supplies referred to in **subparagraph (i)** consists of taxable supplies that are not charged with tax at the rate of 0% under this paragraph or under **paragraph (q)**.”

(3) After section 11A(1), the following is inserted:

“(1B) Subsection (1), other than subsections (1)(e) and (f), does not apply to supplies of services that are treated by **section 8(4B)** as being made in New Zealand.”

(4) In section 11A(2) and (4), “not resident in New Zealand” is replaced by “a non-resident”.

110 Zero-rating of telecommunications services

In section 11AB(a), “resident in New Zealand” is replaced by “who is a resident”.

111 New sections 11C and 11D inserted

After section 11B, the following is inserted:

“11C Election that sections 11A(1)(q) and (r) and 20C not apply

“(1) A registered person may give written notice to the Commissioner of an election that the registered person not be subject to **sections 11A(1)(q) and (r)** and **section 20C**.

- “(2) An election under **subsection (1)**—
- “(a) applies for the taxable period in which the Commissioner receives the notice and for subsequent taxable periods until the election is cancelled; and
 - “(b) is cancelled from the end of the taxable period—
 - “(i) in which the registered person ceases to have a taxable activity, if **subparagraphs (ii) and (iii)** do not require an earlier cancellation; or
 - “(ii) that is nominated in a written notice of cancellation that the Commissioner receives from the registered person, if the notice of cancellation nominates a taxable period after which the cancellation is to be effective; or
 - “(iii) in which the Commissioner receives from the registered person a written notice of cancellation, if the notice of cancellation does not nominate a taxable period after which the cancellation is to be effective.

“11D Amount relating to supplies by another person

A person who makes a return, for a taxable period, based on an amount relating to supplies made by another person must use a figure for the amount that is obtained—

- “(a) from the statistics of the supplies made by the other person; or
- “(b) by a method that is approved by the Commissioner.”

112 Other returns

In section 18, “and 19 of this Act” is replaced by “and 19B”.

113 Calculation of tax payable

- (1) In section 20(2)(c), “relates:” is replaced by “relates; or” and the following is inserted:
 - “(d) sufficient records are maintained as required by **section 24B**, if the supply is a supply of services to which that section relates:”.
- (2) Section 20(3)(a)(iii) is replaced by the following:

- “(iii) calculated in accordance with any one of sections 25(2)(b), 25(5), **25AA(2)(b)**, **25AA(3)(b)**, 26 or **26B(3)**; and”.
- (3) In section 20(3)(b)(iv)—
- (a) “section 25(2)(b) or section 25(5) of this Act” is replaced by “any one of sections 25(2)(b), 25(5), **25AA(2)(b)** or **25AA(3)(b)**”:
- (b) “section 26 of this Act” is replaced by “section 26 or **26B(3)**”.
- (4) In subparagraphs (iii) and (iva) of the proviso to section 20(3)(d), “not resident in New Zealand” is replaced by “a non-resident”.
- (5) In section 20(3)(g), “period:” is replaced by “period; and” and the following is inserted:
- “(h) any amount calculated in accordance with **section 20C** in relation to supplies of financial services in respect of that taxable period:”.
- (6) In section 20(4)(b)—
- (a) in subparagraph (i), “or 25(4); or” is replaced by “25(4) or **26B(2)** and is not treated by **section 8(4B)** as being made in New Zealand; or” and the following is inserted:
- “(ib) to the extent that payment for the supply has been made during the taxable period, if the supply is a supply of services that is treated as being made in New Zealand by **section 8(4B)** together with any one of sections 9(1), 9(3)(a), 9(3)(aa), 9(6), 9(8), **25AA(2)(a)** or **25AA(3)(a)**; or”:
- (b) subparagraph (ii) is replaced by the following:
- “(ii) if the supply of goods and services is made or treated as being made during the taxable period by the registered person and neither of subparagraphs (i) or **(ib)** applies.”

114 New section 20C inserted

After section 20B, the following is inserted:

“20C Goods and services tax incurred in making certain supplies of financial services

Subject to this section, a registered person who has not made an election under **section 11C** and who in respect of a taxable

period supplies financial services to another supplier of financial services (called in this section a **direct supplier**) may make for each direct supplier a deduction under **section 20(3)(h)** of an amount given by the following formula:

$$a \times \frac{b}{c} \times \frac{d}{e}$$

where—

- a is the total amount that the registered person would be able to deduct under section 20(3), other than under **section 20(3)(h)**, in respect of the taxable period if all supplies of financial services by the registered person were taxable supplies;
- b is the total value of exempt supplies of financial services by the registered person to the direct supplier in respect of the taxable period;
- c is the total value of supplies by the registered person in respect of the taxable period;
- d is the total value of taxable supplies by the direct supplier in respect of the taxable period;
- e is the total value of supplies by the direct supplier in respect of the taxable period.”

115 Timing of deduction under section 21F

- (1) In section 21G(1A), “and subject to **subsection (1B)**” is inserted after “Despite subsection (1)”.
- (2) After section 21G(1A), the following is inserted:
“(1B) Subsection (1A) does not apply to a registered person if the goods referred to in section 21E are applied for a different purpose as a consequence of a change in this Act.”

116 Application to make single deduction under section 21F

- (1) Section 21H(2) is replaced by the following:
“(2) The application of subsection (1) is restricted to goods and services that—
“(a) cost \$18,000 or more; and
“(b) are applied for a different purpose other than as a consequence of a change in this Act.”
- (2) In section 21H(3)(d), “section 21” is replaced by “section 21(1)”.

- (3) **Subsection (2)** applies to goods and services treated as being supplied on and after 10 October 2000.

117 New section 24B inserted

After section 24, the following is inserted:

“24B Records to be kept by recipient of imported services

A registered person who receives a supply of services that is treated by **section 8(4B)** as being made in New Zealand must maintain sufficient records of the supply to enable the following particulars to be ascertained:

- “(a) the name and address of the supplier:
- “(b) the date on which, or the period during which, the supply was received:
- “(c) a description of the services supplied:
- “(d) the consideration for the supply:
- “(e) the time by which payment of the consideration for the supply is required:
- “(f) the amount of the consideration for the supply that the registered person has treated as not affecting the value of the supply in reliance on **section 10(15C)(a)**:
- “(g) the amount of the consideration for the supply that the registered person has treated as not affecting the value of the supply in reliance on **section 10(15C)(b)**.”

118 New section 25AA inserted

After section 25, the following is inserted:

“25AA Consequences of change in contract for imported services

- “(1) Despite section 25, this section applies in relation to a supply of services by a non-resident that is treated by **sections 5B and 8(4B)** as being made in New Zealand by the recipient of the supply if—
- “(a) any one of the following is satisfied:
 - “(i) the supply of services has been cancelled:
 - “(ii) the nature of the supply of services has been fundamentally varied or altered:
 - “(iii) the previously agreed consideration for the supply of services has been altered, whether due to the offer of a discount or otherwise:

- “(iv) the services or part of the services supplied have been returned to the non-resident; and
- “(b) an incorrect return has been made for the taxable period for which output tax on the supply is attributable.
- “(2) A person who has accounted for an incorrect amount of output tax must make an adjustment to the calculation of tax payable in the return for the taxable period in which it becomes apparent that the amount of output tax was incorrect, and if the output tax properly charged on the supply is—
- “(a) more than the output tax actually accounted for by the person, the amount of the excess is treated as being tax charged in relation to a taxable supply made by the person:
- “(b) less than the output tax actually accounted for by the person, the amount of the deficiency is a deduction under section 20(3) for the person.
- “(3) A person who has accounted for an incorrect amount of deductions must make an adjustment to the calculation of tax payable in the return for the taxable period in which it becomes apparent that the amount of deductions was incorrect, and if the deduction properly resulting from the supply is—
- “(a) less than the deduction actually claimed by the supplier, the amount of the deficiency is treated as being tax charged in relation to a taxable supply made by the person:
- “(b) more than the deduction actually claimed by the supplier, the amount of the excess is a deduction under section 20(3) for the person.”

119 New section 26B inserted

After section 26A, the following is inserted:

“26B Adjustments to deduction based on amount relating to supplies by another person

- “(1) A registered person must make an adjustment under this section if—
- “(a) the registered person has made a return, for a taxable period, based on an amount relating to the supplies made by another person for the purpose of **section 11A(1)(q) or (r) or section 20C**; and

- “(b) an inaccuracy in the figure for the amount has affected the accuracy of the return; and
 - “(c) the Commissioner does not, under **subsection (5)**, excuse the registered person from making the adjustment.
- “(2) If the effect of the inaccuracy is that the registered person claimed in the return a deduction that was greater than the deduction allowed by section 20(3) for the taxable period, the amount of the excess is treated as tax charged in relation to a taxable supply made by the registered person.
- “(3) If the effect of the inaccuracy is that the registered person claimed in the return a deduction that was less than the deduction allowed by section 20(3) for the taxable period, the amount of the deficiency is treated as a deduction under section 20(3) in relation to a taxable supply received by the registered person.
- “(4) An adjustment under **subsection (2) or (3)** must be made in a return for—
- “(a) the taxable period in which the inaccuracy becomes apparent to the registered person; or
 - “(b) a later taxable period that is acceptable to the Commissioner.
- “(5) The Commissioner may excuse a registered person from making an adjustment that would otherwise be required by this section if the registered person satisfies the Commissioner that the return for the taxable period gives, for deductions under section 20(3) that relate to supplies charged with tax at the rate of 0% under **section 11A(1)(q) or (r)** or that arise under **section 20(3)(h)**, an overall result that is not significantly greater than the overall result for those deductions that would be produced by using figures found under **section 11D(a)**.”

120 Commissioner’s right to withhold payments

- (1) In section 46(6), in the words following paragraph (b), “or otherwise” is replaced by “or, in the absence of a request, in such order or manner as the Commissioner may determine”.
- (2) **Subsection (1)** applies to goods and services tax paid in excess, being goods and services tax payable on supplies made in taxable periods beginning on or after 1 April 2002.

121 Persons making supplies in course of taxable activity to be registered

In section 51(1)(e), “resident in New Zealand” is replaced by “residents”.

122 Group of companies

(1) In section 55(7), “Where any companies” is replaced by “Subject to **subsection (7B)**, where any companies”.

(2) In section 55(7)(db)—

- (a) “acquired or produced or” is inserted before “applied by any member”; and
- (b) “subsequently” is omitted; and
- (c) “first-mentioned” is replaced by “acquisition or production or”.

(3) In section 55(7)(dc), “subsequently” is omitted.

(4) After section 55(7), the following is inserted:

“(7B) Section 55(7), apart from sections 55(7)(b) and (e) to (h), does not apply to a group of companies in relation to a supply of services that is treated by **section 8(4B)** as being made in New Zealand.”

123 New section 56B inserted

After section 56, the following is inserted:

“56B Branches and divisions in relation to certain imported services

“(1) This section applies to a supply of services that is treated by **section 8(4B)** as being made in New Zealand.

“(2) If a person carries on activities both inside and outside New Zealand through branches or divisions—

- “(a) each branch or division is treated as being a separate person; and
- “(b) a branch or division inside New Zealand is treated as being a resident; and
- “(c) a branch or division outside New Zealand is treated as being a non-resident; and
- “(d) an activity carried on by a branch or division is treated as being carried on separately by the branch or division.

“(3) For the purpose of this section, a head office of a company is a branch or division of the company.

“(4) This section applies whether or not a branch or division of the person is registered under section 56.”

124 Agents and auctioneers

- (1) In section 60(6)(a) and (7)(a), “not resident in New Zealand” is replaced by “a non-resident”.
- (2) In section 60(7)(b), “resident in New Zealand” is replaced by “a resident”.

Amendments to Student Loan Scheme Act 1992

125 Student Loan Scheme Act 1992

Sections 126 to 131 amend the Student Loan Scheme Act 1992.

126 Interpretation

- (1) In section 2, after the definition of **primary employment earnings**, the following is inserted:
“**repayment code** means the repayment code specified in **section 17B**”.
- (2) **Subsection (1)** applies for pay periods ending on and after the date on which this Act receives the Royal assent.

127 Borrowers to whom repayment deduction provisions of this Part apply

- (1) In section 17, “Sections 18 to 25” is replaced by “Sections **17B** to 25”.
- (2) **Subsection (1)** applies for pay periods ending on and after the date on which this Act receives the Royal assent.

128 New section 17B inserted

- (1) After section 17, the following is inserted:
“**17B Repayment codes for application of PAYE rules**
For the purpose of the application of the PAYE rules of the Income Tax Act 1994 under section 25 of this Act, the repayment code of any borrower in relation to any salary or wages is ‘SL’.”
- (2) **Subsection (1)** applies for pay periods ending on and after the date on which this Act receives the Royal assent.

129 Borrower to notify employer of student loan repayment obligation

(1) Section 18 is replaced by the following:

“18 Borrower’s notice to employer of requirement for repayment deductions

“(1) A person who is a borrower and is in the employment of an employer (including an employer from whom secondary employment earnings are received) must give written notice under this section to the employer as soon as practicable after the later of—

“(a) the time at which the person becomes an employee of the employer; and

“(b) the time at which the person becomes a borrower.

“(2) A notice under this section must inform the employer that—

“(a) the borrower is required to have repayment deductions made under this Part from any amount paid to the borrower by way of salary or wages; and

“(b) the tax code prescribed by section NC 8(1) of the Income Tax Act 1994 for the borrower should be followed by the repayment code “SL” for the purpose of making a repayment deduction from salary or wages paid to the borrower.”

(2) **Subsection (1)** applies for pay periods ending on and after the date on which this Act receives the Royal assent.

130 PAYE rules of Income Tax Act 1994 to apply to repayment deductions

(1) In section 25(1), “as defined in section OZ 1(1)” is inserted after “PAYE rules” where it first appears.

(2) In section 25(1)(b), “deductions,—” is replaced by “deductions; and” and the following is added:

“(c) every reference to a tax code were a reference to a repayment code,—”.

(3) In section 25(2), “and sections 143A(1)(d) and (e) and 143B(1)(d), and Part 9 (except section 146) of the Tax Administration Act 1994” is omitted.

(4) **Subsection (2)** applies for pay periods ending on and after the date on which this Act receives the Royal assent.

131 Underestimation penalty where interim repayments underestimated as at final instalment date

- (1) In section 44A(1)—
 - (a) in the words preceding paragraph (a), “interim” is inserted before “repayment”:
 - (b) in paragraph (a), “residual” is inserted before “repayment”, where it first appears:
 - (c) in paragraph (a), “interim” is inserted before “repayment”, where it second appears:
 - (d) in paragraph (b), “residual” is inserted before “repayment”.
- (2) In the definition of item “a” in section 44A(2), “residual” is inserted before “repayment”.
- (3) **Subsections (1) and (2)** apply to estimated interim repayment obligations arising in respect of the 1998–99 and subsequent income years.

Amendment to Personal Property Securities Act 1999

132 Personal Property Securities Act 1999

Section 133 amends the Personal Property Securities Act 1999.

133 When Act does not apply

In section 23(b), “(other than section 169 of the Tax Administration Act 1994)” is inserted after “Act”.