

Examined and certified:

Clerk of the House of Representatives

*In the name and on behalf of Her Majesty Queen Elizabeth
the Second I hereby assent to this Act this 18th day
of December 2006*

Governor-General.

Taxation (Savings Investment and Miscellaneous Provisions) Act 2006

Public Act 2006 No 81

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006.

2 Commencement

- (1) This Act comes into force on the date on which it receives the Royal assent, except as provided in this section.
- (2) Section 209 is treated as coming into force on 30 November 1993.
- (3) Section 201 is treated as coming into force on 1 April 1995.
- (4) Section 207(2) is treated as coming into force on 26 July 1996.
- (5) Section 207(4) is treated as coming into force on 20 May 1999.
- (6) Section 206 is treated as coming into force on 1 April 2000.
- (7) Section 218(1), (3), (4), and (5) is treated as coming into force on 1 October 2001.
- (8) Section 205 is treated as coming into force on 26 March 2003.
- (9) Sections 202, 204, and 207(3) are treated as coming into force on 1 April 2003.
- (10) Section 25(1), (2), (4), (5), and (7) are treated as coming into force on 1 February 2004.
- (11) Sections 6, 12, 13, 16, 17, 20(1)(a), 27, 31, 40, 58, 59(1), 60, 62, 63, 77(4), 78(1)(a), (3), (4)(a), (6), and (7), 80(1)(c) and (2), 82, 85, 88, 94, 96, 129, 138, 139, 140, 141, 152(1) and (3), 155(3), (4), (10), (11), (17), (19)(a), (21), (22), (36), and (45), 156, 158(2)(a), 166, 167, 169(3), 170, 171, 172, 179, 183, and 218(2) are treated as coming into force on 1 April 2005.
- (12) Sections 19 and 195 are treated as coming into force on 21 June 2005.
- (13) Sections 14, 32, 33, 37, 38, 43, 48, 49, 50, 54, 55, 56, 77(3), 86, 87, 90, 91, 92(1), (2), (4), and (6), 95, 102, 147(1) and (2), 148, 155(2), (9), and (33), 159, and 163 are treated as coming into force on 1 October 2005.
- (14) Sections 22, 110, 119, 137, 155(23), and 161(2) are treated as coming into force on 1 April 2006.
- (15) Sections 34, 35, 36, 135, 136, 149, 153, 155(32), 157, 177, 186, 187, and 208 are treated as coming into force on 3 April 2006.

- (16) Sections 29, 39, 44, 45, 46, 92(3), (5), and (7), and 131(1) are treated as coming into force on 17 May 2006.
- (17) Sections 117, 132, 151, 155(24), and 178 are treated as coming into force on 1 July 2006.
- (18) Section 11 comes into force 3 months after the date on which this Act receives the Royal assent.
- (19) Sections 191 and 216 come into force on 31 March 2007.
- (20) Sections 5(1) and (2), 8(2), (3), (4), and (5), 24(1), 25(3), (6), (8), and (9), 26(1), 61(1), 64(1) to (3), 65(1) to (3), 66(1), 67(1) and (2), 68(1), 69(1) to (3), 70(1), 71(1), 72(1), 73(1), 74(1) to (3), 75(1) to (3), 76(1) to (3), 77(1), (2), and (6), 78(1)(b), (2), (4)(b), (5), and (8), 79(1), 80(1)(a) and (b), (3), (4), and (5), 81(1) and (2), 83(1), 89(1), 93(1) and (2), 99(1), 101(1) and (2), 142, 143, 144, 145(1), 155(5), (7), (13), (15), (16), (18), (19)(b), (29), (42), (44), and (46), 160, 162, 181, 189, and 193 come into force on 1 April 2007.
- (21) Sections 145(2) to (6), 146, 155(26) and (27), and 220 to 227 come into force on 1 July 2007.
- (22) Sections 4, 7, 10, 15, 18, 21, 28, 51, 97, 98, 100, 103(1), 112, 113, 114, 115, 116, 118, 120, 121, 122, 123, 124, 125, 126, 127, 128, 131(2), 133, 134, 147(3), 150, 152(2), 154, 155(20), (25), (30), (35), (37), (39), (43), and (47), 158(2)(b), 165, 176, 180, 182, 184, 185, 188, 196, 197, 198, 199, 214, 215, 219, 229, 230, 232, 233, 240, 241, 243, 244, 246, and 247 come into force on 1 October 2007.

Part 1

Amendments to Income Tax Act 2004

3 Income Tax Act 2004

This Part amends the Income Tax Act 2004.

4 New section CB 4B inserted

After section CB 4, the following is inserted:

“CB 4B Disposals of certain shares by portfolio investment entity after declaration of dividend

“When this section applies

- “(1) This section applies to a portfolio investment entity who disposes of a share in a company if—

- “(a) section CX 44C (Proceeds from disposal of certain shares by portfolio investment entities) applies to the income from the disposal; and
- “(b) a dividend from the share is—
 - “(i) declared before the disposal; and
 - “(ii) paid to a holder of the share who after the disposal becomes entitled to the dividend.

“*Assessable income*

- “(2) The portfolio investment entity is treated as deriving an amount of income equal to—
 - “(a) the amount of the dividend that is not fully imputed as that term is defined in section NG 2(3) (Application of NRWT rules), if the share is issued by a company that has an imputation credit account; or
 - “(b) the amount of the dividend, if paragraph (a) does not apply.

“Defined in this Act: amount, company, dividend, double tax agreement, income, non-participating redeemable share, portfolio investment entity, resident in New Zealand, share”.

5 Foreign investment fund income

- (1) In section CD 26(b), “comparative value method or the deemed rate of return method” is replaced by “comparative value method, the deemed rate of return method, the cost method, or the fair dividend rate method”.
- (2) In section CD 26, in the list of defined terms, “cost method” and “fair dividend rate method” are inserted.
- (3) Subsections (1) and (2) apply for income years beginning on or after 1 April 2007—
 - (a) beginning with the first day of the first income year for a person who does not make an election under paragraph (b); or
 - (b) beginning with the later of the first day of the first income year and 1 October 2007 for a person that is a company, group investment fund, or superannuation fund that intends to be a portfolio investment entity and chooses to delay the application to the person of changes made by this Act to the rules relating to FIFs by giving a notice to the Commissioner—

- (i) before 1 April 2007, if the person exists before that date; or
- (ii) within 1 month of the day on which the person comes into existence, if the person comes into existence on or after 1 April 2007 and before 1 October 2007.

6 Meaning of share

In the heading to section CE 6, “: **when share acquired**” is added.

7 New subpart CP inserted

Before subpart CQ, the following is inserted:

“Subpart CP—Income from portfolio investment entities

“CP 1 Portfolio investor allocated income

The amount of portfolio investor allocated income of a person who is an investor in a portfolio tax rate entity is income of the person in the income year that includes the portfolio allocation period for which the person is allocated the amount under section HL 24 (Portfolio investor allocated income and portfolio investor allocated loss).

“Defined in this Act: amount, income, investor, portfolio allocation period, portfolio investor allocated income, portfolio tax rate entity”.

8 When FIF income arises

(1) In section CQ 5(1)(c),—

- (a) in subparagraph (ii), “(Grey list exemption)” is replaced by “(Exemptions: direct income interests in FIF in grey list country)”:
- (b) after subparagraph (ii), the following is inserted:
 - “(iib) the exemptions limited by income years in section EX 33B (Exemptions limited by income years: shares in certain grey list companies):
 - “(iic) the exemption for shares in a listed Australian company in section EX 33C (Exemption: shares in listed Australian company):
 - “(iid) the exemption for units in certain Australian unit trusts in section EX 33D (Exemption: units in certain Australian unit trusts):

- “(ie) the Australian superannuation fund exemption in section EX 33E (Australian superannuation fund exemption):”.
- (2) Section CQ 5(1)(d) is replaced by the following:
- “(d) if the person is a natural person and not acting as a trustee, the person holds, at any time during the income year when the person is a New Zealand resident, attributing interests in FIFs for which the total of the following amounts is more than \$50,000:
- “(i) if subparagraph (ii) does not apply to the interest, the cost of the interest calculated under section EX 56 (Measurement of cost):
- “(ii) if the person acquired the interest before 1 January 2000 and chooses, for the year or an earlier year, that this subparagraph and section DN 6(1)(d)(ii) (When FIF loss arises) apply to all interests acquired before 1 January 2000, half of the market value of the interest on 1 April 2007; and
- “(db) if the person is acting as a trustee of a trust that meets the requirements of subsection (5), the person holds attributing interests in FIFs for which the total of the following amounts is more than \$50,000:
- “(i) if subparagraph (ii) does not apply to the interest, the cost of the interest calculated under section EX 56 (Measurement of cost):
- “(ii) if the person acquired the interest before 1 January 2000 and chooses, for the year or an earlier year, that this subparagraph and section DN 6(1)(d)(ii) apply to all interests acquired before 1 January 2000, half of the market value of the interest on 1 April 2007; and”.
- (3) Section CQ 5(1)(f) is replaced by the following:
- “(f) under the relevant calculation method chosen by the person, an income amount is calculated for the year under sections EX 38 to EX 45B (which relate to the calculation of FIF income or loss).”
- (4) After section CQ 5(4), the following is added:

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

- “(5) Subsection (1)(db) applies to the trustee of a trust for an income year if—
- “(a) the settlor of the trust—
 - “(i) is a relative or legal guardian of a beneficiary of the trust, or a person associated with a relative or legal guardian of a beneficiary of the trust under section OD 7 (Defining when 2 persons are associated persons); and
 - “(ii) is required by a court order to pay damages or compensation to the beneficiary:
 - “(b) the settlor of the trust—
 - “(i) is the estate of a deceased person; and
 - “(ii) is required by a court order to settle on the trust the proceeds of damages or compensation for the beneficiaries of the trust:
 - “(c) the settlor of the trust is the Accident Compensation Corporation:
 - “(d) the trust is of the estate of a deceased person and the income year begins on or before the day that is 5 years after the person’s death.”
- (5) In section CQ 5, in the list of defined terms, “associated person” and “relative” are inserted.
- (6) Subsection (1) applies for the 2006–07 and later income years.
- (7) Subsections (2), (3), and (4) apply for income years beginning on or after 1 April 2007—
- (a) beginning with the first day of the first income year for a person who does not make an election under paragraph (b); or
 - (b) beginning with the later of the first day of the first income year and 1 October 2007 for a person that is a company, group investment fund, or superannuation fund that intends to be a portfolio investment entity and chooses to delay the application to the person of changes made by this Act to the rules relating to FIFs by giving a notice to the Commissioner—
 - (i) before 1 April 2007, if the person exists before that date; or

- (ii) within 1 month of the day on which the person comes into existence, if the person comes into existence on or after 1 April 2007 and before 1 October 2007.

9 Withdrawals

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

10 Dividend derived by company from overseas

- (1) Section CW 9(1), other than the heading, is replaced by the following:
 - “(1) A dividend from a foreign company is exempt income if derived by a company that is—
 - “(a) resident in New Zealand; and
 - “(b) not a portfolio tax rate entity.”
- (2) In section CW 9, in the list of defined terms, “portfolio tax rate entity” is inserted.

11 Income for military service in operational area

Section CW 19 is replaced by the following:

“CW 19 Income for military or police service in operational area

“When this section applies

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

“Exempt income

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

“Ministerial committee

- “(3) A ministerial committee that includes the Prime Minister, the Minister of Defence, the Minister of Police, the Minister of Finance, and the Minister of Foreign Affairs may, for the

purposes of subsection (2)(b), decide to exempt an amount of income derived by a member for being in an operational area.

“Some definitions

“(4) In this section,—

“**operational allowance**, for a member, means an allowance payable by the Government of New Zealand that—

“(a) is paid directly and solely for being in an operational area; and

“(b) is not—

“(i) a regular force gratuity:

“(ii) a bonus or bounty for re-engagement in a regular force

“**operational area** means an area—

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

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

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

12 New section CW 23B inserted

(1) After section CW 23, the following is inserted:

“CW 23B Reinvested amount from foreign superannuation scheme in Australia

An amount of income derived in an income year by a natural person as a withdrawal from a foreign superannuation scheme is exempt income if—

“(a) the person in the income year invests the amount in another foreign superannuation scheme; and

“(b) each foreign superannuation scheme is constituted in Australia and is—

“(i) an Australian approved deposit fund:

“(ii) an Australian exempt public sector superannuation scheme:

“(iii) an Australian regulated superannuation fund:

“(iv) an Australian retirement savings account.

“Defined in this Act: Australian approved deposit fund, Australian exempt public sector superannuation scheme, Australian regulated superannuation fund, Australian retirement savings account, exempt income, foreign superannuation scheme, income, income year”.

(2) Subsection (1) applies for the 2006–07 and later income years.

13 Charities: business income

(1) In section CW 35(8)(b)(v), “Income” is replaced by “Dividend”.

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

14 Refund from environmental restoration account

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

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

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

After section CX 44B, the following is inserted:

“Portfolio investment entities

“CX 44C Proceeds from disposal of certain shares by portfolio investment entities

“When this section applies

“(1) This section applies to income derived by a portfolio investment entity from the disposal of a share if—

“(a) the share is issued by a company resident in New Zealand and not treated under a double tax agreement as not being resident in New Zealand or by a company—

“(i) resident in Australia and not treated under a double tax agreement between Australia and another country as being resident in a country other than Australia or New Zealand; and

“(ii) included in an index that is an approved index under the ASX Market Rules, made under Chapter 7 of the Corporations Act 2001 (Aust); and

- “(iii) required under the Income Tax Assessment Act 1997 (Aust) and Income Tax Assessment Act 1936 (Aust) to maintain a franking account; and
- “(b) the share is not a non-participating redeemable share.

“Excluded income

- “(2) The income is excluded income of the portfolio investment entity.

“Defined in this Act: amount, arrangement, company, dividend, double tax agreement, excluded income, income, non-participating redeemable share, portfolio investment entity, resident, resident in Australia, resident in New Zealand, share

“CX 44D Portfolio investor allocated income and distributions of income by portfolio tax rate entities

“Portfolio investor allocated income

- “(1) Portfolio investor allocated income derived under section CP 1 (Portfolio investor allocated income) in a portfolio calculation period in an income year by an investor in a portfolio tax rate entity is excluded income of the investor if—
 - “(a) the prescribed investor rate for the investor is more than 0%; and
 - “(b) the investor does not, before the last day of the income year, provide to the portfolio investment entity a portfolio investor rate for the income year that is less than the prescribed investor rate for the income year; and
 - “(c) for a portfolio tax rate entity making payments of tax under section HL 21 (Payments of tax by portfolio tax rate entity making no election), the portfolio investor allocated income is not allocated to a portfolio allocation period that includes part of a portfolio investor exit period for the investor.

“Distribution of income by portfolio tax rate entity

- “(2) An amount of income derived by an investor as a distribution by a portfolio tax rate entity is excluded income of the investor.

“Distribution by portfolio investment entity that is not portfolio tax rate entity

- “(3) An amount of income derived in an income year by an investor as a distribution by a portfolio listed company is—
- “(a) excluded income of the investor, if the investor is a resident who—
- “(i) is not a zero-rated portfolio investor; and
- “(ii) does not include the distribution as income in a return of income for the income year:
- “(b) excluded income of the investor to the extent that the amount of the distribution is not fully imputed, as that term is defined in section NG 2(3) (Application of NRWT rules), if paragraph (a) does not apply.

“Defined in this Act: amount, distribution, excluded income, income, income year, investor, New Zealand resident, portfolio investment entity, portfolio investor allocated income, portfolio investor exit period, portfolio investor rate, portfolio listed company, portfolio tax rate entity, prescribed investor rate, return of income, zero-rated portfolio investor”.

16 New section CZ 20 added

- (1) After section CZ 19, the following is added:

“CZ 20 Geothermal wells between 31 March 2003 and 17 May 2006

“When this section applies

- “(1) This section applies to a person’s geothermal well, if—
- “(a) the well is—
- “(i) both started and completed between 31 March 2003 and 17 May 2006;
- “(ii) acquired between 31 March 2003 and 17 May 2006; and
- “(b) the person—
- “(i) uses the well, or has the well available for use, after the end of the well’s geothermal energy proving period, in deriving assessable income or carrying on a business for the purpose of deriving assessable income:
- “(ii) disposes of the well.

“Income

- “(2) The person has, for the first income year in which this section applies, income equal to,—

- “(a) if subsection (1)(b)(i) applies, the total amount of deductions that the person is allowed for the well under section DZ 7 of the Income Tax Act 1994 and section DZ 15 (Geothermal wells between 31 March 2003 and 17 May 2006) for all income years; or
- “(b) if subsection (1)(b)(ii) applies, the lesser of—
 - “(i) the amount derived from disposing of the well; and
 - “(ii) the total amount of deductions that the person is allowed for the well under section DZ 7 of the Income Tax Act 1994 and section DZ 15 for all income years.

“Defined in this Act: amount, business, deduction, dispose, geothermal energy proving period, geothermal well, income, income year”.

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

17 Base price adjustment under old financial arrangements rules

- (1) In section DB 9B, the following is added as subsection (2):
 - “*Link with subpart DA*
- “(2) This section supplements the general permission and overrides all the general limitations.”
- (2) In section DB 9B, the following list of defined terms is added:
 - “amount, deduction, general limitation, general permission, supplement”.
- (3) Subsections (1) and (2) apply for the 2005–06 and later income years.

18 Cost of revenue account property

- (1) Section DB 17(1) and (2) are replaced by the following:
 - “*When this section applies*
- “(1) This section applies if a person incurs expenditure as a cost of revenue account property.

“Deduction

- “(2) The person is allowed a deduction for the expenditure.

“Exclusion for portfolio investment entities

- “(3) Subsection (2) does not apply to the expenditure if—
- “(a) the person is a portfolio investment entity; and
 - “(b) section CX 44C (Proceeds from disposal of certain shares by portfolio investment entities) applies to income derived by the person from the disposal of the revenue account property.

“Link with subpart DA

- “(4) The link between this section and subpart DA (General rules) is—
- “(a) subsection (2) overrides the capital limitation but the general permission must still be satisfied; and
 - “(b) subsection (3) overrides the general permission; and
 - “(c) the other general limitations still apply.”
- (2) In section DB 17, in the list of defined terms, “portfolio investment entity” is inserted.

19 Patent applications or patent rights acquired on or after 1 April 1993

- (1) Section DB 31(4)(a) and (b) are replaced by the following:
- “(a) **total cost** is the total cost to the person of the patent application with a complete specification or of the patent rights, excluding any expenditure for which the person has been allowed a deduction under section DZ 14 (Patent applications before 1 April 2005):
 - “(b) **total amounts of depreciation loss** is the total of the amounts, for which the person is allowed a deduction, of depreciation loss for the patent application with a complete specification or for the patent rights and the patent application relating to the patent rights.”
- (2) Subsection (1) applies to a patent application that is lodged for the first time on or after 21 June 2005.

20 Bribes paid to public officials

- (1) In section DB 36,—

- (a) the heading to subsection (1) is replaced by “*When this section applies*”:
- (b) in subsection (1)(b), “New Zealand” is omitted:
- (c) subsections (3) and (4) are replaced by the following:
 - “*Exclusions*
 - “(3) This section does not apply if—
 - “(a) the bribe is given outside New Zealand and, at the time it is given by person A, the bribe is not an offence under the laws of the foreign country in which is situated the principal office of the person, organisation or other body by whom the foreign public official is employed or for whom they provide services:
 - “(b) the bribe is paid wholly or mainly to ensure or expedite the performance by a foreign public official of a routine government action when the value of the benefit is small.”
- (2) Subsection (1) applies for the 2005–06 and later income years.

21 New heading and section DB 43B inserted

After section DB 43, the following is inserted:

“*Portfolio investment entities*

“DB 43B Zero-rated portfolio investor and portfolio investor allocated loss

“*Deduction*

- “(1) A zero-rated investor has a deduction for an income year for the amount of portfolio investor allocated loss under subpart HL (Portfolio investment entities) for the income year.

“*Amount of deduction reduced*

- “(2) The amount of a deduction allowed to an investor under subsection (1) is reduced by the lesser of the following:
 - “(a) the amount of the deduction:
 - “(b) the amount of the portfolio entity formation loss allocated to the investor for the income year that has not previously reduced—
 - “(i) a credit, under section HL 27(8) (Credits received by portfolio tax rate entity or portfolio investor proxy):

- “(ii) a rebate, under section KI 1(3) (Rebate for portfolio tax rate entity relating to certain investors):
- “(iii) a deduction, under this subsection.

“Defined in this Act: deduction, investor, portfolio investment entity, portfolio investor allocated loss, zero-rated portfolio investor”.

22 Section DB 45 replaced

- (1) Section DB 45 is replaced by the following:

“DB 45 Expenditure incurred in operating motor vehicle under agreement or arrangement affected by section CX 6B

“Deduction

- “(1) A party to an agreement or arrangement referred to in section CX 6B (Employer or associated person treated as having right to use vehicle under arrangement) is allowed a deduction for expenditure or depreciation loss incurred in operating a motor vehicle during a period for which an employer or associated person is treated under that section as having a right to use the vehicle.

“Link with subpart DA

- “(2) This section overrides the private limitation and exempt income limitation. The general permission must still be satisfied and the other general limitations still apply.

“Defined in this Act: arrangement, deduction, depreciation loss, exempt income limitation, FBT rules, general limitation, general permission, lease, loss, motor vehicle”.

- (2) Subsection (1) applies for expenditure or depreciation loss incurred on or after 1 April 2006.

23 Deductions for business use

- (1) In section DE 2(4)(a), “paragraph (b)” is replaced by “paragraph (b) or (c)”.
- (2) Section DE 2(4)(b) is replaced by the following:
- “(b) using the formula in subsection (7), if that subsection applies to the depreciation loss; or
 - “(c) using the formula in subsection (8C), if that subsection applies to the depreciation loss.”
- (3) After section DE 2(6), the following is inserted:

“When subsection (7) applies

“(6B) Subsection (7) applies when—

- “(a) the depreciation loss results from a calculation made for the motor vehicle under section EE 41(2) (Effect of disposal or event); and
- “(b) the motor vehicle was, at any time during the period the person owned it, dealt with in subsection (5).”

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

“When subsection (8C) applies

“(8B) Subsection (8C) applies when—

- “(a) the depreciation loss results from a calculation made for the motor vehicle under section EE 41(2) (Effect of disposal or event); and
- “(b) the motor vehicle starts to have a business use in the same income year as the year in which the depreciation loss arose.

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

“(8C) The formula referred to in subsection (4)(c) is—

disposal depreciation loss × business proportion.

“Definition of items in formula

“(8D) In the formula,—

- “(a) **disposal depreciation loss** is the amount resulting from a calculation made for the motor vehicle under section EE 41(2):
- “(b) **business proportion** is the proportion of business use of the motor vehicle for the income year (expressed as a decimal) calculated under sections DE 3 to DE 12.”

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

24 Foreign investment fund loss

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

“Deduction

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

“Ring-fencing rule for loss under branch equivalent method

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

- (2) Subsection (1) applies for income years beginning on or after 1 April 2007—
- (a) beginning with the first day of the first income year for a person who does not make an election under paragraph (b); or
 - (b) beginning with the later of the first day of the first income year and 1 October 2007 for a person that is a company, group investment fund, or superannuation fund that intends to be a portfolio investment entity and chooses to delay the application to the person of changes made by this Act to the rules relating to FIFs by giving a notice to the Commissioner—
 - (i) before 1 April 2007, if the person exists before that date; or
 - (ii) within 1 month of the day on which the person comes into existence, if the person comes into existence on or after 1 April 2007 and before 1 October 2007.

25 When FIF loss arises

- (1) In section DN 6(1)(a)(ii), “non-resident:” is replaced by “non-resident; and”.
- (2) In section DN 6(1)(b), “FIFs:” is replaced by “FIFs); and”.
- (3) In section DN 6(1)(c),—
 - (a) in subparagraph (ii), “(Grey list exemption)” is replaced by “(Exemptions: direct income interests in FIF in grey list country)”:
 - (b) after subparagraph (ii), the following is inserted:

“(iib) the exemptions limited by income years in section EX 33B (Exemptions limited by income years: shares in certain grey list companies):

- “(iic) the exemption for shares in a listed Australian company in section EX 33C (Exemption: shares in listed Australian company):
- “(iid) the exemption for units in certain Australian unit trusts in section EX 33D (Exemption: units in certain Australian unit trusts):
- “(iie) the Australian superannuation fund exemption in section EX 33E (Australian superannuation fund exemption):”.
- (4) In section DN 6(1)(c)(vi), “exemption:” is replaced by “exemption); and”.
- (5) In section DN 6(1)(d), “\$50,000:” is replaced by “\$50,000; and”.
- (6) Section DN 6(1)(d), as amended by subsection (5) of this section, is replaced by the following:
- “(d) if the person is a natural person and not acting as a trustee, the person holds, at any time during the income year when the person is a New Zealand resident, attributing interests in FIFs for which the total of the following amounts is more than \$50,000:
- “(i) if subparagraph (ii) does not apply to the interest, the cost of the interest calculated under section EX 56 (Measurement of cost):
- “(ii) if the person acquired the interest before 1 January 2000 and chooses, for the year or an earlier year, that this subparagraph and section CQ 5(1)(d)(ii) (When FIF income arises) apply to all interests acquired before 1 January 2000, half of the market value of the interest on 1 April 2007; and
- “(db) if the person is acting as a trustee of a trust that meets the requirements of subsection (4), the person holds attributing interests in FIFs for which the total of the following amounts is more than \$50,000:
- “(i) if subparagraph (ii) does not apply to the interest, the cost of the interest calculated under section EX 56 (Measurement of cost):
- “(ii) if the person acquired the interest before 1 January 2000 and chooses, for the year or an earlier year, that this subparagraph and section CQ

5(1)(d)(ii) apply to all interests acquired before 1 January 2000, half of the market value of the interest on 1 April 2007; and”.

- (7) In section DN 6(1)(e), “time:” is replaced by “time; and”.
- (8) In section DN 6(1)(f), “EX 45” is replaced by “EX 45B”.
- (9) After section DN 6(3), the following is added:
“*When application of subsection (1) affected by subsection (1)(db)*”
- “(4) Subsection (1)(db) applies to the trustee of a trust for an income year if—
- “(a) the settlor of the trust—
 - “(i) is a relative or legal guardian of a beneficiary of the trust, or a person associated with a relative or legal guardian of a beneficiary of the trust under section OD 7 (Defining when 2 persons are associated persons); and
 - “(ii) is required by a court order to pay damages or compensation to the beneficiary:
 - “(b) the settlor of the trust—
 - “(i) is the estate of a deceased person; and
 - “(ii) is required by a court order to settle on the trust the proceeds of damages or compensation for the beneficiaries of the trust:
 - “(c) the settlor of the trust is the Accident Compensation Corporation:
 - “(d) the trust is of the estate of a deceased person and the income year begins on or before the day that is 5 years after the person’s death.”
- (10) Subsections (6), (8), and (9) apply for income years beginning on or after 1 April 2007—
- (a) beginning with the first day of the first income year for a person who does not make an election under paragraph (b); or
 - (b) beginning with the later of the first day of the first income year and 1 October 2007 for a person that is a company, group investment fund, or superannuation fund that intends to be a portfolio investment entity and chooses to delay the application to the person of changes made by this Act to the rules relating to FIFs by giving a notice to the Commissioner—

- (i) before 1 April 2007, if the person exists before that date; or
- (ii) within 1 month of the day on which the person comes into existence, if the person comes into existence on or after 1 April 2007 and before 1 October 2007.

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

- (1) Section DN 8 is repealed.
- (2) Subsection (1) applies for income years beginning on or after 1 April 2007—
 - (a) beginning with the first day of the first income year for a person who does not make an election under paragraph (b); or
 - (b) beginning with the later of the first day of the first income year and 1 October 2007 for a person that is a company, group investment fund, or superannuation fund that intends to be a portfolio investment entity and chooses to delay the application to the person of changes made by this Act to the rules relating to FIFs by giving a notice to the Commissioner—
 - (i) before 1 April 2007, if the person exists before that date; or
 - (ii) within 1 month of the day on which the person comes into existence, if the person comes into existence on or after 1 April 2007 and before 1 October 2007.

27 New sections DZ 14 to DZ 17 added

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

“DZ 14 Patent applications before 1 April 2005

“When this section applies

- “(1) This section applies if—
 - “(a) a patent is granted to a person in their 2005–06 or later income year; and
 - “(b) the patent is granted in relation to a patent application owned by the person; and
 - “(c) the patent application, with a complete specification, was first lodged with the Intellectual Property Office of

New Zealand or a similar office in another jurisdiction before 1 April 2005; and

- “(d) a deduction for expenditure on the patent application is not allowed under another provision.

“Calculation of deduction

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

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

“Definition of items in formula

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

“Link with subpart DA

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

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

“DZ 15 Geothermal wells between 31 March 2003 and 17 May 2006

“When this section applies

- “(1) This section applies to a person’s geothermal well, if—
- “(a) the well’s geothermal energy proving period ends between 31 March 2003 and 17 May 2006; and
- “(b) the well is—
- “(i) both started and completed between 31 March 2003 and 17 May 2006:
- “(ii) acquired between 31 March 2003 and 17 May 2006; and
- “(c) a deduction for expenditure on the well is not allowed under any provision except this one.

“Deduction

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

“Link with subpart DA

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

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

“DZ 16 Expenditure on improvements to aquacultural business before 1995–96 income year

“When this section applies

- “(1) This section applies to a person and an income year and expenditure—
- “(a) incurred before the 1995–96 income year in making an improvement for the purposes of an aquacultural business; and
 - “(b) for which the person would be allowed under section DO 6 (Improvements and aquacultural business) a deduction in the income year if the expenditure had been incurred in the 1995–96 income year or a later income year.

“Deduction

- “(2) The person is allowed a deduction in the income year for the expenditure.

“Amount of deduction

- “(3) The amount of the deduction is calculated using the formula—
 $125\% \times \text{schedule percentage} \times \text{diminished value}$.

“Definition of items in formula

- “(4) In the formula,—
- “(a) **schedule percentage** is the percentage set out opposite the description of the improvement in any of schedule

7, parts B to F, column 2 (Expenditure on farming, aquacultural, and forestry improvements):

“(b) **diminished value** means the diminished value of the improvement.

“*Link with subpart DA*

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

“Defined in this Act: amount, business, capital limitation, deduction, diminished value, general limitation, general permission, income year

“**DZ 17 Expenditure on improvements to forestry land before 1995–96 income year**

“*When this section applies*

“(1) This section applies to a person and an income year and expenditure—

“(a) incurred before the 1995–96 income year in making an improvement on land; and

“(b) for which the person would be allowed under section DP 3 (Improvements to forestry land) a deduction in the income year if the expenditure had been incurred in the 1995–96 income year or a later income year.

“*Deduction*

“(2) The person is allowed a deduction in the income year for the expenditure.

“*Amount of deduction*

“(3) The amount of the deduction is calculated using the formula—
 $125\% \times \text{schedule percentage} \times \text{diminished value}$.

“*Definition of items in formula*

“(4) In the formula,—

“(a) **schedule percentage** is the percentage set out opposite the description of the improvement in schedule 7, part G, column 2 (Expenditure on farming, aquacultural, and forestry improvements):

“(b) **diminished value** means the diminished value of the improvement.

“Link with subpart DA

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

“Defined in this Act: amount, business, capital limitation, deduction, diminished value, general limitation, general permission, income year”.

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

28 Meaning of trading stock

After section EB 2(3)(d), the following is inserted:

“(db) an excepted financial arrangement held by a person if section CX 44C (Proceeds from disposal of certain shares by portfolio investment entities) applies to the income of the person from a disposal of the excepted financial arrangement:”.

29 What is depreciable property?

- (1) In section EE 6(1), “Subsections (2) and (3)” is replaced by “Subsections (2) to (4)”.

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

“Property: geothermal wells

- “(4) For the purposes of this subpart, a person who owns a geothermal well is, for the geothermal energy proving period, treated as acquiring the well as property that declines in value and is to be available for use in carrying on a business for the purpose of deriving assessable income.”
- (3) In section EE 6, in the list of defined terms, “geothermal energy proving period” and “geothermal well” are inserted.
- (4) Subsections (1) to (3) apply to a geothermal well for the 2006–07 and later income years, if the well is completed or acquired on or after 1 April 2003.

30 Calculation rule: income year in which item disposed of

- (1) After section EE 11(5), the following is added:

“Exclusion: recent acquisition of item partly used for business

- “(6) A person has the amount of depreciation loss calculated under section FB 7(9) (Depreciation: partial income-producing use) for a disposal or event to which the subsection applies.”
- (2) Subsection (1) applies for the 2006–07 and later income years.

31 Depreciation methods

- (1) Section EE 12(1) is replaced by the following:

“Meaning of depreciation method

- “(1) **Depreciation method** means—

“(a) a method that a person may use to calculate an amount of depreciation loss:

“(b) a rate determined by the Commissioner under section 91AAF or 91AAG of the Tax Administration Act 1994:

“(c) a maximum pooling value determined by the Commissioner under section 91AAL of that Act.”

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

32 Amount resulting from standard calculation

- (1) Section EE 16(4)(b) is replaced by the following:

“(b) when the person uses the straight-line method,—

“(i) if subparagraph (ii) does not apply, the item’s cost to the person excluding expenditure for which the person is allowed a deduction under a provision of this Act outside this subpart (variations to **cost** are in sections EE 18 and EE 19):

“(ii) if the item is a patent or plant variety rights and the person has been allowed a deduction for depreciation loss for the patent application or plant variety rights application relating to the item, the item’s adjusted tax value at the start of the month in which the person acquires the item (a variation to **cost** is in section EE 19).”

- (2) In section EE 16(5)(b), “(or whole calendar months in the case of a patent application)” is inserted after “part calendar months”.
- (3) In section EE 16(6), “(or whole months in the case of a patent application)” is inserted after “part months”.

- (4) Subsection (1) applies to an item that is a patent or plant variety rights, if the item is acquired by a person in their 2005–06 or later income year.
- (5) Subsections (2) and (3) apply to a patent application, if the patent application, with a complete specification, is first lodged with the Intellectual Property Office of New Zealand or a similar office in another jurisdiction on or after 1 April 2005.

33 New section EE 24B inserted

After section EE 24, the following is inserted:

“EE 24B Depreciation loss for plant variety rights application upon grant of rights in 2005–06 or later income year

“When this section applies

- “(1) This section applies if—
- “(a) plant variety rights are granted to a person in their 2005–06 or later income year; and
 - “(b) the plant variety rights are granted in relation to a plant variety rights application owned by the person; and
 - “(c) a deduction for expenditure is not allowed under another provision.

“Calculation of deduction

- “(2) A person is allowed a deduction for the income year in which the plant variety rights are granted, for expenditure on the plant variety rights application, calculated using the formula—

$$\text{cost} \times \frac{\text{months of ownership}}{\text{depreciation months.}}$$

“Definition of items in formula

- “(3) In the formula,—
- “(a) **cost** means the cost to the person of the plant variety rights application:
 - “(b) **months of ownership** means the number of whole calendar months for which the person owns the plant variety rights application:
 - “(c) **depreciation months** means the total of the number of months of ownership under paragraph (b) and the number of months in the term for which the plant variety

rights are granted in relation to the plant variety rights application.

“Defined in this Act: amount, deduction, depreciation, income year, plant variety rights”.

34 Setting of economic depreciation rate

- (1) Section EE 25(3) is replaced by the following:

“Relationship with subject matter: election under section EE 26B

“(3) Subsection (1)(a), (c), and (d) are overridden by section EE 26B.”

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

35 Economic rate for certain aircraft and motor vehicles

- (1) After section EE 25D(2)(c), the following is inserted:

“(cb) is not used for top-dressing or spraying; and”.

(2) In section EE 25D(3), “having seats for no more than 12 persons” is replaced by “that is designed exclusively or mainly to carry persons, and has seats for no more than 12 persons,”.

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

36 Economic rate for plant, equipment, or building, with high residual value

- (1) Section EE 25E(1), other than the heading, is replaced by the following:

“(1) This section is about setting the economic depreciation rate that applies to items of a kind of depreciable property if—

“(a) the kind of depreciable property is not fixed life intangible property, or excluded depreciable property, for which an economic rate cannot be set; and

“(b) the estimated residual market value for the item is more than 13.5%; and

“(c) the items are—

“(i) plant or equipment acquired on or after 1 April 2005:

“(ii) buildings acquired on or after 19 May 2005.”

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

37 Annual rate for fixed life intangible property

- (1) Section EE 27(1)(b) is replaced by the following:
 “(b) a patent for which a rate is set in section EE 27B.”
- (2) Section EE 27(1)(c) is repealed.
- (3) Subsection (1) applies to a patent, if the patent is acquired by a person in their 2005–06 and later income years.

38 Sections EE 27B to EE 27E replaced

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

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

“When this section applies

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

“Rate

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

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

“Definition of item in formula

- “(3) In the formula, **legal life** is—
- “(a) the patent’s remaining legal life from the start of the income year in which the person incurs the additional costs referred to in that section, if section EE 19 applies to the patent; or
- “(b) the patent’s remaining legal life from the time at which the person acquires the patent, if—
- “(i) section EE 19 does not apply to the patent; and
- “(ii) the person has not been allowed a deduction for depreciation loss for the patent application relating to the patent; or
- “(c) the remaining legal life of the patent application relating to the patent from the start of the income year in which the person acquires the patent application, if—
- “(i) section EE 19 does not apply to the patent; and
- “(ii) the person has been allowed a deduction for depreciation loss for the patent application; and

- “(iii) section EE 19 has not applied to the patent application while the person has owned it; or
- “(d) the remaining legal life of the patent application relating to the patent from the start of the income year in which the person acquires the patent, if—
- “(i) section EE 19 does not apply to the patent; and
- “(ii) the person has been allowed a deduction for depreciation loss for the patent application; and
- “(iii) section EE 19 has applied to the patent application while the person has owned it.

“How rate expressed

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

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

39 Items no longer used

- (1) Section EE 32(1)(a) is replaced by the following:
- “(a) is no longer used or, because the geothermal energy proving period has ended, becomes unavailable for use under section EE 6(4); and”.
- (2) In section EE 37, in the list of defined terms, “geothermal energy proving period” is inserted.
- (3) Subsections (1) and (2) apply to a geothermal well for the 2006–07 and later income years, if the well is completed or acquired on or after 1 April 2003.

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

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

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

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

“When this section applies

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

“Associated person

- “(2) The associated person must be a person to whom 1 of the following paragraphs applies:
- “(a) the associated person is allowed a deduction for an amount of depreciation loss for the item for the income year in which person A acquires it:
 - “(b) the associated person would have been allowed a deduction for an amount of depreciation loss for the item for the income year in which person A acquired it, if section EE 11(1) had not applied:
 - “(c) the associated person was allowed a deduction for an amount of depreciation loss for the item for the income year before the income year in which person A acquired it:
 - “(d) the associated person has been allowed a deduction for the item under section DZ 9 (Premium paid on land leased before 1 April 1993) for the income year in which person A acquired it:
 - “(e) the associated person has been allowed a deduction for the item under section DZ 9 for the income year before the income year in which person A acquired it:
 - “(f) the associated person would have been allowed a deduction for an amount of depreciation loss for the item for the income year in which person A acquired it, if the associated person had incurred a cost for the item for which the person was denied any other deduction and if section EE 11(1) had not applied:

- “(g) the associated person would have been allowed a deduction for an amount of depreciation loss for the item for the income year before the income year in which person A acquired it, if the associated person had incurred a cost for the item for which the person was denied any other deduction:
- “(h) the associated person would have been allowed a deduction for the item under section DZ 9 for the income year in which person A acquired it, if the associated person had incurred a cost for the item for which the person was denied any other deduction:
- “(i) the associated person would have been allowed a deduction for the item under section DZ 9 for the income year before the income year in which person A acquired it, if the associated person had incurred a cost for the item for which the person was denied any other deduction:
- “(j) the associated person would have been a person to whom any of paragraphs (a) to (i) applied, if the associated person had not made an election under section EE 8.

“Cost of item to person A

- “(3) For the purpose of determining the amount of depreciation loss that person A has, the cost of the item to person A is treated as 1 of the following:
 - “(a) if section EE 49 applies for the associated person and the item, the lesser of—
 - “(i) the cost of the item to person A:
 - “(ii) the item’s market value when, after the associated person acquired it, a person was first allowed a deduction for it; or
 - “(b) if section EE 49 does not apply for the associated person and the item, the lesser of—
 - “(i) the cost of the item to person A:
 - “(ii) the cost of the item to the associated person.

“Exclusions

- “(4) Subsection (3) does not apply—
 - “(a) if—

- “(i) the item is not depreciable intangible property;
and
 - “(ii) the Commissioner decides that it is appropriate to use the cost of the item to person A for the purposes of determining the amount of depreciation loss that person A has for the item:
- “(b) if the cost to person A is income of the associated person, other than under section EE 41(1):
- “(c) if person A acquires the item under a relationship agreement or a matrimonial agreement to which section FF 16 (Depreciable property) applies.

“*Rate*

- “(5) The annual rate that person A applies to the item must be 1 of the following (not including an item of fixed life intangible property, for which the rate is set in section EE 27):
- “(a) if person A uses the same depreciation method for the item as that used by the associated person for it, the annual rate that person A applies to it must not be more than the annual rate that the associated person applied to it:
 - “(b) if person A uses a depreciation method for the item different from the method that the associated person used for it, the annual rate that person A applies to it must not be more than a rate equivalent to the rate that the associated person applied to it, as determined by schedule 10 (Straight-line equivalents of diminishing value rates of depreciation).

“*Relationship with section EE 34 and subpart FI*

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

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

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

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

“When this section applies

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

“Cost of item to person

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

“Exclusions

- “(3) Subsection (2) does not apply—
- “(a) if—

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

“*Rate*

- “(4) The annual rate that the amalgamated company applies to the item must be 1 of the following (not including an item of fixed life intangible property, for which the rate is set in section EE 27):
 - “(a) if the amalgamated company uses the same depreciation method for the item as that used by the amalgamating company for it, the annual rate that the amalgamated company applies to it must not be more than the annual rate that the amalgamating company applied to it; or
 - “(b) if the amalgamated company uses a depreciation method for the item different from the method that the amalgamating company used for it, the annual rate that the amalgamated company applies to it must not be more than a rate equivalent to the rate that the amalgamating company applied to it, as determined by schedule 10 (Straight-line equivalents of diminishing value rates of depreciation).

“Defined in this Act: acquire, amalgamated company, amalgamating company, amalgamation, amount, annual rate, assessable income, business, Commissioner, depreciable intangible property, depreciation loss, depreciation method, fixed life intangible property, income, matrimonial agreement, property, qualifying amalgamation, relationship agreement

Compare: 1994 No 164 ss EG 17(3B), FE 5(2)”.

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

41 Transfer of depreciable property on or after 24 September 1997

- (1) Section EE 33(3)(a)(ii), as inserted by section 40 of this Act, is replaced by the following:

“(ii) the item’s market value when the associated person starts to use it, or to have it available for use, for the purpose of deriving assessable income or carrying on a business for the purpose of deriving assessable income; or”.

(2) Subsection (1) applies for the 2006–07 and later income years.

42 Transfer of depreciable property in non-qualifying amalgamation on or after 14 May 2002

(1) Section EE 34(2)(a)(ii), as inserted by section 40 of this Act, is replaced by the following:

“(ii) the item’s market value when the amalgamating company starts to use it, or to have it available for use, for the purpose of deriving assessable income or carrying on a business for the purpose of deriving assessable income; or”.

(2) Subsection (1) applies for the 2006–07 and later income years.

43 Application of sections EE 41 to EE 44

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

“Exclusion

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

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

“(b) when a person’s patent application has concluded because a patent is granted to the person in relation to the patent application:

“(c) when a person’s geothermal well becomes unavailable for use under section EE 6(4) because the geothermal energy proving period has ended.”

(2) In section EE 37, in the list of defined terms, “geothermal energy proving period” and “geothermal well” are inserted.

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

(4) Subsections (1) and (2) apply to a geothermal well for the 2006–07 and later income years, if the well is completed or acquired on or after 1 April 2003.

44 Consideration for purposes of section EE 37

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

“Unused geothermal well brought into use

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

- (2) Subsection (1) applies to a geothermal well for the 2006–07 and later income years, if the well is completed or acquired on or after 1 April 2003.

45 Events for purposes of section EE 37

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

“Unused geothermal well brought into use

“(5B) The fifth event is, for a person’s geothermal well that is unavailable for use under section EE 6(4) because the geothermal energy proving period has ended, the start of the person’s—

“(a) using the well in deriving assessable income or carrying on a business for the purposes of deriving assessable income:

“(b) having the well available for use in deriving assessable income or carrying on a business for the purposes of deriving assessable income.”

- (2) In section EE 40(6), “fifth” is replaced by “sixth”.
- (3) In section EE 40, in the list of defined terms, “assessable income”, “business”, “geothermal energy proving period”, and “geothermal well” are inserted.
- (4) Subsections (1) to (3) apply to a geothermal well for the 2006–07 and later income years, if the well is completed or acquired on or after 1 April 2003.

46 New section EE 44B

- (1) After section EE 44, the following is inserted:

“EE 44B Unused geothermal well brought into use

“When this section applies

- “(1) This section applies to a person when an event occurs to which section EE 40(5B) applies.

“Person treated as acquiring geothermal well

- “(2) The person is treated as having acquired the geothermal well, on the day the event occurs, for the cost of the well under this subpart before the event occurs.

“Defined in this Act: geothermal well”.

- (2) Subsection (1) applies to a geothermal well for the 2006–07 and later income years, if the well is completed or acquired on or after 1 April 2003.

47 Base value in section EE 47 when no previous deduction

- (1) Section EE 49(2) is replaced by the following:

“Base value

- “(2) **Base value** is the item’s market value at the time the person starts to use it, or to have it available for use, for the purpose of deriving assessable income or carrying on a business for the purpose of deriving assessable income.”
- (2) Subsection (1) applies for the 2006–07 and later income years.

48 Total deductions in section EE 47

- (1) In section EE 51(1)(b), “subsection (3).” is replaced by “subsection (3); and” and the following is added:

“(c) the amount of a deduction under section EE 24B.”

- (2) Section EE 51(3)(a) is replaced by the following:

“(a) the person was allowed for the item and for,—

“(i) if the item is a patent, the patent application in relation to which the item was granted:

“(ii) if the item is a geothermal well that a person acquired under section EE 44B(2), the well before the person acquired it under that section; or”.

- (3) Section EE 51(5)(a) to (d) are replaced by the following:

“(a) for an item to which section EE 48 applies,—

“(i) unless subparagraph (ii) or (iii) applies, the date on which the person acquired the item; or

“(ii) if the item is a geothermal well that a person acquired under section EE 44B(2), the earliest date on which the person acquired the geothermal well, under section EE 6(4) or otherwise; or

- “(iii) if the item is a patent and the person acquired the patent application in relation to which the patent was granted, the date on which the person acquired the patent application; or
 - “(b) for an item to which section EE 49 applies,—
 - “(i) unless subparagraph (ii) applies, the beginning of the month in which the person started to use the item, or to have it available for use, for the purpose of deriving assessable income or carrying on a business for the purpose of deriving assessable income; or
 - “(ii) if the item is a patent and the person acquired the patent application in relation to which the item was granted, the start of the month in which the person acquired the patent application; or
 - “(c) for an item to which section EE 50 applies, the date on which person A or the relevant associated person acquired the item; or
 - “(d) for an item to which section EZ 21(1) (Base value and total deductions in section EE 47: before 1 April 1995) applies, the end of the 1992–93 income year.”
- (4) In section EE 51, in the list of defined terms, “geothermal well” is inserted.
- (5) Subsections (1) to (3) apply to a patent, if the patent is acquired by a person in their 2005–06 or later income year.
- (6) Subsections (1) to (4) apply to a geothermal well for the 2006–07 and later income years, if the well is completed or acquired on or after 1 April 2003.

49 Meaning of annual rate

Section EE 52(4C) to (4E) are repealed.

50 Other definitions

- (1) In section EE 58, the definition of **legal life** is replaced by the following:
- “**legal life**,—
- “(a) for an item to which paragraphs (b) and (c) do not apply, means the number of years, months, and days for which an owner’s interest in an item of intangible property exists under the contract or statute that creates the

owner's interest, assuming that the owner exercises any rights of renewal or extension that are either essentially unconditional or conditional on the payment of pre-determined fees:

- “(b) for an item that is a patent application or a patent, means the legal life under paragraph (a) that a patent would have if granted when a patent application is first lodged:
- “(c) for an item that is plant variety rights, means the total of—
 - “(i) the legal life that the rights would have under paragraph (a); and
 - “(ii) the number of whole calendar months during which the person owns the plant variety rights application in relation to which the rights are granted”.

- (2) Subsection (1) applies to—
 - (a) a patent application, if the patent application, with a complete specification, is first lodged with the Intellectual Property Office of New Zealand or a similar office in another jurisdiction on or after 1 April 2005:
 - (b) a patent, if the patent is acquired by a person in their 2005–06 or later income year:
 - (c) plant variety rights, if the plant variety rights are granted to a person in their 2005–06 or later income year.

51 New section EG 3 inserted

After section EG 2, the following is inserted:

“EG 3 Allocation of income and deductions by portfolio tax rate entity

“When this section applies

- “(1) This section applies for the calculation of a portfolio tax rate entity's liability for income tax for a tax year.

“Allocation shown in accounts

- “(2) Income and deductions of the portfolio tax rate entity are allocated—
 - “(a) to portfolio allocation periods as—

- “(i) reflected in the entity’s valuations of portfolio investor interests, if the entity makes such valuations; or
 - “(ii) shown in the entity’s financial statements, if subparagraph (i) does not apply:
- “(b) to portfolio investor classes and investors as—
- “(i) reflected in the entity’s valuations of portfolio investor interests, if the entity makes such valuations; or
 - “(ii) shown in the entity’s financial statements, if subparagraph (i) does not apply.

“Defined in this Act: deduction, income, income tax, investor, portfolio allocation period, portfolio investor class, portfolio tax rate entity, tax year”.

52 New section EI 3B inserted

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

“EI 3B Spreading income from patent rights

“When this section applies

- “(1) This section applies when a person derives income under section CB 26 (Sale of patent applications or patent rights).

“Timing of income

- “(2) The person may allocate the income equally between the income year in which they derive it and the following 2 income years.

“Defined in this Act: Commissioner, income, income year, patent rights”.

- (2) Subsection (1) applies for the 2007–08 and later income years.

53 Allocation of deductions for research, development, and resulting market development

- (1) Section EJ 21(3) is replaced by the following:

“Minimum amount of deduction allocated to income year

- “(3) The person must not allocate to an income year (the **current year**) an amount of the deductions referred to in subsection (1) that is less than the lesser of—
- “(a) the amount of assessable income referred to in subsection (2)(a) that the person derives in the current year:
 - “(b) the amount of the deductions that have not been allocated to income years before the current year.

“Maximum amount of deduction allocated to income year

- “(4) The person must not allocate to an income year (the **current year**) an amount of the deductions referred to in subsection (1) that is more than the greater of—
- “(a) the amount of assessable income referred to in subsection (2)(a) that the person derives in the current year:
 - “(b) the amount of the deductions that—
 - “(i) arise in other income years from which a net loss may be carried forward under Part I to the current year; and
 - “(ii) have not been allocated to income years before the current year.”
- (2) Subsection (1) applies for income years corresponding to the 2005–06 and subsequent tax years.

54 Interest on payments to environmental restoration account

- (1) In section EK 6(1)(b), “section EK 15 or EK 19” is replaced by “section EK 15, EK 16, or EK 19”.
- (2) Subsection (1) applies for expenditure incurred by a person in an income year starting on or after 10 June 2005.

55 Refund

- (1) Section EK 12(8) is replaced by the following:
- “(8) If a person is entitled to a refund under subsection (2)(b), the amount that the Commissioner must refund is the difference at the end of the latest complete income year between—
- “(a) the amount in the person’s environmental restoration account, after any transfer under section EK 15, EK 16, or EK 19 for the income year:
 - “(b) the person’s maximum account balance for the income year.”
- (2) Subsection (1) applies for expenditure incurred by a person in an income year starting on or after 10 June 2005.

56 Transfer on death, bankruptcy, or liquidation

- (1) Section EK 16(3) is replaced by the following:

“Commissioner to make transfer

“(3) The Commissioner must transfer the amount referred to in subsection (4) to an environmental restoration account of the person to whom the obligation has been transferred.”

(2) After section EK 16(5), the following is inserted:

“Transfer to person treated as payment to account by person

“(5B) A transfer to the environmental account of a person under subsection (3) is treated as being a payment by that person to their environmental account.”

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

57 Environmental restoration account of member of consolidated group

(1) Section EK 20(2), other than the heading, is replaced by the following:

“(2) The nominated company for the consolidated group may act on behalf of the member under this subpart to—

“(a) make payments, applications, and transfers:

“(b) receive refunds and transfers.”

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

58 Consideration for agreement for sale and purchase of property or services, hire purchase agreement, specified lease, or finance lease

In section EW 32(1), “property and services” is replaced by “property or services”.

59 Associates and 10% threshold

(1) In section EX 15(1), “section EX 46(1)(a)” is replaced by “sections EX 32(b) and EX 46(1)(a)”.

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

60 Unqualified grey list CFCs

(1) In section EX 22(2), “CQ 2(g)” is replaced by “CQ 2(1)(g)”.

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

61 Section EX 33 replaced

(1) Section EX 33 is replaced by the following:

“EX 33 Exemptions: direct income interests in FIF in grey list country

“Direct income interest of 10% or more

“(1) A person’s rights in a FIF in an income year are not an attributing interest if, at all times in the year,—

“(a) the rights are a direct income interest of 10% or more; and

“(b) the person is not a portfolio investment entity, a super-annuation scheme, a unit trust, a life insurer, or a group investment fund; and

“(c) the FIF is not an entity described in schedule 4, part B (Foreign investment funds); and

“(d) the FIF meets the requirements of subsection (2).

“Further requirements under subsection (1)

“(2) A FIF meets the requirements of this subsection if—

“(a) the FIF is a grey list company and a country listed in the grey list imposes on the FIF liability for income tax on the FIF’s income because the FIF—

“(i) is domiciled in the country:

“(ii) is resident in the country:

“(iii) is incorporated in the country:

“(iv) has its place of management in the country:

“(b) there is a country listed in the grey list that—

“(i) is the country under whose laws the FIF is organised; and

“(ii) imposes on persons holding income interests in the FIF liability for income tax on the FIF’s income; and

“(iii) under the laws of the country, is the source of 80% or more of the income of the FIF.

“Shares acquired when FIF resident and unlisted company

“(3) A person’s rights in a FIF in an income year are not an attributing interest if—

“(a) the rights are shares; and

“(b) the FIF is a grey list company that is not an entity described in schedule 4, part B; and

- “(c) the person acquired the shares when—
 - “(i) the company was resident in New Zealand; and
 - “(ii) the shares were not listed on a recognised exchange; and
- “(d) the company became a grey list company immediately after having, for 12 months or more,—
 - “(i) been resident in New Zealand; and
 - “(ii) had in New Zealand more than 50% of its assets and employees; and
- “(e) the year begins less than 10 years after the company became a grey list company; and
- “(f) at all times in the year, the company has a fixed establishment in New Zealand; and
- “(g) the company through the fixed establishment—
 - “(i) incurs in the year expenditure, other than interest, of \$1,000,000;
 - “(ii) at all times in the year, engages 10 or more full-time employees or contractors.

“Shares acquired when FIF unlisted, FIF owns resident company

- “(4) A person’s rights in a FIF in an income year are not an attributing interest if—
 - “(a) the rights are shares; and
 - “(b) the FIF is a grey list company that is not an entity described in schedule 4, part B; and
 - “(c) the person acquired the shares when the shares were not listed on a recognised exchange; and
 - “(d) at all times in the year, the grey list company directly or indirectly owns a company (the **resident company**) that, for 12 months or more, has—
 - “(i) been resident in New Zealand; and
 - “(ii) had in New Zealand more than 50% of the resident company’s assets and employees; and
 - “(e) the year begins less than 10 years after the grey list company first owned the resident company; and
 - “(f) the resident company through a fixed establishment in New Zealand—
 - “(i) incurs in the year expenditure, other than interest, of \$1,000,000;

“(ii) at all times in the year, engages 10 or more full-time employees or contractors.

“Shares acquired under share purchase agreement

- “(5) A person’s rights in a FIF in an income year are not an attributing interest if—
- “(a) the person is a natural person; and
 - “(b) the rights are shares; and
 - “(c) the FIF is a grey list company that is not an entity described in schedule 4, part B; and
 - “(d) at the time the person acquires the shares, the FIF—
 - “(i) employs the person:
 - “(ii) owns, directly or indirectly, the person’s employer; and
 - “(e) the person acquires the shares under a share purchase agreement; and
 - “(f) the share purchase agreement includes a restriction on the disposal of the shares that affects the value under section CE 3 (Restrictions on disposal of shares under share purchase agreements) of the benefit to the person under the agreement; and
 - “(g) at the beginning of the year, the period of the restriction has not expired or has expired for a period of less than 6 months.

“Exception: Categories 2 and 3

- “(6) Subsections (1) to (5) do not apply if the rights of the person are those described in section EX 30(3) or (4).

“Defined in this Act: attributing interest, company, direct income interest, employee, employer, FIF, fixed establishment, grey list company, group investment fund, income tax, income year, interest, life insurer, New Zealand resident, portfolio investment entity, recognised exchange, resident, share, share purchase agreement, superannuation scheme, unit trust, year

“EX 33B Exemptions limited by income years: shares in certain grey list companies

“Exemption for shares in company meeting requirements for listing, shareholding and taxation

- “(1) A person’s rights in a FIF are not an attributing interest in an income year beginning before 1 April 2012 if the rights are shares in a grey list company that,—

- “(a) on 17 May 2006,—
 - “(i) is not an entity described in schedule 4, part B (Foreign investment funds); and
 - “(ii) is listed on a recognised exchange in New Zealand; and
 - “(iii) has more than 20 000 shareholders who have addresses in New Zealand on the company’s share register in New Zealand; and
 - “(iv) has shareholders referred to in subparagraph (iii) who between them hold shares in the company carrying voting interests of more than 50%; and
 - “(v) is listed on a recognised exchange in a country listed in the grey list; and
 - “(vi) is liable to income tax in a country listed in the grey list; and
 - “(vii) has assets of which more than 50% in total value are shares in other companies carrying voting interests of more than 50%; and
- “(b) in the period of 30 days beginning from the day on which the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 receives the Royal assent, gives to the Commissioner notice that on 17 May 2006 the grey list company met the requirements in paragraph (a)(i) to (vii).

“Exemption for shares in company meeting requirements for investment

- “(2) A person’s rights in a FIF are not an attributing interest in an income year beginning before 1 April 2009 if the rights are shares in a grey list company that,—
 - “(a) on 17 May 2006,—
 - “(i) is not an entity described in schedule 4, part B; and
 - “(ii) is listed on a recognised exchange in New Zealand; and
 - “(iii) has shareholders of which more than 40% have addresses in New Zealand on the company’s share register in New Zealand; and
 - “(iv) is listed on a recognised exchange in a country listed in the grey list; and

- “(v) is liable to income tax in a country listed in the grey list; and
 - “(vi) has assets of which 50% or more in total value are shares in other companies each of which is resident in New Zealand; and
 - “(vii) has assets of which 90% or more in total value are shares in other companies each of which is resident in Australia or New Zealand and is listed on a recognised exchange in Australia or New Zealand; and
- “(b) in the period of 30 days beginning from the day on which the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 receives the Royal assent, gives to the Commissioner notice that on 17 May 2006 the grey list company met the requirements in paragraph (a)(i) to (vii); and
- “(c) at all times in the year,—
- “(i) has assets of which 50% or more in total value are shares in other companies each of which is resident in New Zealand; and
 - “(ii) has assets of which 90% or more in total value are shares in other companies each of which is resident in Australia or New Zealand and is listed on a recognised exchange in Australia or New Zealand.

“Exception: Election in tax return that exemption not apply

- “(3) An exemption under subsection (1) or (2) does not apply for a person for an income year (the **initial year**), and for income years after the initial year, if the person completes a return of income for the initial year on the basis that the exemption does not apply for the person and the initial year.

“Defined in this Act: attributing interest, company, FIF, grey list, grey list company, income, income tax, income year, New Zealand resident, recognised exchange, resident, resident in Australia, share, shareholder, voting interest, year

“EX 33C Exemption: shares in listed Australian company

A person’s rights in a FIF in an income year are not an attributing interest if the rights are from shares and the FIF is a company that, at all times in the year, is—

- “(a) resident in Australia and not treated under a double tax agreement between Australia and another country as being resident in a country other than Australia or New Zealand; and
- “(b) included in an index that is an approved index under the ASX Market Rules, made under Chapter 7 of the Corporations Act 2001 (Aust); and
- “(c) not an entity described in schedule 4, part B (Foreign investment funds); and
- “(d) required under the Income Tax Assessment Act 1997 (Aust) and Income Tax Assessment Act 1936 (Aust) to maintain a franking account.

“Defined in this Act: attributing interest, company, direct income interest, double tax agreement, FIF, income, income tax, income year, resident in Australia, share, year

“EX 33D Exemption: units in certain Australian unit trusts

“*Exemption*

- “(1) A person’s rights in a FIF in an income year are not an attributing interest if—
 - “(a) the FIF is a unit trust; and
 - “(b) the FIF is not an entity described in schedule 4, part B (Foreign investment funds); and
 - “(c) at all times in the year, the unit trust is resident in Australia; and
 - “(d) at all times in the year, there is an RWT proxy under section NF 2AA (Election to be RWT proxy) for the unit trust and payments by the unit trust to the person; and
 - “(e) for the assets of the unit trust that each have a market value greater than or equal to the cost of the asset for the unit trust, the market value of the assets (the **held assets**) held at the end of the year by the unit trust and the proceeds derived from disposals of assets during the year by the unit trust (the **asset disposals**) have a relationship meeting the requirements of subsection (2).

“*Requirements for unit trust’s assets and disposals*

- “(2) The total market value of the held assets must exceed the total cost of the held assets by an amount that is less than or equal to 3 times the amount calculated using the formula—

disposal proceeds – asset costs.

“Definition of items in formula

“(3) In the formula,—

“(a) **disposal proceeds** is the total proceeds of the asset disposals:

“(b) **asset costs** is the total cost of the assets involved in the asset disposals.

“Currency of amounts in subsections (2) and (3)

“(4) In subsections (2) and (3), all amounts are expressed in the currency used in the unit trust’s financial accounts.

“Defined in this Act: attributing interest, company, FIF, income, income year, New Zealand resident, resident in Australia, RWT proxy, share, unit trust, year”.

(2) Subsection (1) applies for income years beginning on or after 1 April 2007—

(a) beginning with the first day of the first income year for a person who does not make an election under paragraph (b); or

(b) beginning with the later of the first day of the first income year and 1 October 2007 for a person that is a company, group investment fund, or superannuation fund that intends to be a portfolio investment entity and chooses to delay the application to the person of changes made by this Act to the rules relating to FIFs by giving a notice to the Commissioner—

(i) before 1 April 2007, if the person exists before that date; or

(ii) within 1 month of the day on which the person comes into existence, if the person comes into existence on or after 1 April 2007 and before 1 October 2007.

62 New section EX 33E inserted

(1) Before section EX 34, the following is inserted:

“EX 33E Australian superannuation fund exemption

A person’s rights in a FIF are not an attributing interest if—

“(a) the person is a natural person; and

“(b) the FIF is a foreign superannuation scheme that is—

“(i) an Australian approved deposit fund:

“(ii) an Australian exempt public sector superannuation scheme:

“(iii) an Australian regulated superannuation fund:

“(iv) an Australian retirement savings account.

“Defined in this Act: attributing interest, Australian approved deposit fund, Australian exempt public sector superannuation scheme, Australian regulated superannuation fund, Australian retirement savings account, FIF, foreign superannuation scheme”.

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

63 New resident’s accrued superannuation entitlement exemption

(1) In section EX 36(1), “in a FIF to the extent to which the requirements in subsections (2) to (9) are met at the time.” is replaced by “in a FIF—” and the following is added:

“(a) to the extent to which the requirements in subsections (2) to (4) are met at the time; and

“(b) if the requirements in subsections (5) to (9) are met at the time.”

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

64 Four calculation methods

(1) The heading for section EX 38 is replaced by “**Six calculation methods**”.

(2) In section EX 38(1)(d), “method.” is replaced by “method; or” and the following is added:

“(e) the fair dividend rate method; or

“(f) the cost method.”

(3) In section EX 38(2), “EX 40B,” is inserted after “EX 40,”.

(4) In section EX 38, in the list of defined terms, “cost method” and “fair dividend rate method” are inserted.

(5) Subsections (1), (2), and (4) apply for income years beginning on or after 1 April 2007—

(a) beginning with the first day of the first income year for a person who does not make an election under paragraph (b); or

(b) beginning with the later of the first day of the first income year and 1 October 2007 for a person that is a company, group investment fund, or superannuation fund that intends to be a portfolio investment entity and

chooses to delay the application to the person of changes made by this Act to the rules relating to FIFs by giving a notice to the Commissioner—

- (i) before 1 April 2007, if the person exists before that date; or
- (ii) within 1 month of the day on which the person comes into existence, if the person comes into existence on or after 1 April 2007 and before 1 October 2007.

65 Limits on choice of calculation methods

- (1) After section EX 40(4)(b), the following is inserted:

“(bb) the person is required by section EX 40B to use the method; or”.

- (2) After section EX 40(4), the following is added:

“Deemed rate of return method: further limit

- “(5) A person may not use the deemed rate of return method to calculate FIF income or loss for an income year from an attributing interest if—

- “(a) the interest is a direct income interest in a foreign company of less than 10%; and
- “(b) the person is not required by section EX 40B to use the deemed rate of return method for the interest.

“Comparative value method

- “(6) A person may use the comparative value method to calculate FIF income or loss for an income year from an attributing interest that is a share in a foreign company only if—

- “(a) the person’s direct income interest in the FIF, increased for the purposes of this paragraph by each direct income interest of a person associated with the person, is 10% or more at any time in the income year:
- “(b) the attributing interest is a right of a type referred to in subsection (8)(a)(i) to (v):
- “(c) the person is a natural person:
- “(d) the person is the trustee of a trust that—
 - “(i) is a qualifying trust; and
 - “(ii) is established mainly for the benefit of a natural person for whom the settlor has natural love or

affection or mainly for the benefit of an organisation or trust with income that is exempt income under section CW 34 (Charities: non-business income) or CW 35 (Charities: business income); and

- “(iii) has no settlor who is not a natural person; and
- “(iv) is not a superannuation scheme.

“Fair dividend rate method for share in foreign company

“(7) A person may use the fair dividend rate method to calculate FIF income or loss for an income year from an attributing interest that is a share in a foreign company only if the requirements of subsection (8) are met and—

- “(a) the person is a portfolio investment entity, an entity eligible to be a portfolio investment entity, or a life insurance company and the FIF is a foreign investment vehicle:
- “(b) the person’s direct income interest in the FIF, increased for the purposes of this paragraph by each direct income interest of a person associated with the person, is less than 10%—
 - “(i) at any time in the income year, if the FIF is a grey list company; or
 - “(ii) at all times in the income year, if the FIF is not a grey list company.

“Fair dividend rate method: further requirements for share in foreign company

“(8) The further requirements under this subsection for a share in a foreign company are—

- “(a) the attributing interest is none of the following:
 - “(i) a fixed rate share under section LF 2(3) (Granting of underlying foreign tax credit):
 - “(ii) a non-participating redeemable share:
 - “(iii) an interest in a non-resident having assets of which 80% by value consist of financial arrangements denominated in New Zealand dollars:

- “(iv) an interest meeting the requirements of subsection (9) that the Commissioner has not determined under section 91AAO of the Tax Administration Act 1994 to be an interest for which the fair dividend rate method is applicable;
- “(v) an interest of a type that the Commissioner has determined under section 91AAO of the Tax Administration Act 1994 to be an interest for which the fair dividend rate method is not applicable; and
- “(b) the person uses the comparative value method for no other attributing interest that is a share in a foreign company and for which the person would be allowed, in the absence of this paragraph, to use the fair dividend rate method.

“Fair dividend rate method: other interests for which method not applicable

- “(9) To meet the requirements of this subsection, an attributing interest of a person (the **investor**) in a FIF must be a share and involve an obligation—
 - “(a) of another person to provide to the investor an amount exceeding the issue price of the share; and
 - “(b) that is direct to the investor or indirect through an arrangement; and
 - “(c) that is non-contingent or subject to a contingency that is sufficiently remote to be immaterial.

“Cost method for share in foreign company

- “(10) A person may use the cost method to calculate FIF income for an income year from an attributing interest that is a share in a foreign company only if—
 - “(a) the person’s direct income interest in the FIF, increased for the purposes of this paragraph by each direct income interest of a person associated with the person, is less than 10%—
 - “(i) at any time in the income year, if the FIF is a grey list company; or
 - “(ii) at all times in the income year, if the FIF is not a grey list company; and

- “(b) use of the fair dividend rate method is allowed but is not practical because the person cannot determine the market value of the attributing interest at the start of the income year except by an independent valuation.”
- (3) In section EX 40, in the list of defined terms, “cost method”, “direct income interest”, “exempt income”, “fair dividend rate method”, “income”, “qualifying trust”, “superannuation scheme”, and “trustee” are inserted.
- (4) Subsections (1) and (2) apply for income years beginning on or after 1 April 2007—
- (a) beginning with the first day of the first income year for a person who does not make an election under paragraph (b); or
- (b) beginning with the later of the first day of the first income year and 1 October 2007 for a person that is a company, group investment fund, or superannuation fund that intends to be a portfolio investment entity and chooses to delay the application to the person of changes made by this Act to the rules relating to FIFs by giving a notice to the Commissioner—
- (i) before 1 April 2007, if the person exists before that date; or
- (ii) within 1 month of the day on which the person comes into existence, if the person comes into existence on or after 1 April 2007 and before 1 October 2007.

66 New section EX 40B inserted

- (1) After section EX 40, the following is inserted:

“EX 40B Use of particular calculation methods required

A person who is not allowed to use the fair dividend rate method to calculate FIF income from an attributing interest in a FIF for an income year but would be allowed to use the method in the absence of section EX 40(8)(a) must calculate FIF income from the interest for the income year using—

- “(a) the comparative value method; or
- “(b) the deemed rate of return method, if use of the comparative value method is not practical because the person

cannot determine the market value of the attributing interest at the start of the income year.

“Defined in this Act: attributing interest, comparative value method, deemed rate of return method, fair dividend rate method, FIF, FIF income, income year”.

- (2) Subsection (1) applies for income years beginning on or after 1 April 2007—
- (a) beginning with the first day of the first income year for a person who does not make an election under paragraph (b); or
 - (b) beginning with the later of the first day of the first income year and 1 October 2007 for a person that is a company, group investment fund, or superannuation fund that intends to be a portfolio investment entity and chooses to delay the application to the person of changes made by this Act to the rules relating to FIFs by giving a notice to the Commissioner—
 - (i) before 1 April 2007, if the person exists before that date; or
 - (ii) within 1 month of the day on which the person comes into existence, if the person comes into existence on or after 1 April 2007 and before 1 October 2007.

67 Default calculation method

- (1) In section EX 41(1)(b), “, EX 40B,” is inserted after “EX 40”.
- (2) Section EX 41(2) is replaced by the following:
- “Default choice for direct income interests in FIF of less than 10%”*
- “(2) The person is treated as having chosen to use, for the period,—
- “(a) for a direct income interest in a foreign company of less than 10% for which section EX 40(7) permits the use of the fair dividend rate method,—
 - “(i) the fair dividend rate method, if it is practical to use that method; or
 - “(ii) the cost method, if it is not practical to use the fair dividend rate method; or
 - “(b) for any other interest,—

- “(i) the accounting profits method, if section EX 40(2) allows the use of that method and it is practical to use that method; or
 - “(ii) the comparative value method, if section EX 40(2) does not allow the use of the accounting profits method and it is practical to use the comparative value method; or
 - “(iii) the deemed rate of return method, if section EX 40(2) does not allow the use of the accounting profits method and it is not practical to use the comparative value method.”
- (3) In section EX 41, in the list of defined terms, “cost method” and “fair dividend rate method” are inserted.
- (4) Subsections (2) and (3) apply for income years beginning on or after 1 April 2007—
- (a) beginning with the first day of the first income year for a person who does not make an election under paragraph (b); or
 - (b) beginning with the later of the first day of the first income year and 1 October 2007 for a person that is a company, group investment fund, or superannuation fund that intends to be a portfolio investment entity and chooses to delay the application to the person of changes made by this Act to the rules relating to FIFs by giving a notice to the Commissioner—
 - (i) before 1 April 2007, if the person exists before that date; or
 - (ii) within 1 month of the day on which the person comes into existence, if the person comes into existence on or after 1 April 2007 and before 1 October 2007.

68 Accounting profits method

- (1) In section EX 42(7), the words before paragraph (a) are replaced by “The person must choose, for the accounting period and each later accounting period and for all interests for which the person uses the accounting profits method,—”.
- (2) Subsection (1) applies for income years beginning on or after 1 April 2007—

- (a) beginning with the first day of the first income year for a person who does not make an election under paragraph (b); or
- (b) beginning with the later of the first day of the first income year and 1 October 2007 for a person that is a company, group investment fund, or superannuation fund that intends to be a portfolio investment entity and chooses to delay the application to the person of changes made by this Act to the rules relating to FIFs by giving a notice to the Commissioner—
 - (i) before 1 April 2007, if the person exists before that date; or
 - (ii) within 1 month of the day on which the person comes into existence, if the person comes into existence on or after 1 April 2007 and before 1 October 2007.

69 Comparative value method

- (1) After section EX 44(6), the following is inserted:

“Application of method to direct income interests of less than 10%”

“(6B) Subsection (6C) applies to a person who calculates under subsection (1) an amount of FIF income or loss for an attributing interest in a FIF (the **minor attributing interest**)—

- “(a) that is a direct income interest in a foreign company of less than 10% at a time in the relevant income year; and
- “(b) that is not a right of a type referred to in section EX 40(8)(a)(i) to (v).

“Reduction of total FIF loss from direct income interests of less than 10%”

“(6C) If, in the absence of this subsection, the person would have under subsection (1) a total FIF loss for the income year from all the person’s minor attributing interests in FIFs, the total FIF loss for the income year for the person from the minor attributing interests is zero.”

- (2) Section EX 44(7) is replaced by the following:

“Conversion of foreign currency amounts

- “(7) If an amount in a foreign currency is the market value of, or is derived from or incurred on, an interest during an income year, the person must choose that for the income year and each later income year and for all interests for which the person uses the comparative value method—
- “(a) each foreign currency amount in the income year be converted into New Zealand dollars using the exchange rate on the day for which the market value is determined or on which the amount is derived or incurred; or
 - “(b) all foreign currency amounts in the income year be converted into New Zealand dollars at the average of the close of trading spot exchange rates for the 15th day of each month that falls in the income year.”
- (3) In section EX 44, in the list of defined terms, “direct income interest” and “FIF loss” are inserted.
- (4) Subsections (1), (2), and (3) apply for income years beginning on or after 1 April 2007—
- (a) beginning with the first day of the first income year for a person who does not make an election under paragraph (b); or
 - (b) beginning with the later of the first day of the first income year and 1 October 2007 for a person that is a company, group investment fund, or superannuation fund that intends to be a portfolio investment entity and chooses to delay the application to the person of changes made by this Act to the rules relating to FIFs by giving a notice to the Commissioner—
 - (i) before 1 April 2007, if the person exists before that date; or
 - (ii) within 1 month of the day on which the person comes into existence, if the person comes into existence on or after 1 April 2007 and before 1 October 2007.

70 New sections EX 44B to EX 44E inserted

- (1) After section EX 44, the following is inserted:

“EX 44B Fair dividend rate method*“Alternative formulas used*

- “(1) If a person is using the **fair dividend rate method** to calculate FIF income or loss from an attributing interest in a FIF, the calculation depends on whether the person is a unit trust or other entity (the **unit valuer**) that—
- “(a) makes investments for the benefit of other persons (the **investors**); and
 - “(b) assigns each investor an interest in a proportion of the net returns from the investments; and
 - “(c) determines the value of the investor’s interest for each of a number of periods (the **unit valuation periods**) making up the income year.

“FIF income for person not unit valuer

- “(2) For a person who is not a unit valuer, the FIF income for an income year from the attributing interests in FIFs for which the person uses the fair dividend rate method is the amount calculated for the income year using the method in section EX 44C.

“FIF income for unit valuer

- “(3) For a person who is a unit valuer, the FIF income for an income year from the attributing interests in FIFs for which the person uses the fair dividend rate method is the total of the amounts calculated for each unit valuation period in the income year using the method in section EX 44D.

“FIF loss

- “(4) If a person is using the fair dividend rate method to calculate FIF income or loss from an attributing interest in a FIF, the FIF loss from the attributing interest for an income year is zero.

“Defined in this Act: amount, attributing interest, fair dividend rate method, FIF, FIF income, FIF loss, income year, investor, loss, unit trust

“EX 44C Fair dividend rate method: usual method*“FIF income*

- “(1) If this section applies to a person who calculates FIF income from attributing interests in FIFs under the fair dividend rate

method for an income year, the FIF income is the total of the amounts, each calculated for a FIF for the income year using the formula in subsection (2).

“Formula

- “(2) The formula referred to in subsection (1) is—
 $0.05 \times \text{opening} + \text{quick sale adjustment}$.

“Definition of items in formula

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

“Opening

- “(4) **Opening** is the total of the market values of the attributing interests in FIFs—
“(a) for which the person uses the fair dividend rate method;
and
“(b) that the person holds at the beginning of the income year.

“Quick sale adjustment

- “(5) **Quick sale adjustment** is—
“(a) zero, if the person in the income year—
“(i) acquires or increases the attributing interest in no FIF for consideration;
“(ii) disposes of or reduces the attributing interest in no FIF after an acquisition or increase of the interest for consideration; or
“(b) if paragraph (a) does not apply, the lesser of—
“(i) the amount (the **peak holding adjustment**) determined under subsection (6);
“(ii) the amount (the **quick sale gains**) that is the greater of zero and the total for the income year of amounts calculated, for each attributing interest that is both acquired and disposed of in the income year, by taking the total amount derived by the person from holding or disposing of the interest and subtracting the total expenditure that the person incurs in acquiring the interest.

“Peak holding adjustment

“(6) The peak holding adjustment is the total for the income year of the amounts calculated for each FIF using the formula in subsection (7).

“Formula

“(7) The formula referred to in subsection (6) is—
 $0.05 \times \text{quick sales} \times \text{average cost}$.

“Definition of items in formula

“(8) The items in the formula are defined in subsections (9) and (10).

“Quick sales

“(9) **Quick sales** is,—

“(a) if the person in the income year does not acquire or increase the attributing interest in the FIF for consideration or does not dispose of or reduce the attributing interest in the FIF after such an acquisition or increase, zero; or

“(b) if paragraph (a) does not apply and no share reorganisation occurs in the income year, the lesser of the following, determined in terms of the amount of the attributing interest in the FIF (the **interest size**) that the person holds at a time in the income year:

“(i) the difference between the interest size that is the greatest for the income year and the interest size at the beginning of the income year:

“(ii) the difference between the interest size that is the greatest for the income year and the interest size at the end of the income year; or

“(c) if paragraph (a) does not apply and a share reorganisation occurs in the income year, the amount calculated under section EX 44E for the income year.

“Average cost

“(10) **Average cost** is,—

“(a) if the person in the income year does not acquire or increase the attributing interest in the FIF for consideration or does not dispose of or reduce the attributing

interest in the FIF after such an acquisition or increase, zero; or

- “(b) if paragraph (a) does not apply and no share reorganisation occurs in the income year, the total amount of expenditure that the person incurs during the income year in acquiring or increasing the attributing interest in the FIF divided by the total for the income year of the increase in the attributing interest in the FIF for each acquisition or increase; or
- “(c) if paragraph (a) does not apply and a share reorganisation occurs in the income year, the amount calculated under section EX 44E for the income year.

“Conversion of foreign currency amounts

“(11) If an amount in a foreign currency is the market value of, or is incurred on, an interest during an income year, the person must choose that for the income year and each later income year and for all interests for which the person uses the fair dividend rate method—

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

“Identifying attributing interests disposed of in income year

“(12) For the purpose of calculating the quick sale gains under subsection (5)(b)(ii), attributing interests in a FIF are treated as being disposed of in the reverse order of their acquisition.

“Defined in this Act: amount, attributing interest, fair dividend rate method, FIF, FIF income, income year, investor, market value, share reorganisation

“EX 44D Fair dividend rate method: method for entities that value investors’ units

“FIF income

“(1) If this section applies to an entity who calculates FIF income from attributing interests in FIFs under the fair dividend rate

method, the FIF income of the entity from the interests is the total of the amounts calculated using the formula in subsection (2) for each of the periods making up the income year (the **unit valuation periods**) for which the entity determines the value of investors' interests.

“Formula

“(2) The formula for the entity is—

$$0.05 \times \text{opening} \times \frac{\text{period}}{\text{year}} + \text{quick sale adjustment.}$$

“Definition of items in formula

“(3) The items in the formula are defined in subsections (4) to (7).

“Opening

“(4) **Opening** is the total of the market values of the attributing interests in FIFs—

- “(a) for which the entity uses the fair dividend rate method; and
- “(b) that the entity holds at the beginning of the unit valuation period.

“Period

“(5) **Period** is the number of days in the unit valuation period.

“Year

“(6) **Year** is the number of days in the income year.

“Quick sale adjustment

“(7) **Quick sale adjustment** is—

- “(a) zero, if the unit valuation period is 1 day; or
- “(b) zero, if the entity in the unit valuation period—
 - “(i) acquires or increases the attributing interest in no FIF for consideration;
 - “(ii) disposes of or reduces the attributing interest in no FIF after an acquisition or increase of the interest for consideration; or
- “(c) if paragraphs (a) and (b) do not apply, the lesser of—
 - “(i) the amount (the **peak holding adjustment**) determined under subsection (8):

“(ii) the amount (the **quick sale gains**) that is the greater of zero and the total for the income year of amounts calculated, for each attributing interest that is both acquired and disposed of in the income year, by taking the total amount derived by the entity from holding or disposing of the interest and subtracting the total expenditure that the entity incurs in acquiring the interest.

“Peak holding adjustment

“(8) The peak holding adjustment is the total for the unit valuation period of the amounts calculated for each FIF using the formula in subsection (9).

“Formula

“(9) The formula referred to in subsection (8) is—
 $0.05 \times \text{quick sales} \times \text{average cost}.$

“Definition of items in formula

“(10) The items in the formula are defined in subsections (11) and (12).

“Quick sales

“(11) **Quick sales** is,—

“(a) if the entity in the unit valuation period does not acquire or increase the attributing interest in the FIF for consideration or does not dispose of or reduce the attributing interest in the FIF after such an acquisition or increase, zero; or

“(b) if paragraph (a) does not apply and no share reorganisation occurs in the unit valuation period, the lesser of the following, determined in terms of the amount of the attributing interest in the FIF (the **interest size**) that the entity holds at a time in the unit valuation period:

“(i) the difference between the interest size that is the greatest for the unit valuation period and the interest size at the beginning of the unit valuation period:

“(ii) the difference between the interest size that is the greatest for the unit valuation period and the

interest size at the end of the unit valuation period; or

- “(c) if paragraph (a) does not apply and a share reorganisation occurs in the unit valuation period, the amount calculated under section EX 44E for the unit valuation period.

“Average cost

“(12) **Average cost** is,—

- “(a) if the entity in the unit valuation period does not acquire or increase the attributing interest in the FIF for consideration or does not dispose of or reduce the attributing interest in the FIF after such an acquisition or increase, zero; or
- “(b) if paragraph (a) does not apply and no share reorganisation occurs in the unit valuation period, the total amount of expenditure that the entity incurs during the unit valuation period in acquiring or increasing the attributing interest in the FIF divided by the total for the unit valuation period of the increase in the attributing interest in the FIF for each acquisition or increase; or
- “(c) if paragraph (a) does not apply and a share reorganisation occurs in the unit valuation period, the amount calculated under section EX 44E for the unit valuation period.

“Conversion of foreign currency amounts

“(13) If an amount in a foreign currency is the market value of, or is incurred on, an interest during an income year, the entity must choose that for the income year and each later income year and for all interests for which the entity uses the fair dividend rate method—

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

“Identifying attributing interests disposed of in income year

“(14) For the purpose of calculating the quick sale gains under subsection (7)(c)(ii), attributing interests in a FIF are treated as being disposed of in the reverse order of their acquisition.

“Defined in this Act: amount, attributing interest, close of trading spot exchange rate, fair dividend rate method, FIF, FIF income, income year, market value

**“EX 44E Fair dividend rate method and cost method:
calculating items in formulas for periods affected by
share reorganisations**

“Items and formulas

“(1) This section provides for the calculation, for an income year or unit valuation period (the **affected period**) in which a share reorganisation occurs, of the following:

“(a) the item **quick sales**, for the purposes of the formulas in sections EX 44C(7), EX 44D(9), and EX 45B(2):

“(b) the item **average cost**, for the purposes of the formulas in sections EX 44C(7), EX 44D(9), and EX 45B(2) and (7)(b):

“(c) the item **change**, for the purposes of the formula in section EX 45B(7)(b).

*“Treatment of affected period in which share
reorganisation occurs*

“(2) For the purposes of calculating the items for an affected period under this section,—

“(a) the affected period is treated as consisting of periods (the **reorganisation periods**) that do not overlap:

“(b) each reorganisation period in the affected period—

“(i) begins with the beginning of the affected period or a share reorganisation in the affected period; and

“(ii) ends before the next later event that is a share reorganisation or the end of the affected period:

“(c) the amount of the attributing interest in the FIF held by the person at any time (the **comparison time**) in a reorganisation period, is treated as corresponding to an amount (the **equivalent interest size**) equal to the amount of the attributing interest in the FIF that the person would hold at the end of the affected period if,

after the comparison time, the person did not increase or reduce the attributing interest in the FIF except under share reorganisations occurring in the affected period:

- “(d) the amount of an acquisition or increase (the **acquired interest**) by the person of the attributing interest in the FIF, other than under a share reorganisation, is treated as corresponding to an amount (the **equivalent acquired interest**) equal to the difference between—
 - “(i) the equivalent interest size for the time of the acquisition or increase; and
 - “(ii) the amount that would be the equivalent interest size for the time of the acquisition or increase if the person were not to have the acquired interest.

“Quick sales

- “(3) Under this section, the item **quick sales** for a person and an affected period is the lesser of the following:
 - “(a) the difference between the equivalent interest size that is the greatest for the affected period and the equivalent interest size for the beginning of the affected period:
 - “(b) the difference between the equivalent interest size that is the greatest for the affected period and the equivalent interest size for the end of the affected period.

“Average cost

- “(4) Under this section, the item **average cost** for a person and an affected period is the total amount of expenditure that the person incurs during the affected period in acquiring or increasing the attributing interest in the FIF divided by the total for the affected period of the equivalent acquired interest for each acquisition or increase.

“Change

- “(5) Under this section, the item **change** for a person and an affected period is the difference between the equivalent interest size for the beginning of the affected period and the equivalent interest size for the beginning of the period before the affected period.

“Conversion of foreign currency amounts

- “(6) If an amount in a foreign currency is incurred on an interest during an affected period, the person must use the method for converting the amount to New Zealand currency chosen under section EX 44C, EX 44D, or EX 45B by the person for the income year of the affected period.

“Defined in this Act: amount, attributing interest, FIF, income year”.

- (2) Subsection (1) applies for income years beginning on or after 1 April 2007—
- (a) beginning with the first day of the first income year for a person who does not make an election under paragraph (b); or
 - (b) beginning with the later of the first day of the first income year and 1 October 2007 for a person that is a company, group investment fund, or superannuation fund that intends to be a portfolio investment entity and chooses to delay the application to the person of changes made by this Act to the rules relating to FIFs by giving a notice to the Commissioner—
 - (i) before 1 April 2007, if the person exists before that date; or
 - (ii) within 1 month of the day on which the person comes into existence, if the person comes into existence on or after 1 April 2007 and before 1 October 2007.

71 Deemed rate of return method

- (1) In section EX 45(15), the words before paragraph (a) are replaced by “If an amount is derived from, or incurred on, the interest in a foreign currency during the income year, the person must choose, for the year and each later year and for all interests for which the person uses the deemed rate of return method,—”.
- (2) Subsection (1) applies for income years beginning on or after 1 April 2007—
- (a) beginning with the first day of the first income year for a person who does not make an election under paragraph (b); or
 - (b) beginning with the later of the first day of the first income year and 1 October 2007 for a person that is a

company, group investment fund, or superannuation fund that intends to be a portfolio investment entity and chooses to delay the application to the person of changes made by this Act to the rules relating to FIFs by giving a notice to the Commissioner—

- (i) before 1 April 2007, if the person exists before that date; or
- (ii) within 1 month of the day on which the person comes into existence, if the person comes into existence on or after 1 April 2007 and before 1 October 2007.

72 New section EX 45B inserted

(1) Before section EX 46, the following is inserted:

“EX 45B Cost method

“FIF income from interest, disposal of interest

“(1) If a person is using the **cost method** to calculate FIF income or loss from an attributing interest in a FIF,—

“(a) the FIF income from that interest for the relevant income year is the greater of zero and the amount calculated using the formula in subsection (2):

“(b) the FIF loss from that interest for the relevant income year is zero.

“Formula

“(2) The formula referred to in subsection (1) is—

$0.05 \times (\text{opening value} + (\text{quick sales} \times \text{average cost}))$.

“Definition of items in formula

“(3) The items in the formula are defined in subsections (4) to (6).

“Opening value

“(4) **Opening value** is—

“(a) zero, if the relevant income year is the year in which the person acquires the interest; or

“(b) the amount of an independent valuation of the market value of the interest at the beginning of the relevant income year, if the person holds the interest at the beginning of the relevant income year and—

- “(i) the interest was not an attributing interest for the income year before the relevant income year:
- “(ii) the person has used the cost method for the interest for a period of 4 or more income years ending before the relevant income year and has not applied this paragraph to the interest for any of those income years; or
- “(c) the amount calculated using the formula in subsection (7)(a), if the person’s attributing interest (the **current opening interest**) at the beginning of the relevant income year is the same as the person’s attributing interest (the **preceding opening interest**) at the beginning of the income year before the relevant income year; or
- “(d) the amount calculated using the formula in subsection (7)(b), if the person’s current opening interest is more than the preceding opening interest; or
- “(e) the amount calculated using the formula in subsection (7)(c), if the person’s current opening interest is less than the preceding opening interest.

“*Quick sales*

“(5) **Quick sales** is,—

- “(a) if the person in the relevant income year does not acquire or increase the attributing interest in the FIF for consideration or does not dispose of or reduce the attributing interest in the FIF after such an acquisition or increase, zero; or
- “(b) if paragraph (a) does not apply and no share reorganisation occurs in the relevant income year, the lesser of the following, determined in terms of the amount of the attributing interest in the FIF (the **interest size**) that the person holds at a time in the relevant income year:
 - “(i) the difference between the interest size that is the greatest for the income year and the interest size at the beginning of the income year:
 - “(ii) the difference between the interest size that is the greatest for the income year and the interest size at the end of the income year; or

“(c) if paragraph (a) does not apply and a share reorganisation occurs in the income year, the amount calculated under section EX 44C for the income year.

“Average cost

“(6) **Average cost** is,—

“(a) if the person in the relevant income year does not acquire or increase the attributing interest in the FIF for consideration or does not dispose of or reduce the attributing interest in the FIF after such an acquisition or increase, zero; or

“(b) if paragraph (a) does not apply and no share reorganisation occurs in the relevant income year, the total amount of expenditure that the person incurs during the relevant income year in acquiring or increasing the attributing interest in the FIF divided by the total for the relevant income year of each increase in the attributing interest in the FIF for each acquisition or increase; or

“(c) if paragraph (a) does not apply and a share reorganisation occurs in the relevant income year, the amount calculated under section EX 44C for the relevant income year.

“Formulas for opening value

“(7) In subsection (4),—

“(a) the first formula is—

preceding + FIF income:

“(b) the second formula is—

preceding + FIF income + (change × average cost):

“(c) the third formula is—

$$\frac{\text{opening interest}}{\text{preceding interest}} \times (\text{preceding} + \text{FIF income}).$$

“Definition of items in formulas

“(8) The items in the formulas are defined in subsections (9) to (14).

“Preceding

“(9) **Preceding** is the opening value for the income year before the relevant income year.

“FIF income

“(10) **FIF income** is the FIF income under subsection (1) for the attributing interest for the income year before the relevant income year.

“Change

“(11) **Change** is,—

- “(a) if no share reorganisation occurs in the income year before the relevant income year, the difference between the person’s attributing interest at the beginning of the relevant income year and the person’s attributing interest at the beginning of the income year before the relevant income year:
- “(b) if a share reorganisation occurs in the income year before the relevant income year, the amount calculated under section EX 44C for the income year before the relevant income year.

“Average cost

“(12) **Average cost** is,—

- “(a) if the person in the income year before the relevant income year does not acquire or increase the attributing interest in the FIF for consideration or does not dispose of or reduce the attributing interest in the FIF after such an acquisition or increase, zero; or
- “(b) if paragraph (a) does not apply and no share reorganisation occurs in the income year before the relevant income year, the total amount of expenditure that the person incurs during the income year before the relevant income year in acquiring or increasing the attributing interest in the FIF divided by the total for the income year of the increase in the attributing interest in the FIF for each acquisition or increase; or
- “(c) if paragraph (a) does not apply and a share reorganisation occurs in the income year before the relevant income year, the amount calculated under section EX 44C for the income year before the relevant income year.

“Opening interest

“(13) **Opening interest** is the amount of the attributing interest at the beginning of the relevant income year.

“Preceding interest

“(14) **Preceding interest** is the amount of the attributing interest at the beginning of the income year before the relevant income year.

“Conversion of foreign currency amounts

“(15) If an amount in a foreign currency is the market value of, or is incurred on, an interest during an income year, the person must choose that for the income year and each later income year and for all interests for which the person uses the cost method—

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

“Defined in this Act: amount, calculation method, close of trading spot exchange rate, dividend, FIF, FIF income, foreign withholding tax, income year, loss, New Zealand, tax”.

- (2) Subsection (1) applies for income years beginning on or after 1 April 2007—
- (a) beginning with the first day of the first income year for a person who does not make an election under paragraph (b); or
 - (b) beginning with the later of the first day of the first income year and 1 October 2007 for a person that is a company, group investment fund, or superannuation fund that intends to be a portfolio investment entity and chooses to delay the application to the person of changes made by this Act to the rules relating to FIFs by giving a notice to the Commissioner—
 - (i) before 1 April 2007, if the person exists before that date; or

- (ii) within 1 month of the day on which the person comes into existence, if the person comes into existence on or after 1 April 2007 and before 1 October 2007.

73 Additional FIF income or loss if CFC owns FIF

- (1) Section EX 46(4)(c) is replaced by the following:
 - “(c) apply the FIF loss ring-fencing rules in section DN 9 (Ring-fencing cap on deduction: branch equivalent method) as if the person directly held the attributing interest.”
- (2) Subsection (1) applies for income years beginning on or after 1 April 2007—
 - (a) beginning with the first day of the first income year for a person who does not make an election under paragraph (b); or
 - (b) beginning with the later of the first day of the first income year and 1 October 2007 for a person that is a company, group investment fund, or superannuation fund that intends to be a portfolio investment entity and chooses to delay the application to the person of changes made by this Act to the rules relating to FIFs by giving a notice to the Commissioner—
 - (i) before 1 April 2007, if the person exists before that date; or
 - (ii) within 1 month of the day on which the person comes into existence, if the person comes into existence on or after 1 April 2007 and before 1 October 2007.

74 Codes: comparative value and deemed rate methods

- (1) The heading to section EX 47 is replaced by “**Codes: comparative value method, deemed rate of return method, fair dividend rate method, and cost method**”.
- (2) Section EX 47(1), other than the heading, is replaced by the following:
 - “(1) This section applies if a person holding an attributing interest in a FIF calculates the FIF income or loss from the interest for a period using—
 - “(a) the comparative value method:

- “(b) the deemed rate of return method:
 - “(c) the fair dividend rate method:
 - “(d) the cost method.”
- (3) In section EX 47, in the list of defined terms, “cost method” and “fair dividend rate method” are inserted.
- (4) Subsections (1) and (2) apply for income years beginning on or after 1 April 2007—
- (a) beginning with the first day of the first income year for a person who does not make an election under paragraph (b); or
 - (b) beginning with the later of the first day of the first income year and 1 October 2007 for a person that is a company, group investment fund, or superannuation fund that intends to be a portfolio investment entity and chooses to delay the application to the person of changes made by this Act to the rules relating to FIFs by giving a notice to the Commissioner—
 - (i) before 1 April 2007, if the person exists before that date; or
 - (ii) within 1 month of the day on which the person comes into existence, if the person comes into existence on or after 1 April 2007 and before 1 October 2007.

75 Limits on changes of method

- (1) In section EX 50(2), after paragraph (e), the following is added:
- “(f) in the case of the fair dividend rate method, it is impossible to find out the start-of-year market value of the interest except by an independent valuation:
 - “(g) in the case of the cost method, if it was the default method under section EX 41, it ceases to be the default method.”
- (2) After section EX 50(7), the following is added:
- “Repeated changes between fair dividend rate method and comparative value method*
- “(8) A person may change more than once from the fair dividend rate method to the comparative value method and from the comparative value method to the fair dividend rate method if the person is a natural person or the trustee of a trust that—

- “(a) is a qualifying trust; and
 - “(b) is established mainly for the benefit of—
 - “(i) a natural person for whom the settlor has natural love or affection:
 - “(ii) an organisation or trust with income that is exempt income under section CW 34 (Charities: non-business income) or CW 35 (Charities: business income); and
 - “(c) has no settlor who is not a natural person; and
 - “(d) is not a superannuation scheme.”
- (3) In section EX 50, in the list of defined terms, “cost method”, “exempt income”, “fair dividend rate method”, “qualifying trust”, “settlor”, “superannuation scheme”, and “trustee” are inserted.
- (4) Subsections (1) and (2) apply for income years beginning on or after 1 April 2007—
- (a) beginning with the first day of the first income year for a person who does not make an election under paragraph (b); or
 - (b) beginning with the later of the first day of the first income year and 1 October 2007 for a person that is a company, group investment fund, or superannuation fund that intends to be a portfolio investment entity and chooses to delay the application to the person of changes made by this Act to the rules relating to FIFs by giving a notice to the Commissioner—
 - (i) before 1 April 2007, if the person exists before that date; or
 - (ii) within 1 month of the day on which the person comes into existence, if the person comes into existence on or after 1 April 2007 and before 1 October 2007.

76 Consequences of changes in method

- (1) In section EX 51(1), paragraphs (a) and (b) are replaced by the following:
- “(a) from 1 of the 4 cost-based calculation methods (the comparative value method, or the deemed rate of return method, or the fair dividend rate method, or the cost

method) to either of the look-through calculation methods (the accounting profits method or the branch equivalent method):

“(b) from either of the look-through calculation methods to 1 of the 4 cost-based calculation methods.”

(2) Section EX 51(3) and (4) are replaced by the following:

“Changes from comparative value method or fair dividend rate method to cost method or deemed rate of return method

“(3) If a person holding an attributing interest in a FIF changes from either of the comparative value method and the fair dividend rate method to either of the cost method and the deemed rate of return method for calculating the FIF income or loss from the interest, the person is treated as having—

“(a) disposed of the interest to an unrelated person immediately before the start of the first income year to which the new method applies; and

“(b) reacquired the interest immediately after the start of the income year; and

“(c) received for the disposal and paid for the reacquisition an amount equal to the market value of the interest at the time of the disposal.

“Changes from cost method or deemed rate of return method to comparative value method or fair dividend rate method

“(4) If a person holding an attributing interest in a FIF changes from either of the cost method and the deemed rate of return method to either of the comparative value method and the fair dividend rate method for calculating the FIF income or loss from the interest, the person is treated as having—

“(a) disposed of the interest to an unrelated person immediately before the start of the first income year to which the new method applies; and

“(b) reacquired the interest immediately after the start of the income year; and

“(c) received for the disposal and paid for the reacquisition an amount equal to,—

“(i) if the person changes from the cost method, what would have been the interest’s opening value

- under section EX 45B if the person had applied the cost method for the income year; or
- “(ii) if the person changes from the deemed rate of return method, the interest’s closing book value under section EX 45(7) for the preceding income year; or”.
- (3) In section EX 51, in the list of defined terms, “cost method” and “fair dividend rate method” are inserted.
- (4) Subsections (1) and (2) apply for income years beginning on or after 1 April 2007—
- (a) beginning with the first day of the first income year for a person who does not make an election under paragraph (b); or
- (b) beginning with the later of the first day of the first income year and 1 October 2007 for a person that is a company, group investment fund, or superannuation fund that intends to be a portfolio investment entity and chooses to delay the application to the person of changes made by this Act to the rules relating to FIFs by giving a notice to the Commissioner—
- (i) before 1 April 2007, if the person exists before that date; or
- (ii) within 1 month of the day on which the person comes into existence, if the person comes into existence on or after 1 April 2007 and before 1 October 2007.

77 Migration of persons holding FIF interests

- (1) Section EX 52(1)(c) is replaced by the following:
- “(c) for the period before the change of residence, calculates FIF income or loss from the interest using—
- “(i) the comparative value method:
- “(ii) the deemed rate of return method:
- “(iii) the fair dividend rate method:
- “(iv) the cost method.”
- (2) Section EX 52(3)(c) is replaced by the following:
- “(c) for the period after the change of residence or status, calculates FIF income or loss from the interest using—
- “(i) the comparative value method:
- “(ii) the deemed rate of return method:

“(iii) the fair dividend rate method:

“(iv) the cost method.”

- (3) In section EX 52(4),—
 - (a) in paragraph (a), “residence” is replaced by “residence or status”:
 - (b) in paragraph (b), “when not resident in New Zealand” is replaced by “when the person is a transitional resident or not a New Zealand resident”.
- (4) In section EX 52(5)(c), “deemed rate of return method” is replaced by “branch equivalent method”.
- (5) In section EX 52, in the list of defined terms, “branch equivalent method” is inserted.
- (6) In section EX 52, in the list of defined terms, “cost method” and “fair dividend rate method” are inserted.
- (7) Subsections (3), (4), and (5) apply for the 2005–06 and later income years.
- (8) Subsections (1) and (2) apply for income years beginning on or after 1 April 2007—
 - (a) beginning with the first day of the first income year for a person who does not make an election under paragraph (b); or
 - (b) beginning with the later of the first day of the first income year and 1 October 2007 for a person that is a company, group investment fund, or superannuation fund that intends to be a portfolio investment entity and chooses to delay the application to the person of changes made by this Act to the rules relating to FIFs by giving a notice to the Commissioner—
 - (i) before 1 April 2007, if the person exists before that date; or
 - (ii) within 1 month of the day on which the person comes into existence, if the person comes into existence on or after 1 April 2007 and before 1 October 2007.

78 Changes in application of FIF exemptions

- (1) In section EX 53(1),—
 - (a) “Subsections (2) and (3)” is replaced by “Subsections (2) to (4)”:
 - (b) in paragraph (b)(ii),—

- (i) “or (db)” is inserted after “CQ 5(1)(d)”:
 - (ii) “or (db)” is inserted after “DN 6(1)(d)”.
- (2) In section EX 53(2), in the words before paragraph (a), “the comparative value method or deemed rate of return method” is replaced by “the comparative value method, the deemed rate of return method, the fair dividend rate method, or the cost method”.
- (3) In section EX 53(3), “deemed rate of return method” is replaced by “branch equivalent method”.
- (4) In section EX 53(5),—
 - (a) “Subsections (2) to (4)” is replaced by “Subsections (6) to (8)”:
 - (b) in paragraph (b)(ii),—
 - (i) “or (db)” is inserted after “CQ 5(1)(d)”:
 - (ii) “or (db)” is inserted after “DN 6(1)(d)”.
- (5) In section EX 53(6), in the words before paragraph (a), “the comparative value method or the deemed rate of return method” is replaced by “the comparative value method, the deemed rate of return method, the fair dividend rate method, or the cost method”.
- (6) In section EX 53(6)(b), “repurchased” is replaced by “reacquired”.
- (7) In section EX 53(7), “deemed rate of return method” is replaced by “branch equivalent method”.
- (8) In section EX 53, in the list of defined terms, “branch equivalent method”, “cost method”, and “fair dividend rate method” are inserted.
- (9) Subsections (1)(a), (3), (4)(a), (6), and (7) apply for the 2005–06 and later income years.
- (10) Subsections (1)(b), (2), (4)(b), and (5) apply for income years beginning on or after 1 April 2007—
 - (a) beginning with the first day of the first income year for a person who does not make an election under paragraph (b); or
 - (b) beginning with the later of the first day of the first income year and 1 October 2007 for a person that is a company, group investment fund, or superannuation fund that intends to be a portfolio investment entity and chooses to delay the application to the person of

changes made by this Act to the rules relating to FIFs by giving a notice to the Commissioner—

- (i) before 1 April 2007, if the person exists before that date; or
- (ii) within 1 month of the day on which the person comes into existence, if the person comes into existence on or after 1 April 2007 and before 1 October 2007.

79 New section EX 54B inserted

(1) After section EX 54, the following is inserted:

“EX 54B FIF rules first applying to interest for income year beginning on or after 1 April 2007

“Application of this section

“(1) This section applies if—

“(a) a person has rights in a FIF—

“(i) on the day (the **preceding day**) before an income year; and

“(ii) on the day (the **application day**) that begins the income year; and

“(b) for the period ending on the preceding day,—

“(i) the rights are not an attributing interest:

“(ii) the rights are an attributing interest for which the person does not have FIF income or loss; and

“(c) for the period beginning on the application day, the rights are an attributing interest for which the person has FIF income or loss.

“Disposal and acquisition

“(2) The person is treated as having—

“(a) disposed of the interest to an unrelated person immediately before the application day; and

“(b) reacquired the interest at the start of the application day; and

“(c) received for the disposal and paid for the reacquisition an amount equal to the market value of the interest at the time of the disposal.

“Payment of tax liability arising from transition

“(3) A person who is liable to pay an amount of income tax (the **tax amount**) because of the disposal and acquisition referred to in subsection (2)—

“(a) may satisfy the liability by making payments to the Commissioner of at least—

“(i) one third of the tax amount, in the income year following the income year in which the disposal is treated as occurring; and

“(ii) one half of the balance of the tax amount remaining owing after the payments made under subparagraph (i), in the second income year following the income year in which the disposal is treated as occurring; and

“(iii) the balance of the tax amount remaining owing after the payments made under subparagraphs (i) and (ii), in the third income year following the income year in which the disposal is treated as occurring;

“(b) is not liable to pay any penalty or interest for which the entity would otherwise be liable for an inaccuracy in an estimate, or shortfall in the payment, of provisional tax to the extent that the inaccuracy or shortfall arises because of the disposal.

“Defined in this Act: attributing interest, FIF, FIF income, income year, loss, portfolio calculation period, revenue account property”.

(2) Subsection (1) applies for income years beginning on or after 1 April 2007—

(a) beginning with the first day of the first income year for a person who does not make an election under paragraph (b); or

(b) beginning with the later of the first day of the first income year and 1 October 2007 for a person that is a company, group investment fund, or superannuation fund that intends to be a portfolio investment entity and chooses to delay the application to the person of changes made by this Act to the rules relating to FIFs by giving a notice to the Commissioner—

(i) before 1 April 2007, if the person exists before that date; or

- (ii) within 1 month of the day on which the person comes into existence, if the person comes into existence on or after 1 April 2007 and before 1 October 2007.

80 Measurement of cost

- (1) In section EX 56(1)(a),—
- (a) “or (db)” is inserted after “CQ 5(1)(d)”:
 - (b) “or (db)” is inserted after “DN 6(1)(d)”:
 - (c) “arises); and” is replaced by “arises):”.
- (2) In section EX 56(1)(b), “method; and” is replaced by “method:”.
- (3) In section EX 56(1), after paragraph (c), the following is added:
- “(d) the fair dividend rate method:
“(e) the cost method.”
- (4) Section EX 56(2) is replaced by the following:
- “*Cost flow using average cost*
- “(2) The cost of an attributing interest in a FIF acquired by a person in an income year is treated as being the amount calculated using the formula—

$$\frac{\text{total cost}}{\text{number of interests.}}$$

“Definition of items in formula

- “(2B) In the formula,—
- “(a) **total cost** is the total cost of all attributing interests in the FIF, of the same class as the attributing interest, acquired by the person in the income year:
 - “(b) **number of interests** is the number of the attributing interests referred to in paragraph (a).”
- (5) In section EX 56, in the list of defined terms, “cost method” and “fair dividend rate method” are inserted.
- (6) Subsections (1)(c) and (2) apply for the 2005–06 and later income years.
- (7) Subsections (1)(a) and (b), (3), and (4) apply for income years beginning on or after 1 April 2007—

- (a) beginning with the first day of the first income year for a person who does not make an election under paragraph (b); or
- (b) beginning with the later of the first day of the first income year and 1 October 2007 for a person that is a company, group investment fund, or superannuation fund that intends to be a portfolio investment entity and chooses to delay the application to the person of changes made by this Act to the rules relating to FIFs by giving a notice to the Commissioner—
 - (i) before 1 April 2007, if the person exists before that date; or
 - (ii) within 1 month of the day on which the person comes into existence, if the person comes into existence on or after 1 April 2007 and before 1 October 2007.

81 Non-market transactions in FIF interests

- (1) In section EX 59, “the comparative value method or the deemed rate of return method” is replaced by “the comparative value method, the deemed rate of return method, the fair dividend rate method, or the cost method”.
- (2) In section EX 59, in the list of defined terms, “cost method” and “fair dividend rate method” are inserted.
- (3) Subsection (1) applies for income years beginning on or after 1 April 2007—
 - (a) beginning with the first day of the first income year for a person who does not make an election under paragraph (b); or
 - (b) beginning with the later of the first day of the first income year and 1 October 2007 for a person that is a company, group investment fund, or superannuation fund that intends to be a portfolio investment entity and chooses to delay the application to the person of changes made by this Act to the rules relating to FIFs by giving a notice to the Commissioner—
 - (i) before 1 April 2007, if the person exists before that date; or
 - (ii) within 1 month of the day on which the person comes into existence, if the person comes into

existence on or after 1 April 2007 and before 1 October 2007.

82 Meaning of life insurance

- (1) Section EY 8(3)(b) is replaced by the following:
 - “(b) all the benefits referred to in paragraph (a) are—
 - “(i) payable if the death is caused by a specified cause named in the policy; or
 - “(ii) payable incidentally to the provision of accident or medical benefits, if the death is caused by a specified cause named in the policy.”
- (2) Subsection (1) applies for a person for the 2005–06 and later income years, unless the person—
 - (a) takes a tax position in a return for an income year provided to the Commissioner before 16 May 2006 that relies on the law that would apply if subsection (1) did not come into force; and
 - (b) fails to choose, in a notice of proposed adjustment or a response notice, to apply subsection (1).
- (3) If subsection (1) does not apply for a person for an income year because of subsection (2), the law that would apply if subsection (1) did not come into force applies for the person for the income year.

83 Section EZ 7 repealed

- (1) Section EZ 7 is repealed.
- (2) Subsection (1) applies for income years beginning on or after 1 April 2007—
 - (a) beginning with the first day of the first income year for a person who does not make an election under paragraph (b); or
 - (b) beginning with the later of the first day of the first income year and 1 October 2007 for a person that is a company, group investment fund, or superannuation fund that intends to be a portfolio investment entity and chooses to delay the application to the person of changes made by this Act to the rules relating to FIFs by giving a notice to the Commissioner—
 - (i) before 1 April 2007, if the person exists before that date; or

- (ii) within 1 month of the day on which the person comes into existence, if the person comes into existence on or after 1 April 2007 and before 1 October 2007.

84 Depreciation: partial income-producing use

(1) After section FB 7(7), the following is added:

“(8) Subsection (9) applies when—

“(a) a person has an amount of depreciation loss for an item of depreciable property arising under section EE 41(2); and

“(b) in the income year in which the depreciation loss arises, the person starts to use the item, or to have it available for use, for the purpose of deriving assessable income or carrying on a business for the purpose of deriving assessable income; and

“(c) at a time during the income year, the item is partly used, or is partly available for use, by the person—

“(i) in deriving assessable income or carrying on a business for the purpose of deriving assessable income; or

“(ii) in a way that is subject to fringe benefit tax; and

“(d) the item is not a motor vehicle to which subpart DE applies.

“(9) The deduction the person has for the amount of depreciation loss is calculated using the formula—

$$\text{disposal depreciation loss} \times \frac{\text{qualifying use days}}{\text{all days}}$$

“(10) In the formula,—

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

“(b) **qualifying use days** means the number of days in the income year on which the person owns the item and uses it, or has it available for use, for a use that falls within subsection (8)(c)(i) or (ii):

“(c) **all days** means the number of days in the income year on which the person owns the item and uses it or has it available for use, for any purpose.

“(11) Despite subsection (8), a unit of measurement other than days, whether relating to time, distance, or anything else, is to be

used in the formula if it achieves a more appropriate apportionment.”

- (2) Subsection (1) applies for the 2006–07 and later income years.

85 Amounts derived by non-residents from renting films

- (1) After section FC 21(3), the following is inserted:

“(3B) If the non-resident person is required under an agreement with another non-resident (**person A**) to pay to person A an amount that is a film rent, or a royalty, commission, or arises from an amount derived by the non-resident person from activities described in subsection (1), the amount paid to person A is exempt income of person A.”

- (2) Section FC 21(4) is replaced by the following:

“(4) This section does not apply if the amounts derived by the non-resident person from activities described in subsection (1) are an insignificant proportion of the total amounts derived by them from any business.”

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

86 General requirements for being transitional resident

- (1) In section FC 23(a), “has a permanent place of abode” is replaced by “is resident”.

- (2) Section FC 23(b) is replaced by the following:

“(b) for a continuous period (the **non-residence period**) of at least 10 years ending immediately before the person satisfies the requirements of section OE 1(1) or (2) (Determination of residence of person other than company) for becoming resident in New Zealand, the person—

“(i) did not satisfy the requirements of section OE 1(1) or (2) for being resident in New Zealand:

“(ii) was not resident in New Zealand; and”.

- (3) In section FC 23(c), “period.” is replaced by “period; and” and the following is added:

“(d) the person has not ceased to be a transitional resident after the end of the non-residence period.”

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

87 Section FC 24 replaced

(1) Section FC 24 is replaced by the following:

“FC 24 Transitional resident*“Meaning*

“(1) A natural person is a **transitional resident** at a time in the period given by subsection (2) if the person—

“(a) satisfies at the time the general requirements of section FC 23; and

“(b) does not make an election under subsection (3) for the time.

“Period

“(2) The period for which a natural person may be a transitional resident—

“(a) begins from the first day of the residence required by section FC 23(a); and

“(b) ends on the day that is the earlier of the following:

“(i) the day before the person ceases to be a New Zealand resident:

“(ii) the last day of the 48th month after the earliest month in which the person meets the requirements of section OE 1(1) or (2) (Determination of residence of person other than company) for the residence required by section FC 23(a).

“Election not to be transitional resident

“(3) A person who would otherwise be a transitional resident in an income year may choose irrevocably by a notice under subsection (4) or (6) not to be a transitional resident for a period—

“(a) beginning on or after the beginning of the income year; and

“(b) ending immediately before the person ceases to meet the requirements for being a transitional resident.

“Application for tax credit under subpart KD treated as election by person and by spouse or partner in certain circumstances

“(4) For a person who satisfies the requirements of subsection (5), an application under section 41 of the Tax Administration Act

1994 by the person for a credit of tax under subpart KD for the income year is treated as being—

- “(a) a notice of an election under subsection (3) by the person, if the person is eligible to be a transitional resident and has not made an election under subsection (3); and
- “(b) a notice of an election under subsection (3) by any spouse, civil union partner or de facto partner of the person who is eligible to be a transitional resident and who has not made an election under subsection (3); and
- “(c) for the period beginning with the first day of the period to which the application relates.

“Circumstances in which application treated as election

- “(5) Subsection (4) applies to a person making an application under section 41 of the Tax Administration Act 1994 who—
 - “(a) is eligible to receive a credit of tax under subpart KD in the income year or would be eligible to receive such a credit of tax if the person’s spouse, civil union partner, or de facto partner were not a transitional resident; and
 - “(b) makes the application—
 - “(i) on or after 1 April 2007; or
 - “(ii) before 1 April 2007 and does not give to the Commissioner before 1 June 2007 a notice that the person does not wish the application to be treated as a notice of an election under subsection (3).

“Notice of election

- “(6) A notice under this subsection of an election under subsection (3) by a person must be—
 - “(a) in a form acceptable to the Commissioner; and
 - “(b) received by the Commissioner on or before the latest of the following:
 - “(i) the date by which section 37 of the Tax Administration Act 1994 would require the person to furnish a return of income for the 2006–07 tax year if the person were required to furnish a return of income for that year:

“(ii) the date by which section 37 of the Tax Administration Act 1994 would require the person to furnish a return of income for the tax year corresponding to the first income year affected by the election if the person were required to furnish a return of income for that year:

“(iii) the date allowed by the Commissioner upon application by or on behalf of the person.

“Application for extension of time for notice

- “(7) An application under subsection (6)(b)(iii) by a person, or by a tax agent for a person, for an extension of time to make an election is treated as if it were an application under section 37 of the Tax Administration Act 1994 by the person or tax agent in relation to a return of income for the later of the tax years referred to in subsection (6)(b)(i) and (ii).”
- (2) Subsection (1) applies for the 2005–06 and later income years for a person who,—
- (a) under the law as amended by this Act, becomes on or after 1 April 2006 a person satisfying the requirements of section OE 1 for being a resident:
 - (b) under the law as immediately before being amended by this Act,—
 - (i) does not meet the requirements of sections FC 23 and OE 1 on 31 March 2006; and
 - (ii) meets the requirements of sections FC 23 and OE 1 on a date in the period beginning from 1 April 2006 and ending before the date on which this Act receives the Royal assent.
- (3) If, on a date (the **current date**) in the period referred to in subsection (2)(b)(ii), a person would be a transitional resident under the law (the **former law**) as immediately before being amended by this Act, the person is treated under the law as amended by this Act as being a transitional resident on—
- (a) the current date; and
 - (b) a date, before the current date, on which the person under the former law—
 - (i) would be a non-resident; and
 - (ii) would be resident in New Zealand but for section OE 1(2B).

88 Transfer of property or obligations under financial arrangements deemed to be at market value

Section FE 5(2) is replaced by the following:

- “(2) This section is overridden by section EE 34(2) for the purposes of determining the cost of an item to an amalgamated company under that section, unless the context requires otherwise.”

89 New Zealand net equity of New Zealand banking group

- (1) In section FG 8G(1), in paragraph (b) of the definition of item **EOI**, “comparative value method or the deemed rate of return method” is replaced by “comparative value method, the deemed rate of return method, the fair dividend rate method, or the cost method”.
- (2) Subsection (1) applies for income years beginning on or after 1 April 2007—
- (a) beginning with the first day of the first income year for a person who does not make an election under paragraph (b); or
 - (b) beginning with the later of the first day of the first income year and 1 October 2007 for a person that is a company, group investment fund, or superannuation fund that intends to be a portfolio investment entity and chooses to delay the application to the person of changes made by this Act to the rules relating to FIFs by giving a notice to the Commissioner—
 - (i) before 1 April 2007, if the person exists before that date; or
 - (ii) within 1 month of the day on which the person comes into existence, if the person comes into existence on or after 1 April 2007 and before 1 October 2007.

90 Disposal and resulting acquisition of property by spouse or de facto partner on death of person

- (1) In the heading to section FI 4, “**spouse or de facto partner**” is replaced by “**spouse, civil union partner, or de facto partner**”.
- (2) In section FI 4, in the words before paragraph (a), “to the surviving spouse or de facto partner of the deceased person of

property to which section FI 1(3)(d) or (e) refers” is replaced by “in a transaction to which section FI 1(3)(d) or (e) refers of property to which the surviving spouse, civil union partner, or de facto partner of the deceased person is entitled as beneficiary”.

- (3) In section FI 4(a), “to property” is replaced by “under the will or intestacy to other property (the **other property**)”.
- (4) In section FI 4(b), “the property” is replaced by “the other property”.

91 Section FI 6 replaced

Section FI 6 is replaced by the following:

“FI 6 Disposal and resulting acquisition of timber

If a transaction to which section FI 1(3)(d) or (e) refers involves the disposal and acquisition of property that is timber, standing timber, or the right to take timber, the disposal is treated as a transaction to which subpart FF applies if the beneficiary of the property is within the second degree of relationship to the deceased person.”

92 Relationship of section FI 2(2) to subpart CB

- (1) Section FI 7(1)(a) is replaced by the following:
 - “(a) the transaction involves an interest in property that is land; and
 - “(ab) persons who are related within the second degree of relationship to the deceased person receive the land as beneficiaries—
 - “(i) under the transaction (the **original transaction**), if section FI 1(3)(e) refers to the original transaction:
 - “(ii) under a transaction to which section FI 1(3)(e) refers, if section FI 1(3)(d) refers to the original transaction; and”.
- (2) In section FI 7(1)(b), “or CB 10” is replaced by “CB 10, or CB 12”.
- (3) In section FI 7(1)(b), as amended by subsection (1), “CB 10, or CB 12” is replaced by “or CB 12”.
- (4) In section FI 7(2), “and CB 10” is replaced by “CB 10, and CB 12”.

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

93 Attributing interests in FIFs

- (1) Section GD 14(1)(b) is replaced by the following:
 - “(b) they calculate the FIF income or loss from the interest for the period ending with the disposal using the comparative value method, the deemed rate of return method, the fair dividend rate method, or the cost method; and”.
- (2) Section GD 14(3)(b) is replaced by the following:
 - “(b) they calculate the FIF income or loss from the interest for the period after the acquisition using the comparative value method, the deemed rate of return method, the fair dividend rate method, or the cost method; and”.
- (3) Subsections (1) and (2) apply for income years beginning on or after 1 April 2007—
 - (a) beginning with the first day of the first income year for a person who does not make an election under paragraph (b); or
 - (b) beginning with the later of the first day of the first income year and 1 October 2007 for a person that is a company, group investment fund, or superannuation fund that intends to be a portfolio investment entity and chooses to delay the application to the person of changes made by this Act to the rules relating to FIFs by giving a notice to the Commissioner—
 - (i) before 1 April 2007, if the person exists before that date; or
 - (ii) within 1 month of the day on which the person comes into existence, if the person comes into existence on or after 1 April 2007 and before 1 October 2007.

94 Taxable income to be calculated generally as if group were single company

- (1) In section HB 2(1)(c)(i), “; or” is replaced by “; and”.
- (2) In section HB 2(1)(d)(i), “; or” is replaced by “; and”.
- (3) In section HB 2(1)(e)(i), “; or” is replaced by “; and”.
- (4) Subsections (1) to (3) apply for the 2005–06 and later income years.

95 Source of beneficiary income

In section HH 3C(1),—

- (a) in the words preceding paragraph (a), “either” is omitted:
- (b) in paragraphs (a) to (d) and (e)(i), “; or” is replaced wherever it occurs by “:”.

96 Distributions by Maori authority

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

97 New subpart HL inserted

After subpart HK, the following is inserted:

“Subpart HL—Portfolio investment entities

“Introductory provisions

“HL 1 Intended effect on portfolio tax rate entities and investors

“What this section does

- “(1) This section describes the intended effects of this subpart and related provisions of the Act on a portfolio investment entity that is a portfolio tax rate entity and on an investor in a portfolio tax rate entity.

“Intended effect on portfolio tax rate entity

- “(2) The intended effects for a person (the **entity**) who is using funds supplied by investors to make investments of specified types and who satisfies the other requirements for being a portfolio tax rate entity are that the entity—

- “(a) has a tax liability, on proceeds of the investments that are allocated to investors who are natural persons,—
 - “(i) calculated using a portfolio investor rate for each investor; and
 - “(ii) resembling the total tax liability that the group of investors would have if the investors were to make the investments separately; and
- “(b) has no tax liability on proceeds of the investments that are allocated to other investors; and
- “(c) distributes to each investor amounts resembling the amounts that the investor would receive, after allowing for the tax paid by the entity, if making the investments separately.

“Intended effect on investor in portfolio tax rate entity

- “(3) The intended effects for an investor in the entity are that the investor—
 - “(a) has no tax liability on income arising from proceeds for which the entity has a tax liability based on a portfolio investor rate of more than zero, unless the investor has given to the entity a portfolio investor rate that is lower than the correct rate; and
 - “(b) is liable for tax on any assessable income arising from proceeds for which the entity has a tax liability based on a portfolio investor rate of zero; and
 - “(c) receives on the investment in the entity an economic return resembling the return that the investor would receive after payment of tax liabilities if personally making investments similar to those made by the entity in which the investor has an interest.

“Defined in this Act: investor, portfolio investment entity, portfolio investor rate, portfolio tax rate entity, tax

“HL 2 Scheme of subpart

“Eligibility to be portfolio investment entity

- “(1) The eligibility of an entity to be a portfolio investment entity is determined by sections HL 3 to HL 10.

“Election to be portfolio investment entity

- “(2) An entity who is eligible to be a portfolio investment entity may choose under section HL 11 to be a portfolio investment entity.

“Becoming a portfolio investment entity

- “(3) The time at which an entity becomes a portfolio investment entity and the effects of the change are given by sections HL 12 and HL 13.

“Ceasing to be a portfolio investment entity

- “(4) The time at which an entity ceases to be a portfolio investment entity and the effects of the change are given by section HL 14.

“Portfolio allocation period and portfolio calculation period

- “(5) An entity who is a portfolio tax rate entity has under section HL 15—
- “(a) a portfolio allocation period, which gives the length of the periods in the tax year to which the entity’s income and outgoings are allocated; and
 - “(b) a portfolio calculation period, which gives the length of the periods in the tax year between each calculation by the entity of the amounts of income and outgoings allocated to each portfolio allocation period.

“Treatment of entity’s income from property with no investor or with interest not vested

- “(6) The treatment of income from an entity’s property in which no investor has an interest, or in which the interest has not vested in an investor, is given by section HL 16.

“Portfolio entity tax liability

- “(7) An entity who is a portfolio tax rate entity in a portfolio allocation period must pay income tax of an amount found from the following amounts:
- “(a) the portfolio class net income or portfolio class net loss calculated under section HL 18—

- “(i) for each portfolio investor class and each portfolio allocation period:
- “(ii) from the entity’s assessable income and allowable deductions allocated to the class and the period:
- “(b) the portfolio class taxable income or portfolio class taxable loss calculated under section HL 19—
 - “(i) for each portfolio investor class and each portfolio allocation period:
 - “(ii) from the portfolio class net income or portfolio class net loss for the class and the period and, if appropriate, any portfolio entity formation loss under section HL 28, and any portfolio class taxable loss under section HL 29 that is portfolio class land loss under section HL 30:
- “(c) the portfolio entity tax liability calculated under section HL 20—
 - “(i) for each portfolio investor class of the entity and each portfolio allocation period in the tax year:
 - “(ii) from the portfolio class taxable income for the period, the portfolio investor interest fraction and portfolio investor rate for each investor in the class for the period.

“Payments of tax by portfolio tax rate entity

- “(8) A portfolio tax rate entity is liable to pay tax equal to the amount of the entity’s portfolio entity tax liability for a tax year by the payments required by sections HL 21 to HL 23, depending on the entity’s portfolio allocation period and portfolio calculation period.

“Portfolio investor allocated income and portfolio investor allocated loss

- “(9) An investor in a portfolio tax rate entity in a tax year is treated as—
- “(a) deriving income for the tax year equal to the amount by which the investor’s total portfolio investor allocated income under section HL 24 for the tax year exceeds the investor’s total portfolio investor allocated loss under section HL 24 for the tax year:

“(b) having, if the investor is a zero-rated portfolio investor, for the tax year a deduction under section HL 25 equal to the amount by which the investor’s total portfolio investor allocated loss under section HL 24 for the tax year exceeds the investor’s total portfolio investor allocated income under section HL 24 for the tax year.

“Rebate to entity for some portfolio investor allocated loss

“(10) If a portfolio tax rate entity does not make an election under section HL 22, the entity has a rebate under section HL 26 if it has an investor in a portfolio investor class who is not a zero-rated portfolio investor and who has total portfolio investor allocated loss for a period exceeding the investor’s total portfolio investor allocated income for the period.

“Treatment of tax credits

“(11) If a portfolio tax rate entity does not make an election under section HL 22, the tax liability of the entity relating to an investor in the entity for a portfolio allocation period is reduced in the way given by section HL 27 for credits that are received by the entity and allocated to the investor for the portfolio allocation period.

“Portfolio investor proxies

“(12) An entity who meets the requirements of section HL 31—
“(a) may be a portfolio investor proxy; and
“(b) must perform the obligations imposed by the section relating to a portfolio investor interest held by the entity for an investor.

“Defined in this Act: amount, deduction, income, income tax, income year, investor, portfolio allocation period, portfolio calculation period, portfolio class taxable income, portfolio investment entity, portfolio investor allocated income, portfolio investor allocated loss, portfolio investor class, portfolio investor interest, portfolio investor interest fraction, portfolio investor proxy, portfolio investor rate, portfolio tax rate entity, tax, tax year

“Eligibility requirements: portfolio investment entities and foreign investment vehicles

“HL 3 Eligibility requirements for entities

“Eligibility requirements for portfolio tax rate entity and electing entity

- “(1) A portfolio tax rate entity and an entity that is choosing under section HL 11 to be a portfolio investment entity and a portfolio tax rate entity must meet the eligibility requirements described in subsections (7), (8), and (10).

“Further eligibility requirements for portfolio tax rate entity

- “(2) A portfolio tax rate entity must meet the further eligibility requirements described in subsection (9) and sections HL 6, HL 7, HL 9, and HL 10.

“Eligibility requirements for portfolio listed company and electing entity

- “(3) A portfolio listed company and an entity that is choosing under section HL 11 to be a portfolio investment entity and a portfolio listed company must meet the eligibility requirements described in subsections (7), (8), and (10).

“Further eligibility requirements for portfolio listed company

- “(4) A portfolio listed company must meet the further eligibility requirements described in subsection (9) and sections HL 6, HL 8, HL 9, and HL 10.

“Eligibility requirements for portfolio defined benefit fund and electing entity

- “(5) A portfolio defined benefit fund and an entity that is choosing under section HL 11 to be a portfolio investment entity and a portfolio defined benefit fund must meet the eligibility requirements described in subsections (7), (8), and (10).

“Further eligibility requirements for portfolio defined benefit fund

- “(6) A portfolio defined benefit fund must meet the further eligibility requirements described in sections HL 6, HL 9, and HL 10.

“Form and business requirement

- “(7) The form and business requirement is that the entity—
“(a) must be a company, superannuation fund, or group investment fund; and
“(b) must not carry on a business of life insurance.

“Residence requirement

- “(8) The residence requirement is that the entity must be—
“(a) resident in New Zealand; and
“(b) not treated under a double tax agreement as not being resident in New Zealand.

“Income interest requirement

- “(9) The income interest requirement is that all portfolio investor interests in the entity that give rights in relation to proceeds from a portfolio entity investment give the rights in relation to all the proceeds from the investment that are not category B income.

“Entity history requirement

- “(10) The entity history requirement is that the entity must not, before the day on which the election to be a portfolio investment entity is to be effective, have ceased to be a portfolio investment entity under section HL 14(1), unless the cessation occurred more than 5 years before the day on which the election is to be effective.

“Defined in this Act: amount, company, category B income, double tax agreement, group investment fund, life insurance, portfolio defined benefit fund, portfolio entity investment, portfolio investment entity, portfolio investor interest, portfolio listed company, portfolio tax rate entity, resident in New Zealand, superannuation fund, year

“HL 4 Effect of failure to meet eligibility requirements for entities*“Failure to meet certain requirements*

- “(1) An entity ceases under this section to be eligible to be a portfolio investment entity if the entity fails at any time to meet a requirement that is—
- “(a) referred to in section HL 3; and
 - “(b) not referred to in subsection (2)(a).

“Failure to meet other requirements

- “(2) An entity ceases under this section to be eligible to be a portfolio investment entity if—
- “(a) the entity fails to meet a requirement under section HL 6, HL 9, or HL 10 on the last day of a quarter—
 - “(i) beginning 6 months or more after the date on which the entity becomes a portfolio investment entity; and
 - “(ii) ending more than 3 months before an announcement by the entity to its investors that the entity is winding up within 12 months of the announcement; and
 - “(b) the entity’s failure—
 - “(i) is significant and would not have occurred but for an event or circumstance within the control of the entity;
 - “(ii) is repeated on the last day of the quarter following the quarter referred to in paragraph (a) and ending more than 3 months before the announcement referred to in paragraph (a)(ii).

“Defined in this Act: investor, portfolio defined benefit fund, portfolio investment entity, portfolio listed company, portfolio tax rate entity, quarter

“HL 5 Foreign investment vehicles*“When entity becomes foreign investment vehicle*

- “(1) An entity becomes a foreign investment vehicle if the entity—
- “(a) is not resident in New Zealand; and
 - “(b) is a company or a superannuation scheme; and
 - “(c) has investors that would, if the entity were a portfolio investment entity, be a portfolio investor class meeting

the investor membership requirements under section HL 6(1)(a), (b), (d), (e), (f), (g), (h), or (i); and

“(d) meets the investor interest size requirements under section HL 9, not including the exception in section HL 9(3)(b), for investors who are resident in New Zealand; and

“(e) meets the further eligibility requirements relating to investments under section HL 10, not including the exception in section HL 10(4)(b).

“When entity ceases to be foreign investment vehicle

“(2) An entity that becomes a foreign investment vehicle ceases under this section to be a foreign investment vehicle if the entity—

“(a) fails to meet a requirement under subsection (1)(a) and (b):

“(b) fails to meet a requirement under subsection (1)(c), (d), and (e)—

“(i) on the last day of a quarter; and

“(ii) on the last day of the quarter following the quarter referred to in subparagraph (i).

“Defined in this Act: foreign investment vehicle, portfolio investment entity, portfolio investor class, quarter, resident in New Zealand, superannuation scheme

“HL 6 Investor membership requirement

“Investor membership requirement for entity other than listed company

“(1) The investor membership requirement for a portfolio investor class of an entity that is not a company listed on a recognised exchange in New Zealand and does not meet the requirements of subsection (3) is that the portfolio investor class must include—

“(a) 20 persons, treating—

“(i) all interests held by persons associated under section OD 8(3) (Further definitions of associated persons) and included by subsection (5) as being held by 1 person:

“(ii) all interests held by a portfolio investor proxy as being held by 1 person:

“(b) a portfolio investment entity:

- “(c) a foreign investment vehicle:
- “(d) an entity that—
 - “(i) meets the requirements in section HL 3 that would be relevant if the entity were choosing to be a portfolio investment entity; and
 - “(ii) has not chosen to be a portfolio investment entity:
- “(e) a life insurer:
- “(f) the New Zealand Superannuation Fund:
- “(g) the Accident Compensation Corporation:
- “(h) a Crown entity subsidiary of the Accident Compensation Corporation:
- “(i) the Earthquake Commission:
- “(j) less than 20 persons, as determined under paragraph (a), if—
 - “(i) the entity has 1 or more other portfolio investor classes that satisfy paragraph (a); and
 - “(ii) no investor in the class, other than the entity’s manager or trustee, can control the investment decisions relating to that class; and
 - “(iii) investors for which the entity would not meet the investor membership requirement in the absence of this paragraph have portfolio investor interests with a total value of less than 10% of the total value of portfolio investor interests in the entity.

“Investor membership requirement for listed company

- “(2) The investor membership requirement for an entity that is a company listed on a recognised exchange in New Zealand is that—
 - “(a) the company must not have more than 1 portfolio investor class of investors holding portfolio investor interests in the company; and
 - “(b) each investor must be a member of the portfolio investor class; and
 - “(c) each portfolio investor interest in the company must be a share traded on the recognised exchange.

“No investor membership requirement for entities similar to unit trusts and certain superannuation funds

- “(3) There is no investor membership requirement for an entity that,—

- “(a) if treated as a unit trust, would meet the requirements of 1 or more of paragraphs (a) and (c) to (e) of the definition of qualifying unit trust:
- “(b) is a superannuation fund established under the proposal for the restructuring of the National Provident Fund required by the National Provident Fund Restructuring Act 1990:
- “(c) is the fund established by the Government Superannuation Fund Act 1956.

“Interests of some associated investors included with interests of investor for some purposes

- “(4) For the purposes of subsection (1), the portfolio investor interests of a person who is associated under section OD 8(3) with an investor in a portfolio investor class are included with the portfolio investor interests of the investor if—
 - “(a) the investor is not listed in subsection (1)(b) to (i); and
 - “(b) the associated person is not listed in subsection (1)(b) to (i); and
 - “(c) the associated person has a portfolio investor interest fraction of 5% or more.

“Defined in this Act: associated person, company, foreign investment vehicle, group investment fund, investor, portfolio entity investment, portfolio investment entity, portfolio investor class, portfolio investor interest, portfolio investor proxy, qualifying unit trust, recognised exchange, registered superannuation scheme, unit trust

“HL 7 Investor return adjustment requirement: portfolio tax rate entity

“When this section applies

- “(1) This section applies to a portfolio tax rate entity.

“Investor return adjustment requirement

- “(2) The investor return adjustment requirement is that the entity must make an adjustment referred to in subsection (3) to reflect the effect of the investor’s portfolio investor rate on—
 - “(a) the amount of the entity’s portfolio entity tax liability; and
 - “(b) the amount of a rebate under section HL 26 or HL 27.

“Nature of adjustment

- “(3) An adjustment reflecting the effect of the investor’s portfolio investor rate must be made to—
- “(a) the portfolio investor interest of each investor—
- “(i) within 2 months of the end of the portfolio calculation period, if the entity has not made an election under section HL 22; or
- “(ii) within 3 months of the end of the tax year, if the entity has made an election under section HL 22:
- “(b) the amount of each distribution to each investor.

“Investor may be offered choice of method

- “(4) A portfolio tax rate entity may offer an investor a choice of the method of adjustment.

“Defined in this Act: company, investor, portfolio calculation period, portfolio entity tax liability, portfolio investor interest, portfolio investor rate, recognised exchange, tax year, unit trust

**“HL 8 Imputation credit distribution requirement:
imputation credit account company**

“When this section applies

- “(1) This section applies to a portfolio investment entity that is an imputation credit account company.

“Imputation credit requirement

- “(2) The imputation credit distribution requirement is that when the entity makes a distribution to the members of a portfolio investor class, the distribution must be fully credited for the purposes of section CD 32 (Available subscribed capital amount) to the extent permitted by the imputation credits that the directors of the entity determine are available.

“Defined in this Act: company, group investment fund, imputation credit, imputation credit account, investor, portfolio entity tax liability, portfolio investor interest, portfolio investor rate, portfolio tax rate entity, recognised exchange, tax year, unit trust

“HL 9 Investor interest size requirement

“Investor interest size requirement

- “(1) The investor interest size requirement for a portfolio investment entity is that an investor in a portfolio investor class may

not hold more than 20% of the total portfolio investor interests of investors in the class.

“No investor interest size requirement for entities similar to unit trusts and certain superannuation funds

“(2) There is no investor interest size requirement for an entity that,—

“(a) if treated as a unit trust, would meet the requirements of 1 or more of paragraphs (a) and (c) to (e) of the definition of qualifying unit trust:

“(b) is a superannuation fund established under the proposal for the restructuring of the National Provident Fund required by the National Provident Fund Restructuring Act 1990:

“(c) is the fund established by the Government Superannuation Fund Act 1956.

“Exception for certain investors

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

“(a) the entity is not a portfolio listed company and the investor is listed in subsection (4):

“(b) the entity is a portfolio listed company and the investor is listed in subsection (4) and holds less than 40% of the total portfolio investor interests in the class.

“Investors to which exception applies

“(4) An investor may hold portfolio investor interests in a portfolio investment entity that would otherwise breach the investor interest size requirement for the entity if the investor is—

“(a) a portfolio investment entity:

“(b) a foreign investment vehicle:

“(c) a portfolio investor proxy holding an investment in a unit trust that satisfies 1 or more of paragraphs (a) and (c) to (e) of the definition of qualifying unit trust:

“(d) an entity that—

“(i) meets the requirements in section HL 3 that would be relevant if the entity were choosing to be a portfolio investment entity; and

“(ii) has not chosen to be a portfolio investment entity:

- “(e) a life insurer:
- “(f) the New Zealand Superannuation Fund:
- “(g) the Accident Compensation Corporation:
- “(h) a Crown entity subsidiary of the Accident Compensation Corporation:
- “(i) the Earthquake Commission:
- “(j) a person who meets the requirements of subsection (5).

“Exception for shares in portfolio listed company held from 17 May 2006

- “(5) An investor who is not listed in subsection (4)(a) to (i) may on a date after 30 September 2007 hold portfolio investor interests in a portfolio listed company that are more than 20% and not more than 40% of the total interests of investors in a portfolio investor class if the investor holds portfolio interests that are more than 20% and not more than 40% of the total interests of investors on each day in the period beginning on 17 May 2006 and ending before the date.

“Interests of some associated investors included with interests of investor for some purposes

- “(6) For the purposes of subsections (1) and (5), the portfolio investor interests of a person who is associated under section OD 8(3) (Further definitions of associated persons) with an investor in a portfolio investor class are included with the portfolio investor interests of the investor if—
- “(a) the investor is not listed in subsection (4)(a) to (i); and
 - “(b) the associated person is not listed in subsection (4)(a) to (i); and
 - “(c) the associated person has a portfolio investor interest fraction of 5% or more.

“Defined in this Act: associated person, company, defined benefit fund, foreign investment vehicle, group investment fund, investor, life insurer, New Zealand resident, portfolio investment entity, portfolio investor class, portfolio investor interest, portfolio investor interest fraction, recognised exchange, qualifying unit trust, superannuation fund, unit trust

“HL 10 Further eligibility requirements relating to investments*“Investment type requirement*

- “(1) The investment type requirement is that the entity must use, or have available to use, 90% or more by value of the entity’s assets in deriving income from the owning or trading of—
- “(a) an interest in land:
 - “(b) a financial arrangement:
 - “(c) an excepted financial arrangement:
 - “(d) a right or option concerning property referred to in paragraphs (a) to (c).

“Income type requirement

- “(2) The income type requirement is that the income allocated by an entity to a portfolio investor class must, to the extent of 90% or more,—
- “(a) be derived from property referred to in subsection (1); and
 - “(b) consist of the following:
 - “(i) dividends:
 - “(ii) income treated under subpart EW (Financial arrangements rules) as being derived by the entity:
 - “(iii) rent from an interest in land:
 - “(iv) proceeds from the disposal of property:
 - “(v) FIF income.

“Entity shareholding investment requirement

- “(3) The entity shareholding investment requirement is that, for an investment of the entity consisting of shares in a company that is not listed in subsection (4),—
- “(a) the investment must carry voting interests in the company of less than 20%:
 - “(b) the market value of the investment, together with the market value of the entity’s other investments carrying voting interests in a company of more than 20%, must be less than 10% of the total market value of the entity’s investments.

“Investments not affected by shareholding investment requirement

- “(4) The investments referred to in subsection (3) do not include shares in—
- “(a) a portfolio investment entity;
 - “(b) a foreign investment vehicle;
 - “(c) an entity that—
 - “(i) meets the requirements in section HL 3 that would be relevant if the entity were choosing to be a portfolio investment entity; and
 - “(ii) has not chosen to be a portfolio investment entity;
 - “(d) a life insurer;
 - “(e) a portfolio land company.

“Class shareholding investment requirement

- “(5) The class shareholding investment requirement is that, for each portfolio investor class and each investment referred to in subsection (3), the portfolio class fraction of the investment must—
- “(a) correspond to voting interests in the company of less than 20%;
 - “(b) have a market value that, together with the market value of the class’s other interests that correspond to voting interests in a company of more than 20%, is less than 10% of the total market value of the class’s interests in investments.

“Defined in this Act: amount, company, dividend, excepted financial arrangement, FIF income, financial arrangement, foreign investment vehicle, futures contract, income, interest, investor, portfolio class fraction, portfolio class investment value, portfolio entity investment, portfolio investment entity, portfolio investor class, portfolio land company, share

“Becoming and ceasing to be portfolio investment entity

“HL 11 Election to become portfolio investment entity and cancellation of election

“Notice of election

- “(1) An entity that meets the eligibility requirements in section HL 3 for an electing entity may choose to be a portfolio investment entity by giving a notice in the prescribed form to the Commissioner at any time after 1 April 2007.

“When election effective

- “(2) An election received by the Commissioner is effective on the latest of the following:
- “(a) 1 October 2007:
 - “(b) the date of formation of the entity:
 - “(c) the date nominated in the notice:
 - “(d) the date 30 days before the day of receipt.

“Notice of cancellation

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

“When cancellation effective

- “(4) An election to cease being a portfolio investment entity received by the Commissioner takes effect from the later of the following:
- “(a) the date on which the entity became a portfolio investment entity:
 - “(b) the date nominated in the notice:
 - “(c) the date of receipt.

“Defined in this Act: Commissioner, company, notice, portfolio investment entity, quarter, recognised exchange, tax year

“HL 12 Becoming portfolio investment entity*“Requirement for effective election*

- “(1) An entity that makes an election under section HL 11 becomes a portfolio investment entity unless, in the period ending 12 months after the date on which the election would be effective,—
- “(a) the entity cancels the election:
 - “(b) the entity on the last day of each quarter in the period fails to meet 1 or more of the eligibility requirements in section HL 3.

“Income year for electing entity

- “(2) If an entity with a non-standard income year chooses to become a portfolio tax rate entity making payments of tax under section HL 21 or HL 23, section 39 of the Tax Administration Act 1994 applies as if—

- “(a) the day before the day on which the election is effective were the original balance date of the entity; and
- “(b) the next 31 March after the day on which the election is effective were a new balance date approved by the Commissioner for the entity.

“Entity treated as disposing of, and reacquiring, property

- “(3) If an entity becomes a portfolio investment entity, the entity is treated for the purposes of this Act as, on the day before the day on which the election is effective,—
 - “(a) transferring to another person all shares held by the entity that—
 - “(i) satisfy section CX 44C(1)(a) and (b) (Proceeds from disposal of certain shares by portfolio investment entities); and
 - “(ii) are shares in a company that is not a portfolio investment entity and does not become a portfolio investment entity within the period of 6 months beginning from the day on which the entity becomes a portfolio investment entity; and
 - “(b) receiving for the shares referred to in paragraph (a) an amount of consideration equal to the market value of the shares at that time; and
 - “(c) acquiring the shares referred to in paragraph (a) from the other person for an amount of consideration equal to the amount referred to in paragraph (b).

“Defined in this Act: amount, Commissioner, company, group investment fund, life insurer, portfolio investment entity, portfolio tax rate entity, share, superannuation fund, tax year

“HL 13 Tax consequences from transition

“No penalty or interest arising from transition

- “(1) An entity that becomes a portfolio investment entity is not liable to pay any penalty or interest for which the entity would otherwise be liable for an inaccuracy in an estimate, or shortfall in the payment, of provisional tax to the extent that the inaccuracy or shortfall arises because of—
 - “(a) the effect of the election on the length of the entity’s income year under section HL 12(2);
 - “(b) the disposal and acquisition referred to in section HL 12(3).

“Payment of tax liability arising from transition

- “(2) An entity that becomes a portfolio investment entity in a tax year and is liable to pay an amount of income tax (the **tax amount**) because of the disposal and acquisition referred to in section HL 12(3) may satisfy the liability by making payments to the Commissioner of at least—
- “(a) one third of the tax amount, in the tax year in which the entity becomes a portfolio investment entity; and
 - “(b) one half of the balance of the tax amount remaining owing after the payments made under paragraph (a), in the tax year following the tax year in which the entity becomes a portfolio investment entity; and
 - “(c) the balance of the tax amount remaining owing after the payments made under paragraphs (a) and (b), in the second tax year following the tax year in which the entity becomes a portfolio investment entity.

“Defined in this Act: income tax, income year, interest, portfolio investment entity, provisional tax, tax year

“HL 14 Ceasing to be portfolio investment entity*“Cancellation or loss of eligibility*

- “(1) An entity that has chosen to be a portfolio investment entity ceases to be a portfolio investment entity if—
- “(a) the entity cancels the election under section HL 11:
 - “(b) the entity is no longer eligible to be a portfolio investment entity under section HL 4.

“When entity ceases to be portfolio investment entity

- “(2) An entity ceases to be a portfolio investment entity under subsection (1) on—
- “(a) the day on which the entity’s election under section HL 11 is effective; or
 - “(b) the first day of the quarter following the quarter in which the entity ceases under section HL 4 to be eligible to be a portfolio investment entity.

“Entity treated as disposing of, and reacquiring, property

- “(3) An entity that ceases to be a portfolio investment entity is treated for the purposes of this Act as—

- “(a) disposing of all shares held by the entity that satisfy section CX 44C(1)(a) and (b) (Proceeds from disposal of certain shares by portfolio investment entities) to another person for an amount of consideration equal to the market value of the shares at the time; and
- “(b) acquiring the shares referred to in paragraph (a) from the other person for an amount of consideration equal to the amount referred to in paragraph (a).

“Defined in this Act: amount, portfolio investment entity, quarter, share

“Periods relevant to calculation of portfolio entity tax liability

“HL 15 Portfolio allocation period and portfolio calculation period

“When this section applies

- “(1) This section applies to a portfolio tax rate entity.

“Portfolio allocation period

- “(2) The portfolio allocation period for the entity for a tax year is—
- “(a) a day, if the entity does not choose a portfolio allocation period under paragraph (b) or (c); or
 - “(b) a quarter, if the entity chooses the portfolio allocation period by giving a notice to the Commissioner—
 - “(i) before the tax year;
 - “(ii) when the entity chooses to become a portfolio tax rate entity; or
 - “(c) a day, month, quarter, or income year, if the entity chooses to have a portfolio calculation period of an income year under subsection (3)(c) and chooses the portfolio allocation period by giving a notice to the Commissioner at the same time as the choice under subsection (3)(c).

“Portfolio calculation period

- “(3) The portfolio calculation period for the entity for a portfolio allocation period in a tax year is—
- “(a) a day, if the entity chooses the portfolio calculation period by giving a notice to the Commissioner—

- “(i) before the tax year:
- “(ii) when the entity chooses to become a portfolio tax rate entity; or
- “(b) a quarter, if the entity does not choose a portfolio calculation period under paragraph (a) or (c); or
- “(c) an income year, if the entity—
 - “(i) chooses under section HL 22 to pay provisional tax; and
 - “(ii) chooses the portfolio calculation period by giving a notice to the Commissioner when the entity makes the election under section HL 22.

“Defined in this Act: Commissioner, notice, portfolio allocation period, portfolio calculation period, portfolio tax rate entity, quarter, tax year

“Allocation of income in some cases

“HL 16 Treatment of income not allocated to investor, allocated but not vested in investor

“Treatment of unallocated income

- “(1) If a portfolio tax rate entity has income or property in which no investor has a portfolio investor interest and in which no investor is treated as having an interest under subsection (2), the portfolio tax rate entity is treated as being the sole investor in a portfolio investor class having a portfolio investor interest in the property or income.

“Treatment of income allocated before vesting in investor

- “(2) A portfolio tax rate entity that is a superannuation fund may treat a portfolio investor interest that is not vested in an investor for a portfolio allocation period as being vested in the investor for the purposes of section HL 20 for the period if—
- “(a) the portfolio investor interest is purchased by or for the investor’s employer; and
 - “(b) under an agreement between the investor and the investor’s employer, subject to any contingencies, the interest will vest in the investor in or before the end of a period (the **vesting period**) beginning with the creation of the interest; and
 - “(c) the agreement exists before the portfolio allocation period; and

- “(d) the vesting period ends after the portfolio allocation period; and
- “(e) the vesting period,—
 - “(i) if the entity exists on 17 May 2006, does not exceed the longest vesting period allowed by the entity on 17 May 2006 for an interest created on 17 May 2006; or
 - “(ii) if the entity does not exist on 17 May 2006, does not exceed 3 years.

“Defined in this Act: income, investor, portfolio investor class, portfolio investor interest, portfolio tax rate entity, superannuation fund

“HL 17 Certain new investors treated as part of existing portfolio investor class

A person who becomes an investor in a portfolio tax rate entity may be treated by the entity as a member of an existing portfolio investor class, of which the investor would not be a member in the absence of this section, if—

- “(a) the investor acquires portfolio investor interests that the entity intends to qualify the investor as a member of the class; and
- “(b) the interests do not qualify the investor as a member of the class because the entity does not have sufficient portfolio entity investments corresponding to the interests; and
- “(c) the entity acquires sufficient portfolio entity investments to qualify the investor as a member of the class as soon after the investor’s acquisition of the interests as is practicable.

“Defined in this Act: investor, portfolio investor class, portfolio investor interest, portfolio investor investment

“Calculating portfolio entity tax liability

“HL 18 Portfolio class net income and portfolio class net loss for portfolio allocation period

“Portfolio class net income for portfolio allocation period

- “(1) The **portfolio class net income** under this section for a portfolio investor class for a portfolio allocation period is—
 - “(a) the amount calculated for the period under subsection (3), if the calculated amount is more than zero; or

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

“Portfolio class net loss for portfolio allocation period

“(2) The **portfolio class net loss** under this section for a portfolio investor class for a portfolio allocation period is—

“(a) the amount by which zero exceeds the amount calculated for the period under subsection (3), if the calculated amount is less than zero; or

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

“Calculation of amount for portfolio allocation period

“(3) The amount calculated under this subsection for the portfolio allocation period is the amount calculated using the formula—
class assessable income – class deductions.

“Definition of items in formula

“(4) In the formula,—

“(a) **class assessable income** is the total amount of the entity’s assessable income allocated by the entity to—

“(i) the portfolio investor class; and

“(ii) the portfolio allocation period;

“(b) **class deductions** is the total amount of the entity’s expenditure or loss—

“(i) for which the entity is allowed a deduction; and

“(ii) incurred by the portfolio investment entity in deriving assessable income allocated to the portfolio investor class; and

“(iii) allocated by the entity to the portfolio allocation period.

“Defined in this Act: amount, assessable income, deduction, portfolio allocation period, portfolio class fraction, portfolio class net loss, portfolio entity investment, portfolio investment entity, portfolio investor class

“HL 19 Portfolio class taxable income and portfolio class taxable loss for portfolio allocation period

“Portfolio class taxable income for portfolio allocation period

“(1) The **portfolio class taxable income** under this section for a portfolio investor class for a portfolio allocation period is—

- “(a) the amount calculated for the period under subsection (3), if the calculated amount is more than zero; or
- “(b) zero, if paragraph (a) does not apply.

“Portfolio class taxable loss for portfolio allocation period

- “(2) The **portfolio class taxable loss** under this section for a portfolio investor class for a portfolio allocation period is—
 - “(a) the amount by which zero exceeds the amount calculated for the period under subsection (3), if the calculated amount is less than zero; or
 - “(b) zero, if paragraph (a) does not apply.

“Calculation of amount for portfolio allocation period

- “(3) The amount calculated under this subsection for the portfolio investor class and the portfolio allocation period is calculated using the formula—
 - class net income – class net loss – other loss used.

“Definition of items in formulas

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

“Class net income

- “(5) **Class net income** is the amount of the portfolio class net income under section HL 18 of the class for the period.

“Class net loss

- “(6) **Class net loss** is the amount of the portfolio class net loss under section HL 18 of the class for the period.

“Other loss used

- “(7) **Other loss used** is the lesser of the following amounts:
 - “(a) the total amount for the class of—
 - “(i) the portfolio entity formation loss that has not been offset against portfolio class net income for an earlier allocation period and may be allocated to the allocation period under section HL 28:
 - “(ii) the portfolio class land loss that has not been offset against portfolio class net income for an earlier allocation period and may be allocated to the allocation period under section HL 30:

“(b) the total amount of the class net income referred to in subsection (5).

“Defined in this Act: amount, portfolio allocation period, portfolio class land loss, portfolio class net income, portfolio class net loss, portfolio class taxable income, portfolio class taxable loss, portfolio entity formation loss, portfolio investor class, portfolio investor interest, tax year

“HL 20 Portfolio entity tax liability and rebates of portfolio tax rate entity for period

“Portfolio entity tax liability

- “(1) The **portfolio entity tax liability** of a portfolio tax rate entity, for a period (the **calculation period**) for which the entity is required to calculate the portfolio entity tax liability, is—
- “(a) the total of the amounts calculated under subsection (3) for the calculation period and each investor to which the liability relates, if the total is more than zero; or
- “(b) zero, if paragraph (a) does not apply.

“Amount of rebate under section KI 1

- “(2) For the purposes of section KI 1 (Rebate for portfolio tax rate entity relating to certain investors), the amount of a rebate for a portfolio tax rate entity for a calculation period is—
- “(a) the amount by which zero exceeds the total of the amounts calculated under subsection (3) for the calculation period and each investor to which the rebate relates, if the total is less than zero; or
- “(b) zero, if paragraph (a) does not apply.

“Calculation of amount for calculation period

- “(3) The amount calculated under this subsection for an investor and calculation period is the total of the amounts calculated using the formula in subsection (4) for—
- “(a) each day of a portfolio allocation period in the calculation period; and
- “(b) each portfolio allocation period in the calculation period; and
- “(c) the portfolio investor class of the investor.

“Formula

“(4) The formula is—

$$\frac{\text{investor fraction} \times (\text{income} - \text{loss}) \times \text{rate}}{\text{days in allocation period.}}$$

“Definition of items in formula

“(5) The items in the formula are defined in subsections (6) to (10).

“Investor fraction

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

“Income

“(7) **Income** is the portfolio class taxable income under section HL 19 for the investor’s portfolio investor class and the portfolio allocation period.

“Loss

“(8) **Loss** is the portfolio class taxable loss under section HL 19 for the investor’s portfolio investor class and the portfolio allocation period.

“Rate

“(9) **Rate** is—

- “(a) the portfolio investor rate for the investor for the portfolio allocation period, if paragraph (b) does not apply; or
- “(b) 33%, if the entity is treated as the sole investor under section HL 16.

“Days in allocation period

“(10) **Days in allocation period** is the number of days in the portfolio allocation period.

“Defined in this Act: amount, investor, portfolio allocation period, portfolio class taxable income, portfolio investor class, portfolio investor interest fraction, portfolio investor rate, portfolio tax rate entity, tax year

“Payment by portfolio tax rate entity of tax for tax year

“HL 21 Payments of tax by portfolio tax rate entity making no election

“When this section applies

- “(1) This section applies to a portfolio tax rate entity for a tax year if the entity does not make an election under section HL 22 or HL 23 for the tax year.

“Portfolio calculation period

- “(2) The portfolio calculation period of the entity for the tax year must be a quarter.

“Amount of payments

- “(3) After each portfolio calculation period for the tax year, the entity must make a payment to the Commissioner—
- “(a) of an amount of income tax equal to the portfolio entity tax liability of the entity for the portfolio calculation period; and
 - “(b) within the period of 1 month beginning from the end of the portfolio calculation period.

“Entity not required to pay provisional tax

- “(4) The entity is not required to pay provisional tax under subpart MB (Provisional tax) for the tax year.

“Payment to Commissioner of residual value of investor’s interest

- “(5) If an investor in the entity has, at the end of the investor’s portfolio investor exit period, a portfolio investor interest with a value of more than zero, the entity must pay an amount equal to the value of the interest to the Commissioner at the same time as the payment referred to in subsection (3) for the portfolio calculation period in which the portfolio investor exit period ends.

“Defined in this Act: Commissioner, income tax, interest, portfolio calculation period, portfolio entity tax liability, portfolio investor exit period, portfolio tax rate entity, provisional tax, quarter, tax year

“HL 22 Payments of tax by portfolio tax rate entity choosing to pay provisional tax

“When this section applies

- “(1) This section applies to a portfolio tax rate entity for a tax year if—
- “(a) the portfolio calculation period of the entity for the tax year is the income year corresponding to the tax year; and
 - “(b) the entity chooses to be subject to this section for the tax year.

“Provisional tax

- “(2) The entity must pay provisional tax under subpart MB (Provisional tax) for the income year corresponding to the tax year.

“Notice of election

- “(3) The entity must give the Commissioner notice of an election to be subject to this section—
- “(a) in the prescribed form; and
 - “(b) by the date by which the entity is required to choose a portfolio allocation period and portfolio calculation period for the tax year.

“Defined in this Act: Commissioner, notice, portfolio allocation period, portfolio calculation period, portfolio tax rate entity, provisional tax, tax year, year

“HL 23 Payments of tax by portfolio tax rate entity choosing to make payments when investor leaves

“When this section applies

- “(1) This section applies to a portfolio tax rate entity for a tax year if—
- “(a) the portfolio allocation period and the portfolio calculation period of the entity for the tax year are 1 day; and
 - “(b) the entity chooses to be subject to this section for the tax year.

“Amount of payment for withdrawing investor

- “(2) After each portfolio investor exit period for an investor in a portfolio investor class, the entity must make a payment to the Commissioner—

- “(a) of an amount of income tax equal to the portfolio entity tax liability of the entity for—
 - “(i) the portfolio investor exit period; and
 - “(ii) the investor as a member of the portfolio investor class; and
- “(b) within the period of 1 month beginning from the end of the month in which the portfolio investor exit period ends.

“Amount of payment for investors remaining at end of tax year

- “(3) After each tax year, the entity must make a payment to the Commissioner—
 - “(a) of an amount of income tax equal to the entity’s portfolio entity tax liability for the tax year for the investors in the entity at the end of the tax year, allowing for any payment made under subsection (2) by the entity for any of the investors; and
 - “(b) within the period of 1 month beginning from the end of the tax year.

“Entity not required to pay provisional tax

- “(4) The entity is not required to pay provisional tax under subpart MB (Provisional tax) for the tax year.

“Notice of election

- “(5) The entity must give the Commissioner notice of an election to be subject to this section—
 - “(a) in the prescribed form; and
 - “(b) by the date by which the entity is required to choose a portfolio allocation period and portfolio calculation period for the tax year.

“Defined in this Act: Commissioner, income tax, interest, investor, notice, portfolio allocation period, portfolio calculation period, portfolio entity tax liability, portfolio investor class, portfolio investor exit period, portfolio tax rate entity, provisional tax, tax year

*“Results for investors***“HL 24 Portfolio investor allocated income and portfolio investor allocated loss***“When this section applies*

- “(1) This section applies to a person who is treated by a portfolio tax rate entity or portfolio investor proxy as an investor in a portfolio tax rate entity on a day in a tax year.

“Portfolio investor allocated income for period

- “(2) The person is treated as deriving in the tax year from the portfolio investment entity an amount of **portfolio investor allocated income** equal to—
- “(a) the amount described in subsection (4), if that amount is more than or equal to zero; or
- “(b) zero, if paragraph (a) does not apply.

“Portfolio investor allocated loss for period

- “(3) The person is treated as having in the tax year in relation to the entity an amount of **portfolio investor allocated loss** equal to—
- “(a) the amount by which zero is more than the amount given by subsection (4), if the amount given by subsection (4) is less than zero; or
- “(b) zero, if paragraph (a) does not apply.

“Amount

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

“Formula

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

“Definition of items in formula

“(6) In the formula,—

- “(a) **investor fraction** is the portfolio investor interest fraction of the investor as part of the portfolio investor class on the day:
- “(b) **class income** is the amount under section HL 19 of the portfolio class taxable income for the portfolio allocation period:
- “(c) **class loss** is the amount under section HL 19 of the portfolio class taxable loss for the portfolio investor class for the portfolio allocation period:
- “(d) **days in period** is the number of days in the portfolio allocation period.

“Defined in this Act: amount, investor, portfolio allocation period, portfolio class taxable income, portfolio class taxable loss, portfolio investment entity, portfolio investor allocated income, portfolio investor allocated loss, portfolio investor class, portfolio investor interest fraction, portfolio investor proxy, tax year

“**HL 25 Treatment of portfolio investor allocated loss for zero-rated portfolio investors and investors with portfolio investor exit period**

“When this section applies

- “(1) This section applies for an investor in a portfolio tax rate entity for a period in a tax year, if—
 - “(a) the investor is a zero-rated portfolio investor and the period is a tax year:
 - “(b) the entity makes payments of income tax under section HL 21 and the period is a portfolio investor exit period for the investor.

“Deduction for excess of portfolio investor allocated loss

- “(2) The investor has a deduction under section DB 43B(1) (Zero-rated portfolio investor and portfolio investor allocated loss) in the income year corresponding to the tax year of an amount equal to the total amount of portfolio investor allocated loss under section HL 24 for the period.

“Defined in this Act: amount, deduction, income year, investor, portfolio allocation period, portfolio investor allocated income, portfolio investor allocated loss, portfolio investor exit period, tax year, zero-rated portfolio investor

“Rebate for entity

“HL 26 Treatment of portfolio investor allocated loss for other investors

“Investor in entity making payments of tax under section HL 21

- “(1) A portfolio tax rate entity that makes payments of tax under section HL 21 has a rebate of tax under section KI 1 (Rebate for portfolio tax rate entity relating to certain investors) for a portfolio calculation period and an investor if—
- “(a) the portfolio calculation period does not include a part of a portfolio investor exit period for the investor; and
 - “(b) the investor is not a zero-rated portfolio investor.

“Investor in entity making payments of tax under section HL 23

- “(2) A portfolio tax rate entity that makes payments of tax under section HL 23 has a rebate of tax under section KI 1, for a tax year and an investor, at the time that the entity would be required to make a payment of tax in relation to the tax year and the investor if the entity were liable to make such a payment instead of having a rebate.

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

“Treatment of credits received by entity

“HL 27 Credits received by portfolio tax rate entity or portfolio investor proxy

“When this section applies

- “(1) This section applies to an entity that receives an imputation credit, a credit for tax paid in a foreign country or territory, or a credit for tax paid or withheld if the entity is—
- “(a) a portfolio tax rate entity that has not made an election under section HL 22:
 - “(b) a portfolio investor proxy for an investor in a portfolio tax rate entity that has not made an election under section HL 22.

“Use of credit by entity

- “(2) The entity may not, except as allowed by this section,—
- “(a) use the credit to reduce the liability of the entity for income tax or to obtain a refund of income tax:
- “(b) attach the credit to any distribution or transfer the credit to any other person.

“Tax credit allocated to investor

- “(3) For a portfolio allocation period to which the entity allocates a credit, the amount of the credit that is allocated to an investor is the total of the amounts calculated using the formula in subsection (4) for each day of the period.

“Formula

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

“Definition of items in formula

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

“Application of subsections (7) to (11)

- “(6) For an investor in a portfolio tax rate entity who is allocated under subsection (3) a credit for a portfolio allocation period in a portfolio calculation period in a tax year,—
- “(a) subsections (7) and (8) apply—
- “(i) to credits allocated to the tax year, if the investor is a zero-rated portfolio investor:
- “(ii) to credits allocated to a portfolio allocation period that is part of a portfolio investor exit

period, if the entity makes payments of tax under section HL 21 and the investor is not a zero-rated portfolio investor:

- “(b) subsection (9) applies to credits that are allocated to a portfolio allocation period in a portfolio investor exit period and are not treated as a credit against tax payable by the entity, if the entity makes payments of tax under section HL 23 and the investor is not a zero-rated portfolio investor:
- “(c) subsections (10) and (11) apply if subsections (7) and (9) do not apply.

“Zero-rated portfolio investor or investor with portfolio investor exit period for interest in entity that makes payments under section HL 21

- “(7) The investor is treated as receiving for the tax year for the allocated credits,—
 - “(a) if the credits are under subpart LC (Foreign tax), a credit against income tax payable by the investor of the amount that is the lesser of the following:
 - “(i) the amount of the allocated credits:
 - “(ii) the amount calculated by multiplying the amount of portfolio investor allocated income for the investor for the tax year by the basic rate of tax for the investor for the tax year under schedule 1 (Basic rate of income tax and specified superannuation contribution withholding tax):
 - “(b) if the credits are not under subpart LC, the allocated amount of each type of credit.

“Reduction of credit

- “(8) The amount of a credit received by an investor under subsection (7)(b) or (9) is reduced by the lesser of the following:
 - “(a) the amount of the credit:
 - “(b) the amount found by multiplying 0.33 and the amount of portfolio entity formation loss allocated to the investor for the income year that has not previously reduced—
 - “(i) a deduction, under section DB 43B(2) (Zero-rated portfolio investor and portfolio investor allocated loss):

- “(ii) a rebate, under section KI 1(3) (Rebate for portfolio tax rate entity relating to certain investors):
- “(iii) a credit, under this subsection.

“Investor with portfolio investor exit period for interest in entity that makes payments under section HL 23

- “(9) The investor is treated as receiving for the tax year of the portfolio calculation period, for credits other than under subpart LC, the unused allocated amount of each type of credit.

“Other investor: credit for entity for foreign tax credits

- “(10) The entity is treated as receiving for the tax year of the portfolio calculation period, for credits under subpart LC allocated to the investor, a credit against income tax payable for the portfolio calculation period by the entity of the amount that is the lesser of the following:

- “(a) the total of—
 - “(i) the credits allocated to the portfolio calculation period; and
 - “(ii) the credits allocated to earlier portfolio calculation periods in the tax year and not used by the entity as a credit against income tax payable for those portfolio calculation periods:
- “(b) the amount of the entity’s portfolio entity tax liability for the portfolio calculation period for the investor.

“Other investor: credit for entity for other credits

- “(11) The amount of the credits not under subpart LC allocated to the investor under subsection (2) is treated as—

- “(a) a credit against tax payable by the entity of the amount that is the lesser of the following:
 - “(i) the amount of the credits:
 - “(ii) the amount referred to in subsection (10)(b), reduced by the amount of the credit given by subsection (10):
- “(b) a rebate of tax under section KI 1 (Rebate for portfolio tax rate entity relating to certain investors), for the entity and the portfolio calculation period, of the

amount of the credits that is not used under paragraph (a).

“Defined in this Act: amount, income tax, investor, net income, portfolio allocation period, portfolio class fraction, portfolio entity investment, portfolio investment entity, portfolio investor allocated income, portfolio investor class, portfolio investor exit period, portfolio investor interest fraction, portfolio investor proxy, tax year, zero-rated portfolio investor

“Treatment of losses for entity

“HL 28 Portfolio entity formation loss

“Portfolio entity formation loss

- “(1) The **portfolio entity formation loss** of a portfolio investment entity is the total amount for the entity, at the time the entity becomes a portfolio investment entity, of net loss arising from a period ending before the entity becomes a portfolio investment entity that may be carried forward under subparts IE and IF (which relate to tax losses generally) to the quarter in which the entity becomes a portfolio investment entity.

“Carrying forward portfolio entity formation loss of entity other than portfolio tax rate entity

- “(2) The portfolio entity formation loss of a portfolio investment entity that is not a portfolio tax rate entity or that makes payments of income tax under section HL 22 may be carried forward under subparts IE and IF to an income year in which the entity is a portfolio investment entity.

“Increase in portfolio entity formation loss if allocation results in reduction of deduction, credit, or rebate

- “(3) If portfolio entity formation loss is allocated by a portfolio tax rate entity that makes payments of tax under section HL 21 or HL 23 to an investor for an income year (the **current year**), the portfolio entity formation loss that is available for allocation for the following income year, after allowing for the amount allocated during the current year, is increased by the following:
- “(a) the amount of any reduction under section DB 43B(2) (Zero-rated portfolio investor and portfolio investor allocated loss) of a deduction under section DB 43B(1) for the current year:

- “(b) the amount of any reduction of credit under section HL 27(8) divided by 0.33 for the current year:
- “(c) the amount of any reduction of rebate under section KI 1(3) (Rebate for portfolio tax rate entity relating to certain investors) divided by 0.33 for the current year.

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

“HL 29 Portfolio class taxable income and portfolio class taxable loss for tax year

“Portfolio class taxable income for tax year

- “(1) The **portfolio class taxable income** under this section for a portfolio investor class for a tax year is—
 - “(a) the amount calculated for the tax year under subsection (3), if the calculated amount is more than zero; or
 - “(b) zero, if paragraph (a) does not apply.

“Portfolio class taxable loss for tax year

- “(2) The **portfolio class taxable loss** under this section for a portfolio investor class for a tax year is—
 - “(a) the amount by which zero exceeds the amount calculated for the tax year under subsection (3), if the calculated amount is less than zero; or
 - “(b) zero, if paragraph (a) does not apply.

“Calculation of amount for tax year

- “(3) The amount calculated under this subsection for the portfolio investor class and the tax year is the total of the amounts calculated for each portfolio allocation period in the tax year using the formula—

class tax income – class tax loss.

“Definition of items in formula

- “(4) The items in the formula are defined in subsections (5) and (6).

“Class tax income

- “(5) **Class tax income** is the amount of the portfolio class taxable income under section HL 19 of the portfolio investor class for the portfolio allocation period.

“Class tax loss

- “(6) **Class tax loss** is the amount of the portfolio class taxable loss under section HL 19 of the portfolio investor class for the portfolio allocation period.

“Defined in this Act: amount, portfolio allocation period, portfolio class taxable income, portfolio class taxable loss, portfolio investor class, portfolio investor interest fraction, tax year

“HL 30 Treatment of portfolio class taxable loss and portfolio class land loss for tax year

“Portfolio class taxable loss for tax year other than portfolio class land loss

- “(1) If a portfolio investor class has, for a portfolio calculation period, a portfolio class taxable loss that is not a portfolio class land loss, the portfolio class taxable loss may not be carried forward to a later portfolio calculation period.

“Portfolio class land loss for tax year

- “(2) If a portfolio investor class has a portfolio class land loss for a portfolio calculation period, the portfolio class land loss may be carried forward for the portfolio investor class to following portfolio calculation periods and used to reduce the amount of portfolio class taxable income under section HL 19 for a later portfolio allocation period.

“Meaning of portfolio class land loss

- “(3) A **portfolio class land loss**, for a portfolio investor class, means the portfolio class taxable loss of the portfolio investor class for a portfolio calculation period—
- “(a) at the end of which, the class has interests in portfolio entity investments that—
- “(i) are investments in land or shares in a portfolio land company; and
- “(ii) have a portfolio class investment value that is more than 50% of the portfolio class investment

value for all portfolio entity investments in which the class has interests; and

- “(b) for which the class has a portfolio class taxable loss of more than zero.

“Defined in this Act: land, net income, net loss, portfolio class investment value, portfolio class land loss, portfolio class taxable income, portfolio class taxable loss, portfolio entity investment, portfolio investment entity, portfolio investor class, portfolio land company, tax year

“*Portfolio investor proxies*

“HL 31 Portfolio investor proxies

“*Eligibility of person to be portfolio investor proxy*

- “(1) An entity is eligible to be a portfolio investor proxy for an investor in a portfolio investment entity for a portfolio allocation period if—
- “(a) the portfolio investment entity is not a portfolio listed company; and
 - “(b) the entity holds a portfolio investor interest for an investor in the portfolio investment entity; and
 - “(c) the entity gives to the portfolio investment entity—
 - “(i) a notice that the entity is holding the portfolio investor interest as a portfolio investor proxy; and
 - “(ii) other information that the Commissioner requires the entity to provide with the notice.

“*Role of portfolio investor proxy*

- “(2) An entity who is a portfolio investor proxy holding a portfolio investor interest for an investor for a portfolio allocation period must perform the responsibilities given by subsection (3) in relation to amounts allocated to the entity as holder of the interest for the period as if—
- “(a) the entity were a portfolio investment entity; and
 - “(b) the portfolio investor interest were an interest of the investor in the income of the entity; and
 - “(c) the portfolio investor allocated income, portfolio investor allocated loss, and distributions received by the entity for the investor were income or loss—
 - “(i) of the entity; and
 - “(ii) to which the investor is entitled by the portfolio investor interest.

“Responsibilities of portfolio investor proxy

- “(3) The responsibilities of an entity referred to in subsection (2) in relation to amounts allocated to the entity are to—
- “(a) allocate, to the investor, portfolio investor allocated income and portfolio investor allocated loss for the portfolio allocation period; and
 - “(b) distribute, to the investor, distributions and credits for the period; and
 - “(c) pay income tax on portfolio investor allocated income for the period; and
 - “(d) adjust the portfolio investor interest of the investor, or the distributions to the investor, to reflect the effect of the investor’s portfolio investor rate on the amount of distributions under paragraph (b) and payments under paragraph (c); and
 - “(e) provide to the Commissioner—
 - “(i) returns relating to the allocations, distributions, credits, and payments referred to in paragraphs (a) to (c); and
 - “(ii) other information that the Commissioner requires the entity to provide.

“Defined in this Act: Commissioner, income, income tax, investor, loss, notice, portfolio allocation period, portfolio investment entity, portfolio investor allocated income, portfolio investor allocated loss, portfolio investor class, portfolio investor interest, portfolio investor proxy, portfolio investor rate, tax year”.

98 Net losses may be offset against future net income

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

- “(2BB) If a taxpayer is a portfolio tax rate entity that does not make payments of tax under section HL 22, the taxpayer may not carry forward a net loss under this section.”

99 FIF net losses

- (1) In section IE 4,—
 - (a) subsections (2), (3), and (6) are repealed;
 - (b) in subsection (5), “or (db)” is inserted after “CQ 5(1)(d)” in both places that it occurs.
- (2) Subsection (1) applies for income years beginning on or after 1 April 2007—

- (a) beginning with the first day of the first income year for a person who does not make an election under paragraph (b); or
- (b) beginning with the later of the first day of the first income year and 1 October 2007 for a person that is a company, group investment fund, or superannuation fund that intends to be a portfolio investment entity and chooses to delay the application to the person of changes made by this Act to the rules relating to FIFs by giving a notice to the Commissioner—
 - (i) before 1 April 2007, if the person exists before that date; or
 - (ii) within 1 month of the day on which the person comes into existence, if the person comes into existence on or after 1 April 2007 and before 1 October 2007.

100 Companies included in group of companies

In section IG 1(2), in the words before paragraph (a), “, none of which is a portfolio investment entity,” is inserted after “companies”.

101 Group of companies FIF net losses

- (1) Section IG 5(2) is repealed.
- (2) In section IG 5(4), “subsection (2) or (3)” is replaced by “subsection (3)”.
- (3) Subsections (1) and (2) apply for income years beginning on or after 1 April 2007—
 - (a) beginning with the first day of the first income year for a person who does not make an election under paragraph (b); or
 - (b) beginning with the later of the first day of the first income year and 1 October 2007 for a person that is a company, group investment fund, or superannuation fund that intends to be a portfolio investment entity and chooses to delay the application to the person of changes made by this Act to the rules relating to FIFs by giving a notice to the Commissioner—
 - (i) before 1 April 2007, if the person exists before that date; or

- (ii) within 1 month of the day on which the person comes into existence, if the person comes into existence on or after 1 April 2007 and before 1 October 2007.

102 Rebate in respect of gifts of money

- (1) In section KC 5(1)(cp), “Limited.” is replaced by “Limited:” and the following is added:
 - “(cq) Children on the Edge (NZ) Trust:
 - “(cr) DIPS’N Charitable Trust (International):
 - “(cs) The New Zealand Council of the Ramabai Mukti Mission Trust Board:
 - “(ct) Waterharvest Trust:
 - “(cu) Zonta International District 16 (New Zealand) Charitable Trust.”
- (2) Subsection (1) applies for the 2006–07 and later income years.

103 Determination of net income

- (1) After section KD 1(1)(e)(vii), the following is added:
 - “(viii) any amount of portfolio investor allocated income that is not excluded income of the person and would be excluded income of the person in the absence of section CX 44D(1)(b); and”.
- (2) In section KD 1(1)(g)(ii),—
 - (a) in the formula, “(c – d)” is replaced by “c”:
 - (b) in the definition of the item **c**, “corresponds” is replaced by “corresponds; and”:
 - (c) the definition of the item **d** is repealed.

104 Calculation of subpart KD credit

- (1) In section KD 2(2), in the definition of the item **IWP or CTC**, in paragraph (a), “:” is replaced by “; or”.
- (2) Subsection (1) applies for the 2006–07 and later income years.

105 In-work payment

- (1) In section KD 2AAA,—
 - (a) in subsection (1)(d), “subsection (7)” is replaced by “subsection (8)”:

- (b) in subsection (2), the definition of **weeks** is replaced by the following:

“**weeks**,—

“(a) for 2 or more eligible periods forming 1 continuous period, is the number of whole 1-week periods in the continuous period for which the principal caregiver or the principal caregiver’s spouse, civil union partner, or de facto partner has, from the activity, income to which subsection (1)(d)(i) and (ii) refer:

“(b) for an eligible period to which paragraph (a) does not apply, is the number of whole 1-week periods in the eligible period for which the principal caregiver or the principal caregiver’s spouse, civil union partner, or de facto partner has, from the activity, income to which subsection (1)(d)(i) and (ii) refer”:

- (c) in subsection (5)(a),—

(i) in subparagraph (i), “(x), (xi), (xii), (xiii), (xiv), (xv), and (xvi)” is replaced by “(xi), (xii), (xiii), (xiv), and (xv)”:

(ii) the following is inserted after subparagraph (ii):

“(iii) paid as a result of an incapacity, suffered before 1 January 2006, due to personal injury by accident within the meaning of section 26 of the Injury Prevention, Rehabilitation, and Compensation Act 2001:”.

- (2) Subsection (1) applies for the 2006–07 and later income years.

106 Rules for subpart KD credit

- (1) Section KD 2AA(2) is replaced by the following:

“*Principal caregiver*

- “(2) A person (**person A**) is a principal caregiver of a child if person A lives apart from another qualifying person for that dependent child, and person A has the dependent child in their exclusive care for periods totalling at least one-third of—

“(a) a 4-month period:

“(b) the tax year:

“(c) the entitlement period, in the case of the parental tax credit.”

- (2) Section KD 2AA(2B) is replaced by the following:

“Principal caregiver for eligible period for purposes of in-work payment

- “(2B) A person (**person A**) is a principal caregiver of a child for an eligible period under section KD 2AAA(1) if person A lives apart from another qualifying person for that dependent child, and person A has the dependent child in their exclusive care for periods totalling at least one-third of a 4-month period or the tax year, whether or not those periods coincide with the eligible period.”
- (3) Subsections (1) and (2) apply for the 2006–07 and later income years.

107 Calculation of family tax credit

- (1) In section KD 3(1), “In this section” is replaced by “In this section and section KD 3A”.
- (2) In section KD 3(1), paragraphs (bb) and (bc) of the definition of **qualifying person** are replaced by the following:
- “(bb) the person is not a spouse, civil union partner, or de facto partner of a person who is eligible to be a transitional resident and who has not made an election under section FC 24(3) (Transitional resident); and”.

108 Allowance of credit of tax in end of year assessment

After section KD 4(4), the following is inserted:

- “(4B) A person is not liable for a shortfall penalty under Part 9 of the Tax Administration Act 1994 in relation to an amount that the Commissioner is entitled to recover under this section if the setoff or refund was in excess of the proper amount because—
- “(a) the person applied under section 41 of the Tax Administration Act 1994 and before 1 April 2007 for a credit of tax; and
- “(b) at the time of the application, the person was eligible to be a transitional resident; and
- “(c) before 1 June 2007, the person gave notice to the Commissioner that they did not wish the application to be treated under section FC 24(4) (Transitional resident) as an election under section FC 24(3).”

109 Credit of tax by instalments

- (1) In section KD 5(6A)(b)(ii),—

- (a) “rates of family support credit” is replaced by “amounts of family support credit, in-work payment”:
 - (b) “KD 2” is replaced by “KD 2, KD 2AAA,”.
- (2) Subsection (1) applies for the 2006–07 and later income years.

110 Adjustment of family support amounts, abatement threshold amounts, amounts of in-work payment and parental tax credit, and amount of family tax credit

In section KD 5C(1)(d), “the amount of the family tax credit” is replaced by “the figure in the definition of the item amount”.

111 Commissioner to deliver credit of tax by instalments

- (1) In section KD 7(3A), “any person a credit of tax” is replaced by “any person a credit of tax with an income-tested benefit”.
- (2) Section KD 7(3C) is repealed.

112 New subpart KI inserted

After subpart KH, the following is inserted:

“Subpart KI—Rebates for portfolio tax rate entities

“KI 1 Rebate for portfolio tax rate entity relating to certain investors

“Rebate of income tax

- “(1) A portfolio tax rate entity is allowed a rebate of income tax for a tax year of an amount given by subsection (2) for a portfolio calculation period in the tax year and an investor if—
- “(a) the investor is not a zero-rated portfolio investor; and
 - “(b) the entity does not make payments of tax under section HL 22 (Payments of tax by portfolio tax rate entity choosing to pay provisional tax); and
 - “(c) for an entity that makes payments of tax under section HL 21 (Payments of tax by portfolio tax rate entity making no election), the portfolio calculation period does not include part of a portfolio investor exit period for the investor.

“Amount of rebate

- “(2) The amount of the rebate of income tax is—
- “(a) the amount of a tax credit allocated to the investor and the portfolio calculation period under section HL 27 (Credits received by portfolio tax rate entity or portfolio investor proxy) from an imputation credit or a credit for tax paid or withheld:
 - “(b) the amount of a rebate under section HL 20(2) (Portfolio entity tax liability and rebates of portfolio tax rate entity for period) arising from portfolio investor allocated loss of the investor for the portfolio calculation period.

“Reduction of rebate

- “(3) The amount of a rebate received by an entity under subsection (2) is reduced by the lesser of the following:
- “(a) the amount of the rebate:
 - “(b) the amount found by multiplying 0.33 and the amount of portfolio entity formation loss allocated to the investor for the income year that has not previously reduced—
 - “(i) a deduction, under section DB 43B(2) (Zero-rated portfolio investor and portfolio investor allocated loss):
 - “(ii) a credit, under section HL 27(8) (Credits received by portfolio tax rate entity or portfolio investor proxy):
 - “(iii) a rebate, under this subsection.

“Defined in this Act: imputation credit, income tax, investor, portfolio class net income, portfolio investor allocated loss, portfolio investor exit period, portfolio tax rate entity, tax year, zero-rated portfolio investor”.

113 Credit of tax for imputation credit

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

- “(2C) A taxpayer that is a portfolio tax rate entity is entitled under this section to a credit of tax of no more than the extent allowed by subpart HL (Portfolio investment entities).

“(2D) A taxpayer that is an investor in a portfolio tax rate entity is, to the extent allowed by subpart HL, entitled to a credit of tax to which the entity’s entitlement is restricted by subsection (2C).”

114 Credits in respect of tax paid in country or territory outside New Zealand

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

“(1B) A portfolio tax rate entity is allowed under this section a credit of tax of no more than the extent allowed by subpart HL (Portfolio investment entities).

“(1C) An investor in a portfolio tax rate entity is, to the extent allowed by subpart HL, allowed a credit of tax to which the entity’s entitlement is restricted by subsection (1B).”

115 Resident withholding tax payments to be credited against income tax assessed

In section LD 3, the following is inserted after subsection (1):

“(1B) A portfolio tax rate entity is allowed under this section a credit of tax of no more than the extent allowed by subpart HL (Portfolio investment entities).

“(1C) An investor in a portfolio tax rate entity is, to the extent allowed by subpart HL, allowed a credit of tax to which the entity’s entitlement is restricted by subsection (1B).”

116 Credit of tax for dividend withholding payment credit in hands of shareholder

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

“(1B) A taxpayer that is a portfolio tax rate entity is entitled under this section to a credit of tax of no more than the extent allowed by subpart HL (Portfolio investment entities).

“(1C) A taxpayer that is an investor in a portfolio tax rate entity is, to the extent allowed by subpart HL, entitled to a credit of tax to which the entity’s entitlement is restricted by subsection (1B).”

117 Refund to non-resident or exempt shareholders

Section LD 9(1B)(b) is repealed.

118 New sections LD 10 and LD 11 added

After section LD 9, the following is added:

“LD 10 Credit for investor for tax paid by entity if portfolio investor allocated income not excluded income

- “(1) This section applies for a taxpayer and a tax year if the taxpayer has for the tax year portfolio investor allocated income from a portfolio tax rate entity that—
- “(a) is not excluded income of the taxpayer; and
 - “(b) would be excluded income of the taxpayer in the absence of section CX 44D(1)(b) (Portfolio investor allocated income and distributions of income by portfolio tax rate entities).
- “(2) The taxpayer is entitled to a credit of tax against the taxpayer’s income tax liability for the tax year equal to the lesser of the following amounts:
- “(a) the amount of income tax paid by the portfolio tax rate entity in relation to the portfolio investor allocated income referred to in subsection (1);
 - “(b) the amount by which the taxpayer’s income tax liability exceeds the income tax liability for the tax year that the taxpayer would have in the absence of the portfolio investor allocated income.

“LD 11 Credit for investor for payment under section HL 21(5) by entity for portfolio investor exit period

- “(1) This section applies for a taxpayer and a tax year if—
- “(a) the taxpayer has for the tax year portfolio investor allocated income from a portfolio tax rate entity for a portfolio investor exit period; and
 - “(b) the entity makes a payment under section HL 21(5) (Payments of tax by portfolio tax rate entity making no election) to the Commissioner after the portfolio investor exit period.
- “(2) The taxpayer is entitled to a credit of tax against the taxpayer’s income tax liability for the tax year equal to the lesser of the following amounts:
- “(a) the amount of the payment by the entity under section HL 21(5);
 - “(b) the amount by which the taxpayer’s income tax liability exceeds the income tax liability for the tax year that the

taxpayer would have in the absence of the portfolio investor allocated income.”

119 Amount of underlying foreign tax credit

In section LF 3(1), in the definition of item a, “section CD 10B” is replaced by “section CD 10C”.

120 Provisional tax payable in instalments

- (1) In section MB 8(1), “residual income tax” is replaced, in both places it occurs, by “provisional tax”.
- (2) Subsection (1) applies for provisional tax payments for the 2008–09 and later income years.

121 Example: Section MB 13

- (1) The example after section MB 13 is replaced by the following:

Example: Section MB 13												
Mr Red, who is not registered for GST, starts business on 20 August and has a March balance date. The first business day falls in the period that starts on 29 July (30 days before instalment B) and ends on 21 December (30 days before instalment D). Mr Red has 2 payments of provisional tax for the year, due on 15 January and 7 May.												
May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May
			↓					↓				↓
			starts business					first payment				second payment

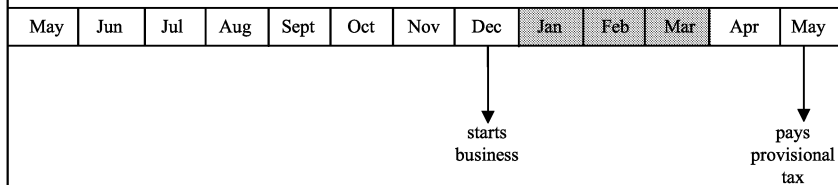
- (2) Subsection (1) applies for provisional tax payments for the 2008–09 and later income years.

122 Example: Section MB 14

- (1) The example after section MB 14 is replaced by the following:

Example: Section MB 14

Ms Orange, who is registered for GST on a 2-monthly basis, starts business on 1 January and has a March balance date. Ms Orange is ordinarily liable to pay provisional tax in 3 instalments aligned with her GST payment dates (s MB 8(2)). However, because her first business day falls in the period that starts on 21 December (30 days before instalment D) and ends on 31 March, Ms Orange has 1 payment of provisional tax for the year, due on 7 May.



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

123 Choosing to use GST ratio

- (1) In section MB 16, in the list of defined terms, “notice” and “notify” are omitted.
- (2) Subsection (1) applies for provisional tax payments for the 2008–09 and later income years.

124 Changing determination method

- (1) In section MB 17(4), in the heading, “first instalment date” is replaced by “date of instalment A”.
- (2) Subsection (1) applies for provisional tax payments for the 2008–09 and later income years.

125 Calculating residual income tax in transitional years

- (1) In section MB 19(1)(a) and (b), “transitional tax year” is replaced in both places it occurs by “transitional year”.
- (2) Subsection (1) applies for provisional tax payments for the 2008–09 and later income years.

126 Example: Sections MB 20 to MB 24

- (1) The example after section MB 24 is replaced by the following:

Example: Sections MB 20 to MB 24

Mr Yellow, who has a March balance date, decides to change to a May balance date. The transitional year is 14 months long. He starts business and becomes a new provisional taxpayer on 31 July, estimating provisional tax at \$15,000 for the income year. At the end of the year, Mr Yellow's residual income tax is \$20,000.

2007											2008				
← Transitional year →															
Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	
			↓ starts business	↓ (no instalment)					↓ first instalment				↓ second instalment	↓ final instalment	

Instalments in transitional year: 28th day of 5th, 9th, and 13th months after balance date, and final instalment on 28th day of month following final month in transitional year (s MB 22 and schedule 13, part B). But the first business day falls within 30 days of the date that would be the first instalment, 28 August (s MB 13), so no instalment is due. The April instalment only is due on 7 May.

Amounts payable on the instalment dates are calculated under s MB 22.

First instalment due 15 January: $\$15,000 \times 4/14 = \$4,285$

Second instalment due 7 May: $\$15,000 \times 8/14 - \$4,285 = \$4,286$

Final instalment due 28 June: $\$15,000 - \$8,571 = \$6,429$.

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

127 Examples: Sections MB 26 and MB 27 (using March balance dates)

- (1) The examples after section MB 27 are replaced by the following:

Examples: Sections MB 26 and MB 27 (using March balance dates)												
Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr
1	<p>Professor Green starts the income year registered for GST on a monthly basis, and on 10 June asks to change to a 6-monthly basis:</p> <ul style="list-style-type: none"> the change takes effect on 30 September (s MB 26(2)) provisional tax instalment payable on old cycle on 28 August provisional tax instalment due on 7 May (s MB 27(2)). 											
2	<p>Ms Blue starts the income year registered for GST on a 6-monthly basis, and on 10 June asks to change to a monthly basis:</p> <ul style="list-style-type: none"> the change takes effect on 30 September (s MB 26(2)) provisional tax instalment payable on old cycle on 28 October provisional tax instalments due on 15 January, 7 May (s MB 27(4)). 											
3	<p>Mr Indigo starts the income year registered for GST on a monthly basis, and on 20 October asks to change to a 6-monthly basis:</p> <ul style="list-style-type: none"> the change takes effect on following 31 March provisional tax instalments paid on old cycle on 28 August, 15 January, 7 May (ss MB 26(3), MB 27(5)). 											
4	<p>Miss Violet starts the income year registered for GST on a 6-monthly basis, and on 10 June ends her GST registration:</p> <ul style="list-style-type: none"> the change takes effect for provisional tax purposes on 10 June (s MB 25(5)) provisional tax instalments due on 28 August, 15 January, 7 May (s MB 25(4)). 											

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

128 Application of provisions of Tax Administration Act 1994

- (1) In section MB 28(1), “residual income tax” is replaced by “provisional tax”.
- (2) Subsection (1) applies for provisional tax payments for the 2008–09 and later income years.

129 Limit on refunds and allocations of tax

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

130 Limits on refunds of tax for certain qualifying unit trusts and group investment funds

- (1) Section MD 2A, except for the heading, is replaced by the following:

“(1) A refund of income tax to which a qualifying unit trust or group investment fund becomes entitled in accordance with section MD 1 is limited to the amount given by subsection (2) if the trust or fund—

“(a) goes into liquidation or chooses to become a portfolio investment entity; and

“(b) at the time of the liquidation or election, the trust or fund has—

“(i) a credit balance in its supplementary available subscribed capital account; and

“(ii) a zero balance in its imputation credit account.

- “(2) The refund of income tax may not be more than the amount calculated according to the formula—

$$\text{credit balance} \times \text{maximum imputation ratio}$$

where—

“**credit balance** is the credit balance in the qualifying unit trust’s, or the group investment fund’s, supplementary available subscribed capital account

“**maximum imputation ratio** is the amount that would be given by the formula set out in section ME 8(1) if the words ‘in which the dividend is paid’ in the definition of item **a** were

replaced by ‘in which the liquidation occurs or the election is made’.”

- (2) Subsection (1) applies for income years beginning on or after 1 April 2007.

131 Companies required to maintain imputation credit account

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

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

“(k) a portfolio tax rate entity.”
- (3) Subsection (1) applies for income years beginning on or after 1 October 2007.

132 Debits arising to imputation credit account

- (1) In section ME 5(1)(ac), “or as a person associated with a share user,” is omitted.
- (2) Subsection (1) applies for the 2005–06 and later income years.

133 Company may elect to maintain dividend withholding payment account

In section MG 2(1), “and is not a portfolio tax rate entity” is inserted after “New Zealand”.

134 Qualifying unit trust or group investment fund may elect to maintain supplementary available subscribed capital amount

In section MJ 1(1), “is not a portfolio tax rate entity and” is inserted after “category A income”.

135 Revocation of listing

- (1) In section NBB 4(2), “30 days” is replaced by “notice”.
- (2) Section NBB 4(3) is replaced by the following:

“(3) The Commissioner may give 14 days notice of revocation, if, within 30 days of the date on which the notice of intended

revocation is given under subsection (2), the listed PAYE intermediary fails to satisfy the Commissioner that the matters listed in that notice of intended revocation are resolved.”

- (3) In section NBB 4(4), “a notice” is replaced by “the 14 days’ notice of revocation given”.

136 Listed PAYE intermediary claim form

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

“(5) Despite subsection (4), the Commissioner may elect to offset an overpayment that results from an amendment under subsection (2) against a claim for payment of subsidy made after expiry of the 14-day period prescribed in subsection (3).”

- (2) Subsection (1) applies for pay periods beginning on or after 1 October 2006.

137 Private use of a motor vehicle: value of benefit

- (1) In section ND 1A(1C)(b)(ii), “ceases to be leased” is replaced by “ceases to be leased by the employer or an associated person without a consecutive or successive lease of the vehicle by the employer or an associated person”.

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

“(1E) Despite subsections (1B) to (1D), an employer must apply schedule 2, part A item 1 or item 2 using the cost price valuation method if—

“(a) a vehicle is owned, leased or rented by the employer or an associated person; and

“(b) the employer or the associated person owned, leased or rented the vehicle:

“(i) during the initial return period for that vehicle, being a period beginning before 1 April 2006:

“(ii) before 1 April 2006.

“(1F) Subsection (1E) does not apply if—

“(a) the employer’s initial return for the vehicle is for a period beginning on or after 1 April 2006 and the vehicle is not subject to an agreement or arrangement referred to in section CX 6B; or

“(b) the vehicle is owned by the employer or the associated person and there has been a period of 5 years after the beginning of the period of the employer’s initial return for the vehicle.”

- (3) Subsections (1) and (2) apply for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

138 Subsidised transport: value of benefit

- (1) In section ND 1C(3), “the benefit is the greater of—” is replaced by “the benefit is the greatest of—” and the following is inserted:

“(aa) 25% of the highest fare the third person charges the public for the equivalent transport (in terms of class, extent, and occasion), if the third person is a company in the same group of companies as the employer; and”.

- (2) Subsection (1) applies for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

139 Meaning of prescribed interest

- (1) In section ND 1G, in the words before paragraph (a), “sections ND 1E” is replaced by “sections ND 1D”.
- (2) Subsection (1) applies for the 2005–06 and later income years.

140 Private use of motor vehicle: when schedular value not used

- (1) Section ND 1U(1) is replaced by the following:
- “(1) This section applies when the employer has not valued the motor vehicle using schedule 2, part A, clause 6.”
- (2) Subsection (1) applies for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

141 Private use of motor vehicle: when schedular value used

- (1) Section ND 1V(1) is replaced by the following:
- “(1) This section applies when the employer has valued the motor vehicle using schedule 2, part A, clause 6.”
- (2) In section ND 1V(2), “clause 3(b)(i)” is replaced by “clause 6(a)”.
- (3) In section ND 1V(3), “clause 3(b)(ii) or (iii)” is replaced by “clause 6(b), (c), (d), or (e)”.
- (4) Subsections (1) to (3) apply for a person's liability for fringe benefit tax for a period beginning on or after 1 April 2006.

142 Specified superannuation contribution withholding tax imposed

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

143 Sections NE 2AA and NE 2AB repealed

Sections NE 2AA and NE 2AB are repealed.

144 New section NE 2B inserted

After section NE 2A, the following is inserted:

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

If an employer makes a specified superannuation contribution on behalf of an employee for a tax year, the employer may choose that the employer, or a PAYE intermediary, pays specified superannuation contribution withholding tax on the specified superannuation contribution at the rate specified in schedule 1, part A, clause 10(a) (Basic rates of income tax and specified superannuation contribution withholding tax) for the SSCWT rate threshold amount for the employee.”

145 Specified superannuation contribution withholding tax to be deducted

(1) In section NE 3, “sections NE 2, NE 2AA, and NE 2AB” is replaced by “section NE 2 or NE 2B”.

(2) Section NE 3(2) is replaced by the following:

“(2) Subsection (1), and whichever is applicable of sections NE 2(1), NE 2A(2), and NE 2B, do not apply to the specified superannuation contribution (the **current specified superannuation contribution**) to the extent to which that contribution is for the employee’s KiwiSaver scheme, and the contribution is not more than the lesser of—

“(a) an amount calculated under subsection (3):

“(b) an amount calculated under subsection (4).

“(2B) Subsection (1), and whichever is applicable of sections NE 2(1), NE 2A(2), and NE 2B, do not apply to the current specified superannuation contribution to the extent to which that contribution—

- “(a) is for the employee’s complying superannuation fund;
and
 - “(b) is subject to complying fund rules; and
 - “(c) is not more than the lesser of—
 - “(i) an amount calculated under section NE 3B(1):
 - “(ii) an amount calculated under section NE 3B(2).”
- (3) In section NE 3(3), “subsection (2)(b)(i)” is replaced by “subsection (2)(a)”.
- (4) In section NE 3(4),—
- (a) “subsection (2)(b)(ii)” is replaced by “subsection (2)(b)”:
 - (b) “previous exempt contributions” is replaced by “previous exempt KiwiSaver contributions”.
- (5) In section NE 3(5),—
- (a) in paragraph (b)(ii), “subsection (2)” is replaced by “subsection (2) or (2B)”:
 - (b) in paragraph (c), “period.” is replaced by “period:”, and the following is added:
 - “(d) **previous exempt KiwiSaver contributions** means the total specified superannuation contributions for the employee’s KiwiSaver scheme, to the extent to which—
 - “(i) those contributions are made in the KiwiSaver calculation period, but excluding the current specified superannuation contribution; and
 - “(ii) subsection (2) applied to the contributions (excluding the current one):”.
- (6) In section NE 3(6), the definitions of **KiwiSaver contributions** and **KiwiSaver scheme** are omitted.

146 New section NE 3B

After section NE 3, the following is inserted:

“NE 3B Calculation amounts in relation to current specified superannuation contribution for complying superannuation fund

- “(1) For the current specified superannuation contribution, in section NE 3(2B)(c)(i) the amount is calculated using the formula—

0.04 × total salary or wages
– previous exempt contributions.

“(2) For the current specified superannuation contribution, in section NE 3(2B)(c)(ii) the amount is calculated using the formula—

total complying fund contributions
– previous exempt complying fund contributions.

“(3) In the formulas,—

“(a) **total salary or wages** means the total salary or wages paid to the employee in the complying fund calculation period, but excluding salary or wages for which there are no superannuation contributions for the employee’s complying superannuation fund that are subject to complying fund rules:

“(b) **previous exempt contributions** means the total specified superannuation contributions for the employee, to the extent to which—

“(i) the contributions are made in the complying fund calculation period, but excluding the current specified superannuation contribution; and

“(ii) section NE 3(2) or (2B) applied to those contributions (excluding the current one):

“(c) **total complying fund contributions** means the total superannuation contributions that are—

“(i) deducted from the employee’s salary or wages in the complying fund calculation period; and

“(ii) subject to complying fund rules:

“(d) **previous exempt complying fund contributions** means the total specified superannuation contributions for the employee’s complying superannuation fund, to the extent to which—

“(i) those contributions are made in the complying fund calculation period, but excluding the current specified superannuation contribution; and

“(ii) section NE 3(2B) applied to those contributions (excluding the current one).

“(4) In this section, **complying fund calculation period** means, for the current specified superannuation contribution, a period—

“(a) beginning with the later of—

- “(i) 1 year before when the employer makes the current specified superannuation contribution:
- “(ii) when the employer is first required to deduct superannuation contributions that are subject to complying fund rules from the employee’s salary or wages; and
- “(b) ending with when the employer makes the current specified superannuation contribution.”

147 Application of RWT rules

- (1) After section NF 1(2)(a)(iv), the following is inserted:
 - “(ivb) interest that is exempt income by virtue of the application of section CW 22B (Certain income derived by transitional resident); or”.
- (2) In section NF 1(2)(b)(viii), “CW 50:” is replaced by “CW 50; or” and the following is added:
 - “(ix) dividends that are exempt income by virtue of the application of section CW 22B:”.
- (3) In section NF 1(2)(b)(ix), as inserted by subsection (2), “CW 22B:” is replaced by “CW 22B; or” and the following is added:
 - “(x) dividends that are excluded income by virtue of the application of section CX 44D (Portfolio investor allocated income and distributions of income by portfolio tax rate entities):”.
- (4) Subsections (1) and (2) apply for the 2005–06 and later income years.

148 Liability to pay resident withholding tax

- (1) After section NF 2(7), the following is inserted:

“(7B) A person (the **first person**) who receives as agent or bare trustee for another person (the **second person**) a payment that is or includes resident withholding income is not liable to make a deduction of resident withholding tax from the payment if—

 - “(a) the first person receives notice from the second person that—
 - “(i) the second person is a transitional resident for a period (the **transitional period**); and

- “(ii) payments during the transitional period from a source or sources (the **specified sources**) are exempt income of the second person under section CW 22B (Certain income derived by transitional resident); and
- “(b) the first person receives the payment during the transitional period; and
- “(c) the payment is from a specified source; and
- “(d) the first person does not have reasonable grounds for believing that the payment is not exempt income of the second person under section CW 22B.”
- (2) Subsection (1) applies for the 2005–06 and later income years.

149 Payment of deductions of resident withholding tax to Commissioner

- (1) In section NF 4(6B), “emigration date” is replaced by “date of the emigration time”.
- (2) Subsection (1) applies for the 2005–06 and later income years.

150 Certificates of exemption

In section NF 9(1), after paragraph (b), the following is inserted:

- “(c) any portfolio investment entity:”.

151 Amount of resident withholding tax deduction deemed to have been received

In section NF 12, “under the RWT rules from any payment” is replaced by “under the RWT rules from any payment other than a replacement payment under a share-lending arrangement”.

152 Application of NRWT rules

- (1) In section NG 1(2), in the words before paragraph (a), “assessable income” is replaced by “income”.
- (2) In section NG 1(2)(a), “and dividends from portfolio listed companies” is inserted after “investment society dividends”.
- (3) In section NG 1(2)(d), “applies.” is replaced by “applies; or”, and the following is added:
- “(e) exempt income; or

“(f) income that is excluded income under section CX 44D(3).”

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

153 Payment of deductions of non-resident withholding tax to Commissioner

- (1) In section NG 11(4B), “emigration date” is replaced by “date of the emigration time”.
- (2) Subsection (1) applies for the 2005–06 and later income years.

154 Liability to make deduction in respect of foreign withholding payment dividend

In section NH 1(1), “that is paid” is replaced by “that is not a portfolio tax rate entity and is paid”.

155 Definitions

- (1) This section amends section OB 1.
- (2) The definition of **acquire** is replaced by the following:
“**acquire**, for depreciable property, includes—
“(a) make:
“(b) be granted, for a patent or plant variety rights:
“(c) lodge, for a patent application or a plant variety rights application”.
- (3) After the definition of **attributing interest**, the following is inserted:
“**Australian approved deposit fund** is an approved deposit fund as defined in section 10 of the Superannuation Industry (Supervision) Act 1993 (Aust)
“**Australian exempt public sector superannuation scheme** is an exempt public sector superannuation scheme as defined in section 10 of the Superannuation Industry (Supervision) Act 1993 (Aust)”.
- (4) After the definition of **Australian imputation credit account company interest**, the following is inserted:
“**Australian regulated superannuation fund** is a regulated superannuation fund as defined in section 19 of the Superannuation Industry (Supervision) Act 1993 (Aust)

“**Australian retirement savings account** is a retirement savings account as defined in section 8 of the Retirement Savings Accounts Act 1997 (Aust)”.

- (5) The definition of **calculation method** is replaced by the following:

“**calculation method**, for the calculation of FIF income or FIF loss, means any of the accounting profits method, the branch equivalent method, the comparative value method, the deemed rate of return method, the fair dividend rate method, and the cost method”.

- (6) After the definition of **completed**, the following is inserted:

“**complying fund calculation period** is defined in section NE 3B(4) (Calculation amounts in relation to a current specified superannuation contribution for complying superannuation fund) for the purposes of that section

“**complying fund rules**, for a superannuation fund, and for an employee’s superannuation accumulation, means rules that—

- “(a) are the same as the rules for KiwiSaver schemes in schedule 1, clauses 4(1) to (4), 7, and 9 of the KiwiSaver Act 2006 (with necessary modifications); and
- “(b) allow withdrawals in some or all of the circumstances described in the rules for KiwiSaver schemes in schedule 1, clauses 8 and 10 to 14 of the KiwiSaver Act 2006 (with necessary modifications), or in none of those circumstances; and
- “(c) do not allow withdrawals under any other circumstances except those described in paragraphs (a) and (b); and
- “(d) require a transfer of all or part of an employee’s superannuation accumulation to another complying superannuation fund, or to a KiwiSaver scheme, if the employee requests such a transfer and, in the case of a transfer to a KiwiSaver scheme, the requirements of the KiwiSaver Act 2006 are met; and
- “(e) require that an employee’s superannuation accumulation is subject to complying fund rules, if it is transferred to another complying superannuation fund in accordance with paragraph (d); and

- “(f) require a transfer of an employee’s superannuation accumulation to a KiwiSaver scheme, if the employee does not request a transfer in accordance with paragraphs (d) and (e), and the employee—
 - “(i) ceases to be eligible to be a member of their complying superannuation fund:
 - “(ii) may not remain a member for any reason except a transfer in accordance with paragraphs (d), (e), and (g), or a withdrawal of all or part of an employee’s superannuation accumulation in accordance with complying fund rules; and
- “(g) require a transfer of an employee’s superannuation accumulation to a KiwiSaver scheme, if the Government Actuary revokes approval of the superannuation fund as a complying superannuation fund and the accumulation is not transferred to another complying superannuation fund and is not subject to complying fund rules; and
- “(h) require that the Commissioner is notified that the employee’s superannuation accumulation must be transferred in accordance with paragraphs (f) and (g), and the notice must include the name, address, and tax file number of the employee, the name and address of their employer, and the name and tax file number of the employee’s complying superannuation fund; and
- “(i) require total minimum superannuation contributions to be deducted in relation to an employee, equal to at least the amount required to be contributed to a superannuation scheme under section 25(1)(d) of the KiwiSaver Act 2006; and
- “(j) for the purposes of calculating whether or not superannuation contributions count towards the total minimum superannuation contributions described in paragraph (i),—
 - “(i) are the same as section 26 of the KiwiSaver Act 2006 (with necessary modifications); and
 - “(ii) do not count a superannuation contribution unless the contribution is for the payment of future benefits to the employee, or for fees, under the superannuation fund; and

- “(k) require that any specified superannuation contribution that counts towards the total minimum superannuation contributions described in paragraph (i) vests completely in the employee, immediately after the contribution is made; and
- “(l) are the same as the rules in section 196 of the KiwiSaver Act 2006 for KiwiSaver schemes (with necessary modifications); and
- “(m) commit an employee to continue to be a member unless otherwise provided by rules described in paragraphs (a) to (l); and
- “(n) do not derogate from rules described in paragraphs (a) to (m)

“**complying superannuation fund** means a superannuation fund that is approved as a complying superannuation fund by the Government Actuary under section 35 of the Superannuation Schemes Act 1989”.

- (7) After the definition of **cost**, the following is inserted:

“**cost method** means the method of calculating FIF income or FIF loss under section EX 45B (Cost method)”.
- (8) In the definition of **diminished value**,—
 - (a) in item **a**, paragraph (a) is replaced by the following:

“(a) on an improvement described in section DO 4 (Improvements to farm land), DO 4B (Expenditure on land: planting of listed horticultural plants), DO 6 (Improvements to aquacultural business), or DP 3 (Improvements to forestry land); or”:
 - (b) in item **c**, paragraph (b) is replaced by the following:

“(b) in the income year under this Act, except an amount allowed in the income year under section DB 37 (Avoiding, remedying, or mitigating effects of discharge of contaminant), section DO 4 (Improvements to farm land), DO 4B (Expenditure on land: planting of listed horticultural plants), DO 4C (Expenditure on land: horticultural replacement planting), DO 6 (Improvements to aquacultural business), or DP 3 (Improvements to forestry land)”.
- (9) In the definition of **dispose**, paragraph (e) is replaced by the following:

- “(e) for depreciable property, includes destroy, withdraw, or let lapse, but does not include the following:
- “(i) for a patent application, conclude the patent application because a patent is granted in relation to the patent application:
 - “(ii) for a geothermal well, have the well cease to be available for use because section EE 6(4) (What is depreciable property?) ceases to apply.”
- (10) The definition of **eligible company** is replaced by the following:
- “**eligible company** means, at any time, a company that, at the time,—
- “(a) is resident in New Zealand; and
 - “(b) is not a foreign company; and
 - “(c) is not a loss attributing qualifying company; and
 - “(d) is not a company that only derives exempt income, except exempt income under sections CW 9 to CW 11 (which relate to exempt income from equity); and
 - “(e) if the company is not a grandparented consolidated company,—
 - “(i) is incorporated in New Zealand or carrying on a business in New Zealand through a fixed establishment; and
 - “(ii) is not, by the law of another country or territory, liable to income tax in that country or territory by reason of domicile, residence, or place of incorporation”.
- (11) In the definition of **eligible period**, in paragraph (e), “last day” is replaced by “last day; and”, and the following is added:
- “(f) the person does not start or cease to be a ring-fenced family support recipient, other than on the first or, as applicable, the last day”.
- (12) After the definition of **employee share loan**, the following is inserted:
- “**employee’s superannuation accumulation** means the total superannuation contributions, together with any return on them, that are subject to complying fund rules and are—

- “(a) specified superannuation contributions vested completely in an employee:
“(b) deducted from the employee’s salary or wages”.
- (13) In the definition of **employer’s contributions to superannuation savings**, in paragraph (a), subparagraph (ii) is replaced by the following:
“(ii) those on which specified superannuation contribution withholding tax was paid at the rate specified in schedule 1, part A, clause 10(a) before that clause was replaced by a new clause 10(a) on 1 April 2007; and”.
- (14) In the definition of **employment**, in paragraph (e), “that section” is replaced by “that section and section KD 3A (Rules for family tax credit)”.
- (15) After the definition of **extra pay**, the following is inserted:
“**fair dividend rate method** means the method of calculating FIF income or FIF loss under section EX 44B (Fair dividend rate method)”.
- (16) In the definition of **FIF net loss**, “sections DN 8 (Ring-fencing cap on deduction: not branch equivalent method) and” is replaced by “section”.
- (17) After the definition of **finance lease**, the following is inserted:
“**finance-related deductions** means deductions allowed to a company that is a member of a consolidated group, calculated as if the company were not a member but nevertheless calculated in accordance with section HB 2(1) (Taxable income to be calculated generally as if group were single company), for—
“(a) an amount of interest incurred, other than an amount that arises only from movement in currency exchange rates:
“(b) an amount of expenditure under the financial arrangement rules or the old financial arrangements rules, other than an amount that arises only from movement in currency exchange rates”.
- (18) In the definition of **financial statements**, “, section EG 3 (Allocation of income and deductions by portfolio tax rate entity),” is inserted before “and section ME 5”.
- (19) In the definition of **fixed rate share**,—

- (a) in paragraph (a), “and any imputation credits or dividend withholding payment credits attached to any dividend” is inserted after “issue of the share”:
 - (b) in paragraph (e), “FG 8G (New Zealand net equity of New Zealand banking group)” is replaced by “EX 40 (Limits on choice of calculation methods), FG 8G (New Zealand net equity of New Zealand banking group),”.
- (20) After the definition of **foreign investment fund**, the following is inserted:
- “**foreign investment vehicle** means an entity that—
- “(a) has become a foreign investment vehicle under section HL 5(1) (Foreign investment vehicles); and
 - “(b) has not ceased to be a foreign investment vehicle under section HL 5(2)”.
- (21) After the definition of **generally accepted accounting practice**, the following is inserted:
- “**geothermal energy proving period** means, for a person’s geothermal well that is not used to exploit geothermal energy, a period—
- “(a) starting with the completion or acquisition of the well; and
 - “(b) excluding the case of the person disposing of the well to another person, ending when the well, for the foreseeable future, is not intended, and cannot reasonably be expected, to be used or available for use in—
 - “(i) deriving assessable income:
 - “(ii) carrying on a business for the purpose of deriving assessable income
- “**geothermal well** means a bore or well solely for the purpose of investigating or exploiting geothermal energy in New Zealand”.
- (22) After the definition of **Government Superannuation Fund**, the following is inserted:
- “**grandparented consolidated company**, for a company that is a member of a consolidated group and for an income year (the **current income year**), means a company that before 17 May 2006 elected, by notice, to form or join the consolidated group, if—

- “(a) the current income year is the 2005–06 or 2006–07 income year:
- “(b) the company carries on a business, and the total amount of the company’s finance-related deductions allocated to the income year (the **previous income year**) before the current income year is—
- “(i) zero, because no deductions are allocated to the previous income year; or
- “(ii) less than 50% of the company’s total deductions allocated to the previous income year, calculated as if the company were not a member but nevertheless calculated in accordance with section HB 2(1) (Taxable income to be calculated generally as if group were single company)”.
- (23) In the definition of **grey list company**, “company or territory” is replaced by “country or territory”.
- (24) In the definition of **imputation credit**, in paragraph (c), “section CD 10C(4)” is replaced by “section CD 10B(4)”.
- (25) The definition of **investor** is replaced by the following:
- “**investor** means,—
- “(a) for a group investment fund, a person who is entitled, by reason of the terms of the trust under which the group investment fund is established, to the income from the money, investments, and other property of the group investment fund:
- “(b) for a portfolio investment entity that is a company, a shareholder in the company:
- “(c) for a portfolio investment entity that is not a company, a person who is entitled, by reason of the rules of the portfolio investment entity or the terms of the trust under which the portfolio investment entity is established, to a proportion of the funds available for distribution by the entity as if the entity were a company and the investor were a shareholder in the company”.
- (26) The definition of **KiwiSaver contributions** is replaced by the following:
- “**KiwiSaver contributions** means contributions required to be deducted under Part 3, subpart 1 of the KiwiSaver Act 2006”.

- (27) The definition of **KiwiSaver scheme** is replaced by the following:
“**KiwiSaver scheme** means a KiwiSaver scheme, as defined in section 4 of the KiwiSaver Act 2006”.
- (28) In the definition of **lease**, paragraph (ab) is repealed.
- (29) In the definition of **non-participating redeemable share**, “for the purposes of that section” is omitted.
- (30) In the definition of **non-refundable credit**, the following is inserted after paragraph (a):
“(ab) a credit allowed under section HL 27(7)(a) (Credits received by portfolio investment entity or portfolio investor proxy) to an investor who is allocated a credit under subpart LC (Foreign tax) received by a portfolio investment entity or portfolio investor proxy:”.
- (31) After the definition of **operating lease**, the following is inserted:
“**operational allowance** is defined in section CW 19(4) (Income for military service or police in operational area) for the purposes of that section”.
- (32) In the definition of **ownership interest**, “**ownership interest** is defined in section OD 5AA(7)” is replaced by “**ownership interests** is defined in section OD 5AA(6)”.
- (33) The definition of **patent application date** is repealed.
- (34) The definition of **pay and allowances** is repealed.
- (35) After the definition of **portable veteran’s pension**, the following is inserted:
“**portfolio allocation period**, for a portfolio tax rate entity, means a period that meets the requirements of section HL 15 (Portfolio allocation period and portfolio calculation period) to which the entity allocates income
“**portfolio calculation period**, for a portfolio tax rate entity, means a period consisting of 1 or more portfolio allocation periods that meets the requirements of section HL 15 (Portfolio allocation period and portfolio calculation period) for the calculation of portfolio investor allocated income and portfolio investor allocated loss
“**portfolio class fraction**, for a portfolio tax rate entity and a portfolio investor class, means the fraction of the proceeds

from a portfolio entity investment to which the investors in the portfolio investor class are entitled as a group

“**portfolio class investment value**, for a portfolio tax rate entity, a portfolio investor class, and a portfolio entity investment, means the portfolio class fraction of the market value of the portfolio entity investment

“**portfolio class net income** is defined in section HL 18 (Portfolio class net income and portfolio class net loss for portfolio allocation period)

“**portfolio class net loss** is defined in section HL 18 (Portfolio class net income and portfolio class net loss for portfolio allocation period)

“**portfolio class taxable income** is defined,—

“(a) for a tax year, in section HL 29 (Portfolio class taxable income and portfolio class taxable loss for tax year):

“(b) for a portfolio allocation period, in section HL 19 (Portfolio class taxable income and portfolio class taxable loss for portfolio allocation period)

“**portfolio class taxable loss** is defined,—

“(a) for a tax year, in section HL 29 (Portfolio class taxable income and portfolio class taxable loss for tax year):

“(b) for a portfolio allocation period, in section HL 19 (Portfolio class taxable income and portfolio class taxable loss for portfolio allocation period)

“**portfolio defined benefit fund** means a defined benefit fund that—

“(a) does not allocate income to investors; and

“(b) has become a portfolio investment entity under section HL 12 (Becoming portfolio investment entity); and

“(c) has not ceased to be a portfolio investment entity under section HL 14 (Ceasing to be portfolio investment entity)

“**portfolio entity formation loss** is defined in section HL 28 (Portfolio entity formation loss)

“**portfolio entity investment** means an investment of a portfolio investment entity in an item of property of a type to which section HL 10(1) (Further eligibility requirements relating to investments) refers

“**portfolio entity tax liability**, for a portfolio tax rate entity for a period, is defined in section HL 20 (Portfolio entity tax liability and rebates of portfolio tax rate entity for period)

“**portfolio investment entity** means—

“(a) a portfolio tax rate entity:

“(b) a portfolio listed company:

“(c) a portfolio defined benefit fund

“**portfolio investor allocated income** is defined in section HL 24 (Portfolio investor allocated income and portfolio investor allocated loss)

“**portfolio investor allocated loss** is defined in section HL 24 (Portfolio investor allocated income and portfolio investor allocated loss)

“**portfolio investor class** means 1 or more investors in a portfolio investment entity, each investor having an entitlement to a distribution by the entity of proceeds from portfolio entity investments such that—

“(a) the portfolio entity investments are the same for all the investors in the group; and

“(b) each investor’s interest in a portfolio entity investment represents a proportion (the **investment proportion**) of the value of the investor’s entitlement; and

“(c) the investment proportion for each investor and each portfolio entity investment differs from the average value of the investment proportion for the investors in the group and the portfolio entity investment by less than 2.5% of that average value

“**portfolio investor exit period**, for an investor in a portfolio tax rate entity and a tax year, means,—

“(a) for an entity that makes payments of tax under section HL 21 (Payments of tax by portfolio tax rate entity making no election), a period—

“(i) beginning with the beginning of a portfolio calculation period and ending with the fifth working day after the portfolio calculation period; and

“(ii) for which the amount of the entity’s portfolio tax liability under section HL 20 (Portfolio entity tax liability and rebates of portfolio tax rate entity for period) for the investor would, if the period were

not a portfolio investor exit period for the investor, equal or exceed the value of the investor's portfolio investor interest at the end of the period;
or

“(b) for an entity that makes payments of tax under section HL 23 (Payments of tax by portfolio tax rate entity choosing to make payments when investor leaves), a period—

“(i) beginning with the later of the beginning of the tax year and the day on which the investor last became an investor in the entity; and

“(ii) ending on a day in the tax year on which the amount of the entity's portfolio tax liability under section HL 20 for the investor for the period equals or exceeds the value of the investor's portfolio investor interest

“**portfolio investor interest** means an interest in a portfolio investment entity that gives the holder an entitlement to a distribution of proceeds from a portfolio entity investment of the entity

“**portfolio investor interest fraction**, for an investor in a portfolio investor class of a portfolio investment entity, means the fraction to which the investor is entitled of the amount of a distribution by the entity to the investors in the portfolio investor class

“**portfolio investor proxy** is defined in section HL 31 (Portfolio investor proxies)

“**portfolio investor rate**, for an investor in a portfolio tax rate entity and a portfolio calculation period, means—

“(a) 33%, if paragraphs (b) and (c) do not apply; or

“(b) the rate, if paragraph (c) does not apply, that the investor notifies to the entity as the prescribed investor rate for the investor and the period—

“(i) before the end of the period; and

“(ii) by a notice satisfying section 28B of the Tax Administration Act 1994; or

“(c) 0%, if—

“(i) the entity makes payments of tax under section HL 21 (Payments of tax by portfolio tax rate entity making no election); and

“(ii) the portfolio investor rate for the investor for the portfolio calculation period would, in the absence of this paragraph, be more than 0%; and

“(iii) the portfolio calculation period includes part of a portfolio investor exit period for the investor

“**portfolio land company** means, for a tax year, a company that—

“(a) is not a portfolio investment entity in the tax year; and

“(b) at the beginning of the tax year, owns property that—

“(i) consists of interests in land or shares in a portfolio land company that does not own, directly or indirectly, shares in the company; and

“(ii) has a market value equal to or more than 90% of the market value of all the property of the company

“**portfolio listed company** means a company listed on a recognised exchange in New Zealand that—

“(a) has become a portfolio investment entity under section HL 12 (Becoming portfolio investment entity); and

“(b) has not ceased to be a portfolio investment entity under section HL 14 (Ceasing to be portfolio investment entity)

“**portfolio tax rate entity** means a company, superannuation fund, or group investment fund that—

“(a) has become a portfolio tax rate entity under section HL 12 (Becoming portfolio investment entity); and

“(b) has not ceased to be a portfolio tax rate entity under section HL 14 (Ceasing to be portfolio investment entity); and

“(c) is not a company listed on a recognised exchange in New Zealand; and

“(d) is not a defined benefit fund”.

(36) In the definition of **prescribed interest**, “sections ND 1E (Employment-related loans: repayment)” is replaced by “sections ND 1D (Employment-related loans: value of benefit)”.

(37) After the definition of **prescribed interest**, the following is inserted:

“**prescribed investor rate**, for a person who is an investor in a portfolio tax rate entity and a portfolio allocation period in a tax year, means—

- “(a) 33%, if—
 - “(i) none of paragraphs (b) and (c) applies to the person:
 - “(ii) the person is a resident who derives income as a trustee and chooses to be subject to this paragraph for the tax year; or
 - “(b) 19.5%, unless paragraph (c) applies to the person, if the person is a resident who had, in either of the 2 income years immediately before the tax year,—
 - “(i) \$38,000 or less in taxable income; and
 - “(ii) a total amount of \$60,000 or less in taxable income and portfolio investor allocated income; or
 - “(c) 0%, if the person is a resident who—
 - “(i) is an organisation or trust with income that is exempt income under section CW 34 (Charities: non-business income) or CW 35 (Charities: business income):
 - “(ii) is a portfolio investment entity:
 - “(iii) is a company:
 - “(iv) is a superannuation fund:
 - “(v) derives income as a trustee and does not choose to be subject to paragraph (a) for the tax year:
 - “(vi) is a portfolio investor proxy for the portfolio allocation period”.
- (38) In the definition of **principal caregiver**, paragraph (ab) is replaced by the following:
- “(ab) the person is not a spouse, civil union partner, or de facto partner of a person who is eligible to be a transitional resident and who has not made an election under section FC 24(3) (Transitional resident); and”.
- (39) In the definition of **provisional taxpayer**, after paragraph (b)(i), the following is inserted:
- “(ib) a portfolio tax rate entity that does not make an election under section HL 22 (Payments of tax by portfolio tax rate entity choosing to pay provisional tax); or”.
- (40) In the definition of **qualifying person**,—

- (a) paragraph (a)(iib) and (iic) are replaced by the following:
- “(iib) the person is not a spouse, civil union partner, or de facto partner of a person who is eligible to be a transitional resident and who has not made an election under section FC 24(3) (Transitional resident); and”:
- (b) in paragraph (c), “that section” is replaced by “that section and section KD 3A (Rules for family tax credit)”.
- (41) In paragraph (c) of the definition of **refundable credit**, “credit” is replaced by “credit; or” and the following is added:
- “(d) for a payment made by a portfolio tax rate entity under section HL 21(5) (Payments of tax by portfolio tax rate entity making no election)”.
- (42) In the definition of **resident in Australia**, “and for the purposes of the imputation rules” is omitted.
- (43) In the definition of **schedular income**, after paragraph (d), the following is inserted:
- “(db) income derived by a portfolio tax rate entity:”.
- (44) After the definition of **share purchase scheme**, the following is inserted:
- “**share reorganisation**, in the FIF rules and for a person and an attributing interest in a FIF, means an action of the FIF that causes an increase or reduction, other than for consideration, of the attributing interests held by persons, including the person, who hold attributing interests in the FIF immediately before the action”.
- (45) The definition of **specified lease** is replaced by the following:
- “**specified lease** means a lease of a personal property lease asset if—
- “(a) the lease is entered in the period starting on 6 August 1982 and ending on 19 May 1999 and the lease has a guaranteed residual value, or has a term of the lease that is more than 36 consecutive months, or has a term of the lease that is the economic life of the asset because the Commissioner considers that the asset has an economic life of less than 36 months, and—

- “(i) the lessee becomes the owner of the asset at the end of the term of the lease:
 - “(ii) the lessee has the option to purchase the asset at the end of the term of the lease at a price that the Commissioner considers will be significantly lower than the market value of the asset at the end of the term of the lease:
 - “(iii) the total of all personal property lease payments and the guaranteed residual value is more than or equal to, or to a small extent less than, the cost price of the asset:
 - “(iv) the lessor and the lessee agree that the lessee is liable for the payment of all, or nearly all, expenditure incurred for the costs of repair and maintenance of the asset and any other incidental costs arising during the term of the lease for the use of the asset:
- “(b) the lease is entered in the period starting on 6 August 1982 and ending on 19 May 1999 and the lessee acquires ownership of the asset by any means, whether from the lessor or another person:
- “(c) the lease is entered in the period starting on 28 October 1983 and ending on 19 May 1999 and—
- “(i) a person other than the lessee acquires the asset; and
 - “(ii) the lessee and the person who acquires the asset are associated”.
- (46) After the definition of **spreading method**, the following is inserted:
- “**SSCWT rate threshold amount** for a specified superannuation contribution means,—
- “(a) if the employee is employed by the employer for all of the tax year immediately before the tax year in which the specified superannuation contribution is paid, the total amount of—
 - “(i) salary and wages derived by the employee in that previous tax year; and
 - “(ii) specified superannuation contributions (being the gross amount of the contributions before deduction of specified superannuation contribution

- withholding tax) that the employer pays on behalf of the employee in that previous year; or
- “(b) if paragraph (a) does not apply, the total amount of—
- “(i) salary and wages that the employer estimates will be derived by the employee in the tax year in which the specified superannuation contribution is paid; and
- “(ii) specified superannuation contributions (being the gross amount of the contributions before deduction of specified superannuation contribution withholding tax) that the employer estimates they will make on behalf of the employee in the tax year in which the specified superannuation contribution is paid”.
- (47) After the definition of **year of determination**, the following is added:
- “**zero-rated portfolio investor**, for a portfolio tax rate entity that makes payments of tax under section HL 21 (Payments of tax by portfolio tax rate entity making no election) or HL 23 (Payments of tax by portfolio tax rate entity choosing to make payments when investor leaves) and a portfolio allocation period, means an investor in the entity who has a prescribed investor rate of 0% for the period.”
- (48) Subsections (9), (10), (11), (17), (19)(a), (21), (22), and (45) apply for the 2005–06 and later income years.
- (49) Subsections (5), (7), (15), (16), and (29) apply for income years beginning on or after 1 April 2007—
- (a) beginning with the first day of the first income year for a person who does not make an election under paragraph (b); or
- (b) beginning with the later of the first day of the first income year and 1 October 2007 for a person that is a company, group investment fund, or superannuation fund that intends to be a portfolio investment entity and chooses to delay the application to the person of changes made by this Act to the rules relating to FIFs by giving a notice to the Commissioner—
- (i) before 1 April 2007, if the person exists before that date; or

- (ii) within 1 month of the day on which the person comes into existence, if the person comes into existence on or after 1 April 2007 and before 1 October 2007.
- (50) Subsections (18), (19)(b), (30), (42), and (46) apply for income years beginning on or after 1 October 2007.

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

- (1) In section OD 5(6F), “sections OD 3(3)(b) and OD 4(3)(b) and (d)” is replaced by “sections OD 3(3)(d), OD 4(3)(d), and OD 9”.
- (2) Subsection (1) applies for a person for the 2005–06 and later income years, unless the person—
 - (a) has taken a tax position for an income year in a return provided to the Commissioner before 17 May 2006 that relies on the law that would apply if subsection (1) did not come into force; and
 - (b) fails to choose, in a notice of proposed adjustment or a response notice, to apply subsection (1).
- (3) If subsection (1) does not apply for a person for an income year because of subsection (2), the law that would apply if subsection (1) did not come into force applies for the person for the income year.

157 Modifications to voting and market value interests for application of continuity provisions to reverse takeover

- (1) In section OD 5AA(2)(e), “are treated under section OD 5(6)(b) as being held by the persons” is replaced by “are held by persons”.
- (2) In section OD 5AA(2)(f),—
 - (a) in subparagraph (i), “that the initial owners hold” is inserted after “initial parent”:
 - (b) in subparagraph (ii), “held the total ownership” is replaced by “held the ownership”.
- (3) Subsections (1) and (2) apply for the 2005–06 and later income years.

158 Further definitions of associated persons

In section OD 8(3),—

- (a) “EE 34” is replaced by “EE 33”:
- (b) “HL 6, HL 9,” is inserted after “HK 11,”.

159 Determination of residence of person other than company

- (1) In section OE 1, subsection (2B) is repealed.
- (2) Subsection (1) applies for the 2005–06 and later income years.

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

- (1) In schedule 1, part A, after clause 5, the following is inserted:

“6 Portfolio tax rate entity

The basic rate of income tax on all taxable income of a portfolio tax rate entity is the effective rate of tax found by dividing the amount of the portfolio entity tax liability of the entity under section HL 20 by the number of dollars in the taxable income of the entity.”

- (2) In schedule 1, part A, clause 10, paragraphs (a) and (aa) are replaced by the following:

“(a) the rate specified in part C, if the employer has made an election under section NE 2B; and”.
- (3) In schedule 1, in the heading to part C, “(aa)” is replaced by “(a)”.
- (4) In schedule 1, part C,—
 - (a) the heading for the first column is replaced by “The SSCWT rate threshold amount for the employee for the year in which the specified superannuation contribution is paid”:
 - (b) “\$9,500” is replaced by “\$11,400”, in both places it occurs:
 - (c) “\$38,000” is replaced by “\$45,600”, in both places it occurs.

161 Schedule 2—Fringe benefit values

- (1) Schedule 2, part A, clause 3 is replaced by the following:

“3 In this schedule, a motor vehicle’s tax value in a quarter in a tax year, in a tax year, or in an income year is—

- “(a) the value of the vehicle, as determined under subpart EE (Depreciation) for the beginning of the tax year or income year, if paragraphs (b) and (c) do not apply; or
 - “(b) the cost price of the vehicle, if the vehicle is acquired after the beginning of the tax year or income year and paragraph (c) does not apply; or
 - “(c) determined under clause 3B, if, in the period of 2 years before the vehicle’s acquisition by the person (**person A**) providing it to the employee, the vehicle is owned by person A or by a person (**person B**) associated with them.
- “3B For person A and the purposes of clause 3(c), the tax value of the vehicle is the value under subpart EE it would have at the beginning of the tax year or income year, or at the time of acquisition in the year, treating the cost of the vehicle on acquisition as the amount given by—
- “(a) clause 3C, if—
 - “(i) the cost price was last used by person A or person B for the vehicle under clause 1:
 - “(ii) the vehicle was not subject to clause 1 in the 2-year period referred to in clause 3(c) and neither person A nor person B have used the tax value for the vehicle under clause 1:
 - “(b) clause 3D, if person A did not own the vehicle and person B last used the tax value of the vehicle under clause 1:
 - “(c) clause 3E, if person A owned the vehicle and the tax value was last used for the vehicle under clause 1.
- “3C The highest of the following amounts is the relevant amount for the purposes of clause 3B(a):
- “(a) the highest cost of the vehicle to person A on any acquisition of it by them:
 - “(b) the highest cost of the vehicle to person B on any acquisition of it by them.
- “3D The highest of the following amounts is the relevant amount for the purposes of clause 3B(b):
- “(a) the tax value of the vehicle under this schedule for person B, immediately before the last disposal of the vehicle by them:

“(b) the cost of the vehicle to person A on acquisition.

“3E The highest of the following amounts is the relevant amount for the purposes of clause 3B(c):

“(a) the tax value of the vehicle under this schedule for whichever of person A or person B last used tax value for the vehicle under clause 1, immediately before the last disposal of the vehicle by that person:

“(b) the cost of the vehicle to person A on the last acquisition of it by them.”

(2) In schedule 2, part A, clause 7, the words before paragraph (a) are replaced by the following:

“7 When a vehicle is leased or rented to the person after it has been leased or rented to another person (the **other person**), the vehicle’s cost price is its market value at the time it is first leased or rented to the person if—”.

(3) Subsection (2) applies for a person’s liability for fringe benefit tax for a period beginning on or after 1 April 2006.

162 Schedule 4—Foreign investment funds

In the shoulder reference, “EX 33B, EX 33C, EX 33D,” is inserted after “EX 33”.

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

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

164 Schedule 11—Banded rates of depreciation

(1) In the shoulder reference in schedule 11, “EE 25” is replaced by “EE 25E”.

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

165 Schedule 13—Months for payment of provisional tax and terminal tax

(1) In columns A to F of schedule 13, part A, “28 Apr” is replaced wherever it appears by “7 May”.

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

166 Schedule 22A—Identified policy changes

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

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

167 Schedule 23—Comparative tables of old and new provisions

In schedule 23,—

- (a) in the third column of part A,—
- (i) the entry corresponding to EG 17(1) is replaced by “EE 33(1)–(3)”:
 - (ii) the entry corresponding to EG 17(2) is replaced by “EE 33(4)”:
 - (iii) the entry corresponding to EG 17(3) is replaced by “EE 33(4)”:
 - (iv) the entry corresponding to EG 17(3B) is replaced by “EE 34(1)”:
 - (v) the entry corresponding to EG 17(4) is replaced by “EE 33(5)”:
 - (vi) the entry corresponding to EG 17(5) is replaced by “EE 33(1)”:
 - (vii) the entry corresponding to EG 17(8) is replaced by “EE 33(1), (3)–(5), EE 35”:
- (b) the entry in part A corresponding to GD 9 is replaced by—
- (i) an entry corresponding to GD 9(1) in which the third column is “CB 13”:
 - (ii) an entry corresponding to GD 9(2) in which the third column is “omitted”:
- (c) in the second column of part B,—
- (i) the entry corresponding to EE 33 is replaced by “EG 17(1)–(5), (8)”:
 - (ii) the entry corresponding to EE 34 is replaced by “EG 17(3B), FE 5(2)”.

Part 2

Amendments to Tax Administration Act 1994

168 Tax Administration Act 1994

This Part amends the Tax Administration Act 1994.

169 Interpretation

- (1) In subsection 3(1), after the definition of **fringe benefit**, the following is inserted:

“**full and complete inspection**—

“(a) includes use as evidence in court proceedings:

“(b) does not include removal to make copies under section 16B”.

- (2) In subsection 3(1), in the definition of **judicial officer**, “and section 16C” is added after “that section”.

- (3) In subsection 3(1), the following are repealed:

(a) the definition of **new return date**:

(b) the definition of **original return date**:

(c) the definition of **return date**.

170 Giving of notices by Commissioner

Section 14(9) is replaced by the following:

- “(9) A notice given by post is treated as having been given at the time the notice would have been delivered in the ordinary course of the post.”

171 Giving of notices to Commissioner

Section 14B(8) is replaced by the following:

- “(8) A notice given by post is treated as having been given at the time the notice would have been delivered in the ordinary course of the post.”

172 Giving of notices to other persons

Section 14C(8) is replaced by the following:

- “(8) A notice given by post is treated as having been given at the time the notice would have been delivered in the ordinary course of the post.”

173 New section 16C inserted

After section 16B, the following is inserted:

“16C Power to remove and retain documents for inspection

- “(1) The Commissioner, an authorised officer, or a person accompanying the Commissioner or the authorised officer may remove books or documents from a place accessed under section 16 and retain them for a full and complete inspection if the Commissioner or the authorised officer has—
- “(a) the consent of an occupier;
 - “(b) a warrant issued under subsection (2).
- “(2) A judicial officer may issue, to the Commissioner or an authorised officer, a warrant for the purpose of removing books or documents from a place and retaining them for a full and complete inspection if, on written application made on oath, the judicial officer is satisfied that the exercise by the Commissioner or an authorised officer of his or her functions under section 16 may require removing books or documents from a place and retaining them for a full and complete inspection.
- “(3) Every warrant issued under subsection (2) must meet the requirements in section 16(5)(a) to (d).
- “(4) Every person exercising the power to remove and retain conferred by a warrant issued under subsection (2) must produce the warrant of authority and evidence of identity—
- “(a) on first entering the place; and
 - “(b) whenever subsequently reasonably required to do so.
- “(5) The owner of a book or document that is removed under this section is entitled to obtain a copy of the book or document at the premises to which the book or document is removed—
- “(a) at the time the book or document is removed to the premises;
 - “(b) at reasonable times subsequently.
- “(6) Books or documents retained under this section may be retained for so long as is necessary for a full and complete inspection.
- “(7) The Commissioner or an officer of the Department authorised by the Commissioner may make copies of books or documents retained under this section, and a copy of a book or document certified by or on behalf of the Commissioner is admissible in evidence in court as if it were the original.

“(8) In this section, **judicial officer** means a judicial officer as defined in section 16(7).”

174 Claim that book or document is tax advice document

In section 20D(4)(a), “1 or both of sections 16 and 16B” is replaced by “section 16 or under section 16 and either of sections 16B and 16C”.

175 Person must disclose tax contextual information from tax advice document

In section 20F(2)(a), “1 or both of sections 16 and 16B” is replaced by “section 16 or under section 16 and either of sections 16B and 16C”.

176 New section 28B inserted

After section 28, the following is inserted:

“28B Investor advising portfolio tax rate entity of portfolio investor rate

An investor who notifies a portfolio tax rate entity that the prescribed investor rate for the investor and a portfolio calculation period is less than 33% must provide the investor’s tax file number to the entity at the time of the notice.”

177 Shareholder dividend statement to be provided by company

- (1) In section 29(1C)(b), “emigration date” is replaced by “date of the emigration time”.
- (2) Subsection (1) applies for the 2005–06 and later income years.

178 Statement to share supplier when share user makes replacement payment under share-lending arrangement

Section 30B(d) and (h) are repealed.

179 Maori authority to give notice of amounts distributed

In section 31(1)(e), “section NF 8B” is replaced by “section NF 8A”.

180 New section 31B inserted

After section 31, the following is inserted:

“31B Portfolio tax rate entity to give statement to investors and request information

- “(1) A portfolio tax rate entity must give to a zero-rated portfolio investor in the entity a notice giving information that the Commissioner considers relevant,—
- “(a) for each portfolio calculation period, if the portfolio calculation period is more than a day; or
 - “(b) for each income year, if the portfolio calculation period is a day.
- “(2) A portfolio tax rate entity must give to an investor in the entity who has a portfolio investor exit period a notice giving information that the Commissioner considers relevant,—
- “(a) for each portfolio calculation period in which the portfolio exit period falls, if the portfolio calculation period is more than a day; or
 - “(b) for each income year in which the portfolio exit period falls, if the portfolio calculation period is a day.
- “(3) If subsections (1) and (2) do not apply to an investor in a portfolio tax rate entity, the entity must give to the investor in the entity a notice giving information that the Commissioner considers relevant—
- “(a) for each income year; and
 - “(b) by the 30 June after the end of the income year.
- “(4) A portfolio tax rate entity must at least once in each income year give a notice to an investor in the entity requesting that the investor provide the entity with the investor’s prescribed investor rate.”

181 Certification requirements for withdrawals subject to section CS 1 of Income Tax Act 2004

Section 32B(1)(b) is replaced by the following:

- “(b) The amount of specified superannuation contributions that were subject to specified superannuation contribution withholding tax at the rate specified in schedule 1, part A, clause 10(a) of the Income Tax Act 2004 before that clause was replaced by a new clause 10(a) on 1 April 2007:”.

182 Annual returns of income

In section 33(1), “or a portfolio tax rate entity” is inserted after “section 33A applies”.

183 Annual returns of income not required

In section 33A(1)(a), in the words before subparagraph (i), “gross income” is replaced by “assessable income”.

184 New section 36AB inserted

After section 36A, the following is inserted:

“36AB Electronic format of returns by portfolio investment entity

“(1) The Commissioner must prescribe one or more electronic formats in which a return required under section 57B must be furnished by a portfolio tax rate entity or portfolio investor proxy.

“(2) A format prescribed under subsection (1) is subject to the conditions specified by the Commissioner, whether generally or in a particular case.”

185 Returns to annual balance date

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

“(1B) A portfolio tax rate entity that does not make payments of tax under section HL 22 of the Income Tax Act 2004 must not make an election under subsection (1).”

186 Non-resident withholding tax deduction certificates and annual reconciliations

(1) In section 49(4B), in the words before paragraph (a), “emigration date” is replaced by “date of the emigration time”.

(2) In section 49(4C)(c), “emigration date” is replaced by “date of the emigration time”.

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

187 Resident withholding tax deduction reconciliation statements

(1) In section 51(5B), “emigration date” is replaced by “emigration time”.

- (2) In section 51(5C)(c), “emigration date” is replaced by “date of the emigration time”.
- (3) Subsections (1) and (2) apply for the 2005–06 and later income years.

188 New section 57B inserted

After section 57, the following is inserted:

“57B Portfolio tax rate entities and portfolio investor proxies to make returns, file annual reconciliation statement

- “(1) A person who is a portfolio tax rate entity or portfolio investor proxy in a tax year and who has not made an election under section HL 22 or HL 23 of the Income Tax Act 2004 for the tax year must perform the responsibilities referred to in subsection (4)—
 - “(a) for a portfolio calculation period in the tax year; and
 - “(b) by the end of the month beginning from the end of the month in which the portfolio calculation period ends.
- “(2) A person who is a portfolio tax rate entity or portfolio investor proxy in a tax year and who has made an election under section HL 22 of the Income Tax Act 2004 for the tax year must perform the responsibilities of a provisional taxpayer under the provisional tax rules.
- “(3) A person who is a portfolio tax rate entity or portfolio investor proxy in a tax year and who has made an election under section HL 23 of the Income Tax Act 2004 for the tax year must perform the responsibilities referred to in subsection (4),—
 - “(a) for an investor with a portfolio investor exit period in the tax year,—
 - “(i) for the portfolio investor exit period; and
 - “(ii) by the end of the month beginning from the end of the month in which the portfolio investor exit period ends; and
 - “(b) for the investors who hold portfolio investor interests at the end of the tax year,—
 - “(i) for the tax year; and
 - “(ii) by the end of the month beginning from the end of the tax year.
- “(4) The responsibilities of a person for each period are to—
 - “(a) file a return in the prescribed form showing—

- “(i) the amount of the portfolio entity tax liability of the person for the period; and
 - “(ii) if the person has not made an election under section HL 22 or HL 23 of the Income Tax Act 2004, the amount of each payment required by section HL 21(5) of that Act for a portfolio investor exit period ending in the period; and
 - “(iii) further information that the Commissioner considers relevant; and
 - “(b) pay an amount of income tax equal to the portfolio entity tax liability of the person for the period.
- “(5) A person who is a portfolio tax rate entity or portfolio investor proxy in a tax year must file for the tax year a return in the prescribed form showing—
- “(a) the income tax paid by the person for the tax year; and
 - “(b) further information that the Commissioner considers relevant.
- “(6) A person required by subsection (5) to file a return must file the return—
- “(a) by 30 June of the calendar year in which the tax year ends, if the person is a portfolio tax rate entity or portfolio investor proxy at the end of the tax year; or
 - “(b) by the end of the second month following the month in which the entity ceases to be a portfolio tax rate entity or portfolio investor proxy, if the person ceases to be a portfolio tax rate entity or portfolio investor proxy in the tax year.”

189 Officers to maintain secrecy

After section 81(4)(mb), the following is inserted:

- “(mc) publishing the name of a company that has given the Commissioner a notice under section EX 33B(1)(b) or (2)(b) of the Income Tax Act 2004.”.

190 Notices of proposed adjustment required to be issued by Commissioner

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

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

- (1) In section 89D(2D), “section 16(3)” is replaced by “section 16(6)”.
- (2) Subsection (1) applies for taxable periods ending on or after 31 March 2007.

192 Determination on economic rate

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

“(b) is—

- “(i) reacquired, after the date on which the new determination is issued, by the person who disposed of it before the date on which the new determination is issued:
- “(ii) an item of property to which section EE 25B, EE 25C, EE 25E, or EZ 21B of the Income Tax Act 2004 applies.”

193 New heading and section 91AAO inserted

After section 91AAN, the following is inserted:

*“Determinations relating to calculation of FIF income
using fair dividend rate method*

“91AAO Determination on type of interest in FIF and use of fair dividend rate method

- “(1) For the purposes of section EX 40 of the Income Tax Act 2004, the Commissioner may determine that a type of financial arrangement or excepted financial arrangement is—
 - “(a) a type of attributing interest in a FIF for which a person may use the fair dividend rate method to calculate FIF income from the interest; or
 - “(b) a type of attributing interest in a FIF for which a person may not use the fair dividend rate method to calculate FIF income from the interest.
- “(2) In making a determination, the Commissioner must take into account the economic relationships created by the arrangement and the principles that—
 - “(a) the fair dividend rate method may be used to calculate FIF income from an arrangement giving an investor an interest in the business profits and losses of a FIF:

- “(b) the fair dividend rate method should not be used to calculate FIF income from an arrangement giving an investor a return that is not dependent on the business profits and losses of a FIF.
- “(3) A determination made by the Commissioner under this section may be made for tax years that are specified in the determination but may not apply to a taxpayer for a date before the date of the determination unless the taxpayer would, in the absence of the determination, be subject to a shortfall penalty relating to the date and a tax position that is affected by the determination.
- “(4) A determination may provide for the extension, limitation, variation, cancellation, or revocation of an earlier determination.
- “(5) A determination made by the Commissioner under this section must be published in the *Gazette* within 30 days of the making of the determination.”

194 Extension of time bars

- (1) In section 108B(2), “A waiver under subsection (1)” is replaced by “An agreement under subsection (1)(a)”.
- (2) After section 108B(2), the following is inserted:
- “(2B) A notice under subsection (1)(b) must be given to the Commissioner before the expiry of the 12-month period referred to in subsection (1)(a).”

195 Definitions

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

- “(f) for unpaid tax, being terminal tax for the tax year in which a taxpayer dies, the due date for the deceased person’s terminal tax, if—
- “(i) each instalment of provisional tax payable by the deceased person for that tax year is paid by the due date under section MB 5 for the instalment; and
- “(ii) the terminal tax payable by the deceased person for that tax year is paid by the due date under section MC 1 for the terminal tax”.

196 Example: Section 120KC

- (1) The example after section 120KC is replaced by the following:

Example: Section 120KC

Mr Yellow, who has a March balance date, decides to change to a May balance date. The transitional year is 14 months long. He starts business on 31 July, estimating provisional tax at \$15,000 for the income year. At the end of the year, Mr Yellow's residual income tax is \$20,000. He is not subject to GST.

2007										2008					
Transitional year															
Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	
			↓ starts business	↓ (no instalment)					↓ first instalment				↓ second instalment	↓ final instalment	

Instalments in transitional year: 28th day of 5th, 9th, and 13th months after balance date, and final instalment on 28th day of month following final month in transitional year (s MB 20(2) and schedule 13, part B Income Tax Act 2004). But first business day falls within 30 days of the date that would be the first instalment, 28 August (s MB 20(4)(a) of that Act), so no instalment is due. The April instalment only is due on 7 May.

Amounts payable on the instalment dates are calculated under s MB 22 of that Act.

First instalment due 15 January: $\$15,000 \times 4/14 = \$4,285$
 Second instalment due 7 May: $\$15,000 \times 8/14 - \$4,285 = \$4,286$
 Final instalment due 28 June: $\$15,000 - \$8,571 = \$6,429$.

Three interest start dates apply: 16 January, 29 April, and 29 June (s 120KD(2)).

First instalment 15 January on RIT: $\$20,000 \times 4/14 = \$5,714$

- interest payable from 16 January on: $(\$5,714 - \$4,285) = \$1,429$

Second instalment 7 May on RIT: $\$20,000 \times 4/14 = \$5,714$

- interest payable from 8 May on: $(\$5,714 - \$4,286) = \$1,428$

Final instalment 28 June on RIT: $\$20,000 - (\$5,714 + \$5,714) = \$8,572$

- interest payable from 29 June on RIT: $(\$8,572 - \$6,429) = \$2,143$.

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

197 Example: Section 120KD

(1) The example after section 120KD is replaced by the following:

Example: Section 120KD

Dr Beige starts the income year (March balance date) using a GST ratio to determine the amount of provisional tax payable. He makes payments in June and August. On 10 September 2007, Dr Beige decides to change his determination method. He must then estimate his residual income tax for the income year (s MB 17(5) Income Tax Act 2004), and pay 2 instalments under the estimation method on instalment dates D and F (s MB 6(5) of that Act). Dr Beige provides a return for the income year that shows residual income tax of \$30,000.

Four interest start dates apply:

- for credit interest, the interest start date is 11 September 2007 (s 120KE(6)):
- for debit interest, the interest start dates are:
 - 11 September for unpaid instalments under the GST ratio method (s 120KE(7))
 - 16 January 2008 for unpaid instalments under estimation method (s 120C(1)(a)(i)(A))
 - 8 May 2008 for unpaid instalments under estimation method (s 120C(1)(a)(i)(A)).

2007									2008				
Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May
		↓		↓	↓				↓				↓
Ratio		\$2,000		\$2,500									
payments													
		← Changes determination method on 10 September →											
Estimates provisional tax for year of \$10,500													
Estimation instalments									\$3,000				\$3,000
Files return for year and RIT is \$30,000													
Balance is \$25,500 (\$30,000 - \$4,500)													
Estimation instalments: interest calculated on unpaid tax of:													
on 16 Jan 2008 on \$9,750 (\$12,750 - \$3,000) (s 120C(2)(b))													
on 8 May 2008 on \$9,750 (\$12,750 - \$3,000) (s 120C(2)(b)).													

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

198 Late filing penalties

After section 139A(2)(a)(iii), the following is inserted:

“(iib) a return required to be furnished under section 57B:”.

199 Non-electronic filing penalty

- (1) After section 139AA(1)(a), the following is inserted:

“(ab) a portfolio investment entity; and”.

- (2) Section 139AA(2) is replaced by the following:

“(2) A person who is an employer, a portfolio investment entity, a portfolio investor proxy, or a PAYE intermediary is liable to a non-electronic filing penalty if the person furnishes a return required to be in electronic format in a format that is not prescribed.”

Part 3

Amendments to other Acts and regulations

Income Tax Act 1994

200 Income Tax Act 1994

Sections 201 to 208 amend the Income Tax Act 1994.

201 What constitutes an interest in a foreign investment fund

- (1) After section CG 15(2)(c), the following is inserted:

“(cb) if the person is a natural person and, at the time, the FIF is a foreign superannuation scheme, constituted in Australia, that is—

“(i) an approved deposit fund as defined in section 10 of the Superannuation Industry (Supervision) Act 1993 (Aust):

“(ii) an exempt public sector superannuation scheme as defined in section 10 of the Superannuation Industry (Supervision) Act 1993 (Aust):

“(iii) a regulated superannuation fund as defined in section 19 of the Superannuation Industry (Supervision) Act 1993 (Aust):

- “(iv) a retirement savings account as defined in section 8 of the Retirement Savings Accounts Act 1997 (Aust); or”.
- (2) Subsection (1) applies for tax on income derived by a person in—
- (a) the 1994–95 income year, if the corresponding accounting year for the person ends on or after 1 April 1995:
 - (b) the 1995–96 and later income years.

202 New section CZ 7 added

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

“CZ 7 Geothermal wells between 31 March 2003 and 17 May 2006

- “(1) This section applies to a taxpayer’s geothermal well, if—
- “(a) the well is—
 - “(i) both started and completed between 31 March 2003 and 17 May 2006:
 - “(ii) acquired between 31 March 2003 and 17 May 2006; and
 - “(b) the taxpayer—
 - “(i) uses the well, or has the well available for use, after the end of the well’s geothermal energy proving period, in deriving gross income or carrying on a business for the purpose of deriving gross income:
 - “(ii) disposes of the well.
- “(2) The taxpayer’s gross income, for the first income year in which this section applies, includes an amount equal to,—
- “(a) if subsection (1)(b)(i) applies, the amount of a deduction that the taxpayer is allowed for the well under section DZ 7 for any income year; or
 - “(b) if subsection (1)(b)(ii) applies, the lesser of—
 - “(i) the amount derived from disposing of the well; and
 - “(ii) the amount of a deduction that the taxpayer is allowed for the well under section DZ 7 for any income year.”
- (2) Subsection (1) applies for the 2003–04 and later income years.

203 Expenditure to prevent or combat pollution of environment

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

204 New section DZ 7 added

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

“DZ 7 Geothermal wells between 31 March 2003 and 17 May 2006

- “(1) This section applies to a taxpayer’s geothermal well, if—
- “(a) the well’s geothermal energy proving period ends between 31 March 2003 and 17 May 2006; and
 - “(b) the well is—
 - “(i) both started and completed between 31 March 2003 and 17 May 2006;
 - “(ii) acquired between 31 March 2003 and 17 May 2006; and
 - “(c) a deduction for expenditure on the well is not allowed under any provision except this one.
- “(2) The taxpayer is allowed a deduction, for the income year in which the well’s geothermal energy proving period ends, for expenditure incurred on the well.”
- (2) Subsection (1) applies for the 2003–04 and later income years.

205 Distributions by Maori authority

- (1) In section HI 4(3), “ME 5” is replaced by “ME 35”.
- (2) Subsection (1) applies for the 2004–05 and later income years.

206 Limit on refunds and allocations of tax

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

207 Definitions

- (1) This section amends section OB 1.
- (2) In the definition of **eligible company**,—
- (a) in the words before paragraph (a), “, and is either incorporated in New Zealand or carrying on a business in New Zealand through a fixed establishment,” is inserted after “New Zealand”;
 - (b) in paragraph (c), “company:” is replaced by “company; or”, and the following is added:
 - “(d) by the law of another country or territory, liable to income tax in that country or territory by reason of domicile, residence, or place of incorporation”.

- (3) After the definition of **geophysical prospecting**, the following is inserted:
- “**geothermal energy proving period** means, for a taxpayer’s geothermal well that is not used for exploiting geothermal energy, a period—
- “(a) starting with the completion or acquisition of the well; and
 - “(b) excluding the case of the taxpayer disposing of the well to another person, ending when the well, for the foreseeable future, is not intended, and cannot reasonably be expected, to be used or available for use in—
 - “(i) deriving gross income:
 - “(ii) carrying on a business for the purpose of deriving gross income
- “**geothermal well** means a bore or well solely for the purpose of investigating or exploiting geothermal energy in New Zealand”.
- (4) The definition of **specified lease** is replaced by the following:
- “**specified lease** means a lease of a lease asset if—
- “(a) the lease is entered in the period starting on 6 August 1982 and ending on 19 May 1999 and the lease has a guaranteed residual value, or has a lease term that is more than 36 consecutive months, or has a lease term that is the economic life of the asset because the Commissioner considers that the asset has an economic life of less than 36 months, and—
 - “(i) the lessee becomes the owner of the lease asset at the end of the term of the lease:
 - “(ii) the lessee has the option to purchase the lease asset at the end of the term of the lease at a price that the Commissioner considers will be significantly lower than the market value of the lease asset at the end of the lease term:
 - “(iii) the total of all lease payments and the guaranteed residual value is more than or equal to, or to a small extent less than, the cost price of the lease asset:

- “(iv) the lessor and the lessee agree that the lessee is liable for the payment of all, or nearly all, expenditure incurred for the costs of repair and maintenance and any other incidental costs arising during the lease term for the use of the lease asset:
 - “(b) the lease is entered in the period starting on 6 August 1982 and ending on 19 May 1999 and the lessee acquires ownership of the asset by any means, whether from the lessor or another person:
 - “(c) the lease is entered in the period starting on 28 October 1983 and ending on 19 May 1999 and—
 - “(i) a person other than the lessee acquires the lease asset; and
 - “(ii) the lessee and the person who acquires the lease asset are associated”.
- (5) Subsection (2) applies for a person for the 1997–98 and later income years, unless the person is, for the relevant income year, a member of a consolidated group under the law that would apply in the absence of this Act.
- (6) If subsection (2) does not apply for a person for an income year because of subsection (5), the definition of eligible company that would apply if subsection (2) did not come into force applies for the person for the income year.
- (7) Subsection (3) applies for the 2003–04 and later income years.

208 Modifications to voting and market value interests for application of continuity provisions to reverse takeover

- (1) In section OD 5AA(2)(e), “are treated under section OD 5(6)(b) as being held by the persons” is replaced by “are held by 1 or more persons”.
- (2) In section OD 5AA(2)(f),—
 - (a) in subparagraph (i), “that the initial owners hold” is inserted after “initial parent”:
 - (b) in subparagraph (ii), “held the total ownership” is replaced by “held the ownership”.
- (3) Subsections (1) and (2) apply for the 1998–99 and later income years.

*Income Tax Act 1976***209 What constitutes an interest in a foreign investment fund**

- (1) After section 245RA(2)(c) of the Income Tax Act 1976, the following is inserted:
- “(cb) if the person is a natural person and, at the time, the FIF is a foreign superannuation scheme, constituted in Australia, that is—
- “(i) an approved deposit fund as defined in section 10 of the Superannuation Industry (Supervision) Act 1993 (Aust):
 - “(ii) an exempt public sector superannuation scheme as defined in section 10 of the Superannuation Industry (Supervision) Act 1993 (Aust):
 - “(iii) a regulated superannuation fund as defined in section 19 of the Superannuation Industry (Supervision) Act 1993 (Aust); or”.
- (2) Subsection (1) applies to tax on income derived in—
- (a) the 1993–94 income year, for a taxpayer whose corresponding non-standard accounting year ends after 30 November 1993:
 - (b) the 1994–95 income years, for a taxpayer whose corresponding non-standard accounting year ends before 1 April 1995.

*Goods and Services Tax Act 1985***210 Goods and Services Tax Act 1985**

Sections 211 to 218 amend the Goods and Services Tax Act 1985.

211 Meaning of associated persons

In section 2A(1),—

- (a) paragraph (c)(iv) is repealed:
- (b) after paragraph (c), the following is inserted:

“(cb) a trustee of a trust and another person (**person A**), if—

 - “(i) person A is associated with another person (the **relative**) under paragraph (c); and

“(ii) the relative is associated with the trustee under paragraph (f):”.

212 Meaning of term financial services

In section 3(1)(l), “thereon.” is replaced by “thereon:” and the following is added:

“(m) the investment in an entity, if—

“(i) the investment is in an equity security equal to or greater than 10% of all equity securities issued by the entity or in a participatory security equal to or greater than 10% of all participatory securities issued by the entity; and

“(ii) the investment allows the investor, or a person acting on behalf of the investor, to influence the management of the business of the entity:

“(n) the evaluation by an investor of an investment referred to in paragraph (m) in an entity and the planning or acting by the investor to influence the management of an entity for the principal purpose of preserving or increasing the value of such an investment.”

213 Value of supply of goods and services

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

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

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

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

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

214 Changes in taxable periods

(1) After section 15C(3), the following is inserted:

- “(3B) A person to whom section 15(1)(a) or (b) applies may apply to the Commissioner, in a way acceptable to the Commissioner, to change the person’s taxable period to a 1-month period.
- “(3C) A person to whom section 15(1)(c) applies may apply to the Commissioner, in a way acceptable to the Commissioner, to change the person’s taxable period to a 2-month period, unless section 15(4) applies.”
- (2) Subsection (1) applies for a registered person for—
- (a) a taxable period that begins on or after the beginning of the registered person’s income year corresponding to the 2008–09 tax year, if the registered person derives assessable income in that income year:
 - (b) a taxable period that begins on or after 1 April 2008, if paragraph (a) does not apply.

215 When change in taxable period takes effect

- (1) In section 15D(1)(a), “15B(5)(b), or 15C(1) or (2)” is replaced by “15B(5)(b) or 15C”.
- (2) Subsection (1) applies for a registered person for—
- (a) a taxable period that begins on or after the beginning of the registered person’s income year corresponding to the 2008–09 tax year, if the registered person derives assessable income in that income year:
 - (b) a taxable period that begins on or after 1 April 2008, if paragraph (a) does not apply.

216 Taxable period returns

- (1) Section 16(2)(a) and (b) is replaced by the following:
- “(a) the 28th of the month following the end of the taxable period, if paragraph (b) or (c) do not apply; or
 - “(b) the 15th day of January, if the month following the end of the taxable period is December; or
 - “(c) the 7th day of May, if the month following the end of the taxable period is April.”
- (2) Section 16(5)(a) and (b) is replaced by the following:
- “(a) the 28th of the month following the end of the taxable period, if paragraph (b) or (c) do not apply; or
 - “(b) the 15th day of January, if the month following the end of the taxable period is December; or

“(c) the 7th day of May, if the month following the end of the taxable period is April.”

- (3) Subsections (1) and (2) apply for taxable periods ending on or after 31 March 2007.

217 Election that sections 11A(1)(q) and (r) and 20C apply

In section 20F(1), “registered person” is replaced in both places it appears by “person”.

218 Group of companies

- (1) Section 55(1) is replaced by the following:

“(1) For the purposes of this Act, 2 or more companies (the **companies**) are eligible to be members of a group of companies at a time, if the companies are a group of companies, or are part of a group of companies, under section IG 1 of the Income Tax Act 1994 at that time, and—

“(a) each of the companies is a registered person:

“(b) the total value of taxable supplies made by the companies, in any 12-month period which includes that time, to persons other than the companies, is at least 75% of the total value of supplies made by the companies to persons other than the companies in that period.”

- (2) In section 55(1), as inserted by subsection (1), “Income Tax Act 1994” is replaced by “Income Tax Act 2004”.

- (3) Section 55(3) is replaced by the following:

“(3) In any application made under subsection (2) of this section by 2 or more companies—

“(a) one of the companies shall be nominated to be the representative member; and

“(b) the company nominated under paragraph (a) must be a registered person.”

- (4) In section 55(4),—

(a) in paragraph (d), “section,—” is replaced by “section.”;

(b) the words after paragraph (d) are omitted.

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

- “(4AA) The Commissioner shall grant an application made under subsection (4) of this section from—
- “(a) the beginning of such taxable period as is determined by the Commissioner, unless paragraph (b) applies; or
 - “(b) the beginning of the taxable period in which the relevant company is first eligible, under subsection (1)(b) of this section, to be a member of the group of companies, if the application is made under subsection (4)(a) of this section.”
- (6) In section 55(4), as amended by subsection (4),—
- (a) in paragraph (d), “section.” is replaced by “section,—”:
 - (b) after paragraph (d), the following is inserted:
“and the Commissioner shall grant the application from the beginning of such taxable period as is determined by the Commissioner.”
- (7) Section 55(4AA), as inserted by subsection (5), is repealed.

Companies Act 1993

219 Dividends

In section 53(2) of the Companies Act 1993, “or is required, for a portfolio tax rate entity, by section HL 8 of the Income Tax Act 2004” is added.

KiwiSaver Act 2006

220 KiwiSaver Act 2006

Sections 221 to 227 amend the KiwiSaver Act 2006.

221 Interpretation

In section 4(1), after the definition of **Commissioner**, the following is inserted:

“**complying superannuation fund** has the same meaning as in section OB 1 of the Income Tax Act 2004”.

222 Heading to Part 2, subpart 3

In the heading to Part 2, subpart 3, “KiwiSaver schemes” is replaced by “KiwiSaver schemes and between complying superannuation fund and KiwiSaver scheme”.

223 Application

Section 54 is replaced by the following:

“54 Application

- “(1) Sections 55 and 56 apply if a person wishes to transfer KiwiSaver schemes or to transfer from a complying superannuation fund to a KiwiSaver scheme (a **voluntary transfer**).
- “(2) Sections 57 to 59 apply if a person has to transfer KiwiSaver schemes or to transfer from a complying superannuation fund to a KiwiSaver scheme (an **involuntary transfer**). An example of an involuntary transfer may be where a person ceases to be eligible to be a member of their current KiwiSaver scheme, or their complying superannuation fund.”

224 People may transfer between KiwiSaver schemes

- (1) In the heading to section 55, “**KiwiSaver schemes**” is replaced by “**KiwiSaver schemes and between complying superannuation fund and KiwiSaver scheme**”.
- (2) In section 55(1), “one KiwiSaver scheme (an **old scheme**) to another KiwiSaver scheme” is replaced by “a KiwiSaver scheme or a complying superannuation fund (an **old scheme**) to a new KiwiSaver scheme”.

225 Notification of transfers and requirement to transfer funds and information

In section 56(3)(c)(i), “KiwiSaver scheme” is replaced by “KiwiSaver scheme, if the old scheme is a KiwiSaver scheme”.

226 Involuntary transfers

In section 57(1),—

- (a) in the words before the paragraphs, “transfer KiwiSaver schemes” is replaced by “transfer KiwiSaver schemes or from a complying superannuation fund to a KiwiSaver scheme”;
- (b) in paragraph (c), “section 210(2).” is replaced by “section 210(2); or”;
- (c) the following is added:
- “(d) the Commissioner has received notice in accordance with paragraph (h) of the definition of complying fund rules in section OB 1 of the Income Tax Act 2004.”

227 Schedule 1—KiwiSaver scheme rules

In schedule 1, clause 4(2),—

- (a) in paragraph (b), “years.” is replaced by “years; or”:
- (b) the following is added:
- “(c) the date on which the member has been a member of a complying superannuation fund (or of a complying superannuation fund and a KiwiSaver scheme) for 5 years.”

Public Trust Act 2001**228 Public Trust Act 2001**

Sections 229 and 230 amend the Public Trust Act 2001.

229 Interpretation

In section 4, after the definition of **owner**, the following is inserted:

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

230 New section 72B inserted

After section 72, the following is inserted:

“72B Powers to adjust interest in trust property of Fund that is portfolio investment entity

Where any investments and funds comprising a Group Investment Fund are employed in an activity that Public Trust is empowered or authorised to carry on as a portfolio investment entity, Public Trust may adjust the interests of the beneficiaries in the investments and funds in the way required by section HL 7 of the Income Tax Act 2004 despite any other provision in this Act.”

Securities Act 1978**231 Securities Act 1978**

Sections 232 and 233 amend the Securities Act 1978.

232 Interpretation

In section 2, after the definition of **person**, the following is inserted:

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

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

233 Exemptions from this Act

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

“(4A) Nothing in sections 33, 37, and 37A(1)(a) of this Act shall apply in respect of an adjustment under section HL 7(3) of the Income Tax Act 2004 of the portfolio investor interest of an investor by a portfolio investment entity.

“(4B) The exemption in subsection (4A) does not apply if the portfolio investment entity has under section HL 7(4) of the Income Tax Act 2004 offered the investor a choice of the method of adjustment.”

Superannuation Schemes Act 1989**234 Superannuation Schemes Act 1989**

Sections 235 to 238 amend the Superannuation Schemes Act 1989.

235 Interpretation

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

“**complying fund rules** means complying fund rules, as defined in section OB 1 of the Income Tax Act 2004”.

236 Disclosure of information to Government Actuary

In section 18A(2),—

(a) in paragraph (b), “inadequate.” is replaced by “inadequate; or”:

(b) the following is added:

“(c) for a registered scheme approved as a complying superannuation fund for the purposes of the Income Tax Act

2004, the registered scheme no longer meets the requirements in section 35(1)(a) to (c).”

237 New sections 34 to 36 added

The following is added to Part 2:

“34 Complying superannuation funds

“(1) A person may apply to the Government Actuary for approval of a registered scheme as a complying superannuation fund for the purposes of the Income Tax Act 2004.

“(2) The application must be accompanied by all information relevant to the Government Actuary dealing with the application under section 35.

“35 Dealing with applications for complying superannuation funds

“(1) The Government Actuary must complete consideration of whether or not the relevant registered scheme is approved as a complying superannuation fund, within 28 days after receiving an application from a person under section 34 and the relevant information required to accompany the application. The Government Actuary must approve a registered scheme if—

“(a) the registered scheme and any relevant participation agreement evidence rules that subject relevant contributions to complying fund rules; and

“(b) the registered scheme is a defined contribution scheme, as defined in section 4(1) of the KiwiSaver Act 2006; and

“(c) the registered scheme has at least 20 members, treating all interests in the registered scheme or account held by persons associated under section OD 8(3) of the Income Tax Act 2004 as being held by 1 person; and

“(d) the registered scheme is registered on or before 1 July 2007; and

“(e) any relevant participation agreement is entered into on or before 1 July 2007.

“(2) The Government Actuary must notify the person whether or not the relevant registered scheme is approved as a complying superannuation fund for the purposes of the Income Tax Act

2004 as soon as practicable after completing consideration under subsection (1).

- “(3) If the relevant registered scheme is approved as a complying superannuation fund for the purposes of the Income Tax Act 2004, the Government Actuary must notify the Commissioner of Inland Revenue of that approval, at the same time as giving notice under subsection (2).
- “(4) Approval notified under subsections (2) and (3) is effective on and after the date the Government Actuary must complete consideration under subsection (1), or earlier, if consideration is completed earlier. The notices must contain the date on and after which approval is effective, under this subsection.

“36 Revocation of approval

- “(1) If the Government Actuary has reasonable cause to believe that a registered scheme that is approved as a complying superannuation fund no longer meets the requirements in section 35(1)(a) to (c), or has failed to specify in an annual report the information required by schedule 2, item (o), the Government Actuary may revoke that approval immediately.
- “(2) The Government Actuary must, as soon as practicable after revoking approval under subsection (1), notify that revocation to—
- “(a) the registered scheme; and
 - “(b) the person that originally applied for approval under section 34; and
 - “(c) the Commissioner of Inland Revenue.
- “(3) Revocation notified under subsection (2) is effective on and after the date the Government Actuary revokes approval under subsection (1). The notices must contain the date on and after which approval is revoked, under this subsection.
- “(4) A registered scheme that is notified that approval is revoked must immediately notify that revocation to each member who may be affected, and to their employers. At the same time, the registered scheme must notify the Commissioner of each member who may be affected, and of their employers.”

238 Schedule 2—Matters to be specified in annual report

In schedule 2, item (n), “1978.” is replaced by “1978:”, and the following is added:

- “(o) If the registered scheme is a complying superannuation fund for the purposes of the Income Tax Act 2004,—
- “(i) the market value of assets subject to complying fund rules; and
 - “(ii) the number of members to which the assets relate; and
 - “(iii) the value of withdrawals subject to complying fund rules.”

Trustee Act 1956

239 Trustee Act 1956

Sections 240 and 241 amend the Trustee Act 1956.

240 Interpretation and application

In section 2, after the definition of **possession**, the following is inserted:

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

241 New heading and new section 42E inserted

After section 42D, the following is inserted:

“Special powers in respect of portfolio investment entities

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

Where any property is employed in an activity that the trustee is empowered or authorised to carry on as a portfolio investment entity, the trustee may adjust the interests of the beneficiaries in the property in the way required by section HL 7 of the Income Tax Act 2004 despite any other provision in this Act, in the Superannuation Schemes Act 1989, or in any instrument creating the trust under which the property is held.”

*Trustee Companies Act 1967***242 Trustee Companies Act 1967**

Sections 243 and 244 amend the Trustee Companies Act 1967.

243 Interpretation

In section 2, after the definition of **person**, the following is inserted:

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

244 New section 33B inserted

After section 33, the following is inserted:

“33B Powers of trustee company or manager to adjust interest in trust property of Fund that is portfolio investment entity

Where any investments and funds comprising a Group Investment Fund are employed in an activity that the trustee company is empowered or authorised to carry on as a portfolio investment entity, the trustee company or the manager of the Fund may adjust the interests of the beneficiaries in the property in the way required by section HL 7 of the Income Tax Act 2004 despite any other provision in this Act or in any instrument creating the trust under which the investments and funds are held.”

*Unit Trusts Act 1960***245 Unit Trusts Act 1960**

Sections 246 and 247 amend the Unit Trusts Act 1960.

246 Interpretation

In section 2, after the definition of **nominee**, the following is inserted:

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

247 New section 12A inserted

After section 12, the following is inserted:

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

“(1) The provision in subsection (2) shall be implied in every trust deed relating to a unit trust for which the trustee is a portfolio investment entity, notwithstanding anything to the contrary in the deed.

“(2) Where any money, investments or other property of the unit trust is employed in an activity carried on as a portfolio investment entity, the manager may adjust the interests in the unit trust of the beneficiaries in the way required by section HL 7 of the Income Tax Act 2004.”

Tax Administration (Form of Warrant) Regulations 2003**248 Tax Administration (Form of Warrant) Regulations 2003**

Sections 249 to 251 amend the Tax Administration (Form of Warrant) Regulations 2003.

249 Warrant to enter private dwelling

In regulation 4, “the Schedule” is replaced by “schedule 1”.

250 New regulation 4B

After regulation 4, the following is inserted:

“4B Warrant to remove and retain books or documents

A warrant issued under section 16C of the Tax Administration Act 1994 must be in the form set out in schedule 2.”

251 New schedule 2 inserted

After the schedule, schedule 2 in the schedule of this Act is added.

s 251

Schedule
New Schedule 2 inserted in principal regulations

r 4B

Schedule 2
Form of warrant

Warrant to remove and retain books or documents

Section 16C(2), Tax Administration Act 1994

- 1 **To** every officer of the Inland Revenue Department (**you**) authorised by the Commissioner of Inland Revenue under sections 16 and 16C of the Tax Administration Act 1994 (*or To [full name], officer of the Inland Revenue Department (you) authorised by the Commissioner of Inland Revenue under sections 16 and 16C of the Tax Administration Act 1994*).
- 2 I am satisfied, on written application made on oath by [*full name*], that there are reasonable grounds for believing that the exercise by you of your inspection functions under section 16 of the Tax Administration Act 1994 requires removing books or documents from a place, namely [*location*], and retaining them for a full and complete inspection.
- 3 You have the powers to obtain information given by section 16 of the Tax Administration Act 1994 and under this warrant you have the powers to remove and retain documents and books given by section 16C of that Act.
- 4 Other persons whom you consider necessary for the effective exercise of your inspection functions may (*or may not*) accompany you.
- 5 This warrant is valid from [*date of issue*] and expires on [*date of expiry that is 1 month or less from the date of issue*].

Dated at this day of 20...

District Court Judge

(*or Justice of the Peace*

or Community Magistrate

or Registrar (who is not an officer or an employee of the Inland Revenue Department))

Legislative history

12 December 2006

Divided from Taxation (Annual Rates, Savings
Investment, and Miscellaneous Provisions) Bill
(Bill 48–2), third reading
