

# **Taxation (Annual Rates, Savings Investment, and Miscellaneous Provisions) Bill**

Government Bill

As reported from the Finance and Expenditure  
Committee

## **Commentary**

### **Recommendation**

The Finance and Expenditure Committee has examined the Taxation (Annual Rates, Savings Investment, and Miscellaneous Provisions) Bill and recommends that it be passed, by majority, with the amendments shown.

### **Overview**

The bill sets the income tax rates that are to apply for the 2006–07 tax year. It also contains several new tax policy initiatives to reform the rules governing the taxation of investment income. The bill amends the following legislation:

- Income Tax Act 2004
- Taxation Administration Act 1994
- Income Tax Act 1994
- Income Tax Act 1976
- Goods and Services Tax Act 1985
- Companies Act 1993
- Public Trust Act 2001
- Trustee Act 1956
- Trustee Companies Act 1967

- Securities Act 1978
- Unit Trusts Act 1960
- Tax Administration (Form of Warrant) Regulations 2003.

### **Supplementary order papers**

In addition to these measures, the Minister of Revenue invited the committee to consider Supplementary Order Papers 44 and 45 to the bill. We agreed to consider the two supplementary order papers alongside the main bill.

The first measure concerns a previously announced change to the proposed rules for taxing offshore share investment. It would allow individual investors in widely-held foreign companies that have a substantial New Zealand shareholder base a five-year exemption from the proposed rules once they are enacted. This would allow companies time to consider shifting their headquarters to New Zealand. The exemption is limited to investment in companies that meet certain criteria.

The second measure amends the application date on which changes in the bill relating to consolidated groups apply.

The third measure is a change to the Goods and Services Tax grouping rules to allow a company to be regarded as a single entity for GST purposes, even if a member of the group is not registered for GST. This is consistent with the principle that business-to-business transactions should generally be tax-neutral unless they involve tax-exempt transactions or entities.

### **Technical amendments**

The bill also proposes a raft of technical amendments, on which we make no comment in this report. Officials advised that tax practitioners and Inland Revenue Department field staff frequently propose such amendments having recognised the need for them in the course of applying tax legislation. It is considered sound practice to rectify such matters promptly, using the first available legislative vehicle such as remedial tax bills like this one.

A second group of amendments relating to the rewrite of the Income Tax Act project respond to unintended effects discovered by taxpayers and by the Rewrite Advisory Panel. There are a small number in this bill.

The rest of the commentary addresses the issues we considered.

### **New tax rules for offshore portfolio investment in shares**

The bill, as introduced, proposed to change the tax rules for investments of less than 10 percent in foreign companies. The objective of these changes was to tax portfolio investments in offshore companies more consistently, regardless of whether the investment was made through a managed fund, or made directly, and regardless of where the investment was located. It was also considered important that offshore tax rules should not bias investment away from New Zealand.

The original proposals suggested taxing offshore portfolio share investments on 85 percent of any gain in value, with this limited to 5 percent of the opening value (with any excess gain being carried forward) for individuals. We received thousands of submissions opposing the proposals on the basis that they would introduce a capital gains tax and were excessively complex.

In response to these concerns, and suggestions from a number of submitters that a deemed rate of return be considered, the Minister of Revenue and the acting Minister of Finance wrote to us stating their support if the committee were to recommend that offshore share investments be taxed using a fair dividend rate methodology. The fair dividend rate method was considered preferable to the bill's proposals, on the grounds of simplicity and fairness, as it would tax something approximating a reasonable dividend yield rather than targeting capital gains.

We released an interim report outlining the fair dividend rate proposal and invited comment from stakeholders representing individual investors, financial advisors, managed funds and tax and legal professionals.

Most of the submitters on this new proposal stated a first preference for the current offshore tax rules to remain, with certain modifications such as expansion of the grey list. In addition some submitters suggested an extension of capital account treatment for managed funds. Submitters did, however, acknowledge that the fair dividend rate was preferable to the proposals currently in the bill. Submitters on the fair dividend rate proposal raised two key policy issues.

The first issue was the level at which the fair dividend rate was set. Submitters did not support the proposed 5 percent rate, arguing that a lower fixed rate of between 3 and 4 percent should apply, as this was more representative of average offshore dividend yields.

The second major concern of submitters was that the proposal did not align the treatment of direct offshore investment with that of offshore investment via a New Zealand managed fund. Investments via a New Zealand managed fund would be taxed on a fixed 5 percent fair dividend rate, while direct investment would get the benefit of a variable 5 percent rate with a lower rate or no tax being payable depending on actual returns. Submitters were concerned that the difference in treatment could result in New Zealanders investing in offshore-managed funds in preference to New Zealand managed funds. They proposed a reduction in the 5 percent fair dividend rate as a means of aligning the two tax treatments.

#### **Level of fair dividend rate**

After due consideration, we decided that a 5 percent fair dividend rate is appropriate. Officials advise that this rate broadly approximates the dividend yield on Australasian equities. Unlike New Zealand and Australia, which have dividend imputation systems, many other countries have tax systems that discourage dividend payment. We understand that a lower fair dividend rate based on average offshore dividend yields is not appropriate, as the low average offshore dividend rate is the problem and so should not be part of the solution.

#### **Alignment of offshore investments**

We were advised by officials that the concerns raised by submitters that New Zealand managed funds would be put at a competitive disadvantage compared to offshore funds are significantly overstated and do not take into account several factors:

- The bill removes the current major tax disadvantages to New Zealand funds—full tax on capital gains and over-taxation of low-rate investors. Investors in actively managed funds who invest offshore would be significantly better off under the fair dividend rate than under the current rules.
- The proposals cap the tax rate on fund investors at 33 percent, versus 39 percent for direct investors.
- The social assistance entitlements of managed fund investors will not be affected
- Managed funds will now be exempt on Australasian share gains, whereas individual share traders will continue to be taxed on such gains.

- Managed fund investors will also receive the benefit of the specified superannuation contribution withholding tax (SSCWT) exemption for employer contributions to KiwiSaver.

Given that the tax disadvantages faced by New Zealand managed funds are reducing, we understand that it is unlikely that investors would abandon New Zealand-based funds in favour of direct investment in offshore managed funds. We therefore do not consider a fixed 5 percent fair dividend rate to be a significant disincentive for investing via New Zealand managed funds.

### **Fair dividend rate method**

To replace the market value and smoothed market value methods proposed in the bill as introduced, the majority of us propose amendments to provide for using a fair dividend rate method for taxing offshore portfolio shareholdings. The majority of us recommend that such a fair dividend rate should

- tax 5 percent of the market value of offshore shares held at the start of an income year
- apply to portfolio investments only in offshore shares—interests of less than 10 percent in foreign companies—that have market values, with the current foreign investment fund rules continuing to apply to interests of 10 percent or more
- work on a pooled approach, rather than on an investment-by-investment approach to assets that qualify
- ignore purchases and sales of shares during a year (except where the shares are bought and sold in the same year)
- not tax dividends separately
- offset tax from any tax paid in overseas jurisdictions, or advise dividends received.

For individual investors and family trusts, the majority recommend a variation to the fair dividend rate method to provide that where investors can show that their total return on all their offshore shares that qualify for the fair dividend rate is less than 5 percent of the opening market value they will be taxed on the actual return. If the total return for the year is negative, no tax will be payable.

The variation outlined above would not apply to New Zealand managed funds, including portfolio investment entities, and non-natural persons, other than family trusts. The majority understand this would mean that tax would be payable on a fixed 5 percent return irrespective of how investments perform. The 5 percent fair dividend rate would apply to the average value of the entity's offshore portfolio share investments for the year.

#### **Offshore investments for which fair dividend rate would not apply**

The majority of us do not consider that the fair dividend rate method should apply in the case of certain offshore portfolio share investments that effectively offer New Zealand investors "guaranteed returns" in excess of the fair dividend rate. For example, a portfolio investment in a company resident in a low-tax jurisdiction that invests in high-yield debt or other guaranteed return instruments (with rates of return greater than 5 percent) would be taxable on a maximum return of 5 percent under the fair dividend rate; whereas if they had invested directly in these instruments they would be taxable on the full return. The fair dividend rate should therefore not apply to such investments.

#### **Rule for "quick sales" of shares**

The majority of us consider that a rule is needed to tax shares that are bought and sold within the same income year, that is, shares that are purchased after 1 April and sold before the following 31 March. These are described in the proposed fair dividend rate amendment as "quick sales". Shares that are bought and sold within an income year would otherwise escape tax under a fair dividend rate method, as they would not be reflected in the value of shares held at the start of either year.

The majority of us therefore recommend that shares bought and sold in the same income year, be taxed under the fair dividend rate method on the lesser of 5 percent of the average cost of offshore shares purchased during a year and sold before the end of that year, or the actual return on "quick sales". This should address concerns raised by submitters about the potential for over-taxation under the quick sale rules. We understand that averaging the cost is necessary as different parcels of shares may be purchased during the year at different prices. Taking the average cost of all such share parcels

purchased in a year should be easier than requiring investors to track the cost of each share that is subsequently sold.

The majority of us also recommend rules to deal with situations where an investor buys and sells shares during an income year and there is a share split between when the shares were purchased and when they were sold—described as a “share reorganisation”.

### **Treatment of portfolio investments for which market values are not available**

The majority of us consider that a cost-based method should be available for offshore portfolio investments for which it is not possible or practical to obtain market values (and for which the fair dividend rate method would therefore not be practical). The method we recommend would tax 5 percent of the cost of a person’s investments, with the cost base increased by 5 percent each year to proxy for the increasing value of the investment. We understand that this cost-based method could apply to types of investments including interests in unlisted foreign companies and non-exempt interests in foreign superannuation schemes and foreign life insurance policies.

The majority consider that investors should have the ability to obtain a revaluation every five years under the cost method. This should allow investors to reduce their cost base if these investments have made a loss.

### **\$50,000 de minimis exemption**

The majority of us recommend that the NZ\$50,000 threshold for application of the new offshore tax rules to individual investors remain. We intend that investments below the NZ\$50,000 threshold should continue to be taxed as at present.

We considered the view of a number of submitters that the \$50,000 de minimis threshold should be removed for the sake of simplicity; or that it could be made elective, allowing taxpayers to waive the de minimis on a once-and-for-all basis; or that it be increased and extended to family trusts that meet certain criteria.

We understand that the \$50,000 threshold for individual direct investments in offshore companies (outside Australia and New Zealand) is intended to limit the application of more complex tax rules to individuals with moderate to large offshore share portfolios. Officials advise that the threshold represents a trade-off between

accuracy and simplicity for individual investors with small amounts invested offshore, and recognises that any additional accuracy gained from imposing more complex tax rules is likely to be more than offset by the compliance costs involved. Under the exemption, individuals would generally pay tax on dividends only, if the total cost of their offshore investments were NZ\$50,000 or less.

While the fair dividend rate method will be simpler for individuals to apply than the market value and smoothed market value methods proposed initially in the bill, on balance, the majority of us consider that the \$50,000 threshold should be retained, as it should be simpler for smaller investors to understand and the tax difference is not likely to be significant given the size of the portfolios involved.

### **Exemption for investments in Australian resident listed companies**

The majority support the retention of the proposed exemption for investments in Australian resident listed companies. In response to issues raised by submitters the majority of us have recommended some technical amendments. Investments in these companies by individuals and other non-portfolio investment entity investors will, however, continue to be taxable as at present and investment in Australian resident listed companies by portfolio investment entities will be taxable only on dividends.

We considered the request of some submitters that the exemption for investments in Australian resident listed companies be removed from the bill or at the least made elective. Some also commented that if the Australian exemption was retained, it should include interests in listed Australian unit trusts and shares in unlisted widely held Australian companies acquired through employee share purchase schemes.

While we saw the merits of removing the exemption for Australian resident listed companies or at least making it elective, we decided to retain it, as moving from a regime that explicitly taxes Australian dividends to one that approximates a reasonable dividend yield (under the fair dividend rate) could raise issues regarding trans-Tasman recognition of imputation credits. Officials assure us that the proposed Australian exemption would, to the extent it applies generally, preserve the status quo.

### **Australian unit trusts included in exemption**

Australian unit trusts were not included in the proposed exemption from the foreign investment fund rules for Australian investments because we understand they could be used as roll-up vehicles to invest outside Australia in companies that pay little or no dividend (and therefore avoid the new offshore tax rules). New Zealand investors could invest in these vehicles and derive income in the form of capital gain, without a tax liability arising on this income in either Australia or New Zealand. However, a number of the submitters made useful suggestions for addressing concerns about the use of Australian unit trusts to thus avoid the application of the new foreign investment fund rules.

The majority of us therefore recommend an amendment to include certain Australian unit trusts in the proposed Australian foreign investment fund exemption. We intend, however, that the exemption should apply only to investments in Australian unit trusts that meet certain minimum turnover requirements and where the investor elects to use the resident withholding tax (RWT) proxy mechanism for their investment in the entity. This should accommodate current arrangements, where investors in certain Australian unit trusts can have their tax liabilities satisfied by way of the RWT proxy, thereby reducing compliance obligations.

### **Exemption for investments in certain grey list companies**

Officials advise that the five-year temporary exemption for investments in certain grey list companies will allow time for completion of the Government's review of the controlled foreign company tax rules. Pending the outcome of this review, a company like Guinness Peat Group (GPG) might decide to relocate to New Zealand.

The majority of us therefore support retaining the proposed temporary exemption (outlined in Supplementary Order Paper No 44) for investments in certain companies such as the Guinness Peat Group, as the policy rationale for the exemption has not changed under the proposed fair dividend rate method. Individual investors in such a company will be taxed under the current rules for a period of five years under the exemption. We do not support providing the five-year exemption on the basis that a foreign company being invested into has a substantial New Zealand trading or business presence. This is quite different from the superficially similar exemption we support.

We understand that to qualify for the five-year exemption, the investment must be in a company that

- is resident in a grey list country
- is liable to tax in that country
- is listed on a recognised stock exchange
- the majority of its shareholders in both number and by proportion of shares held are New Zealanders.

Under the exemption, we intend that institutional investors (portfolio investment entities and other managed funds) should be taxed on their GPG (or similar) investments using the fair dividend rate method rather than current rules. We understand that under the current offshore tax rules, institutional investors would generally hold these investments on revenue account, and would be taxable on any gains realised. In many cases, the fair dividend rate method should result in a lower tax liability for such investors. This method would also be easier for managed funds to apply under the new portfolio investment entity tax rules. We do not consider that institutional investors should be exempt on their Guinness Peat Group holdings, for reasons discussed later in this report.

The majority of us also consider that a temporary exemption of two years is justified for investments in entities such as the New Zealand Investment Trust, a United Kingdom-based investment trust, which has the majority of its assets invested in New Zealand and Australian resident companies. We understand that the New Zealand Investment Trust would benefit from relocating to New Zealand and becoming a portfolio investment entity. Under the portfolio investment entity tax rules, the trust would benefit from not having their capital gains from trading Australasian shares taxed (a benefit that is currently procured through the United Kingdom tax rules) but would also be eligible to pass on the imputation credits attached to New Zealand dividends to investors (this is currently not allowed as the New Zealand Investment Trust is a United Kingdom entity).

We recommend provisions be included in the bill to allow Inland Revenue to publish the names of the companies who notify it that their shareholders qualify for the temporary exemptions from the foreign investment fund rules.

### **Exempting revenue account investors on their GPG investments**

The majority of us do not consider that investments by portfolio investment entities in GPG should be treated as an investment in a New Zealand or Australian company (and taxed only on dividends), as GPG is not a New Zealand company.

Officials advise that the comprehensive nature of New Zealand's company tax system, which encourages dividend distribution, was a key reason for granting portfolio investment entities an exclusion from tax on their share-trading income from investments in New Zealand companies. In contrast, GPG does not pay out a large percentage of its earnings by way of dividends. The majority of us consider that taxing portfolio investment entities only on this income would therefore improve the competitive position of an investment in GPG relative to all other offshore portfolio share investments (which would be taxed on a 5 percent fair dividend rate).

The majority of us therefore consider that institutional investors in GPG should have the option of paying tax on their GPG investments using the fair dividend rate method. The majority believe this should address the compliance point that paying tax on realised shares gains will be difficult to incorporate with the effective look through treatment under the portfolio investment entity tax rules.

### **Exemption for investments in New Zealand start-up companies (venture capital)**

The majority of us recommend an amendment to the bill to include an exemption for investments in certain New Zealand start-up companies that migrate offshore to gain access to finance under the new offshore rules. The majority of us intend that a person's rights in a foreign investment fund in an income year are not an attributing interest if

- the rights are shares
- the FIF is a grey list company that is not an entity described in the legislation
- the person acquired the shares when the shares were not listed on a recognised exchange
- at all times in the year, the grey list company directly or indirectly owns a company that for 12 months or more has been resident in New Zealand and had in New Zealand more

than 50 percent of the resident company's assets and employees

- the year begins less than 10 years after the grey list company first owned the resident company
- the resident company, through a fixed establishment in New Zealand, incurs in the year expenditure, other than interest, of \$1,000,000
- the resident company, through a fixed establishment in New Zealand at all times in the year, engages 10 or more full-time employees or contractors.

This exemption would broadly remove investments in New Zealand start-up companies that migrate offshore to gain access to finance (venture capital or private equity investment) from the proposed offshore tax rules if the New Zealand operations of the company remain significant. As a result of raising capital offshore, New Zealand investors typically end up holding portfolio interests in the migrated company.

The majority of us consider that applying comprehensive tax rules to such investments might result in a large tax liability arising when there is no underlying income stream, as start-ups will typically be making losses even though their share value, in anticipation of future earnings, is increasing. Therefore, even the application of the fair dividend rate (which would tax a maximum of 5 percent of the value of the investment) could result in cash-flow issues for investors in such companies.

Importantly, the new tax rules for offshore portfolio share investments are designed to create a level playing field between investing directly and via a managed fund. As direct investment in start-up companies does not compete with investment via managed funds, venture capital investment is not the target of the proposed tax rules.

We understand that officials have consulted with the New Zealand venture capital industry in developing the above exemption criteria.

### **Employee share purchase schemes**

The majority of us recommend that the new offshore tax rules include a limited exemption for offshore shares acquired through employee share-purchase schemes to the extent that there are restrictions on disposal of the shares. We consider, however, that the exemption should be valid only for the duration of the restrictions.

We consider that a temporary exemption is justified in cases where shares acquired through an employee share-purchase scheme contain restrictions on disposal. We propose that the exemption should be limited to shares held by a person in a foreign company where

- the foreign company is resident in a grey list country and is the employer of the employee or owns, directly or indirectly, the New Zealand-resident employer of the employee
- the shares are acquired through employment and there are restrictions in the share purchase agreement preventing the disposal of the shares for a period except on the grounds of serious hardship.

We intend that this exemption should apply only for the period during which there are restrictions on the disposal of the shares, and employees should have six months from the date the restrictions cease to apply to dispose of their investments. The shares would then enter the new foreign investment fund rules, becoming subject to the fair dividend rate method at their market value.

We note that consideration of the employee share purchase scheme is on the Government's tax policy work programme.

### **New tax rules for portfolio investment entities**

The bill introduces new tax rules for collective investment vehicles that meet the definition of a portfolio investment entity (PIE). Under these optional rules, collective investment vehicles that satisfy certain criteria will not be taxable on realised share gains made on New Zealand and Australian companies. Portfolio investment entities will pay tax on investment income on the basis of the tax rates of their investors (capped at 33 percent).

The new rules treat investment through PIEs in a similar way as direct investment by individuals, thereby removing long-standing disadvantages to saving through intermediaries such as managed funds. They would also prevent over-taxation of lower-income savers, and eliminate the taxation of capital gains and losses on New Zealand and Australian shares held through a fund. We understand these changes are required because of the implementation of KiwiSaver in 2007.

We received over 120 submissions on the proposed tax rules for PIEs. Most submitters welcomed the new rules and supported the

objective of aligning the tax treatment of investors in managed funds with that of direct savers.

Submitters sought a number of amendments to the proposed PIE tax rules to ensure they achieve the intended policy effect. We note the main concern of submitters that the rules, as proposed in the bill were overly prescriptive, particularly in the area of the criteria for eligibility as a portfolio investment entity. Submitters were also concerned that the rules were overly complex and did not reflect the current commercial practice of certain funds.

Taking into account the concerns raised by submitters, the majority of us have recommended a number of amendments to the PIE tax rules, including

- deferring the application date of the rules to 1 October 2007, to align with KiwiSaver
- making it easier for entities that satisfy current definitions of a widely-held investment vehicle to qualify as a portfolio investment entity
- allowing PIEs to recognise income, for tax purposes, in the same way they allocate income to investors
- allowing PIEs to generally apply a zero percent tax rate in relation to investors that exit the fund
- providing refunds for tax losses and excess tax credits directly to PIEs, who would apply the refunds for the benefit of investors, instead of these amounts being rebated directly to investors
- allowing simplified tax calculation methods for PIEs that are listed companies and for superannuation funds.

### **Application date of PIE tax rules**

The majority of us recommend amending clause 6 to defer the application date of the PIE tax rules from 1 April 2007 to 1 October 2007. The timing of the PIE tax rules is linked with the application date of the KiwiSaver work-based savings initiative. The Government has deferred this date to 1 July 2007 to take account of providers' concerns, and the fact that employee contributions will not now be transferred to KiwiSaver providers until 1 October 2007. Given that this is when the new PIE tax rules need to be in place, the majority of us agreed with submitters that the application date of the

PIE tax rules should be deferred by six months to give fund providers (including KiwiSaver default funds) more time to develop their systems and to inform investors about their new products.

### **PIE eligibility criteria—“safe harbour” approaches**

The majority of us recommend a number of amendments to clause 85 of the bill to make it easier for entities that satisfy current definitions of a widely-held investment vehicle to qualify as a PIE. In particular, we recommend the following:

- that entities that meet paragraphs (a), (c) to (e) of the “qualifying unit trust” definition in section OB 1 of the Income Tax Act 2004 not be required to separately meet the investor requirements under the proposed PIE definition (known as the “investor requirement safe harbour”). Entities that would meet this requirement if they were a unit trust would also be safe-harboured.
- allowing the National Provident Fund a similar safe harbour in relation to the investor requirements
- allowing entities that are eligible to become PIEs, but elect not to, and life insurance companies to hold up to 100 percent of a PIE, without incurring a breach of its PIE status. This would address the concerns raised by submitters in relation to wholesale funds.
- allowing the New Zealand Superannuation Fund and funds operated by the Earthquake Commission and Accident Compensation Corporation to hold up to 100 percent of a PIE, without incurring a breach of its PIE status
- allowing investors in a PIE generally to hold up to 20 percent of the PIE, with specific rules to accommodate legacy investors holding interests greater than 20 percent in listed entities. This would address the concerns raised by a number of submitters in relation to listed entities.

We note that the PIE eligibility criteria are designed to distinguish genuine savings and investment vehicles from other entities. This distinction is important, as PIEs will not generally be taxable on their realised New Zealand and Australian share gains. Among these criteria is a requirement that investors in the PIE are portfolio investors (the investor requirements) and the PIE itself is a portfolio

investor in companies it invests into (the investment size requirements).

The majority of us also consider it is important that a PIE should have the majority of its assets employed in deriving what is known as passive income (such as income from trading shares, dividends, land and rents). We understand that these criteria are designed to replicate the situation of the vast majority of individuals who invest directly (rather than via a managed fund). Officials advised us that if these tests (referred to as bright-line tests) were not satisfied, then direct investors who were share traders would be able to manipulate the PIE rules to gain the advantages of being a PIE, while maintaining control of their trading activities.

### **Investor requirements**

The majority of us recommend a number of amendments to simplify the investor requirements. We note the suggestion from some submitters that instead of the preceding bright-line tests, a more appropriate qualification requirement would be to require that an eligible entity be an issuer of securities to the public under the Securities Act 1978 or a qualifying unit trust.<sup>1</sup> Under the bill, as introduced, a PIE could have investors that were PIEs or entities that qualified as a foreign investment vehicle (according to the definition in the bill) without breaching the investor requirements. The bill proposed that these investors could hold up to 100 percent of a PIE, and that a PIE did not need 20 other investors if it had either a PIE or a foreign investment vehicle as an investor.

The majority of us agree with submitters that entities that meet the “qualifying unit trust” definition in section OB 1 of the Income Tax Act 2004 should be safe-harboured from the investor requirements. We consider that this safe harbour should be available to entities that meet paragraphs (a), (c) to (e) of the qualifying unit trust definition, or that would meet the definition if the entity were a unit trust. We do not consider, however, that entities that meet paragraph (b) of the definition—mainly wholesale managed funds—should be included in the safe harbour.

The majority of us also support amending the bill to accommodate the National Provident Fund. We understand that the main reason why funds operated by the National Provident Fund would not meet

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<sup>1</sup> A “qualifying unit trust” is a term defined in the Income Tax Act and, broadly, describes a widely-held investment vehicle.

the “qualifying unit trust” definition is that it does not satisfy the requirement to offer securities to the public. As these funds are widely-held entities (and are operated under statute), we do not see any reason not to extend a safe harbour from the investor tests under the PIE rules.

The majority of us consider that entities that would meet the PIE eligibility criteria but elect not to become PIEs should be allowed to hold up to 100 percent of a PIE without the PIE losing its PIE status. Similarly, life insurance companies (which are not eligible to become PIEs under the rules as currently drafted) should be allowed to hold up to 100 percent of a PIE. We also understand that the New Zealand Superannuation Fund and funds operated by the Earthquake Commission and the Accident Compensation Corporation can hold large interests in other investment vehicles, and should be allowed to hold up to 100 percent of a PIE.

We note that if a PIE has one or more of these types of investors, it would not be required to meet the 20-investor test. The amendments we propose should mean that a wholesale managed fund could have as investors other PIEs eligible to be PIEs that elect not to be, life insurance companies, foreign investment vehicles, and certain specified funds (such as the New Zealand Superannuation Fund), without breaching the investor requirements.

Further, the amendments would allow investors other than those listed above to hold up to 20 percent of a PIE (the current limit in the bill is 10 percent). The majority of us believe this would help most listed investment entities such as listed property funds and listed investment companies that may wish to become PIEs to comply with the investor size requirement.

We understand that shareholders in a listed company cannot increase their holding to 20 percent or more of the voting rights without triggering certain provisions of the Takeovers Code. This should provide a signal to prospective PIEs that are listed entities that a breach of the investor size requirement is imminent.

We are also aware that certain listed entities have legacy investors holding more than 20 percent of the entity (and would therefore breach the investor size requirement). The majority of us consider that there is scope for grandparenting such legacy investments, to the extent of allowing such investors to hold 40 percent or less of a PIE. This would mean that a listed PIE could have legacy investors holding an interest in the PIE of more than 20 percent on the date

that the bill was introduced without breaching the investor interest size requirement. Rules would, however, be needed to ensure that such an entity did not retain PIE status if these legacy investors increased their interests more than 40 percent.

The majority of us do not consider that being a qualifying unit trust or an issuer of securities to the public should be the sole criterion for PIE status, as a number of additional criteria (such as the investment requirements and investment-type requirements) are necessary to distinguish genuine savings and investment vehicles from other entities. In particular, the investment size requirement (which requires a PIE to hold not more than 20 percent of an underlying company) is important to reinforce the portfolio investor concept, as there is no similar requirement in the definition of a qualifying unit trust.

We consider that monitoring compliance with the PIE eligibility criteria—required quarterly—will be no different from monitoring compliance with existing tax rules (such as the definition of a qualifying unit trust).

#### **Australian unit trusts**

The majority of us do not recommend that Australian unit trusts be allowed into the PIE regime. An Australian unit trust, while meeting a number of other criteria, will fail the New Zealand tax residency requirement and therefore cannot elect into the PIE regime. We understand the PIE tax rules were designed for New Zealand resident managed funds, as a New Zealand resident investor has the choice to invest directly or via such a vehicle—investment through New Zealand managed funds is currently tax-disadvantaged relative to investing directly (including direct investment in an Australian unit trust). The PIE tax rules aim to correct these anomalies. Further, an Australian unit trust would be subject to the Australian tax rules and would therefore be outside New Zealand's taxing jurisdiction. It is therefore unclear how New Zealand's tax rules could be applied to taxing the underlying income of an Australian unit trust.

#### **Income interest requirement**

The majority of us recommend that group investment funds deriving category B income be exempt from the income interest requirement proposed in section HL 5(3) inserted by clause 85 of the bill as introduced. We understand that group investment funds deriving

category B income are typically trusts administering the estates of deceased taxpayers. These trusts can allocate income to certain beneficiaries and capital to other beneficiaries. Officials advised us that they are satisfied that group investment funds deriving only category B income are genuine commercial arrangements, and should therefore be eligible to become PIEs without meeting the income interest requirement.

### **Investor class requirement**

While the majority of us do not support the request of submitters that the investor class requirement outlined in section HL 6(2) of clause 85 be removed, we do recommend amendments to provide exceptions to the 20-member investor class requirement in certain circumstances. The majority of us also recommend that the PIE tax rules provide some tolerance for new investors in a class having interests in the investments of that class that differ in proportion from those held by existing investors.

The PIE investor class requirements recognise that managed funds may have various investment options (investor classes), such as conservative, balanced, and growth portfolios, within the same fund. The investor class requirement is designed to ensure that in each investor class offered by a PIE there are at least 20 investors; otherwise an investor class could be set up with a single investor, who owned 100 percent of the underlying investments in the class (but less than 20 percent of the PIE), and would effectively be able to control the investment decisions of that particular investor class. The majority of us therefore did not agree that the investor class requirement should be removed from the PIE tax rules.

The 20-investor requirement would not need to be met if the PIE had at least one investor that is

- another PIE
- a foreign investment vehicle (as defined in the rules)
- an entity that would meet the PIE eligibility rules, but does not elect to become a PIE
- a life insurance company or the New Zealand Superannuation Fund, the Earthquake Commission, or ACC.

The majority of us also consider that an exception to the investor class requirement for 20 or more investors is justified in certain circumstances, such as when a boutique investment option is on

offer and fewer than 20 investors take it up. The requirements for this exception should be as follows:

- The PIE has another class with at least 20 members.
- In a class with fewer than 20 members no investor other than the fund's manager or trustee can control the investment decisions relating to that class.
- Less than 10 percent of the PIE's total assets belong to all classes of the PIE with fewer than 20 members.

### **Definition of portfolio investor class**

The definition of "portfolio investor class" in the bill effectively requires each investor in the class to have an interest in the investments of that class in the same proportion as the other investors in that class. We understand that when new investors enter a class the interests of the new investors in the assets of the class may initially not match those of existing investors (as the entity would need time to purchase more of the underlying investments). The majority of us therefore recommend amendments to provide a tolerance for new investors in a class to temporarily have interests in the investments of that class that differ in proportion from the interests held by existing investors.

The majority of us consider that new investors should be permitted to have interests in the investments of the class that differ in proportion from those of existing investors for a short time until it is able to render the interests proportional. We also consider that investors should generally be allowed to have interests in the underlying investments that differ in proportion from those of other investors, if this difference is largely immaterial (if the interest in the underlying assets differs by less than 5 percent). This recognises that, owing to normal commercial arrangements, it is unlikely that an investor in a class will have an interest in the investments of that class that is, at all times, exactly the same in proportion as those of the other investors in that class.

### **Associated investors**

The majority of us recommend amendments so that associated investors can be taken into account for the purposes of the 20-investor requirements. Otherwise, it would be possible for a group of associated investors to effectively control a PIE. We consider, however, that PIEs should be required for the purposes of the "association rule" to take into account only investors who hold more than 5

percent of the PIE. This would mean that PIEs should not have to incur the compliance costs of establishing association between investors with very small holdings.

Some submitters asked that the 20-person requirement be amended to refer to 20 natural persons ultimately holding units. The majority of us do not, however, consider that the 20-investor requirement under the investor test should refer to natural persons only, as associated entities such as trusts and companies may be used to gain control of the underlying investments of a PIE.

### **Employer-sponsored super schemes investing into a PIE**

Officials tell us that the simpler PIE tax rules being proposed for superannuation funds will address many concerns about the compliance costs of PIEs for employer-sponsored superannuation schemes. Further, the proposed safe harbour from the investor requirements would mean that an eligible superannuation scheme that elects to not become a PIE could hold up to 100 percent of another PIE. This would allow these schemes to invest in PIEs and get the benefit of the exclusion from tax of Australasian share gains, without having to be PIEs themselves.

### **Investment value requirement**

The majority of us recommend amendment of the bill to provide that the investment size requirement be applied only to equity held in a company, and be determined by the percentage of the total voting interests in the company held by a PIE. The majority of us also recommend that the investment size requirement be raised to 20 percent (from 10 percent) without a requirement to offer a buy-back mechanism to investors.

The majority of us agree with submitters that the investment value requirement should apply only to equity held in a company (that is, a PIE would be allowed to hold up to 100 percent of non-equity investments such as debt or land). Our understanding is that property funds, for example, typically hold greater than 20 percent interests in land and buildings, either directly or through a holding company (defined as a company whose assets are 90 percent or more and, in substance, in the form of land). The majority of us consider that this should continue to be allowed under the PIE rules, as the tax status of property investments (unlike Australasian equities) would not change. Further, we support the investment value requirement being

measured by reference to the percentage of the total voting interests in the company held by a PIE.

The majority of us were persuaded by submitters to raise the investment size requirement to 20 percent for investments in companies, without the need for a PIE to offer a facility for investors to redeem their interest at an estimated market value. We understand that such a “buy-back” requirement is of significant concern to listed entities that currently do not offer such a mechanism (the investment can only be redeemed in a secondary market) as well as superannuation schemes. Removing the “buy-back” requirement and raising the investment size threshold from 10 percent to 20 percent (the level at which a number of provisions in the Takeovers Code are triggered) should address many of the concerns raised by submitters.

#### **Type of investments**

The majority of us recommend amending the bill to replace the current prescriptive list of eligible investments (under the investment-type requirement in the PIE tax rules) with a requirement that at least 90 percent of the PIEs assets are in land, financial arrangements, or excepted financial arrangements. We also recommend that the investment type test be further supported by a requirement that at least 90 percent of the taxable income derived by a PIE be rents from investments in land, income from financial arrangements, excepted financial arrangements, and foreign investment fund income.

#### **Foreign investment vehicle requirements**

For the purposes of applying the investor size test to foreign investment vehicles, the majority of us recommend amendments to provide that the investor size requirement apply only in respect of New Zealand resident investors. Some submitters asked for the foreign investor vehicle definition to be amended, as they considered it unrealistic to require a PIE to determine whether a foreign entity that invests in it is a foreign investment vehicle. Submitters also asked that a foreign investment vehicle not be required to comply with the investor interest size requirement (under the PIE rules) and be allowed to have fewer than 20 investors, if the vehicle can be regarded as a vehicle for collective investment either directly or indirectly despite the lesser number of investors.

We understand that the foreign investor vehicle definition is designed to allow PIEs to hold up to 100 percent of a foreign

investment vehicle, and to describe foreign savings vehicles that may hold up to 100 percent of a PIE. As the PIE rules confer certain benefits to investors in PIEs, the majority of us consider it is important that the ability to wholly own a PIE and for a PIE to hold 100 percent of another entity be restricted to genuine widely-held savings vehicles. The mechanism for doing this, in the case of non-resident entities, is applying a subset of the PIE eligibility requirements to these foreign vehicles.

The majority of us recognise that some of the criteria may be difficult to apply as the PIE may not be able to source this information from the foreign vehicle. Such information will typically relate to other investors in the foreign vehicle. Therefore, for the purposes of eligibility to be classed as a foreign investment vehicle, we consider that the investor size requirement should apply only to New Zealand resident investors in the foreign investment vehicle. This would mean that non-resident investors would be able to hold more than 20 percent of the foreign vehicle without breaching the definition of a foreign investment vehicle under the PIE rules. A PIE would be able to hold any ownership interest in a foreign investment vehicle as long as no other New Zealand resident investor (for example, one that is not a PIE, or one that would otherwise be allowed to hold 100 percent of a foreign investment vehicle) holds an ownership interest of 20 percent or more.

In the case of foreign investment in PIEs, the majority of us consider that a rule is necessary to ensure that the foreign entity is a widely-held vehicle. That is, a single non-resident investor should not be able to hold 100 percent of a PIE and gain access to New Zealand and Australian share trading gains tax free (as they would not gain the safe harbour if they had invested directly in New Zealand companies). In many cases these investors would also hold less than 20 percent of the New Zealand PIE and therefore would not jeopardise the New Zealand entity's PIE status.

### **Independent management requirement**

The majority of us recommend amendments to remove the independent management requirement from the PIE eligibility criteria. We agree with submitters that the requirement creates uncertainty as to the level of ownership interest in a PIE the fund manager can maintain. The wording of this requirement in the bill as introduced has been interpreted as precluding any investment in the PIE by

management. Officials advise us that this was not intended. The majority of us also consider that other PIE eligibility requirements (such as the investor and investment requirements) are sufficient to ensure that only genuine widely-held investment vehicles can qualify as PIEs. As with any other general investment in a PIE, we understand that the manager or trustee would be able to hold up to a 20 percent interest.

### **Loss of PIE status on a prospective basis**

The majority of us recommend amendment of the bill to provide that the loss of PIE status should be prospective. We agree with the principle that PIE status should be lost only if a PIE fails to meet certain eligibility criteria on the last day of two consecutive quarters (that is, a period of six months). We intend that PIE status should be lost from the start of the third quarter.

### **Financial reporting**

The majority of us recommend amendments to include in the PIE rules a purpose provision relating to financial reporting. We understand that the entity model for calculating PIE income tax has been adopted as it is considered the simplest method of taxing investors on their share of the PIE's income at the correct rate while ensuring that this income does not affect investors' other liabilities or entitlements. However, it is acknowledged that PIE income is, in economic substance, the investors' income. In view of this, the majority of us consider that the PIE tax rules would benefit from a purpose provision to clarify that the tax levied on behalf of an investor at the PIE level is intended to resemble the tax that an investor would pay on the income if the investor had made the investment directly. A purpose provision of this nature should reduce the risk that entities would be required, for financial reporting purposes, to recognise as income tax any tax levied on the income of the PIE.

### **Zero rating of exiting investors and annual attribution option**

The majority of us recommend that PIEs that calculate and pay PIE tax each quarter be permitted to apply a zero percent tax rate for investors who exit in a particular quarter. We also recommend that a PIE should be provided with the option of attributing and calculating PIE tax annually, provided that it withhold tax accurately from

investors exiting the PIE during the tax year and pay it to Inland Revenue in the month following that in which the investor exits the PIE.

The bill as drafted does not allow PIEs to attribute income to investors annually. It provides that PIEs must allocate income to investors at least quarterly and pay PIE tax on that income at least quarterly (or more often at the election of the PIE). The quarterly attribution and payment of tax ensures that tax receipts from PIEs are not deferred.

The bill also provides that the PIE will be liable for tax on all the income that it earns during the quarter, even if an investor exits during the quarter. Officials advise that this approach could result in significant investor equity issues for some PIEs, because the tax liability on the PIE income for the quarter, including the income that was attributed to exiting investors, would be borne by those investors who remained in the PIE at the end of the quarter. We understand that the only way PIEs could address this issue would be to approximate an amount of tax to withhold from exiting investors, and such an approximation would inevitably be inaccurate and result in inequity for investors.

The majority of us therefore support allowing PIEs to pay tax on income earned in a period at zero percent for investors that have exited the PIE during the quarter and within five days after the end of the quarter. Under this approach, the PIE would inform Inland Revenue of investors that had exited during the year and how much taxable income had been allocated to each exiting investor. The outstanding PIE tax liability would then be a matter for Inland Revenue to follow up with the investor concerned.

The majority of us also agree that an annual attribution and payment of PIE tax should be permitted, provided that a fund withholds tax accurately when investors exit during the year. Under this approach, the fund would deduct the correct amount of tax from the exiting investor's proceeds and would return this sum to Inland Revenue in the month following the exit. While this would delay the tax receipts from PIEs that had adopted this approach, it would be the most accurate and least administratively expensive method of collecting tax from PIEs.

### **Allocation of income to PIE investors**

The majority of us recommend that the bill be amended to provide that, in general, the allocation of income under the PIE tax rules should mirror the allocation that the PIE performs for accounting or unit pricing purposes. The bill as introduced is insufficiently flexible regarding the calculation of PIE tax in that it does not recognise that different PIEs may use different methods for attributing income to their investors.

The majority of us support the general principle that the PIE tax rules should recognise income in the same way that the PIE allocates that income to investors. In other words, as a general rule, the tax liability of the PIE should equal the aggregate of all the amounts attributed to investors, multiplied by each investor's tax rate for the tax calculation period.

The majority of us therefore agree that the PIE tax calculation methodologies should be amended to provide more flexibility and reflect the way each PIE attributes income to its investors.

Officials advise that additional flexibility could be achieved by allowing PIEs to choose the period over which income is allocated to investors for tax purposes. This would generally allow PIEs to ensure that the allocation period for tax purposes matched their allocation period for commercial purposes. For example, a unit trust that calculates unit prices daily (and therefore allocates income to investors daily) would be able to choose a daily allocation period for tax purposes.

In addition, the rules could be made more flexible by ensuring that the period for which the PIE recognises income and expenditure for commercial purposes is mirrored by the period over which the amounts are recognised for tax purposes. A good example of this is expenditure on audit fees. While these fees are often formally incurred for tax purposes at the end of the tax year, a PIE will often recognise these fees for commercial purposes from the beginning of the year to which the expenditure relates.

### **Timing of income and expenditure**

The majority of us recommend that the bill be amended so that the timing of income and expenditure under the PIE tax calculation will follow the timing of the same income and expenditure for accounting and unit pricing purposes, in order to provide more flexibility.

### **Information disclosure requirements**

The majority of us recommend amending the bill to require PIEs to provide their investors at the end of each year with the information prescribed by the Commissioner of Inland Revenue. This information includes details of the investor's share of the PIE's taxable income and the rate that the PIE has used on behalf of that investor. This should ensure that all categories of PIE investors have the information necessary to comply with their tax obligations.

### **Payment of tax and provision of returns**

The majority of us recommend amendments to require that the annual reconciliation showing PIE tax paid for the year should be due on 30 June each year rather than 20 May. We also propose that PIEs that wind up or permanently breach the PIE eligibility rules be required to complete all return and payment obligations within two months of the date of cessation.

### **Matching income year to tax year**

The majority of us recommend amendment of the bill so that PIEs that are not required to calculate PIE tax regularly need not end their income years on 31 March. We consider that PIEs that are required to attribute income regularly to their investors should, like the majority of their investors, have the standard tax year ending on 31 March. We believe this is important as some PIE investors will need timely information as to how much PIE income they have earned for a particular tax year.

We note that Inland Revenue will be issuing refunds to certain PIEs that have incurred tax losses during the year or have excess tax credits. This process would be easier if the end of the PIE's tax year matched that of the standard tax year. Certain PIEs (such as listed company PIEs and those that elect to remain as provisional taxpayers), however, will not attribute income regularly to their investors and will not receive refunds for tax losses incurred during the year or excess tax credits. Officials advise that there is less need for such PIEs to match their tax year with the standard tax year.

### **Income year aligned with PIE tax period**

We considered whether to amend the bill to define the income year as a period consistent with a PIE period. For example, the market value and smoothed market value methods in the bill as introduced would need to be applied on the basis of a PIE tax period. Given that

we agree with the general point that the PIE tax calculation period should mesh with the proposed international tax rules, the majority of us recommend that the bill be amended accordingly. Officials assure us that under the fair dividend rate method for taxing offshore share investment this could be achieved by ensuring that the fair dividend rate reflects the PIE's tax calculation and allocation periods.

### **Requiring equitable income calculations**

The majority of us recommend that PIEs be allowed to choose the frequency with which income is allocated to investors. We consider that PIEs should be able to perform taxable income calculations based on the frequency with which investors can enter and exit the PIE, to ensure fair and equitable results for all investors. Such calculations would ensure that investors coming into a fund or exiting during a calculation period will be taxed correctly on income they actually derive. This would allow investors to enter and exit PIEs as they currently do; investors would be treated equitably and any potential for abuse should also be removed. The majority of us also consider that PIEs should be allowed to determine PIE tax on a daily basis without averaging class income over the portfolio entity period.

### **Marginal investor tax rates**

We note the arguments put forward by submitters for taxing income relating to 39 percent PIE investors at 39 percent. Officials advise that the 33 percent tax rate cap applying to PIEs was chosen to remove the dilemma that trustees of certain funds would otherwise face: that is, if the top PIE tax rate were 39 percent the trustee of a superannuation fund currently taxed at a final rate of 33 percent would have to decide whether to elect into the PIE rules, which would advantage the fund's 19.5 percent investors but could disadvantage its 39 percent investors. The majority of us recognise that this would be a significant practical concern and so agree that the top PIE tax rate should remain at 33 percent.

We note arguments for retaining the boundary between the 19.5 percent rate and the 33 percent rate at \$38,000. We understand, however, that the proposal to set the boundary at \$48,000 was to ensure that, if someone's PIE income from the previous year caused their total income to exceed \$38,000, they would not be over-taxed

on their PIE income. Otherwise over-taxation could occur as investors would be required to elect a 33 percent PIE tax rate for all their PIE income, even though a portion of the PIE income for the previous year would have fallen below the \$38,000 threshold.

The majority of us do, however, recommend that the rules for investors selecting a PIE tax rate be amended so that they would be required to elect a 33 percent rate if their income other than PIE income from the relevant previous year exceeded \$38,000. This exclusion of PIE investment income would also address the over-taxation issue.

A further rule is needed to ensure that investors with very little non-PIE income (for example, employment income) but significant PIE income would be unable to get the 19.5 percent tax rate on their income from PIEs. The majority of us therefore recommend the bill be amended to require investors whose combined income in the relevant previous year from PIEs and other sources exceeds \$60,000 to elect the 33 percent tax rate on their PIE income. We consider a \$60,000 threshold should balance the potential over-taxation of PIE income with the need to ensure that PIE rules do not create opportunities to reduce tax inappropriately.

The majority of us accept that in many cases an investor's marginal tax rate on income earned below \$38,000 is 21 percent because such investors are likely to be earning salary and wage income, which receives the benefit of the low income rebate; it is clawed back by applying a 21 percent rate for income earned between \$9,500 and \$38,000. The low income rebate does not, however, apply to investment income, which attracts a simple 19.5 percent RWT rate. Given that PIE income is investment income, we consider that it is appropriate to retain the 19.5 percent rate rather than apply a 21 percent rate to PIE income.

### **Election to become a PIE**

To allow PIEs more time to make the necessary changes, the majority of us recommend that the bill be amended to provide that the PIE rules apply from 1 October 2007. We agree that PIEs should be allowed to indicate to Inland Revenue their ability to meet the PIE requirements by 1 October 2007 from 1 April 2007, or six months before the 1 October 2007 application date.

**Electing higher rates**

The majority of us recommend an amendment to the bill to allow trusts to elect 33 percent as a final tax rate on PIE income. We believe this approach will suit trusts that currently have their investment income taxed at the fund level. This would mean income attributed to the trustee would be excluded income and not be taxable to the beneficiary, including a beneficiary on a 39 percent marginal tax rate.

We note that the trust rules require that for income of the trust to be beneficiary income certain requirements must be met. Allowing trustees to elect the 19.5 percent rate would allow them to circumvent these requirements. It would also be very difficult to prove that all the potential discretionary beneficiaries of a trust had a 19.5 percent tax rate.

**Electing lower rates**

The majority of us support amendment of the bill to enable portfolio investment entities, custodians, and certain other entities to elect a portfolio investor rate of zero percent. Officials advise that the PIE rules do not distinguish between investors who hold PIE interests on revenue and those who hold them on capital account. Therefore, the right to elect a zero percent tax rate on PIE income should not be based on the capital or revenue account status of investors. The correct result would be achieved if an individual investor who holds an interest in a PIE on revenue account is required to elect 19.5 percent or 33 percent and pay tax on any trading gain when the interest is disposed of.

**Investors who elect the wrong rate**

Under the bill, as introduced, an investor who incorrectly elects for PIE tax to be paid at 19.5 percent rather than 33 percent will be further taxed on the entire amount of their share of PIE income at their marginal tax rate (which might be 33 percent or 39 percent). The majority of us agree with submitters that relief should be provided to ensure that the investor who innocently elects 19.5 percent in these circumstances is not double-taxed.

The majority of us therefore recommend amendments to provide that

- investors who incorrectly elect a tax rate of 19.5 percent instead of 33 percent will receive a credit for tax already paid by the PIE

- the PIE income will be excluded for the purposes of calculating an investor's entitlement to family assistance. This will ensure that the position of an investor who elects the wrong rate is the same as that of an investor who has elected the correct rate as regards family assistance
- PIEs be required to request annual tax rate updates from their investors. If confirmation is not provided to the PIE, the investor's current tax rate should continue, rather than be automatically replaced by a 33 percent rate.

#### **Timing of notification of investor rate**

We considered whether it should be permissible to select the prescribed investor rate with reference to the year prior to the last completed tax year, to give investors certainty on this issue. Some submitters asked that providers be allowed one month at the beginning of each tax year to determine whether an investor is to pay 19.5 percent or 33 percent tax, on the basis of their 31 March tax assessment.

The majority of us support this proposal, in part, and have recommended amendments to generally provide that the rate to be notified to the PIE by the investor should be based on income derived from the previous year or the preceding year, for example if the information is not available. Further, the time available to investors to provide their prescribed investor rate should also be extended until the end of the PIE's tax calculation period.

#### **Clarification of frequency of prescribed-rate election**

The majority of us agree with submitters that clarification is needed regarding the frequency with which investors are expected to advise their portfolio investor rate, and recommend that the bill be amended to provide that investors should advise their PIE only of any changes to their prescribed investor rate. If the investors do not advise any such change, the PIE should continue to use the last notified elected rate.

#### **Separately identifying foreign tax credits (PIEs)**

While we understand that under general tax rules foreign tax credits need to be identified separately from other credits, for compliance cost reasons the majority of us consider that these credits should be able to be offset against tax on all PIE income, irrespective of the source of the income. Therefore a single pool of foreign tax credits

could be maintained. Any foreign tax credits that cannot be offset against PIE tax would be forfeited, and would not be refunded to investors (which is consistent with the current law). The majority of us view this proposed treatment as a significant simplification, as the current rules for use of foreign tax credits require that credits be separated according to income-type and source.

### **Determining capital or revenue account status**

We considered the request of one submitter that PIE income be deemed assessable income for the purpose of determining whether an investor is a capital or revenue account investor. The submitter reasoned that because a PIE pays PIE tax on attributed income of individual investors, and distributions from a PIE are excluded income, individual investors would not derive any assessable income. This might affect their ability to argue that they hold their PIE investment on capital account.

However, the majority of us consider that such an amendment is not necessary, and officials advise us that it would complicate the law unnecessarily. However, we note that Inland Revenue officials intend to include a statement in the Tax Information Bulletin article on the new rules to clarify that the exclusion for distributions from a PIE does not affect the capital account status of investors.

### **Custodial investors in PIEs**

The majority of us support amending the bill to allow nominee holdings in PIEs to be treated as zero-rated investors, with the nominee receiving the gross amount and withholding the tax (on behalf of its investors).

We consider that nominees and wrap account providers should perform the PIE tax compliance obligations with respect to their clients. We believe this is necessary as only these custodians, rather than the PIEs themselves, will have the necessary information about the individual investors.

### **Australasian trading exemption**

The majority of us support those submitters who requested that no deduction be given for the cost of shares in New Zealand companies and Australian resident listed companies that are subject to the

realised share gains exclusion for PIEs. We recommend amendments to prevent a realised loss incurred from the sale of New Zealand and Australian resident listed companies from being deductible to a PIE.

#### **Anti-avoidance rules**

The majority of us recommend amendment of the anti-avoidance rule in new section CX 44C(c) (clause 12) so that when Australian and certain New Zealand shares are sold after a dividend has been declared but before the dividend is paid the amount of the dividend is taxable. The majority of us also support amendment of section CX 44C(d) to focus on the time of acquisition of the relevant shares or commencement of the arrangement. In line with these amendments, we recommend section CX 44C(e) be omitted.

#### **Land-holding PIEs—indirect investment in land**

The majority of us recommend amendments so that an interest in a company of which 90 percent or more of the assets constitute land can be treated as an interest in land for the PIE rules. We agree with submitters that investments in land by way of an incorporated joint venture or a 100 percent subsidiary that only owns land should be treated as a direct investment in that land for the purposes of the PIE rules.

#### **Listed PIEs**

To address the attribution problems raised by submitters regarding listed companies, the majority of us recommend amendments to give them similar treatment to qualifying companies. The amendments we propose would make listed PIEs subject to 33 percent company tax on their taxable income. Listed companies would be allowed to exclude income from trading Australasian shares, would be subject to provisional tax, and would have to maintain an imputation credit account.

Further, when a listed PIE pays a dividend it would have to impute the dividend to the extent imputation credits are available as determined by the directors. The dividend would be excluded income to the shareholder, and any attached imputation credits could not be used. Officials assure us that this means that the dividend would be subject to a maximum tax rate of 33 percent. A taxpayer would, however, be able to elect to include the dividend in their assessable

income and use any attached imputation credit by returning the dividend in a tax return. Shareholders on a 19.5 percent rate should therefore be able to receive the benefit of excess imputation credits.

### **Simplified method for superannuation funds**

The majority of us support amendments to the bill to provide for a simplified system for superannuation funds to allow them the benefits of being a PIE (especially the Australasian share trading exclusion), while avoiding some of the complexities of the attribution requirements of the normal PIE rules. We consider such a simplified system desirable for superannuation funds that lack the systems that make attribution practicable.

The amendments the majority of us propose would require a superannuation fund that meets the PIE eligibility criteria and elects into the simplified system to

- pay provisional tax using a weighted average of the tax rates of its members
- perform an accurate tax calculation for its tax year based on its actual income and the weighted average tax rate of its members
- make an annual investor interest adjustment within three months of the end of the tax year to ensure that taxpayers on the 19.5 percent rate receive an additional entitlement to reflect their lower tax rate
- pay the tax on the share of the current year's income that is paid out to investors that exit the fund during a year. We understand this would typically be the "interim interest rate" that superannuation funds pay out to exiting investors. Officials advise that superannuation funds would probably fund a provision for this tax liability by making a deduction from the amount paid out to their exiting members.

Further, the majority of us propose that tax losses and tax credits (such as imputation credits) should not pass through to members; instead they should be used to offset only the tax liability of the superannuation fund. The tax rate applying to superannuation funds that are defined benefit schemes would be 33 percent.

### **Superannuation funds—treatment of unvested amounts**

The majority of us recommend amendments to allow portfolio investor rates to be used to tax income arising on unvested employer contributions subject to the following conditions:

- For schemes established before the bill was introduced, the vesting period could not be increased beyond its current length.
- New schemes established after this bill was introduced must have vesting periods equal to or less than three years, and the contributions should vest in the employee within that vesting period.

We consider that these amendments would address the concerns raised by submitters about the complexity of identifying taxable income relating to vested and unvested contributions to member accounts. Superannuation administration systems will record the total vested and unvested account balance as a single record for each individual member.

### **Life insurance companies' holdings**

The new PIE rules do not allow life insurance companies to become PIEs. Officials advise that the main reason for this was because the life insurance business presented officials with complex issues that could not be suitably addressed in the time available. We note one of the principal objectives of the life insurance tax review announced by the Minister of Finance and the Minister of Revenue on 17 August 2006 is to determine, in consultation with the life industry, whether life insurance can be integrated into the portfolio investment entity tax regime so that policyholders are not disadvantaged relative to other modes of saving.

In the interim, however, the majority of us recommend amendments to the bill to change the PIE tax rules to allow life insurance companies to hold up to 100 percent of another investment vehicle that elects to be a PIE.

### **Trust deed or company constitution overrides for investor interest adjustment**

The majority of us recommend including in the bill a provision similar to clause 168 to amend the Trustee Companies Act to authorise the trustee or manager (in the case of an externally

managed fund) of a group investment fund to adjust the interests of investors as required under proposed section HL 6(3), despite any provision in the Trustee Companies Act 1967 or the relevant trust deed. For consistency, clause 168 also requires amendment to allow the trustee or manager to authorise adjustments.

Since group investment funds can also be established under the Public Trust Act 2001, the majority of us also agreed to recommend a similar amendment allowing the interests of investors in these funds to be adjusted despite any provision in this Act or the relevant trust deed.

### **Transitional issues—Limiting notional wind-up to assets whose tax treatment changes**

The majority of us recommend amendments to limit the application of section HL 2(3) to Australasian shares whose proceeds of sale will be excluded income. We agree with submitters that the deemed disposal and reacquisition of the property of entities becoming PIEs, under section HL 2(3), should apply only to New Zealand and Australian shares which will be subject to the proposed exclusion in section CX 44C for PIEs from tax on realised gains on Australasian shares. We understand this is because these assets only change status from revenue account to capital account status, and it is appropriate that the accrued change in value is brought to tax.

### **Double taxation issue (retail and wholesale PIEs)**

The majority of us agree with submitters that the deemed disposition and reacquisition in proposed section HL 2(3) should not apply for shares held by a PIE in another entity that becomes a PIE, because this otherwise could result in double taxation. We recommend appropriate amendments to ensure that a notional wind up is not required on assets held in an underlying vehicle (such as a wholesale fund) where the underlying vehicle also becomes a PIE.

### **Treatment of supplementary available subscribed capital account credit balances upon election to be a PIE**

The majority of us recommend amendments to allow overpaid income tax for a qualifying unit trust or group investment fund to be refunded to the extent provided in section MD 2A when it elects to be a PIE. The rationale for this proposal is that qualifying unit trusts and group investment funds may liquidate and obtain a refund of pre-paid tax in the same way under current legislation. The majority

of us also support amendments to provide that a PIE does not have to maintain a supplementary available subscribed capital account.

### **Changes to the tax treatment of geothermal wells**

Clauses 13, 23, 24, 33, 37, 38, 39, 40, 42, 126(8) and (19), 157, 159, and 162(3) of the bill address concerns that certain expenditure on failed geothermal wells is not recognised for tax purposes. We understand the purpose of the amendments included in the bill is to recognise and allow a deduction for the costs of unsuccessful geothermal wells from the 2003–04-income year. Amendments include clawing back this deduction if the unsuccessful well is subsequently used or sold and allowing all geothermal wells to be depreciated from the date of completion or acquisition.

#### **Geothermal wells drilled or acquired between 1 April 2003 and 16 May 2006**

The majority of us recommend the bill be amended to allow taxpayers to depreciate geothermal wells drilled or acquired between 1 April 2003 and 16 May 2006 and not yet in service from the beginning of the 2006–07 income year.

We understand that the retrospective application date was to provide comfort on the legality of deductions claimed for expenditure incurred on unsuccessful geothermal wells when there was some ambiguity about whether the law allowed such deductions. We can see merit, however, in allowing wells drilled or acquired in the specified period to be depreciable without having to satisfy the normal in-use or available-for-use requirement. First, from a compliance perspective, it would be simpler to have consistent treatment for geothermal wells. Second, it is relatively simple for businesses to enter into arrangements that result in these wells being subject to the new rules.

#### **Australian superannuation fund exemption**

While submitters supported the new exemption of certain Australian superannuation funds from the foreign investment fund taxation rules, they requested that the exemption be extended to other foreign superannuation schemes, and not limited to certain schemes constituted in Australia, and that it should be retrospective in its application.

**Retrospective application of the proposed exemption**

The majority of us recommend amendments to allow the new exemption of certain Australian superannuation funds from the foreign investment fund taxation rules to apply retrospectively from the commencement of those rules. We agree with submitters that if the exemption is not retrospective there will be too many situations where people, especially those who had arrived in New Zealand in the past few years, would be inequitably affected depending on exactly when they arrived. Further, the proposed application date of 1 April 2006 would mean that those people who are not complying now would continue not to comply.

We also consider that to allow the retrospective application of the exemption would simplify its application and improve the overall equity of the foreign investment fund rules as they apply to people who acquire their Australian superannuation interests from 1 April 2006 and those who had acquired similar interests before that date.

We note submitters suggested that the exemption ought to apply to interests acquired after 1 April 2006 and to those interests that existed as at 1 April 2006. The effect of this suggestion would be that the exemption should apply from the commencement of the foreign investment fund rules.

**Roll-over relief for transfers between preserved schemes**

The majority of us recommend amending the bill to provide roll-over relief for transfers between the Australian superannuation schemes specified in the new exemption. We understand that in the absence of a roll-over provision, a transfer between schemes might be deemed a withdrawal, which could result in the new contribution falling outside the exemption provisions. The amendment the majority of us propose, however, limits roll-over relief to transfers between Australian superannuation schemes that are subject to strict preservation and restrictions on the early release of those benefits.

**Taxation of employer superannuation contributions—  
“Salary sacrifice”**

The proposals in the bill, as introduced, seek to ensure that specified superannuation contribution withholding tax (SSCWT) rates under the progressive scale would be based on the total of an employee’s salary or wages and employer superannuation contributions. We understand this is to minimise the possibility of overtaxing some

employees on superannuation contributions and to minimise the opportunity for taxpayers to significantly decrease their tax liabilities through the practice of excessive salary sacrifice.

### **Increase the SSCWT rate threshold uplift**

The majority of us recommend the difference between SSCWT thresholds and the equivalent personal income tax thresholds be increased by setting the SSCWT thresholds at 20 percent rather than 15 percent, because some schemes have employer contribution rates higher than 15 percent of salary and wages, and to encourage superannuation savings.

Officials advise that 90 percent of employer superannuation contributions are equal to or less than 15 percent of salary and wages. High-income earners would fall into the 33 percent SSCWT bracket, although we understand some larger schemes, which involve excessive salary sacrifice, have higher employer contribution rates. For example, the New Zealand Defence Force scheme, which is compulsory for enlisted personnel, has an employer contribution rate of 17.9 percent, and the New Zealand Police Force scheme has an employer contribution rate of 15.2 percent for sworn personnel. Many members of these schemes fall into lower income brackets. Therefore, setting the SSCWT thresholds at 20 percent higher than the equivalent income tax thresholds would be sufficient to ensure that lower income earners are not overtaxed on employer superannuation contributions.

### **Removal of documents for inspection—legislating controls**

The bill contains a provision giving the Inland Revenue Commissioner the power to remove documents for inspection. The main purpose of this power is to assist Inland Revenue in its investigation of tax evasion and avoidance schemes and in particular to facilitate the forensic examination of documents.

To improve the system of checks and balances on the use of the proposed power, the majority of us recommend an amendment to the bill to require the Commissioner to seek a warrant from a judicial officer before the exercise of the new power. This would ensure documents could not be removed for inspection unless a warrant has been issued. The warrant would be issued by a judicial officer, normally a District Court Judge, who would need to be satisfied that

there were reasonable grounds for requiring the removal of the documents.

### **Extension of tax exemption to apply to New Zealand Police**

The bill proposes that operational allowances paid to military personnel on specified missions in designated operational areas will be exempt from income tax. The majority of us recommend this exemption should apply also to allowances paid to New Zealand Police personnel serving in operational areas.

New Zealand Police personnel are involved in a number of overseas deployments and carry out various operational and peacekeeping duties, often working alongside the New Zealand Defence Force. We consider that if New Zealand Police personnel are serving in operational areas any allowances paid to them directly and solely for serving in those areas should automatically be exempt from income tax.

The majority of us recommend that the Ministerial Committee be allowed to determine whether to exempt from income tax the pay and other allowances of New Zealand Police personnel who are serving in operational areas in the same way as pay and other allowances of defence force personnel. In view of this amendment, we propose that the Minister of Police be included in the Ministerial Committee.

### **Consolidated groups and foreign losses—grandparenting provisions**

Submitters generally support the intent of Supplementary Order Paper No 44 to protect the position of existing consolidated groups where they have made provisional tax payments before 17 May 2006. Submitters, however, consider that the grandparenting provision should be extended. The majority of us agree.

Officials advise that as this is a base maintenance issue, the amendment in the bill, as introduced, applies from the 1997-1998 income year. We understand this reduces the likelihood that taxpayers will retrospectively take advantage of the discrepancy in the current law by seeking to have their assessments for previous years amended.

However, the majority of us consider that the position for all companies should be protected for their 2006–2007 and earlier years if they

have elected to join the consolidated group before 17 May 2007, regardless of their provisional tax instalment date. To minimise possible compliance costs, we recommend the bill be amended to grandparent certain existing dual resident companies that are genuine trading companies. These companies must be in business other than a financing business, and have applied to be a member of a consolidated group before 17 May 2006. The majority of us believe this amendment would address the concerns raised by submitters by grandparenting dual resident entities that are genuine trading companies.

### **National Party minority view**

The National Party supports neither the confirmation of current income tax rates nor the measures to tax portfolio investments in offshore companies. While supporting the objective of the legislation to tax portfolio investments in offshore companies more consistently, regardless of whether the investment is made through a managed fund, or made directly, and regardless of where the investment is located, the measures do not deliver on that objective.

National members are concerned by the fact that investments via a New Zealand managed fund would be taxed on a fixed 5 percent fair dividend rate, while direct investments by either individuals or family trusts would get the benefit of a lower rate or no tax being payable depending on actual returns. Further, a \$50,000 de minimis will apply to individuals investing directly but not to those investing through funds.

National also considers the 5 percent fair dividend rate is inappropriate as it includes an element of capital gains tax. Most submitters argued that a lower deemed rate or return applying to individuals and funds alike, and aligned to average international dividend returns would have removed that element of capital gains tax.

National does support including the domestic rules relating to portfolio investment entities and the remedial tax measures.

## Appendix

### Committee process

The Taxation (Annual Rates, Savings Investment, and Miscellaneous Provisions) Bill was referred to the committee on 25 May 2006. The closing date for submissions was 7 July 2006. We received and considered 3404 submissions from interested groups and individuals. We heard 144 submissions, which included holding hearings in Auckland, Wellington, and Christchurch. We received advice from the Inland Revenue Department, and The Treasury, and had the assistance of an independent specialist tax adviser.

### Committee membership

Shane Jones (Chairperson)

Gordon Copeland

Jeanette Fitzsimons

Craig Foss

Hon Mark Gosche

Hone Harawira

Hon George Hawkins

Rodney Hide

John Key

Dr the Hon Lockwood Smith (Deputy Chairperson)

Hon Paul Swain

Chris Tremain

R Doug Woolerton

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

**Struck out (unanimous)**

Subject to this Act,

Text struck out unanimously

**New (unanimous)**

Subject to this Act,

Text inserted unanimously

*(Subject to this Act,)*

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

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*Hon Peter Dunne*

# **Taxation (Annual Rates, Savings Investment, and Miscellaneous Provisions) Bill**

Government Bill

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

**1 Title**

This Act is the **Taxation (Annual Rates, Savings Investment, and Miscellaneous Provisions) Act 2006**.

**Struck out (unanimous)**

**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 162(2)** is treated as coming into force on 26 July 1996.
- (3) **Section 161** is treated as coming into force on 1 April 2000.
- (4) **Section 160** is treated as coming into force on 26 March 2003. 10
- (5) **Sections 157, 159, and 162(3)** are treated as coming into force on 1 April 2003.
- (6) **Section 20(1), (2), (4), (5), and (7)** are treated as coming into force on 21 December 2004.
- (7) **Sections 13, 14, 16, 23, 34, 50, 53, 69(4), 70(3), (4), (6), and (7), 72(1)(c) and (2), 74, 77, 78, 84, 112, 124, 126(10), (11), (16), and (19), 128, 129(2)(a), 134, 135, 138, 139, and 140** are treated as coming into force on 1 April 2005. 15
- (8) **Sections 15, 80, 81(1), (2), and (3), and 151** are treated as coming into force on 21 June 2005. 20
- (9) **Sections 11, 26, 27, 31, 32, 37, 42, 43, 44, 47, 48, 49, 69(3), 83, 89, 126(2), (8), and (23), and 132** are treated as coming into force on 1 October 2005.
- (10) **Sections 96, 115, and 131** are treated as coming into force on 1 April 2006. 25
- (11) **Sections 28, 29, 30, 114, 121, 125, 146, and 147** are treated as coming into force on 3 April 2006.
- (12) **Sections 24, 33, 38, 39, 40, 81(4), (5), and (6), and 113(1)** are treated as coming into force on 16 May 2006.
- (13) **Sections 103, 123, and 142** are treated as coming into force on 1 July 2006. 30
- (14) **Section 10** comes into force 3 months after the date on which it receives the Royal assent.

## Struck out (unanimous)

- |      |   |    |
|------|---|----|
| (15) | <b>Sections 5, 6, 7(2), (3), (4), and (5), 8, 12, 17, 19, 20(3), (6), (8), and (9), 21, 22, 51, 54, 55, 56, 57, 58, 59, 60, 61, 63, 64, 65, 66, 67, 68, 69(1), (2), and (5), 70(1), (2), (5), and (8), 71, 72(1)(a) and (b), (3), and (4), 73, 75, 79, 82, 85, 86, 87, 88, 98, 99, 100, 101, 102, 104, 113(2), 116, 117, 118, 120, 122, 126(4), (5), (6), (9), (15), (17), (18), (20), (21), (25), (26), (27), (32), (33), and (34), 127, 129(1) and (2)(b), 130, 143, 144, 145, 148, 154, 155, 167, 168, 170, and 171</b> come into force on 1 April 2007. | 5  |
| (16) | <b>Sections 105, 106, 107, 108, 109, 110, 111, 152, and 153</b> come into force on 1 October 2007.  | 10 |

## New (unanimous)

- |                       |   |    |
|-----------------------|---|----|
| <b>2 Commencement</b> |   |    |
| (1)                   | This Act comes into force on the date on which it receives the Royal assent, except as provided in this section.  |    |
| (2)                   | <b>Section 162C</b> is treated as coming into force on 30 November 1993.  | 15 |
| (3)                   | <b>Section 156B</b> is treated as coming into force on 1 April 1995.  |    |
| (4)                   | <b>Section 162(2)</b> is treated as coming into force on 26 July 1996.  |    |
| (5)                   | <b>Section 162(3B)</b> is treated as coming into force on 20 May 1999.  |    |
| (6)                   | <b>Section 161</b> is treated as coming into force on 1 April 2000.   | 20 |
| (7)                   | <b>Section 165F(1), (3), (4), and (5)</b> is treated as coming into force on 1 October 2001.  |    |
| (8)                   | <b>Section 160</b> is treated as coming into force on 26 March 2003.  |    |
| (9)                   | <b>Sections 157, 159, and 162(3)</b> are treated as coming into force on 1 April 2003.  | 25 |
| (10)                  | <b>Section 20(1), (2), (4), (5), and (7)</b> is treated as coming into force on 21 December 2004.   |    |
| (11)                  | <b>Sections 5B, 10B, 10C, 13, 14, 16(a), 23, 25B, 34, 50, 50B(1), 50C, 52, 53, 69(2) and (5), 70(1)(a), (3), (4)(a), (6), and (7), 72(1)(c) and (2), 74, 77, 78, 82B, 84, 112, 115B, 115C, 115D, 115E, 124, 126(3), (3B), (10), (11), (15B), (16)(a), (19), (19B), (25B), and (32C), 128, 129(2)(a), 134, 135, 137(3), 138, 139, 140, 142B, 144B, and 165F(2)</b> are treated as coming into force on 1 April 2005. | 30 |

**Taxation (Annual Rates, Savings  
Investment, and Miscellaneous Provisions)**

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**New (unanimous)**

- |   |              |
|---|--------------|
| (12) <b>Sections 15 and 151</b> are treated as coming into force on 21 June 2005.   |              |
| (13) <b>Sections 11, 26, 27, 31, 32, 37, 42, 43, 44, 47, 48, 49, 69(4), 77B, 77C, 79B, 80, 81(1), (2), (4), and (6), 83, 89, 120(1) and (2), 120B, 126(2), (8), and (23), 129B, and 132</b> are treated as coming into force on 1 October 2005.   | 5            |
| (14) <b>Sections 17B, 96, 104B, 115, 126(19C), and 131(1)</b> are treated as coming into force on 1 April 2006.   |              |
| (15) <b>Sections 28, 29, 30, 114, 114B, 121, 125, 126(22B), 128B, 141D, 146, 147, and 162B</b> are treated as coming into force on 3 April 2006.  | 10           |
| (16) <b>Sections 24, 33, 38, 39, 40, 81(3), (5), and (7), and 113(1)</b> are treated as coming into force on 17 May 2006.   |              |
| (17) <b>Sections 103, 113B, 123, 126(19D), and 142</b> are treated as coming into force on 1 July 2006.   |              |
| (18) <b>Section 10</b> comes into force 3 months after the date on which it receives the Royal assent.  | 15           |
| (19) <b>Sections 149B and 165D</b> come into force on 31 March 2007.  |              |
| (20) <b>Sections 5(1) and (2), 7(2), (3), (4), and (5), 19(1), 20(3), (6), (8), and (9), 22(1), 51(1), 54(1) to (3), 55(1) to (3), 55B(1), 56(1) and (2), 56B(1), 57(1) to (3), 58(1), 59(1), 60(1), 61(1), 63(1) to (3), 66(1) to (3), 67(1) to (3), 69(1), (3), and (7), 70(1)(b), (2), (4)(b), (5), and (8), 71(1), 72(1)(a) and (b), (3), (4), and (5), 73(1) and (2), 75(1), 79(1), 82(1) and (2), 87(1), 88(1) and (2), 116, 117, 117B, 118, 126(4), (5B), (12), (14B), (15), (16)(b), (21), (32B), and (33), 130, 131B, 143, 148B, and 150B</b> come into force on 1 April 2007. | 20<br><br>25 |
| (21) <b>Sections 4B, 6, 9B, 12, 16B, 17, 23B, 44B, 85, 86, 87B, 90(1), 98, 99, 100, 101, 102, 103B, 105, 105B, 105C, 106, 107, 108, 109, 110, 111, 113(2), 113C, 113D, 120(3), 122, 124(1B), 125B, 126(9), (17), (20), (21B), (25), (26), (27), (32), and (34), 129(2)(b), 133B, 141CB, 142C, 144, 145, 145B, 148, 152, 153, 154, 155, 165B, 165C, 165G, 165I, 165J, 165L, 165M, 167, 168, 168C, 168D, 170, and 171</b> come into force on 1 October 2007.  | 30           |

**Part 1**

**Annual rates of income tax for 2006–07 tax year**

**3 Rates of income tax for 2006–07 tax year**

- (1) Income tax imposed by section BB 1 of the Income Tax Act 2004 must, for the 2006–07 tax year, be paid at the basic rates specified in schedule 1 of that Act. 5
- (2) The Taxation (Annual Rates of Income Tax 2005–06) Act 2005 is repealed.

**Part 2**

**Amendments to Income Tax Act 2004** 10

**4 Income Tax Act 2004**

This Part amends the Income Tax Act 2004.

**New (unanimous)**

**4B 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** 15

*“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 20
  - “(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. 25

*“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 30

**New (unanimous)**

“(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

**Struck out (unanimous)**

**5 Foreign investment fund income**

(1) In section CD 26(b), “comparative value method or the deemed rate of return method” is replaced by “cost method, the market value method, or the smoothed market value method”.

10

(2) In section CD 26, in the list of defined terms,—

(a) “comparative value method” and “deemed rate of return method” are omitted:

(b) “cost method”, “market value method”, and “smoothed market value method” are inserted.

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(3) **Subsections (1) and (2)** apply for income years and portfolio entity periods beginning on or after 1 April 2007.

**New (unanimous)**

**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”.

20

(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—

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(a) beginning with 1 April 2007 for a person who does not make an election under **paragraph (b)**; or

(b) beginning with 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

30

**New (unanimous)**

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.

5

**5B Meaning of share**

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

**Struck out (unanimous)**

**6 New subpart CP inserted**

- (1) Before subpart CQ, the following is inserted:

“Subpart CP—Income from portfolio investment entities

15

“**CP 1 Portfolio investor attributed income**

The amount of portfolio investor attributed income of a person who is an investor in a portfolio investment entity is income of the person in the portfolio entity period for which the person derives the amount.

20

“Defined in this Act: amount, income, portfolio entity period, portfolio investment entity, portfolio investor attributed income, portfolio investor class

“**CP 2 Distributions by portfolio investment entities**

A distribution that an investor derives from a portfolio investment entity is income of the investor.

25

“Defined in this Act: amount, distribution, income, portfolio investment entity”.

- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.

**New (unanimous)**

**6 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 5  
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 23** (Portfolio investor allocated income and portfo-  
lio investor allocated loss). 10

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

**7 When FIF income arises**

(1) After section CQ 5(1)(c)(ii), the following is inserted:

“(iib) the Australian superannuation fund exemption in 15  
**section EX 33(B)E** (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 20  
trustee, the person holds, at any time during the income  
year when the person is a New Zealand resident, attrib-  
uting interests in FIFs for which the total of the follow-  
ing amounts is more than \$50,000:

“(i) if **subparagraph (ii)** does not apply to the interest, 25  
the cost of the interest calculated under section  
EX 56 (Measurement of cost):

“(ii) if the person acquired the interest before 1 Janu-  
ary 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 30  
acquired before 1 January 2000, half of the mar-  
ket 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 ((6))(5)**, the person holds 35  
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”.

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**Struck out (unanimous)**

- (3) In section CQ 5(1)(f), “EX 45” is replaced by “**EX 45B**”.

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**New (unanimous)**

- (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).”

15

- (4) After section CQ 5(4), the following is added:

**Struck out (unanimous)**

- “*Special rule: grey list company with FIF interest*
- “(5) A person with a direct income interest in a grey list company can also have FIF income under the special rule in **section EX 46B** (Additional FIF income or loss if grey list company owns FIF).”

20

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

- “(6) **Subsection (1)(db)** applies to the trustee of a trust 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

25

**Struck out (unanimous)**

<p>section OD 7 (Defining when 2 persons are associated persons); and</p> <p>“(ii) is required by a court order to pay damages or compensation to the beneficiary:</p> <p>“(b) the settlor of the trust is the Accident Compensation Corporation:</p> <p>“(c) the trust is of the estate of a deceased person who has been deceased for less than 5 of the estate’s income years that begin on or after the person’s death.</p>	<p>5</p>
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**New (unanimous)**

<p>“(5) <b>Subsection (1)(db)</b> applies to the trustee of a trust for an income year if—</p> <p>“(a) the settlor of the trust—</p> <p>    “(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</p> <p>    “(ii) is required by a court order to pay damages or compensation to the beneficiary:</p> <p>“(b) the settlor of the trust—</p> <p>    “(i) is the estate of a deceased person; and</p> <p>    “(ii) is required by a court order to settle on the trust the proceeds of damages or compensation for the beneficiaries of the trust:</p> <p>“(c) the settlor of the trust is the Accident Compensation Corporation:</p> <p>“(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.”</p>	<p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p>
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(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.

**Struck out (unanimous)**

(7) **Subsections (2), (3), (4), and (5)** apply for income years and portfolio entity periods beginning on or after 1 April 2007.

**New (unanimous)**

(7) **Subsections (2), (3) and (4)** apply for income years beginning on or after 1 April 2007—

- (a) beginning with 1 April 2007 for a person who does not make an election under **paragraph (b)**; or
- (b) beginning with 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.

**Struck out (unanimous)**

**8 Calculation of FIF income** 20

(1) In section CQ 6, “EX 49” is replaced by “EX 47”.  
 (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.

**9 Withdrawals**

(1) In section CS 1(2), in the formula, “withdrawn” is replaced by “withdrawal”. 25  
 (2) **Subsection (1)** applies for the 2005–06 and later income years.

**New (unanimous)**

**9B 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.”

5

(2) In section CW 9, in the list of defined terms, “portfolio tax rate entity” is inserted.

**10 Income for military service in operational area**

10

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.

15

*“Exempt income*

“(2) The following amounts are exempt income of the member:

“(a) an amount of operational allowance:

20

“(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.

25

*“Some definitions*

“(4) In this section,—

30

“**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 5
- “**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; 10
  - 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”. 15

**New (unanimous)**

**10B 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— 20

- “(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— 25
  - “(i) an Australian approved deposit fund:
  - “(ii) an Australian exempt public sector superannuation scheme:
  - “(iii) an Australian regulated superannuation fund: 30
  - “(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”. 35

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

**New (unanimous)**

**10C 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.

**11 Refund from environmental restoration account**

5

- (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.

**Struck out (unanimous)**

**12 New heading and sections CX 44C and CX 44D inserted**

10

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

*“Portfolio investment entities*

**“CX 44C Certain income of portfolio investment entities**

Income derived by a portfolio investment entity from disposing of a share is excluded income if—

15

“(a) the share is issued by a company—

“(i) resident in New Zealand and not treated under a double tax agreement as not being resident in New Zealand:

“(ii) resident in Australia and listed on the Australian Stock Exchange; and

20

“(b) the share is not a non-participating redeemable share; and

“(c) no dividend from the share is—

“(i) declared before the disposal; and

25

“(ii) paid after the disposal; and

“(d) the portfolio investment entity is not assured, under an arrangement with another person, of having a gain on the disposal; and

“(e) the following events do not occur within the period of 30 days from the disposal:

30

“(i) the company declares a dividend; and

**Struck out (unanimous)**

“(ii) after the declaration, the portfolio investment entity purchases a share in the company that confers the same rights and imposes the same obligations on the holder as the share involved in the disposal.

5

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

**“CX 44D Portfolio investor attributed income and distributions by portfolio investment entities**

10

*“Portfolio investor attributed income*

“(1) Portfolio investor attributed income derived under **section CP 1** (Portfolio investor attributed income) in a portfolio entity period by an investor in a portfolio investment entity is excluded income of the investor if—

15

“(a) the prescribed investor rate for the investor is more than 0%; and

“(b) the investor does not, before the last day of the period, provide to the portfolio investment entity for the period a portfolio investor rate that is less than the prescribed investor rate for the period.

20

*“Distribution by portfolio investment entity*

“(2) A distribution by a portfolio investment entity that is derived by an investor in the portfolio investment entity is excluded income of the person.

25

“Defined in this Act: amount, distribution, excluded income, investor, portfolio investment entity, portfolio investment entity tax, portfolio investor attributed income, portfolio investor rate, prescribed investor rate”.

(2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.

30

**New (unanimous)**

**12 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** 5

*“When this section applies*

“(1) This section applies to income derived by a portfolio invest-  
ment 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 10  
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 15  
other than Australia or New Zealand; and

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

“(iii) required under the Income Tax Assessment Act  
1997 (Aust) and Income Tax Assessment Act 20  
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. 25

“Defined in this Act: amount, arrangement, company, dividend, double tax agree-  
ment, 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** 30

*“Portfolio investor allocated income*

“(1) Portfolio investor allocated income derived under **section CP 1**  
(Portfolio investor allocated income) in a portfolio calculation

## New (unanimous)

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	5
“(c) for a portfolio tax rate entity making payments of tax under <b>section HL 20</b> (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.	10
“ <i>Distribution of income by portfolio tax rate entity</i>	15
“(2) An amount of income derived by an investor as a distribution by a portfolio tax rate entity is excluded income of the investor.	
“ <i>Distribution by portfolio investment entity that is not portfolio tax rate entity</i>	20
“(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	25
“(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 <b>paragraph (a)</b> does not apply.	30
“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”.	35

Struck out (unanimous)

<b>13</b>	<b>New section CZ 20 added</b>	
(1)	After section CZ 19, the following is added:	
	<b>“CZ 20 Geothermal wells between 31 March 2003 and 16 May 2006</b>	
	<i>“When this section applies</i>	5
“(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 16 May 2006:	
	“(ii) acquired between 31 March 2003 and 16 May 2006; and	10
	“(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:	15
	“(ii) disposes of the well.	
	<i>“Income</i>	
“(2)	The person has, for the first income year in which this section applies, income equal to,—	20
	“(a) if <b>subsection (1)(b)(i)</b> applies, the total amount of deductions that the person has been allowed for the well under <b>section DZ 15</b> (Geothermal wells between 31 March 2003 and 16 May 2006) and <b>section DZ 7</b> of the Income Tax Act 1994; or	25
	“(b) if <b>subsection (1)(b)(ii)</b> applies, the lesser of—	
	“(i) the amount derived from disposing of the well; and	
	“(ii) the total amount of deductions that the person has been allowed for the well under <b>section DZ 15</b> (Geothermal wells between 31 March 2003 and	30

**Struck out (unanimous)**

16 May 2006) and **section DZ 7** of the Income Tax Act 1994.

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

- (2) **Subsection (1)** applies for the 2005–06 and later income years. 5

**New (unanimous)**

**13 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* 10

- “(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 15

“(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: 20

“(ii) disposes of the well.

*“Income*

- “(2) The person has, for the first income year in which this section applies, income equal to,— 25

“(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 30

“(b) if **subsection (1)(b)(ii)** applies, the lesser of—

**New (unanimous)**

	“(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 <b>section DZ 7</b> of the Income Tax Act 1994 and <b>section DZ 15</b> (Geothermal wells between 31 March 2003 and 17 May 2006) for all income years.	5
	“Defined in this Act: amount, business, deduction, dispose, geothermal energy proving period, geothermal well, income, income year”.	
(2)	<b>Subsection (1)</b> applies for the 2005–06 and later income years.	10
<b>14</b>	<b>Base price adjustment under old financial arrangements rules</b>	
(1)	In section DB 9B, the following is added as subsection (2): “ <i>Link with subpart DA</i> ”	
“(2)	This section supplements the general permission and over- rides all the general limitations.”	15
(2)	In section DB 9B, the following list of defined terms is added: “amount, deduction, general limitation, general permission, supplement”.	
(3)	<b>Subsections (1) and (2)</b> apply for the 2005–06 and later income years.	20
<b>15</b>	<b>Patent applications or patent rights acquired on or after 1 April 1993</b>	
(1)	Section DB 31(4)(a) and (b) are replaced by the following: “(a) <b>total cost</b> is the total cost to the person of the patent application with a complete specification or of the pat- ent rights, excluding any expenditure for which the person has been allowed a deduction under <b>section DZ 14</b> (Patent applications before 1 April 2005):	25
“(b)	<b>total amounts of depreciation loss</b> 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.”	30

- (2) **Subsection (1)** applies to a patent application that is lodged for the first time on or after 21 June 2005.

**16 Bribes paid to public officials**

- (1) In section DB 36,—
- (a) the heading to subsection (1) is replaced by “*When this section applies*”: 5
  - (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,— 10
- “(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: 15
  - “(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.” 20
- (2) **Subsection (1)** applies for the 2005–06 and later income years.

**New (unanimous)**

**16B 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. 25
- “*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— 30
- “(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

**New (unanimous)**

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— 5
- “(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. 10

**Struck out (unanimous)**

**17 New heading and section DB 43B inserted**

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

*“Portfolio investment entities*

- “**DB 43B Zero-rated portfolio investor and portfolio investor attributed loss** 15
- A person who is an investor in a portfolio investment entity has, to the extent allowed by **subpart HL** (Portfolio investment entities), a deduction for the amount of a portfolio investor attributed loss of the person under that subpart.” 20
- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.



**New (unanimous)**

*“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”.

5

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

**18 Deductions for business use**

10

- (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

15

“(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—

20

“(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).”

25

- (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

30

“(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* 5

“(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.” 10

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

**19 Foreign investment fund loss** 15

(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.” 20

**Struck out (unanimous)**

(2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.

**New (unanimous)**

(2) **Subsection (1)** applies for income years beginning on or after 1 April 2007— 25

(a) beginning with 1 April 2007 for a person who does not make an election under **paragraph (b)**; or

(b) beginning with 1 October 2007 for a person that is a company, group investment fund, or superannuation 30

**New (unanimous)**

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 5
- (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. 10

**20 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) After section DN 6(1)(c)(ii), the following is inserted: 15
  - “(iib) the Australian superannuation fund exemption in **section EX 33(B)E** (Australian superannuation fund exemption):”.
- (4) In section DN 6(1)(c)(iv), “resident:” is replaced by “resident); and”. 20
- (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 (4)(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: 25
    - “(i) if **subparagraph (ii)** does not apply to the interest, the cost of the interest calculated under section EX 56 (Measurement of cost): 30
    - “(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 35

- 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)(4)**, the person holds attributing interests in FIFs for which the total of the following amounts is more than \$50,000: 5
- “(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”. 10 15
- (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:

**Struck out (unanimous)**

- “Special rule: grey list company with FIF interest*
- “(4) A person with a direct income interest in a grey list company can also have a FIF loss under the special rule in **section EX 46B** (Additional FIF income or loss if grey list company owns FIF). 20
- “When application of subsection (1) affected by subsection (1)(db)* 25
- “(5) **Subsection (1)(db)** applies to the trustee of a trust 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 30
- “(ii) is required by a court order to pay damages or compensation to the beneficiary:

**Struck out (unanimous)**

- “(b) the settlor of the trust is the Accident Compensation Corporation:  
“(c) the trust is of the estate of a deceased person who has been deceased for less than 5 of the estate’s income years that begin on or after the person’s death.”

5

**New (unanimous)**

*“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:

10

15

- “(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:

20

- “(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.”

25

**Struck out (unanimous)**

- (10) **Subsections (6), (8), and (9)** apply for income years and portfolio entity periods beginning on or after 1 April 2007.

**New (unanimous)**

- (10) **Subsections (6), (8), and (9)** apply for income years beginning on or after 1 April 2007—
- (a) beginning with 1 April 2007 for a person who does not make an election under **paragraph (b)**; or
  - (b) beginning with 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.

**Struck out (unanimous)****21 Calculation of FIF loss**

- (1) In section DN 7, “EX 49” is replaced by “EX 47”.
- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.

**22 Ring-fencing cap on deduction: not branch equivalent method**

- (1) Section DN 8 is repealed.

**Struck out (unanimous)**

- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.

**New (unanimous)**

- (2) **Subsection (1)** applies for income years beginning on or after 1 April 2007—
- (a) beginning with 1 April 2007 for a person who does not make an election under **paragraph (b)**; or
  - (b) beginning with 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.

**23 New sections DZ 14 (and DZ 15) 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 a deduction for)* 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—

$$\text{cost} \times \frac{\text{months of ownership}}{240.} \quad 5$$

*“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. 10

*“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. 15

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

**Struck out (unanimous)**

**“DZ 15 Geothermal wells between 31 March 2003 and 16 May 2006 20**

*“When this section applies*

- “(1) This section applies to a person’s geothermal well, if—
- “(a) the well’s geothermal proving period ends between 31 March 2003 and 16 May 2006; and
- “(b) the well is— 25
- “(i) both started and completed between 31 March 2003 and 16 May 2006;
- “(ii) acquired between 31 March 2003 and 16 May 2006; and
- “(c) a deduction for expenditure on the well is not allowed under another provision. 30

*“Deduction*

- “(2) The person is allowed, for the income year in which the well’s geothermal proving period ends, a deduction for expenditure on the well. 35

**Struck out (unanimous)**

*“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 proving period, geothermal well, income year, supplement

5

**New (unanimous)**

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

*“When this section applies*

10

“(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:

15

“(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.

20

*“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*

25

“(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

30

## New (unanimous)

<b>“DZ 16 Expenditure on improvements to aquacultural business before 1995–96 income year</b>	
<i>“When this section applies</i>	
“(1) This section applies to a person and an income year and expenditure—	5
“(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.	10
<i>“Deduction</i>	
“(2) The person is allowed a deduction in the income year for the expenditure.	15
<i>“Amount of deduction</i>	
“(3) The amount of the deduction is calculated using the formula— $125\% \times \text{schedule percentage} \times \text{diminished value}$ .	
<i>“Definition of items in formula</i>	
“(4) In the formula,—	20
“(a) <b>schedule percentage</b> 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):	25
“(b) <b>diminished value</b> means the diminished value of the improvement.	
<i>“Link with subpart DA</i>	
“(5) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.	30
“Defined in this Act: amount, business, capital limitation, deduction, diminished value, general limitation, general permission, income year	

**New (unanimous)**

**“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— 5
- “(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. 10

*“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— 15
- $125\% \times \text{schedule percentage} \times \text{diminished value}.$

*“Definition of items in formula*

- “(4) In the formula,— 20
- “(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. 25

*“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” 30

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

**New (unanimous)****23B 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.”

5

**24 What is depreciable property?**

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

10

(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.”

15

(3) In section EE 6, in the list of defined terms, “geothermal energy proving period” and “geothermal well” are inserted.

**Struck out (unanimous)**

(4) **Subsections (1) to (3)** apply to a geothermal well that is completed or acquired on or after 16 May 2006.

20

**New (unanimous)**

(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.

**25 Calculation rule: income year in which item disposed of**

25

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

*“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.” 5
- (2) **Subsection (1)** applies for the 2006–07 and later income years.

**New (unanimous)**

**25B Depreciation methods**

- (1) Section EE 12(1) is replaced by the following:
- “Meaning of depreciation method”*
- “(1) **Depreciation method** means— 10
- “(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.” 15
- (2) **Subsection (1)** applies for the 2005–06 and later income years.

**26 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,— 20
- “(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): 25
- “(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).” 30
- (2) In section EE 16(5)(b), “(or whole calendar months in the case of a patent application)” is inserted after “part calendar months”. 35

- (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
- (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.
- 27 New section EE 24B inserted** 10  
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— 15
- “(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. 20
- “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— 25
- $$\text{cost} \times \frac{\text{months of ownership}}{\text{depreciation months.}}$$
- “Definition of items in formula* 30
- “(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: 35

“(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.

5

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

**28 Setting of economic depreciation rate**

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

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

10

“(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.

**29 Economic rate for certain aircraft and motor vehicles**

15

**New (unanimous)**

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

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

(1) 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,”.

20

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

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

25

(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

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

**New (unanimous)**

“(c) the items are—

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

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

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

**31 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.**”

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(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.

**32 Sections EE 27B to EE 27E replaced**

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

15

**“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.

20

*“Rate*

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

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

*“Definition of item in formula*

25

“(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

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- “(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”.

**Struck out (unanimous)**

- 33 Items no longer used** 30
- (1) Section EE 32(1)(a) is replaced by the following:
  - “(a) is no longer used or, because **section EE 6(4)** ceases to apply, the property ceases to be available for use; and”.
- (2) **Subsection (1)** applies to a geothermal well that is completed or acquired on or after 16 May 2006. 35

**New (unanimous)**

**33 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”. 5
- (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. 10

**34 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”*** 15
- “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. 20  
 25
- “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: 30  
 “(b) the associated person would have been be 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: 5
  - “(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: 10
  - “(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: 15
  - “(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: 20
  - “(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: 25
  - “(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: 30
  - “(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. 35

- “*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— 5
- “(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 10
- “(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* 15
- “(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: 20
- “(b) if the cost to person A is income of the associated person, other than under section EE 41(1): 25
- “(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): 30
- “(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: 35
- “(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).

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*“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.

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“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

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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*

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“(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

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“(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

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“(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.

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*“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— 5
- “(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 10
- “(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. 15

*“Exclusions*

- “(3) **Subsection (2)** does not apply—
- “(a) if—
- “(i) the item is not depreciable intangible property; and 20
- “(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). 25

*“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): 30
- “(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 35

- “(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). 5
- “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 10
- Compare: 1994 No 164 ss EG 17(3B), FE 5(2)”.
- (2) **Subsection (1)** applies for the 2005–06 and later income years. 15
- 35 Transfer of depreciable property on or after 24 September 1997**
- (1) **Section EE 33(3)(a)(ii)**, as inserted by **section 34** 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”. 20
- (2) **Subsection (1)** applies for the 2006–07 and later income years. 25
- 36 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 34** 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”. 30
- (2) **Subsection (1)** applies for the 2006–07 and later income years. 35

**Struck out (unanimous)****37 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: 5

“(b) to an event that is—

“(i) the conclusion of a person’s patent application because a patent is granted to the person in relation to the patent application: 10

“(ii) a person’s geothermal well ceasing to be available for use because **section EE 6(4)** ceases to apply.”

(2) In section EE 37, in the list of defined terms, “geothermal well” is inserted. 15

(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 that is completed or acquired on or after 16 May 2006. 20

**New (unanimous)****37 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: 25

“(b) when a person’s patent application has concluded because a patent is granted to the person in relation to the patent application: 30

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

**New (unanimous)**

- (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. 5

**38 Consideration for purposes of section EE 37**

- (1) After section EE 38(6), the following is inserted: 10
  - “*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).”

**Struck out (unanimous)**

- (2) **Subsection (1)** applies to a geothermal well that is completed or acquired on or after 16 May 2006. 15

**New (unanimous)**

- (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.

**Struck out (unanimous)**

**39 Events for purposes of section EE 37**

- (1) After section EE 40(5), the following is inserted: 20
  - “*Unused geothermal well brought into use*”
  - “(5B) The fifth event is, for a person’s geothermal well that has been, but is not, available for use because **section EE 6(4)** has ceased to apply, the start of the person’s—

**Struck out (unanimous)**

- “(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.” 5
- (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”, and “geothermal well” are inserted.
- (4) **Subsections (1) to (3)** apply to a geothermal well that is completed or acquired on or after 16 May 2006. 10

**New (unanimous)**

- 39 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— 15
    - “(a) using the well in deriving assessable income or carrying on a business for the purposes of deriving assessable income: 20
    - “(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”. 25
  - (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. 30

**40 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. 5

*“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. 10

*“Defined in this Act: geothermal well”.*

**Struck out (unanimous)**

(2) **Subsection (1)** applies to a geothermal well that is completed or acquired on or after 16 May 2006.

**New (unanimous)**

(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. 15

**41 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.” 20

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

**42 Total deductions in section EE 47** 25

(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.

**Struck out (unanimous)**

- (6) **Subsections (1) to (4)** apply to a geothermal well that is completed or acquired on or after 16 May 2006.

**New (unanimous)**

- (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.

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**43 Meaning of annual rate**

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

**44 Other definitions**

- (1) In section EE 58, the definition of **legal life** is replaced by the following:

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“**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:

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“(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:

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“(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

25

“(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”.

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- (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: 5
- (c) plant variety rights, if the plant variety rights are granted to a person in their 2005–06 or later income year.

**New (unanimous)**

**44B New section EG 3 inserted** 10

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. 15

*“Allocation shown in accounts*

- “(2) Income and deductions of the portfolio tax rate entity are allocated—

- “(a) to portfolio allocation periods as— 20

- “(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 **sub-paragraph (i)** does not apply: 25

- “(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 **sub-paragraph (i)** does not apply. 30

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

**45 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). 5

*“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. 10

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

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

**46 Allocation of deductions for research, development, and resulting market development**

Section EJ 21(3) is replaced by the following: 15

*“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— 20

“(a) the amount of assessable income referred to in subsection (2)(a) that the person derives in the current year: 20

“(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— 25

“(a) the amount of assessable income referred to in subsection (2)(a) that the person derives in the current year: 30

“(b) the amount of the deductions that— 30

“(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.” 35

**47    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.      5

**48    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—      10
    - “(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.”      15
- (2) **Subsection (1)** applies for expenditure incurred by a person in an income year starting on or after 10 June 2005.

**49    Transfer on death, bankruptcy, or liquidation**

**New (unanimous)**

- (1A) Section EK 16(3) is replaced by the following:      20
  - “*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.”

- (1) After section EK 16(5), the following is inserted:      25

**New (unanimous)**

“*Transfer to person treated as payment to account by person*”

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

- (2) **Subsection (1)** applies for expenditure incurred by a person in an income year starting on or after 10 June 2005. 5

**New (unanimous)**

**49B 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.” 10

- (2) **Subsection (1)** applies for expenditure incurred by a person in an income year starting on or after 10 June 2005. 15

**50 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”. 20

**New (unanimous)**

**50B 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.

**50C Unqualified grey list CFCs**

- (1) In section EX 22(2), “CQ 2(g)” is replaced by “CQ 2(1)(g)”. 25
- (2) **Subsection (1)** applies for the 2005–06 and later income years.

**Struck out (unanimous)****51 Section EX 33 replaced**

(1) In section EX 33, the heading and subsection (1) are replaced by the following:

**“EX 33 Exemption: shares in listed Australian company,  
direct income interests in FIF in grey list country**

5

*“Exemption*

“(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 from shares listed on the official list of the Australian Stock Exchange and the FIF is a company resident in Australia that is—

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“(i) not an entity described in schedule 4, part B (Foreign investment funds); and

“(ii) required under the Income Tax Assessment Act 1997 (Aust) and Income Tax Assessment Act 1936 (Aust) to maintain a franking account; and

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“(iii) liable under the Income Tax Assessment Act 1997 (Aust) and Income Tax Assessment Act 1936 (Aust) to income tax on income derived from Australia and income not derived from Australia:

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“(b) the rights are a direct income interest of 10% or more and the person is not a portfolio investment entity, a superannuation scheme, a unit trust, a life insurer, or a group investment fund, and—

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“(i) the FIF is a company that is not an entity described in schedule 4, part B: and:

“(ii) a country listed in schedule 3, part A (International tax rules: grey list countries), in relation to the FIF, satisfies at least 1 of the grounds for exemption given by subsections (1B) and (1C):

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“(c) the rights are a direct income interest and the FIF is a grey list company and—

“(i) the person is a New Zealand resident; and

“(ii) no more than 100 New Zealand residents, including the person and treating persons associated under section OD 8(1) (Further definitions of

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**Struck out (unanimous)**

- associated persons) as 1 person, hold a direct income interest in the grey list company; and
- “(iii) New Zealand residents hold a total direct income interest of 10% or more in the grey list company; and 5
- “(iv) none of the New Zealand residents is a widely-held company, a portfolio investment entity, a superannuation scheme, a unit trust, a life insurer, or a group investment fund.”
- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007. 10

**New (unanimous)**

- 51 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 15**
- “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 20
- “(b) the person is not a portfolio investment entity, a superannuation 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 25
- “(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— 30
- “(i) is domiciled in the country:
- “(ii) is resident in the country:

## New (unanimous)

“(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	5
“(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.	10
<i>“Shares acquired when FIF resident and unlisted company</i>	
“(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	15
“(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	20
“(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	25
“(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—	30
“(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.	

**New (unanimous)**

*“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 5
  - “(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— 10
    - “(i) been resident in New Zealand; and
    - “(ii) had in New Zealand more than 50% of the resident company’s assets and employees; and 15
  - “(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; 20
    - “(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— 25
- “(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 30
  - “(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 35

**New (unanimous)**

“(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	5
“(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.	
“ <i>Exception: Categories 2 and 3</i>	
“(6) <b>Subsections (1) to (5)</b> do not apply if the rights of the person are those described in section EX 30(3) or (4).	10
“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	15
<b>“EX 33B Exemptions limited by income years: shares in certain grey list companies</b>	
“ <i>Exemption for shares in company meeting requirements for listing, shareholding and taxation</i>	20
“(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	25
“(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	30
“(iv) has shareholders referred to in <b>subparagraph (iii)</b> 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	35

**New (unanimous)**

“(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	5
“(b) in the period of 30 days beginning from the day on which the Taxation (Annual Rates, 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 <b>paragraph (a)(i) to (vii)</b> .	10
<i>“Exemption for shares in company meeting requirements for investment</i>	
“(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,—	15
“(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	20
“(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	25
“(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	30
“(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	35

## New (unanimous)

- “(b) in the period of 30 days beginning from the day on which the Taxation (Annual Rates, 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 5
- “(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 10
- “(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. 15
- “*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. 20
- “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** 25
- 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 30
- “(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 35

**New (unanimous)**

- “(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.

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“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*

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- “(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; 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)**.

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*“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.

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**New (unanimous)**

<i>“Definition of items in formula</i>	
“(3) In the formula,—	
“(a) <b>disposal proceeds</b> is the total proceeds of the asset disposals:	
“(b) <b>asset costs</b> is the total cost of the assets involved in the asset disposals.	5
<i>“Currency of amounts in subsections (2) and (3)</i>	
“(4) In <b>subsections (2) and (3)</b> , 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”.	10
(2) <b>Subsection (1)</b> applies for income years beginning on or after 1 April 2007—	
(a) beginning with 1 April 2007 for a person who does not make an election under <b>paragraph (b)</b> ; or	15
(b) beginning with 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—	20
(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

**Struck out (unanimous)**

<b>52 New section EX 33B inserted</b>	
(1) After section EX 33, the following is inserted:	
<b>“EX 33B Australian superannuation fund exemption</b>	30
<i>“Exemption</i>	
“(1) A person’s rights in a FIF are not an attributing interest if—	
“(a) the person is a natural person; and	

**Struck out (unanimous)**

“(b) the FIF is a foreign superannuation scheme, constituted in Australia, that is—

“(i) an approved deposit fund:

“(ii) an exempt public sector superannuation scheme:

“(iii) a regulated superannuation fund:

“(iv) a retirement savings account.

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*“Some definitions*

“(2) In this section,—

“**approved deposit fund** means an approved deposit fund as defined in section 10 of the Superannuation Industry (Supervision) Act 1993 (Aust), as amended from time to time

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“**exempt public sector superannuation scheme** means an exempt public sector superannuation scheme as defined in section 10 of the Superannuation Industry (Supervision) Act 1993 (Aust), as amended from time to time

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“**regulated superannuation fund** means a regulated superannuation fund as defined in section 19 of the Superannuation Industry (Supervision) Act 1993 (Aust), as amended from time to time

“**retirement savings account** means a retirement savings account as defined in section 8 of the Retirement Savings Account Act 1997 (Aust), as amended from time to time.

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

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

**New (unanimous)**

**52 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—

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

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

“(i) an Australian approved deposit fund:

**New (unanimous)**

“(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”.

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

**53 New resident’s accrued superannuation entitlement exemption**

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(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

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“(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.

**Struck out (unanimous)****54 Four calculation methods**

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

(2) In section EX 38(1), paragraphs (c) and (d) are replaced by the following:

“(c) the market value method; or

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“(d) the smoothed market value method; or

“(e) the cost method.”

(3) In section EX 38, in the list of defined terms,—

(a) “comparative value method” and “deemed rate of return method” are omitted;

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(b) “cost method”, “market value method”, and “smoothed market value method” are inserted.

**Struck out (unanimous)**

- (4) **Subsections (1), (2), and (3)** apply for income years and portfolio entity periods beginning on or after 1 April 2007.

**New (unanimous)**

**54 Four calculation methods**

- (1) The heading for section EX 38 is replaced by “**Six calculation methods**”. 5
- (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, in the list of defined terms, “cost method” and “fair dividend rate method” are inserted. 10
- (4) **Subsections (1), (2) and (3)** apply for income years beginning on or after 1 April 2007—  
(a) beginning with 1 April 2007 for a person who does not make an election under **paragraph (b)**; or 15  
(b) beginning with 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. 20 25

**Struck out (unanimous)**

**55 Limits on choice of calculation methods**

- (1) Section EX 40(4) is repealed.

**Struck out (unanimous)**

- (2) In section EX 40, in the list of defined terms, “comparative value method”, “deemed rate of return method”, “income year”, and “market value” are omitted.
- (3) **Subsections (1) and (2)** apply for income years and portfolio entity periods beginning on or after 1 April 2007.

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**New (unanimous)**

**55 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*
  - “(4B) 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.

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“*Comparative value method*

- “(5) 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 (7)(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

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**New (unanimous)**

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	5
“(iii) has no settlor who is not a natural person; and	
“(iv) is not a superannuation scheme.	
<i>“Fair dividend rate method for share in foreign company</i>	
“(6) 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 <b>subsection (7)</b> are met and—	10
“(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:	15
“(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%—	20
“(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	
<i>“Fair dividend rate method: further requirements for share in foreign company</i>	
“(7) 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):	30
“(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:	35

## New (unanimous)

“(iv) an interest meeting the requirements of <b>subsection (9)</b> that the Commissioner has not determined under <b>section 91AAO</b> of the Tax Administration Act 1994 to be an interest for which the fair dividend rate method is applicable:	5
“(v) an interest of a type that the Commissioner has determined under <b>section 91AAO</b> 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 does not satisfy <b>subsection (5)(a) or (b)</b> :	10
“ <i>Fair dividend rate method: other interests for which method not applicable</i>	
“(9) To meet the requirements of this subsection, an attributing interest of a person (the <b>investor</b> ) in a FIF must be a share and involve an obligation—	15
“(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	20
“(c) that is non-contingent or subject to a contingency that is sufficiently remote to be immaterial.	
“ <i>Cost method for share in foreign company</i>	
“(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—	25
“(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%—	30
“(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	35

**New (unanimous)**

- “(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. 5
- (4) **Subsections (1) and (2)** apply for income years beginning on or after 1 April 2007— 10
- (a) beginning with 1 April 2007 for a person who does not make an election under **paragraph (b)**; or
- (b) beginning with 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— 15
- (i) before 1 April 2007, if the person exists before that date; or 20
- (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.
- 55B New section EX 40B inserted** 25
- (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(7)(a)** must calculate FIF income from the interest for the income year using— 30
- “(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 35

**New (unanimous)**

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— 5
  - (a) beginning with 1 April 2007 for a person who does not make an election under **paragraph (b)**; or
  - (b) beginning with 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— 10
    - (i) before 1 April 2007, if the person exists before that date; or 15
    - (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. 20

**Struck out (unanimous)**

**56 Default calculation method**

- (1) In section EX 41(2)(b),—
  - (a) in subparagraph (i), “comparative value method” is replaced by “market value method”;
  - (b) subparagraph (ii) is replaced by the following: 25
    - “(ii) the cost method if using the market value method is not practical.”
- (2) In section EX 41, in the list of defined terms,—
  - (a) “comparative value method” and “deemed rate of return method” are omitted: 30
  - (b) “cost method” and “market value method” are inserted.
- (3) **Subsections (1) and (2)** apply for income years and portfolio entity periods beginning on or after 1 April 2007.

**New (unanimous)**

**56 Default calculation method**

- (1) 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(6)** 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.”
- (2) In section EX 41, 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 1 April 2007 for a person who does not make an election under **paragraph (b)**; or
- (b) beginning with 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—

**New (unanimous)**

- (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. 5

**56B 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,—”. 10
- (2) **Subsection (1)** applies for income years beginning on or after 1 April 2007—
  - (a) beginning with 1 April 2007 for a person who does not make an election under **paragraph (b)**; or 15
  - (b) beginning with 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— 20
    - (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

**Struck out (unanimous)****57 Section EX 44 repealed**

- (1) Section EX 44 is repealed.
- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007. 30

**New (unanimous)**

**57 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**)— 5

“(a) for which the person’s direct income interest in the FIF at a time in the relevant income year is less than 10%; and 10

“(b) that is not described in **section EX 40(7)(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.” 15

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

*“Conversion of foreign currency amounts”* 20

“(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— 25

“(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.” 30

(3) In section EX 44, in the list of defined terms, “direct income interest” and “FIF loss” are inserted. 35

**New (unanimous)**

- (4) **Subsections (1), (2), and (3)** apply for income years beginning on or after 1 April 2007—
- (a) beginning with 1 April 2007 for a person who does not make an election under **paragraph (b)**; or
  - (b) beginning with 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.

**Struck out (unanimous)****58 New sections EX 44B and EX 44C inserted**

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

**“EX 44B Market value method***“Formula*

- “(1) If a person is using the **market value method** to calculate FIF income or loss from an attributing interest in a FIF, the FIF income or loss from the interest for an income year (**relevant income year**) is calculated using the formula—

$$0.85 \times ((\text{closing value} + \text{other proceeds}) - (\text{opening value} + \text{costs})).$$

*“Definition of items in formula*

- “(2) The items in the formula are defined in **subsections (3) to (6)**.

*“Closing value*

- “(3) **Closing value** is—

- “(a) the market value at the end of the relevant income year of the interest, if the person is—

**Struck out (unanimous)**

- “(i) holding the interest at the end of the relevant income year; and
- “(ii) applying the market value method to the interest at the end of the relevant income year; or
- “(b) zero, if **paragraph (a)** does not apply. 5
- “*Other proceeds*
- “(4) **Other proceeds** is the total of all amounts, other than dividends, that the person derives during the relevant income year from holding or disposing of the interest.
- “*Opening value* 10
- “(5) **Opening value** is—
- “(a) the market value at the end of the income year preceding the relevant income year of the interest, if the person is—
- “(i) holding the interest at the end of the income year preceding the relevant income year; and 15
- “(ii) applying the market value method to the interest at the end of the income year preceding the relevant income year; or
- “(b) zero, if **paragraph (a)** does not apply. 20
- “*Costs*
- “(6) **Costs** is the total of all expenditure that the person incurs during the income year in acquiring or increasing the interests.
- “*Conversion of foreign currency amounts*
- “(7) If an amount in a foreign currency is derived from, or incurred on, an interest during an income year, the person must choose that— 25
- “(a) each foreign currency amount in the income year be converted into New Zealand dollars using the exchange rate on the day the amount is derived or incurred; or 30
- “(b) all foreign currency amounts in the income year be converted into New Zealand dollars at the average of

**Struck out (unanimous)**

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, close of trading spot exchange rate, dividend, FIF, FIF income, income year, loss, market value, market value method, New Zealand

- “EX 44C Smoothed market value method** 5
- “FIF income or loss*
- “(1) If a person is using the **smoothed market value method** to calculate FIF income or loss from an attributing interest for an income year (**relevant income year**), the person has—
- “(a) an amount of FIF income from all the person’s interests in FIFs for the relevant income year if the formula FIF income or loss, calculated using the formula in **subsection (6)(a)**, is more than or equal to zero: 10
- “(b) an amount of FIF loss from all the person’s interests in FIFs for the relevant income year if the formula FIF income or loss is less than zero. 15
- “FIF income*
- “(2) If the person does not dispose of all attributing interests in the relevant income year, the amount of the FIF income referred to in **subsection (1)(a)** is the lesser of— 20
- “(a) the amount by which the formula FIF income or loss under **subsection (6)(a)** is more than zero:
- “(b) the amount (**FIF income limit**) that is the greater of—
- “(i) the amount calculated using the formula in **subsection (6)(b)**: 25
- “(ii) the amount calculated using the formula in **subsection (6)(c)**, if the person does not meet the requirements of **subparagraph (iii)**:
- “(iii) the amount calculated using the formula in **subsection (6)(d)**, if the person is a natural person or the trustee of a trust who meets the requirements of **subsection (3)**. 30

**Struck out (unanimous)**

- “Person with FIF income limit determined using formula in subsection (6)(d)*
- “(3) The FIF income limit for the trustee of a trust is determined using the formula in **subsection (6)(d)** if the trust—
- “(a) is a qualifying trust; and 5
  - “(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 10
  - “(c) has no settlor who is not a natural person; and
  - “(d) is not a superannuation scheme.
- “FIF loss 15*
- “(4) If the person does not dispose of all the attributing interests in the income year, the amount of the FIF loss referred to in **subsection (1)(b)** is the lesser of—
- “(a) the amount by which the formula FIF income or loss is less than zero: 20
  - “(b) the amount calculated using the formula in **subsection (6)(b)**.
- “FIF income or loss in year of complete disposal*
- “(5) If the person disposes of all the attributing interests in the income year, the amount of— 25
- “(a) the FIF income referred to in **subsection (1)(a)** is the amount by which the formula FIF income or loss under **subsection (6)(a)** is greater than zero;
  - “(b) the FIF loss referred to in **subsection (1)(b)** is the amount by which the formula FIF income or loss under **subsection (6)(a)** is less than zero. 30
- “Formulas*
- “(6) In this section—
- “(a) the **formula FIF income or loss** is the amount calculated using the formula— 35

**Struck out (unanimous)**

- $0.85 \times ((\text{closing value} + \text{other proceeds}) - (\text{opening value} + \text{costs})) + \text{dividends} + \text{carried income} - \text{carried loss}$ :
- “(b) the formula referred to in **subsections (2)(b)(i) and (4)(b)** is—  
 $0.05 \times \text{commencing value}$ : 5
- “(c) the formula referred to in **subsection (2)(b)(ii)** is—  
 other proceeds + dividends:
- “(d) the formula referred to in **subsection (2)(b)(iii)** is—  
 other proceeds – costs + dividends.
- “*Definition of items in formulas* 10
- “(7) The items in the formulas are defined in **subsections (8) to (15)**.
- “*Closing value*
- “(8) **Closing value** is the market value at the end of the relevant income year of the interests—
- “(a) that the person is holding at the end of the relevant income year; and 15
- “(b) to which the person is applying the smoothed market value method for the relevant income year.
- “*Other proceeds*
- “(9) **Other proceeds** is the total of all amounts derived during the relevant income year by the person from holding or disposing of the interests, other than— 20
- “(a) dividends:
- “(b) amounts treated under subpart FI (Effect of certain disposals and resulting acquisitions) as being derived 25  
 by the person upon the death of the person.
- “*Opening value*
- “(10) **Opening value** is whichever the person chooses of—
- “(a) the market value at the end of the income year preceding the relevant income year of the interests— 30
- “(i) held by the person at the end of the income year preceding the relevant income year; and
- “(ii) to which the person applies the smoothed market value method for the relevant income year:

**Struck out (unanimous)**

- “(b) the total of all expenditure that the person incurs before the relevant income year in acquiring or increasing the interests to which the person applies the smoothed market value method for the relevant income year.
- “*Costs* 5
- “(11) **Costs** is the total of all expenditure that the person incurs during the relevant income year in acquiring or increasing the interests.
- “*Dividends*
- “(12) **Dividends** is the total of all dividends that the person derives during the relevant income year from holding or disposing of the interest. The amounts include foreign withholding tax or other tax that the person is allowed as a credit under section LC 1 (Credits in respect of tax paid in country or territory outside New Zealand). 10  
15
- “*Carried income*
- “(13) **Carried income** is—
- “(a) zero, if the person—
- “(i) acquires all the interests in the relevant income year: 20
- “(ii) has FIF income in the income year preceding the relevant income year that is less than or equal to the FIF income limit for the income year preceding the relevant income year:
- “(iii) has FIF loss in the income year preceding the relevant income year: 25
- “(iv) did not use the smoothed market value method to calculate FIF income or loss from attributing interests for the income year preceding the relevant income year: 30
- “(b) the amount by which the person’s FIF income calculated using the formula in **subsection (6)(a)** for the income year preceding the relevant income year is more than the FIF income limit for the income year preceding the relevant income year, if **subsection (a)** does not apply. 35

## Struck out (unanimous)

*“Carried loss*“(14) **Carried loss** is—

- “(a) zero, if the person—
  - “(i) acquires all the interests in the relevant income year: 5
  - “(ii) has FIF income in the income year preceding the relevant income year:
  - “(iii) has FIF loss in the income year preceding the relevant income year that is less than or equal to the amount calculated using the formula in **subsection (6)(b)** for the income year preceding the relevant income year: 10
  - “(iv) did not use the smoothed market value method to calculate FIF income or loss from attributing interests for the income year preceding the relevant income year: 15
- “(b) the amount by which the person’s FIF loss calculated using the formula in **subsection (6)(a)** for the income year preceding the relevant income year is more than the amount calculated using the formula in **subsection (6)(b)** for the income year preceding the relevant income year, if **subsection (a)** does not apply. 20

*“Commencing value*“(15) **Commencing value** is,—

- “(a) if the person does not have FIF loss in the relevant income year, the market value at the end of the income year preceding the relevant income year of the interests— 25
  - “(i) held by the person at the end of the income year preceding the relevant income year; and 30
  - “(ii) to which the person applies the smoothed market value method for the relevant income year:
- “(b) if the person has FIF loss in the relevant income year, whichever the person chooses of— 35
  - “(i) the amount given by **paragraph (a)**:
  - “(ii) the total of all expenditure that the person incurs before the relevant income year in acquiring or

**Struck out (unanimous)**

increasing the interests to which the person applies the smoothed market value method for the relevant income year.

*“Conversion of foreign currency amounts*

- “(16) If an amount in a foreign currency is derived from, or incurred on, the interest during an income year, the person must choose that— 5
- “(a) each such foreign currency amount in the income year be converted into New Zealand dollars using the exchange rate on the day the amount is derived or incurred; or 10
- “(b) all such 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 fifteenth day of each month that falls in the income year. 15
- “Defined in this Act: amount, attributing interest, close of trading spot exchange rate, dividend, FIF, FIF income, foreign withholding tax, income year, loss, market value, New Zealand, smoothed market value method, tax”.
- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007. 20

**New (unanimous)**

**58 New sections EX 44B and EX 44C 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— 25
- “(a) makes investments for the benefit of other persons (the **investors**); and 30
- “(b) assigns each investor an interest in a proportion of the net returns from the investments; and

**New (unanimous)**

“(c) determines the value of the investor’s interest for each of a number of periods (the <b>unit valuation periods</b> ) making up the income year.	
<i>“FIF income for person not unit valuer</i>	
“(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 method is the amount calculated for the income year using the formula in <b>subsection (4B)</b> .	5
<i>“FIF income for unit valuer</i>	
“(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 method is the total of the amounts calculated for each unit valuation period in the income year using the formula in <b>subsection (4F)</b> .	10
<i>“FIF loss</i>	15
“(4) If a person is using the <b>fair dividend rate method</b> 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.	
<i>“Formula for person other than unit valuer</i>	20
“(4B) The formula for a person who is not a unit valuer is— 0.05 × opening + quick sale adjustment.	
<i>“Definition of items in formula</i>	
“(4C) The items in the formula are defined in <b>subsections (4D) and (4E)</b> .	
<i>“Opening</i>	25
“(4D) <b>Opening</b> 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.	30

**New (unanimous)**

*“Quick sale adjustment*

“(4E) **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: 5

“(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 (4L)**: 10

“(ii) the amount (the **quick sale gains**) that is the total of amounts, for all attributing interests that are both acquired and sold in the income year, found for each such interest by taking the total amount received by the person as holder of the interest and subtracting the total cost of holding the interest. 15

*“Formula for unit valuer*

“(4F) The formula for a person who is a unit valuer is— 20

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

*“Definition of items in formula*

“(4G) The items in the formula are defined in **subsections (4H) to (4K)**.

*“Opening* 25

“(4H) **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 unit valuation period. 30

**New (unanimous)**

“ <i>Period</i>	
“(4I) <b>Period</b> is the number of days in the unit valuation period.	
“ <i>Year</i>	
“(4J) <b>Year</b> is the number of days in the income year.	
“ <i>Quick sale adjustment</i>	5
“(4K) <b>Quick sale adjustment</b> is,—	
“(a) zero, if the unit valuation period is 1 day; or	
“(b) zero, if the person in the unit valuation period—	
“(i) acquires or increases the attributing interest in no FIF for consideration:	10
“(ii) disposes of or reduces the attributing interest in no FIF after an acquisition or increase of the interest for consideration, zero; or	
“(c) if <b>paragraphs (a) and (b)</b> do not apply, the lesser of—	
“(i) the amount (the <b>peak holding adjustment</b> ) determined under <b>subsection (9B)</b> :	15
“(ii) the amount (the <b>quick sale gains</b> ) that is the total of amounts, for all attributing interests that are both acquired and sold in the unit valuation period, found for each such interest by taking the total amount received by the person as holder of the interest and subtracting the total cost of holding the interest.	20
“ <i>Peak holding adjustment for person not unit valuer</i>	
“(4L) The peak holding adjustment is the sum for the income year of the amounts calculated for each attributing interest acquired or increased for consideration in the income year using the formula in <b>subsection (5)</b> .	25
“ <i>Formula for person other than unit valuer</i>	
“(5) The formula for a person who is not a unit valuer is—	30
$0.05 \times \text{quick sales} \times \text{average cost}$ .	

**New (unanimous)**

*“Definition of items in formula*

“(6) The items in the formula are defined in **subsections (7) to (9)**.

*“Quick sales*

“(8) **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 5

“(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: 10

“(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: 15

“(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 20

“(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*

“(9) **Average cost** is— 25

“(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 30

“(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 35

## New (unanimous)

increase in the attributing interest in the FIF for each acquisition or increase; or	
“(c) if <b>paragraph (a)</b> does not apply and a share reorganisation occurs in the income year, the amount calculated under <b>section EX 44C</b> for the income year.	5
“ <i>Peak holding adjustment for unit valuer</i>	
“(9B) The peak holding adjustment is the sum for the unit valuation period of the amounts calculated for each attributing interest acquired or increased for consideration in the unit valuation period using the formula in <b>subsection (10)</b> .	10
“ <i>Formula for unit valuer</i>	
“(10) The formula for a unit valuer is— 0.05 × quick sales × av cost.	
“ <i>Definition of items in formula</i>	
“(11) The items in the formula are defined in <b>subsections (12) to (16)</b> .	15
“ <i>Quick sales</i>	
“(15) <b>Quick sales</b> is,—	
“(a) if the unit valuation period is 1 day, zero; or	
“(b) if the person 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	20
“(c) if <b>paragraphs (a) and (b)</b> do 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 <b>interest size</b> ) that the person holds at a time in the unit valuation period:	25
“(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:	30
“(ii) the difference between the interest size that is the greatest for the unit valuation period and the	

**New (unanimous)**

interest size at the end of the unit valuation period; or	
“(d) if <b>paragraphs (a) and (b)</b> do not apply and a share reorganisation occurs in the unit valuation period, the amount calculated under <b>section EX 44C</b> for the unit valuation period.	5
<i>“Av cost</i>	
“(16) <b>Av cost</b> is—	
“(a) if the person 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	10
“(b) if <b>paragraph (a)</b> does not apply and no share reorganisation occurs in the unit valuation period, the total amount of expenditure that the person 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	15
“(c) if <b>paragraph (a)</b> does not apply and a share reorganisation occurs in the unit valuation period, the amount calculated under <b>section EX 44C</b> for the unit valuation period.	20
<i>“Conversion of foreign currency amounts</i>	
“(17) 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—	25
“(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	30
“(b) all foreign currency amounts in the income year be converted into New Zealand dollars at the average of	35

## New (unanimous)

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, attributing interest, close of trading spot exchange rate, fair dividend rate method, FIF, FIF income, FIF loss, income year, loss, market value

5

**“EX 44C 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: 10

“(a) the item **quick sales**, for the purposes of the formulas in **sections EX 44B(5) and (10) and EX 45B(2)**:

“(b) the item **average cost**, for the purposes of the formulas in **sections EX 44B(5) and (10) and EX 45B(2) and (7)(b)**: 15

“(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*

20

“(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— 25

“(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: 30

“(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, 35

**New (unanimous)**

	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 <b>acquired interest</b> ) by the person of the attributing interest in the FIF, other than under a share reorganisation, is treated as corresponding to an amount (the <b>equivalent acquired interest</b> ) equal to the difference between—	5
“(i)	the equivalent interest size for the time of the acquisition or increase; and	10
“(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.	
	<i>“Quick sales</i>	
“(3)	Under this section, the item <b>quick sales</b> for a person and an affected period is the lesser of the following:	15
“(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.	20
	<i>“Average cost</i>	
“(4)	Under this section, the item <b>average cost</b> 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.	25
	<i>“Change</i>	30
“(5)	Under this section, the item <b>change</b> 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.	35

**New (unanimous)**

*“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 44B or EX 45B** by the person for the income year of the affected period. 5

“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 1 April 2007 for a person who does not make an election under **paragraph (b)**; or 10

(b) beginning with 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— 15

(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. 20

**Struck out (unanimous)**

**59 Section EX 45 repealed**

(1) Section EX 45 is repealed. 25

(2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.

**New (unanimous)**

**59 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 30

**New (unanimous)**

<p>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,—”.</p> <p>(2) <b>Subsection (1)</b> applies for income years beginning on or after 1 April 2007—</p> <p>(a) beginning with 1 April 2007 for a person who does not make an election under <b>paragraph (b)</b>; or</p> <p>(b) beginning with 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—</p> <p>(i) before 1 April 2007, if the person exists before that date; or</p> <p>(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.</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p>
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**Struck out (unanimous)**

<b>60 New section EX 45B inserted</b>	
(1) Before section EX 46, the following is inserted:	
<b>“EX 45B Cost method</b>	
<i>“FIF income from interest, disposal of interest</i>	
“(1) If a person is using the <b>cost method</b> to calculate FIF income or loss from an interest in a FIF, the FIF income or loss from that interest for the relevant income year is—	25
“(a) if the person holds the interest at the end of the year, the greater of—	
“(i) the total of all dividends that the person derives during the income year from holding the interest, including foreign withholding tax or other tax that the person is allowed as a credit under	30

**Struck out (unanimous)**

- section LC 1 (Credits in respect of tax paid in country or territory outside New Zealand):
- “(ii) the amount calculated using the formula in **subsection (2)(a)**:
- “(b) if the person disposes of the interest in the year, the amount calculated using the formula in **subsection (2)(b)**. 5
- “*Formulas*
- “(2) In **subsection (1)**,—
- “(a) the first formula is—
- $0.05 \times \text{opening value}$ : 10
- “(b) the second formula is—
- $0.85 \times (\text{disposal proceeds} - \text{commencing value})$ .
- “*Definition of items in formulas*
- “(3) The items in the formula are defined in **subsections (4) to (6)**.
- “*Opening value* 15
- “(4) **Opening value** is—
- “(a) zero, if the relevant income year is the year in which the person acquired the interest; or
- “(b) the total of the following amounts, calculated for each year, before the relevant income year, in which the person held the interest: 20
- “(i) expenditure that the person incurs in the year in acquiring or increasing the interest:
- “(ii) the difference between the person’s FIF income for the income year and the amount given by **subsection (1)(a)**. 25
- “*Disposal proceeds*
- “(5) **Disposal proceeds** is the total of all amounts that the person derives during the income year from disposing of the interest. The amounts include foreign withholding tax or other tax that the person is allowed as a credit under section LC 1 (Credits in respect of tax paid in country or territory outside New Zealand). 30

**Struck out (unanimous)**

*“Commencing value*

- “(6) **Commencing value** is—
- “(a) zero, if the relevant income year is the year in which the person acquired the interest; or
  - “(b) the total of the following amounts for the interest disposed of, calculated for each year, before the relevant income year, in which the person held the interest:
    - “(i) expenditure that the person incurs in the year in acquiring or increasing the interest:
    - “(ii) the difference between the person’s FIF income for the income year and the amount given by **subsection (1)(a)(i)**.

*“Conversion of foreign currency amounts*

- “(7) If an amount in a foreign currency is derived from, or incurred on, the interest during the year, the person must choose that—
- “(a) each such foreign currency amount in the income year be converted into New Zealand dollars using the exchange rate on the day the amount is derived or incurred; or
  - “(b) all such 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 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 and portfolio entity periods beginning on or after 1 April 2007.

**New (unanimous)**

- 60 New section EX 45B inserted**
- (1) Before section EX 46, the following is inserted:



**New (unanimous)**

- interest (the **preceding opening interest**) at the beginning of the income year before the relevant income year; or
- “(c) 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 5
- “(d) 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* 10
- “(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 15
- “(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: 20
- “(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 25
- “(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. 30
- “*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

**New (unanimous)**

	consideration or does not dispose of or reduce the attributing interest in the FIF after such an acquisition or increase, zero; or	
“(b)	if <b>paragraph (a)</b> 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	5 10
“(c)	if <b>paragraph (a)</b> does not apply and a share reorganisation occurs in the relevant income year, the amount calculated under <b>section EX 44C</b> for the relevant income year.	
	<i>“Formulas for opening value</i>	
“(7)	In <b>subsection (4)</b> ,—	15
“(a)	the first formula is— preceding + FIF income:	
“(b)	the second formula is— preceding + FIF income + (change × average cost):	
“(c)	the third formula is— $\frac{\text{opening interest}}{\text{preceding interest}} \times (\text{preceding} + \text{FIF income}).$	20
	<i>“Definition of items in formulas</i>	
“(8)	The items in the formulas are defined in <b>subsections (9) to (14)</b> .	25
	<i>“Preceding</i>	
“(9)	<b>Preceding</b> is the opening value for the income year before the relevant income year.	
	<i>“FIF income</i>	
“(10)	<b>FIF income</b> is the FIF income under <b>subsection (1)</b> for the attributing interest for the income year before the relevant income year.	30

**New (unanimous)**

*“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: 5
- “(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. 10

*“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 15
- “(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 20 25
- “(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. 30

*“Opening interest*

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

**New (unanimous)**

*“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*

5

“(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—

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“(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.

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“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”.

20

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

(a) beginning with 1 April 2007 for a person who does not make an election under **paragraph (b)**; or

25

(b) beginning with 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—

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(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.

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**61 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.”

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**Struck out (unanimous)**

(2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.

**New (unanimous)**

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

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(a) beginning with 1 April 2007 for a person who does not make an election under **paragraph (b)**; or

(b) beginning with 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—

15

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

20

(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.

**Struck out (unanimous)**

**62 New section EX 46B inserted**

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

**Struck out (unanimous)**

**“EX 46B Additional FIF income or loss if grey list company  
owns FIF**

*“Application of this section*

- “(1) This section applies if—
- “(a) a person has a direct income interest in a grey list company for an accounting period; and 5
  - “(b) the income interest is—
    - “(i) not excluded from being an attributing interest by the application of **section EX 33(1)(b)**; and
    - “(ii) excluded from being an attributing interest by the application of **section EX 33(1)(c)**; and 10
  - “(c) the grey list company has investments in persons that are neither of the following:
    - “(i) resident in New Zealand;
    - “(ii) resident in a grey list country and controlled by the grey list company; and 15
  - “(d) the total value of the investments is more than 5% of the total value of the grey list company’s assets; and
  - “(e) the grey list company would have FIF income or loss for the period if— 20
    - “(i) the grey list company were resident in New Zealand; and
    - “(ii) the grey list company’s rights were not excluded from being an attributing interest by sections EX 32 and EX 33. 25

*“Calculation of FIF income or loss*

- “(2) The person has FIF income or loss, for the income year in which the period ends, calculated using the formula—  
income interest × company’s FIF income or loss.

*“Definition of items in formulas 30*

- “(3) In the formula—
- “(a) **income interest** is the person’s direct income interest in the grey list company for the period:
  - “(b) **company’s FIF income or loss** is the FIF income or loss that the grey list company would have relating to 35

**Struck out (unanimous)**

- the persons referred to in **subsection (1)(c)** for the period if—
- “(i) the grey list company were resident in New Zealand; and
  - “(ii) the grey list company’s rights were not excluded from being an attributing interest by sections EX 32 and EX 33. 5
- “Application of FIF rules to choice of method*
- “(4) The person must—
- “(a) choose, under sections EX 38 to EX 41, the calculation method for calculating the grey list company’s FIF income or loss; and 10
  - “(b) otherwise apply the calculation rules in sections EX 38 to EX 47 as if the person directly held the attributing interest. 15
- “Defined in this Act: accounting period, attributing interest, CFC, FIF income, grey list company, income interest, income year, loss”.
- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.
- 63 Codes: comparative value and deemed rate methods 20**
- (1) The heading for section EX 47 is replaced by “**Codes: market value method, smoothed market value method, and cost method**”.
- (2) Section EX 47(1), other than the heading, is replaced by the following: 25
- “(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 market value method:
  - “(b) the smoothed market value method: 30
  - “(c) the cost method.”
- (3) In section EX 47(2), “The person” is replaced by “If the person is not using the market value method, the person”.
- (4) In section EX 47, in the list of defined terms,—

**Struck out (unanimous)**

- (a) “comparative value method” and “deemed rate of return method” are omitted:
  - (b) “cost method”, “market value method”, and “smoothed market value method” are inserted.
- (5) **Subsections (1), (2), (3), and (4)** apply for income years and portfolio entity periods beginning on or after 1 April 2007. 5

**New (unanimous)**

- 63 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**”. 10
- (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— 15
- “(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. 20
- (4) **Subsections (1) and (2)** apply for income years beginning on or after 1 April 2007—
- (a) beginning with 1 April 2007 for a person who does not make an election under **paragraph (b)**; or 25
  - (b) beginning with 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— 30
    - (i) before 1 April 2007, if the person exists before that date; or

**New (unanimous)**

- (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.

**Struck out (unanimous)**

- 64 Section EX 48 repealed** 5
- (1) Section EX 48 is repealed.
- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.
- 65 Section EX 49 repealed** 10
- (1) Section EX 49 is repealed.
- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.
- 66 Limits on changes of methods** 15
- (1) In section EX 50(2), paragraphs (c) to (e) are replaced by the following:
- “(c) in the case of the market value method or the smoothed market value method, it is impossible to find out the end-of-year market value of the interest: 20
- “(d) 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) In section EX 50, in the list of defined terms,—
- (a) “comparative value method” and “deemed rate of return method” are omitted: 25
- (b) “cost method”, “market value method”, and “smoothed market value method” are inserted.
- (3) **Subsections (1) and (2)** apply for income years and portfolio entity periods beginning on or after 1 April 2007.

## New (unanimous)

**66 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: 5
- “(g) in the case of the cost method, if it was the default method under **section EX 41(2)(a)**, it ceases to be the default method.”
- (2) After section EX 50(7), the following is added: 10
- “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— 15
- “(a) is a qualifying trust; and
- “(b) is established mainly for the benefit of— 20
- “(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 25
- “(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. 30
- (4) **Subsections (1) and (2)** apply for income years beginning on or after 1 April 2007—
- (a) beginning with 1 April 2007 for a person who does not make an election under **paragraph (b)**; or
- (b) beginning with 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 35

**New (unanimous)**

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.

5

**Struck out (unanimous)**

**67 Consequences of changes in method**

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(1) In section EX 51(1), paragraphs (a) and (b) are replaced by the following:

“(a) from 1 of the 3 cost-based calculation methods (the market value method, the smoothed market value method, or the cost method) to either of the look-through calculation methods (the accounting profits method and the branch equivalent method):

15

“(b) from either of the look-through calculation methods to 1 of the 3 cost-based calculation methods.”

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

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*“Changes from market value method or smoothed market value method to cost method*

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

25

“(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

30

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

**Struck out (unanimous)**

- “(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 to market value method or smoothed market value method* 5
- “(4) If a person holding an attributing interest in a FIF changes from the cost method to either of the market value method and the smoothed market value method for calculating the FIF income or loss from the interest, the person is treated as having— 10
- “(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 15
- “(c) received for the disposal and paid for the reacquisition an amount equal to 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.”
- (3) In section EX 51, in the list of defined terms,— 20
- (a) “comparative value method” and “deemed rate of return method” are omitted:
- (b) “cost method”, “market value method”, and “smoothed market value method” are inserted.
- (4) **Subsections (1), (2), and (3)** apply for income years and portfolio entity periods beginning on or after 1 April 2007. 25

**New (unanimous)**

- 67 Consequences of changes in method**
- (1) In section EX 51(1), paragraphs (a) and (b) are replaced by the following: 30
- “(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

**New (unanimous)**

- 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.” 5
- (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— 10
- “(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 15
- “(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. 20
- “Changes from cost method or deemed rate of return method to comparative value method or fair dividend rate method* 25
- “(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— 30
- “(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 35
- “(c) received for the disposal and paid for the reacquisition an amount equal to,—

**New (unanimous)**

- |   |  |
|---|--|
| <p>“(i) if the person changes from the cost method, what would have been the interest’s opening value under <b>section EX 45B</b> if the person had applied the cost method for the income year; or</p> <p>“(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”.</p> <p>(3) In section EX 51, in the list of defined terms, “cost method” and “fair dividend rate method” are inserted.</p> <p>(4) <b>Subsections (1) and (2)</b> apply for income years beginning on or after 1 April 2007—</p> <p>(a) beginning with 1 April 2007 for a person who does not make an election under <b>paragraph (b)</b>; or</p> <p>(b) beginning with 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—</p> <p>(i) before 1 April 2007, if the person exists before that date; or</p> <p>(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.</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> |
|---|--|

**Struck out (unanimous)**

- |  |           |
|--|-----------|
| <b>68 New section EX 51B inserted</b>  |           |
| <p>(1) After section EX 51, the following is inserted:</p> <p><b>“EX 51B Person using comparative value method or deemed rate of return method before 1 April 2007</b></p> <p><i>“Application of this section</i></p> <p>“(1) This section applies if—</p> <p>“(a) a person has on both 31 March 2007 and 1 April 2007 an attributing interest in a FIF; and</p> | <p>30</p> |

**Struck out (unanimous)**

- “(b) for the period ending on 31 March 2007, the person calculated the person’s FIF income or loss from the interest using the method known as the comparative value method or the method known as the deemed rate of return method; and 5
- “(c) for the period beginning on 1 April 2007, the person calculates the person’s FIF income or loss from the interest using the market value method, the smoothed market value method, or the cost method.
- “*Opening value equal to closing value under former method* 10
- “(2) The opening value for the interest under the calculation method for the period beginning on 1 April 2007 is equal to the closing value for the interest under the calculation method that the person used for the period ending on 31 March 2007. 15
- “Defined in this Act: cost method, direct income interest, FIF, FIF income, income interest, income year, loss, market value, market value method, smoothed market value method”.
- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007. 20
- 69 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— 25
- “(i) the market value method:
- “(ii) the smoothed market value method:
- “(iii) 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— 30
- “(i) the market value method:
- “(ii) the smoothed market value method:
- “(iii) the cost method.”
- (3) In section EX 52(4),—

**Struck out (unanimous)**

- |     |   |    |
|-----|---|----|
| (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”. | 5  |
| (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,—  |    |
| (a) | “comparative value method” and “deemed rate of return method” are omitted:  | 10 |
| (b) | “cost method”, “market value method”, and “smoothed market value method” are inserted.  |    |
| (6) | <b>Subsection (3)</b> applies for the 2005–06 and later income years.   |    |
| (7) | <b>Subsections (1), (2), and (5)</b> apply for income years and portfolio entity periods beginning on or after 1 April 2007.                    | 15 |

**New (unanimous)**

- |  |   |    |
|--|---|----|
| <b>69 Migration of persons holding FIF interests</b> |   |    |
| (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:  | 20 |
|  | “(ii) the deemed rate of return method:   |    |
|  | “(iii) the fair dividend rate method:   |    |
|  | “(iv) the cost method.”   |    |
| (3)  | 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— | 25 |
|  | “(i) the comparative value method:  |    |
|  | “(ii) the deemed rate of return method:   |    |
|  | “(iii) the fair dividend rate method:   |    |
|  | “(iv) the cost method.”   | 30 |
| (4)  | In section EX 52(4),—   |    |
| (a)  | in paragraph (a), “residence” is replaced by “residence or status”:   |    |

**New (unanimous)**

- |     |   |    |
|-----|---|----|
|     | <p>(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”.</p>  |    |
| (5) | In section EX 52(5)(c), “deemed rate of return method” is replaced by “branch equivalent method”.   | 5  |
| (6) | In section EX 52, in the list of defined terms, “branch equivalent method” is inserted.   |    |
| (7) | In section EX 52, in the list of defined terms, “cost method” and “fair dividend rate method” are inserted.   |    |
| (8) | <b>Subsections (2), (4), (5), and (6)</b> apply for the 2005–06 and later income years.   | 10 |
| (9) | <b>Subsections (1) and (3)</b> apply for income years beginning on or after 1 April 2007—   |    |
|     | (a) beginning with 1 April 2007 for a person who does not make an election under <b>paragraph (b)</b> ; or  | 15 |
|     | (b) beginning with 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— | 20 |
|     | (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 |

**Struck out (unanimous)**

- |     |  |    |
|-----|--|----|
|     | <b>70 Changes in application of FIF exemptions</b>                     |    |
| (1) | In section EX 53(1),—  |    |
|     | (a) “Subsections (2) and (3)” is replaced by “Subsections (2) to (4)”: | 30 |
|     | (b) in paragraph (b)(ii),—   |    |
|     | (i) “or <b>(db)</b> ” is inserted after “CQ 5(1)(d)”:                  |    |
|     | (ii) “or <b>(db)</b> ” is inserted after “DN 6(1)(d)”.                 |    |

**Struck out (unanimous)**

- |      |  |    |
|------|--|----|
| (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 market value method, the smoothed market value method, or the cost method”.     |    |
| (3)  | In section EX 53(3), “deemed rate of return method” is replaced by “branch equivalent method”.   | 5  |
| (4)  | In section EX 53(5), “Subsections (2) to (4)” is replaced by “Subsections (6) to (8)”.   |    |
| (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 market value method, the smoothed market value method, or the cost method”. | 10 |
| (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”.   | 15 |
| (8)  | In section EX 53, in the list of defined terms,—   |    |
|      | (a) “comparative value method” and “deemed rate of return method” are omitted:   |    |
|      | (b) “branch equivalent method”, “cost method”, “market value method”, and “smoothed market value method” are inserted.   | 20 |
| (9)  | <b>Subsections (3), (4), (6), and (7)</b> apply for the 2005–06 and later income years.  |    |
| (10) | <b>Subsections (1), (2), (5), and (8)</b> apply for income years and portfolio entity periods beginning on or after 1 April 2007.  | 25 |

**New (unanimous)****70 Changes in application of FIF exemptions**

- |     |  |    |
|-----|--|----|
| (1) | In section EX 53(1),—  |    |
|     | (a) “Subsections (2) and (3)” is replaced by “Subsections (2) to (4)”: | 30 |
|     | (b) in paragraph (b)(ii),—   |    |
|     | (i) “or <b>(db)</b> ” is inserted after “CQ 5(1)(d)”:                  |    |
|     | (ii) “or <b>(db)</b> ” is inserted after “DN 6(1)(d)”.                 |    |

**New (unanimous)**

- |      |   |    |
|------|---|----|
| (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”.  | 5  |
| (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)”:   | 10 |
|      | (b) in paragraph (b)(ii),—  |    |
|      | (i) “or <b>(db)</b> ” is inserted after “CQ 5(1)(d)”:   |    |
|      | (ii) “or <b>(db)</b> ” 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”.  | 15 |
| (6)  | In section EX 53(6)(b), “repurchased” is replaced by “reacquired”.  | 20 |
| (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.  | 25 |
| (9)  | <b>Subsections (1)(a), (3), (4)(a), (6), and (7)</b> apply for the 2005–06 and later income years.  |    |
| (10) | <b>Subsections (1)(b), (2), (4)(b), and (5)</b> apply for income years beginning on or after 1 April 2007—  |    |
|      | (a) beginning with 1 April 2007 for a person who does not make an election under <b>paragraph (b)</b> ; or  | 30 |
|      | (b) beginning with 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— | 35 |

**New (unanimous)**

- (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.

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**Struck out (unanimous)****71 New section EX 54B inserted**

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

**“EX 54B FIF rules first applying to interest on 1 April 2007***“Application of this section*

10

“(1) This section applies if—

“(a) a person has on both 31 March 2007 and 1 April 2007 rights in a FIF; and

“(b) for the period ending on 31 March 2007, the person did not derive FIF income or loss from the rights; and

15

“(c) for the period beginning on 1 April 2007, the rights are an attributing interest.

*“Revenue account property*

“(2) If the interest is revenue account property of the person, the person is treated as having—

20

“(a) disposed of the interest to an unrelated person immediately before 1 April 2007; and

“(b) reacquired the interest at the start of 1 April 2007; and

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

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*“Not revenue account property*

“(3) If the interest is not revenue account property of the person, the person is treated as having—

“(a) disposed of the interest to an unrelated person immediately before 1 April 2007; and

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“(b) reacquired the interest at the start of 1 April 2007; and

**Struck out (unanimous)**

- “(c) received for the disposal and paid for the reacquisition an amount equal to—
- “(i) the market value of the interest at the time of the disposal, if **subparagraph (ii)** does not apply; or
  - “(ii) the cost incurred in acquiring the interest, if the person is a natural person and the cost of the interest is greater than the market value of the interest at the time of the disposal.
- “Defined in this Act: deduction, direct income interest, FIF, FIF income, income interest, income year, loss, market value”.
- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.

**New (unanimous)**

- 71 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.

## New (unanimous)

- “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 5
  - “(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* 10
- “(3) A person who applies the FIF rules to rights in a FIF for the first time in an income year and 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— 15
    - “(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 **paragraph (a)**, in the second income year following the income year in which the disposal is treated as occurring; and 20
    - “(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: 25
  - “(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. 30
- “Defined in this Act: attributing interest, FIF, FIF income, income year, loss, portfolio calculation period, revenue account property”. 35
- (2) **Subsection (1)** applies for income years beginning on or after 1 April 2007—

**New (unanimous)**

- |   |                    |
|---|--------------------|
| <ul style="list-style-type: none"> <li>(a) beginning with 1 April 2007 for a person who does not make an election under <b>paragraph (b)</b>; or</li> <li>(b) beginning with 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— <ul style="list-style-type: none"> <li>(i) before 1 April 2007, if the person exists before that date; or</li> <li>(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.</li> </ul> </li> </ul> | <p>5</p> <p>10</p> |
|---|--------------------|

**Struck out (unanimous)**

- |   |   |
|---|---|
| <p><b>72 Measurement of cost</b></p> <ul style="list-style-type: none"> <li>(1) In section EX 56(1)(a),— <ul style="list-style-type: none"> <li>(a) “or <b>(db)</b>” is inserted after “CQ 5(1)(d)”:</li> <li>(b) “or <b>(db)</b>” is inserted after “DN 6(1)(d)”:</li> <li>(c) “arises); and” is replaced by “arises):”:</li> </ul> </li> <li>(2) In section EX 56(1)(b), “method; and” is replaced by “method:”.</li> <li>(3) In section EX 56(1), paragraphs (b) and (c) are replaced by the following: <ul style="list-style-type: none"> <li>“(b) the market value method:</li> <li>“(c) the smoothed market value method:</li> <li>“(d) the cost method.”</li> </ul> </li> <li>(4) In section EX 56, in the list of defined terms,— <ul style="list-style-type: none"> <li>(a) “comparative value method” and “deemed rate of return method” are omitted:</li> <li>(b) “cost method”, “market value method”, and “smoothed market value method” are inserted.</li> </ul> </li> <li>(5) <b>Subsections (1)(c) and (2)</b> apply for the 2005–06 and later income years.</li> </ul> | <p>15</p> <p>20</p> <p>25</p> <p>30</p> |
|---|---|

**Struck out (unanimous)**

- (6) **Subsections (1)(a) and (b), (3), and (4)** apply for income years and portfolio entity periods beginning on or after 1 April 2007.

**New (unanimous)**

**72 Measurement of cost**

- (1) In section EX 56(1)(a),—
- (a) “or **(db)**” is inserted after “CQ 5(1)(d)”: 5
  - (b) “or **(db)**” is inserted after “DN 6(1)(d)”: 5
  - (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: 10
- “(d) the fair dividend rate method:
  - “(e) the cost method.”
- (4) Section EX 56(2) is replaced by the following: 15
- “*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—
- $$\frac{\text{total cost}}{\text{number of interests.}}$$
- 20
- “*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: 25
  - “(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. 30

**New (unanimous)**

- (7) **Subsections (1)(a) and (b), (3), and (4)** apply for income years beginning on or after 1 April 2007—
- (a) beginning with 1 April 2007 for a person who does not make an election under **paragraph (b)**; or
  - (b) beginning with 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.

**Struck out (unanimous)**

- 73 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 market value method, the smoothed market value method, or the cost method”. 20
  - (2) In section EX 59, in the list of defined terms,—
    - (a) “comparative value method” and “deemed rate of return method” are omitted;
    - (b) “cost method”, “market value method”, and “smoothed market value method” are inserted. 25
  - (3) **Subsections (1) and (2)** apply for income years and portfolio entity periods beginning on or after 1 April 2007.

## New (unanimous)

- |               |   |    |
|---------------|---|----|
| <b>73</b>     | <b>Non-market transactions in FIF interests</b>   |    |
| (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”.  | 5  |
| (2)           | In section EX 59, in the list of defined terms, “cost method” and “fair dividend rate method” are inserted.   |    |
| (3)           | <b>Subsection (1)</b> applies for income years beginning on or after 1 April 2007—  |    |
|               | (a) beginning with 1 April 2007 for a person who does not make an election under <b>paragraph (b)</b> ; or  | 10 |
|               | (b) beginning with 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— | 15 |
|               | (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.   | 20 |
| <br><b>74</b> | <br><b>Meaning of life insurance</b>  |    |
| (1)           | Section EY 8(3)(b) is replaced by the following:  | 25 |
|               | “(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.”  | 30 |
| (2)           | <b>Subsection (1)</b> 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 <b>16 May 2006</b> that   | 35 |

- 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. 5
- 75 Section EZ 7 repealed**
- (1) Section EZ 7 is repealed. 10
- Struck out (unanimous)**
- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.
- New (unanimous)**
- (2) **Subsection (1)** applies for income years beginning on or after 1 April 2007—

(a) beginning with 1 April 2007 for a person who does not make an election under **paragraph (b)**; or 15

(b) beginning with 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— 20

(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
- 76 Depreciation: partial income-producing use**
- (1) After section FB 7(7), the following is inserted: 30

- “(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 5
  - “(c) at a time during the income year, the item is partly used, or is partly available for use, by the person— 10
    - “(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 15
  - “(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— 20
- $$\text{disposal depreciation loss} \times \frac{\text{qualifying use days}}{\text{all days}}$$
- “(10) In the formula,—
- “(a) **disposal depreciation loss** is the amount resulting from a calculation made for the item under section EE 41(2): 25
  - “(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. 30
- “(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.” 35
- (2) **Subsection (1)** applies for the 2006–07 and later income years.

**77 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.” 5
- (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.” 10
- (3) **Subsection (1)** applies for the 2005–06 and later income years.

**New (unanimous)**

- 77B General requirements for being transitional resident**
- (1) In section FC 23(a), “has a permanent place of abode” is replaced by “is resident”. 15
- (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: 20
- “(ii) was not resident in New Zealand; and” 25
- (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. 30

**77C Section FC 24 replaced**

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

**New (unanimous)**

**“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 5
  - “(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— 10
- “(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: 15
    - “(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). 20

*“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— 25
- “(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 30*

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

**New (unanimous)**

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 <b>subsection (3)</b> by the person; and		
“(b) a notice of an election under <b>subsection (3)</b> 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 <b>subsection (3)</b> ; and	5	
“(c) for the period beginning with the first day of the period to which the application relates.	10	
<i>“Circumstances in which application treated as election</i>		
“(5) <b>Subsection (4)</b> applies to a person making an application under section 41 of the Tax Administration Act 1994 who—		
“(a) is eligible to be a transitional resident; and		
“(b) 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	15	
“(c) makes the application—		
“(i) on or after 1 April 2007; or	20	
“(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 <b>subsection (3)</b> .	25	
<i>“Notice of election</i>		
“(6) A notice under this subsection of an election under <b>subsection (3)</b> 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:	30	
“(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:	35	

## New (unanimous)

- “(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: 5
- “(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)**.” 10 15
- (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: 20
- (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. 25
- (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— 30
- (a) the current date; and
- (b) a date, before the current date, on which the person under the former law— 35

**New (unanimous)**

- (i) would be a non-resident; and
- (ii) would be resident in New Zealand but for section OE 1(2B).

**78 Transfer of property or obligations under financial arrangements deemed to be at market value** 5  
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.”

**Struck out (unanimous)**

- 79 New Zealand net equity of New Zealand banking group** 10
- (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 “cost method, the market value method, or the smoothed market value method”.
  - (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007. 15

**New (unanimous)**

- 79 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”. 20
  - (2) **Subsection (1)** applies for income years beginning on or after 1 April 2007—
    - (a) beginning with 1 April 2007 for a person who does not make an election under **paragraph (b)**; or 25
    - (b) beginning with 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 30

**New (unanimous)**

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.

**79B Disposal and resulting acquisition of property by spouse or de facto partner on death of person** 10

- (1) 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 or de facto partner of the deceased person is entitled as beneficiary”. 15
- (2) In section FI 4(a), “to property” is replaced by “under the will or intestacy to other property (the **other property**)”.
- (3) In section FI 4(b), “the property” is replaced by “the other property”. 20

**80 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.” 25

**Struck out (unanimous)****81 Relationship of section FI 2(2) to subpart CB** 30

- (1) In section FI 7(1)(b), “or CB 10” is replaced by “CB 10, or CB 12”.

**Struck out (unanimous)**

- |     |   |    |
|-----|---|----|
| (2) | In section FI 7(2), “and CB 10” is replaced by “CB 10, and CB 12”.  |    |
| (3) | In section FI 7(3), “or CB 10” is replaced by “CB 10, or CB 12”.  |    |
| (4) | In section FI 7(1)(b), as amended by <b>subsection (1)</b> , “CB 10, or CB 12” is replaced by “or CB 12”. | 5  |
| (5) | In section FI 7(2), as amended by <b>subsection (2)</b> , “CB 10, and CB 12” is replaced by “and CB 12”.  |    |
| (6) | In section FI 7(3), as amended by <b>subsection (3)</b> , “CB 10, or CB 12” is replaced by “or CB 12”.    | 10 |

**New (unanimous)**

**81 Relationship of section FI 2(2) to subpart CB**

- |     |  |    |
|-----|--|----|
| (1) | Section FI 7(1)(a) is replaced by the following:<br>“ (a) the transaction involves an interest in property that is land; and<br>(ab) persons who are related within the second degree of relationship to the deceased person receive the land as beneficiaries—<br>(i) under the transaction (the <b>original transaction</b> ), if section FI 1(3)(e) refers to the original transaction:<br>(ii) under a transaction to which section FI 1(3)(e) refers, if section FI 1(3)(d) refers to the original transaction; and”. | 15 |
| (2) | In section FI 7(1)(b), “or CB 10” is replaced by “CB 10, or CB 12”.  | 25 |
| (3) | In section FI 7(1)(b), as amended by <b>subsection (1)</b> , “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 <b>subsection (4)</b> , “CB 10, and CB 12” is replaced by “and CB 12”.   | 30 |

**New (unanimous)**

- (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”.

**Struck out (unanimous)**

- 82 Attributing interests in FIFs** 5
- (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 market value method, the smoothed market value method, or the cost method; and” 10
- (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 market value method, the smoothed market value method, or the cost method; and” 15
- (3) **Subsections (1) and (2)** apply for income years and portfolio entity periods beginning on or after 1 April 2007.

**New (unanimous)**

- 82 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” 20
- (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” 25

**New (unanimous)**

- (3) **Subsections (1) and (2)** apply for income years beginning on or after 1 April 2007—
- (a) beginning with 1 April 2007 for a person who does not make an election under **paragraph (b)**; or
  - (b) beginning with 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.

**82B 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.

**83 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 “:”.

**84 Distributions by Maori authority**

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

**Struck out (unanimous)****85 New subpart HL inserted**

(1) After subpart HK, the following is inserted:

“Subpart HL—Portfolio investment entities 5

**“HL 1 Portfolio investment entity tax**

*“Portfolio investment entity tax*

“(1) An entity that is a portfolio investment entity must pay portfolio investment entity tax on income derived by the entity in a portfolio entity period. 10

*“Factors in calculation*

“(2) The amount of portfolio investment entity tax payable for a portfolio entity period is determined under **section HL 12** by reference to—

“(a) the portfolio investor rate of each investor in the entity: 15

“(b) the income and expenditure of the entity relating to investments in which the investor has a portfolio investor interest:

“(c) the credits received by the entity in relation to income derived from the investments: 20

“(d) the share of the proceeds from the investments to which the investor is entitled:

“(e) the days of the portfolio entity period on which the investor has the portfolio investor interest.

*“Portfolio investor classes 25*

“(3) An investor in a portfolio investment entity belongs to a portfolio investor class in which each investor has interests in the same investments of the portfolio investment entity.

*“Portfolio investor attributed income and portfolio investor attributed loss 30*

“(4) An investor in a portfolio investment entity for a portfolio entity period is treated as—

**Struck out (unanimous)**

- “(a) deriving income for the portfolio entity period equal to the portfolio investor attributed income under **section HL 15** for all the portfolio investor classes of which the investor is a part for the period:
- “(b) having for the portfolio entity period a deduction under **section HL 16** or a rebate under **section KI 1** (Rebate for investor in portfolio investment entity other than zero-rated portfolio investor) for an amount of portfolio investor attributed loss under **section HL 15** for all the portfolio investor classes of which the investor is a part for the period.
- “Defined in this Act: amount, company, income, income year, portfolio entity period, portfolio investment entity, portfolio investment entity tax, portfolio investor class, portfolio investor attributed income, portfolio investor attributed loss, portfolio investor interest, portfolio investor rate

**“HL 2 Becoming portfolio investment entity**

*“Requirements for making election*

- “(1) A person (**entity**) may choose under **section HL 7** to be a portfolio investment entity if the entity—
- “(a) is a company, a group investment fund, or a superannuation fund; and
- “(b) is not a life insurer; and
- “(c) meets the eligibility requirements in **section HL 5**.

*“Requirement for effective election*

- “(2) An entity that makes an election under **section HL 7** 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 **sections HL 5 and HL 6**.

**Struck out (unanimous)***“Entity treated as disposing of, reacquiring, property*

- “(3) If an entity becomes a portfolio investment entity—
- “(a) the income year of the entity ends before the day on which the election is effective; and
  - “(b) the entity is treated for the purposes of this Act as, at the end of the income year referred to in **paragraph (a)**, disposing of the property of the entity to another person for an amount of consideration equal to the market value of the property at that time; and 5
  - “(c) the entity is treated for the purposes of this Act as, at the beginning of the day on which the election is effective, acquiring the property referred to in **paragraph (b)** from the other person for an amount of consideration equal to the amount referred to in **paragraph (b)**; and 10
  - “(d) the income year of the portfolio investment entity— 15
    - “(i) begins on the day on which the election is effective and ends with the end of the tax year in which the election is effective, for the first income year:
    - “(ii) coincides with the tax year, for later income years. 20

*“Payment of tax, making of returns*

- “(4) An entity that has chosen to be a portfolio investment entity must—
- “(a) pay portfolio investment entity tax as required by **section HL 12**; and 25
  - “(b) make the returns required by **section 57B** of the Tax Administration Act 1994.

“Defined in this Act: amount, company, group investment fund, income year, portfolio entity period, portfolio investment entity, portfolio investment entity tax, tax year 30

**“HL 3 Tax treatment of period before election effective***“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 35

**Struck out (unanimous)**

- 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:
  - “(b) the disposal and acquisition referred to in **section HL 2(3)**. 5
- “Spreading of liability for period before election*
- “(2) An entity that becomes a portfolio investment entity and at the time has a liability under the resident withholding tax rules and the non-resident withholding tax rules to make payments to the Commissioner may satisfy each liability by making a payment of one third of the liability at the end of each of the 3 tax years following the tax year in which the entity becomes a portfolio investment entity. 10
- “Defined in this Act: interest, non-resident withholding tax rules, portfolio investment entity, provisional tax, resident withholding tax rules 15
- “HL 4 Ceasing to be portfolio investment entity**
- “When entity ceases to portfolio investment entity*
- “(1) An entity that has chosen to be a portfolio investment entity ceases to be a portfolio investment entity if— 20
    - “(a) the entity cancels the election under **section HL 7**:
    - “(b) the entity no longer meets the eligibility requirements in **section HL 5**:
    - “(c) the entity ceases under **section HL 6(9)** to meet the further eligibility requirements in **section HL 6**.
- “Entity treated as disposing of, reacquiring, property 25*
- “(2) An entity that ceases to be a portfolio investment entity is treated for the purposes of this Act as— 30
    - “(a) disposing of the property of the portfolio investment entity to another person for an amount of consideration equal to the market value of the property at the time; and

**Struck out (unanimous)**

“(b) acquiring the property 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: portfolio investment entity

- “**HL 5 Eligibility requirements for entities** 5
- “*Eligibility requirements*
- “(1) **Subsections (2) to (5)** describe eligibility requirements that must be met by a portfolio investment entity and an entity that is electing under **section HL 7** to become a portfolio investment entity. 10
- “*Residence requirement*
- “(2) 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. 15
- “*Income interest requirement*
- “(3) The income interest requirement is that all portfolio investor interests in the entity that give rights in relation to a portfolio entity investment give the rights in relation to all the proceeds from the investment. 20
- “*Independent management requirement*
- “(4) The independent management requirement is that no investor or person associated with an investor, other than a portfolio investment entity or a foreign investment vehicle, has a power to influence the entity in the making or disposal of an investment if the making or disposal is within the power of the entity. 25
- “*Entity history requirement*
- “(5) 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— 30

**Struck out (unanimous)**

“(a) under **section HL 4(1)(a)**, unless the cessation occurred more than 5 years before the day on which the election is to be effective:

“(b) under **section HL 4(1)(b) or (c)**.

“Defined in this Act: amount, portfolio entity investment, portfolio entity period, portfolio entity taxable income, portfolio investment entity, portfolio investor attributed income, portfolio investor attributed loss, portfolio investor class, portfolio investor class net loss, portfolio investor interest, portfolio investor interest fraction, taxable income

5

**“HL 6 Further eligibility requirements for entities**

10

*“Eligibility requirements*

“(1) **Subsections (2) to (8)** describe further eligibility requirements that must be met by a portfolio investment entity.

*“Investor class requirement*

“(2) The investor class requirement is that each portfolio investor class for the entity must include—

15

“(a) 20 persons, if all persons associated under section OD 8(3) (Further definitions of associated persons) are treated as 1 person:

“(b) a portfolio investment entity:

20

“(c) a foreign investment vehicle.

*“Investor interest adjustment requirement*

“(3) The investor interest adjustment requirement is that, after each period for which the entity is liable for portfolio investment entity tax calculated under **section HL 12** by reference to the portfolio investor rate of each investor, the entity must adjust the portfolio investor interest of each investor to reflect the effect of the rate on the amount of portfolio investment entity tax paid by the entity.

25

*“Investor interest size requirement*

30

“(4) The investor interest size requirement is that the portfolio investor interests held by an investor who is not a portfolio investment entity or a foreign investment vehicle, together

**Struck out (unanimous)**

with the portfolio investor interests held by persons associated with the investor under section OD 8(3),—

- “(a) must not be more than 20% of the total interests of investors in a portfolio investor class if the investor is—
  - “(i) a qualifying unit trust that is a New Zealand resident: 5
  - “(ii) a group investment fund:
  - “(iii) a life insurer that is a New Zealand resident:
  - “(iv) a superannuation fund; and
- “(b) must not be more than 10% of the total interests of investors in a portfolio investor class if the investor is not a person referred to in **paragraph (a)** and is not associated with such a person under section OD 8(3). 10

*“Investment type requirement*

- “(5) 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— 15
  - “(a) an interest in land:
  - “(b) a financial arrangement or an excepted financial arrangement that is, or is similar to, a— 20
    - “(i) loan:
    - “(ii) security:
    - “(iii) share:
    - “(iv) futures contract:
    - “(v) currency swap contract: 25
    - “(vi) interest rate swap contract:
    - “(vii) forward exchange contract:
    - “(viii) forward interest rate contract:
  - “(c) a right or option concerning property referred to in **paragraphs (a) and (b)**. 30

*“Application of investment value requirement*

- “(6) The investment value requirement applies if the entity has a portfolio entity investment—
  - “(a) in a company that is not a portfolio investment entity or a foreign investment vehicle; and 35

**Struck out (unanimous)**

“(b) having a value equal to more than 25% of the value of the company.

*“Investment value requirement*

“(7) The investment value requirement is that—

“(a) the total value of portfolio entity investments referred to in **subsection (6)** must be equal to or less than 10% of the total value of the entity’s assets; and 5

“(b) the total amount of the portfolio investor class investment values for portfolio entity investments referred to in **subsection (6)** must be equal to or less than 10% of the total amount of the portfolio investor class investment values for all the portfolio entity investments in which investors in the portfolio investor class have interests. 10

*“Investor interest repurchase requirement*

“(8) The investor interest repurchase requirement is that, at intervals of 5 years or less after the entity’s election to be a portfolio investment entity,— 15

“(a) the entity must offer to purchase from an investor in a portfolio investor class all or part of the investor’s portfolio investor interests at the time if, at the time,— 20

“(i) the entity has a portfolio entity investment in a company that is not a portfolio investment entity or a foreign investment vehicle; and

“(ii) the market value of the investment is more than 10% of the market value of the company; and 25

“(iii) the total amount of the portfolio investor class investment values for the portfolio entity investments that meets the requirements of **subparagraphs (i) and (ii)** is more than 10% of the total amount of the portfolio investor class investment values for all the portfolio entity investments in which the investors in the portfolio investor class have interests; and 30

“(b) if an investor accepts an offer from the entity under **paragraph (a)**,— 35

**Struck out (unanimous)**

- “(i) the entity must purchase the portfolio investor interests that the investor wishes to sell to the entity; and
- “(ii) pay for the interests an amount equal to the total of the amounts that are, for each portfolio entity investment, the portfolio investor interest fraction of the portfolio investor class investment value at the time of the acceptance. 5
- “*Effect of not meeting requirement*
- “(9) An entity is not eligible to be a portfolio investment entity if— 10
- “(a) the entity fails to meet a requirement referred to in **subsections (2) to (8)** 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 15
- “(ii) ending more than 3 months before an announcement by the company to its shareholders that the company is winding up within 6 months of the announcement; and
- “(b) the entity’s failure— 20
- “(i) is repeated on the last day of the quarter following the quarter referred to in **paragraph (a)**:
- “(ii) is due to factors within the control of the company.
- “*Foreign investment vehicle* 25
- “(10) **Foreign investment vehicle** means an entity that—
- “(a) is not resident in New Zealand; and
- “(b) meets the requirements of all of **subsections (2)(a), (4), (5), (6), (7) and (8) and section HL 5(3) and (4)**.
- “Defined in this Act: amount, foreign investment vehicle, futures contract, group investment fund, life insurance company, New Zealand resident, portfolio entity investment, portfolio entity period, portfolio investment entity, portfolio investor class, portfolio investor class investor values, portfolio investor interest, portfolio investor interest fraction, qualifying unit trust, superannuation fund 30

**Struck out (unanimous)**

**“HL 7 Election to become portfolio investment entity and  
cancellation of election**

*“Notice of election*

- “(1) An entity that meets the eligibility requirements in **section HL 5** may choose to be a portfolio investment entity by giving a notice to the Commissioner. 5

*“When election effective*

- “(2) An election received by the Commissioner is effective on—  
“(a) the start of the next quarter of the 2007–08 tax year beginning after the day of receipt, if the day is before the end of the 2007–08 tax year; or 10  
“(b) the start of the next tax year, if the day of receipt is on or after 1 January 2008.

*“Notice of cancellation*

- “(3) An entity may choose at any time to cease being a portfolio investment entity by giving a notice to the Commissioner. 15

*“When cancellation effective*

- “(4) An election to cease being a portfolio investment entity takes effect from 1 April after the election is made.

“Defined in this Act: Commissioner, notice, portfolio investment entity, quarter, tax year, taxable income 20

**“HL 8 Portfolio investor class taxable income**

*“Amount*

- “(1) The **portfolio investor class taxable income** of a portfolio investor class of a portfolio investment entity for a portfolio entity period is— 25  
“(a) the amount calculated using the formula in **subsection (2)**, if the portfolio investor class has, for the period, an amount of portfolio investor class land loss that is more than the portfolio investor class net loss; or 30  
“(b) zero, if the portfolio investor class has, for the period, an amount of portfolio investor class land loss that is less than or equals the portfolio investor class net loss.

## Struck out (unanimous)

*“Formula*

- “(2) A portfolio investor class referred to in **subsection (1)(a)** has portfolio investor class taxable income for the period equal to the amount calculated using the formula—
- class income + excess loss – land loss used– forma- 5  
tion loss used.

*“Definition of items in formula*

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

*“Class income*

- “(4) **Class income** is the amount of the portfolio investor class net income under **section HL 9** of the portfolio investor class for the period. 10

*“Excess loss*

- “(5) **Excess loss** is the amount by which the portfolio investor class land loss for the period is more than the portfolio investor class net loss for the period: 15

*“Land loss used*

- “(6) **Land loss used** is—
- “(a) zero, if the portfolio investor class land loss for the period is more than zero; or 20
- “(b) the lesser of the following amounts:
- “(i) the portfolio investor class land gain for the period:
- “(ii) the portfolio investor class available land loss, calculated under **section HL 17**, at the beginning of the period. 25

*“Formation loss used*

- “(7) **Formation loss used** is the lesser of the following amounts:
- “(a) the amount of the portfolio entity formation loss that, before the beginning of the period, has not been included as an amount of formation loss used in a calculation of portfolio entity class taxable income: 30

**Struck out (unanimous)**

“(b) the amount of the net income under **section HL 9** increased by the amount of excess loss under **subsection (5)** and reduced by the amount of land loss used under **subsection (6)**.

“Defined in this Act: amount, portfolio entity class taxable income, portfolio entity formation loss, portfolio entity investment, portfolio entity period, portfolio investment entity, portfolio investor attributed income, portfolio investor class, portfolio investor class available land loss, portfolio investor class land gain, portfolio investor class land loss, portfolio investor class net income, portfolio investor class net loss, portfolio investor class taxable income, portfolio investor interest, portfolio investor interest fraction

**“HL 9 Portfolio investor class net income and portfolio investor class net loss**

*“Portfolio investor class net income*

“(1) The **portfolio investor class net income** of a portfolio investor class for a portfolio entity period is the total of the following amounts, found for each portfolio entity investment in which the investors in the portfolio investor class have an interest:

“(a) zero, if the amount of the entity’s assessable income for the period derived from the portfolio entity investment is less than or equal to the amount of the entity’s deductions for the period incurred in deriving assessable income from the portfolio entity investment; or

“(b) the amount calculated using the formula—  
class fraction × (investment income – investment cost).

*“Definition of items in formula*

“(2) In the formula,—

“(a) **class fraction** is the portfolio investor class fraction for the portfolio entity investment:

“(b) **investment income** is the total amount of the entity’s assessable income for the period derived from the portfolio entity investment:

“(c) **investment cost** is the total amount of the entity’s deductions for the period incurred in deriving assessable income from the portfolio entity investment.

## Struck out (unanimous)

*“Portfolio investor class net loss*

- “(3) The **portfolio investor class net loss** of a portfolio investor class for a period is the total of the following amounts, found for each portfolio entity investment in which the investors in the portfolio investor class have an interest: 5
- “(a) zero, if the amount of the entity’s deductions for the period incurred in deriving assessable income from the portfolio entity investment is less than or equal to the amount of the entity’s assessable income for the period derived from the portfolio entity investment; or 10
- “(b) the amount calculated using the formula—  
class fraction × (investment cost – investment income).

*“Definition of items in formula*

- “(4) In the formula,— 15
- “(a) **class fraction** is the portfolio investor class fraction for the portfolio entity investment:
- “(b) **investment cost** is the total amount of the entity’s deductions for the period incurred in deriving assessable income from the portfolio entity investment: 20
- “(c) **investment income** is the total amount of the entity’s assessable income for the period derived from the portfolio entity investment.

“Defined in this Act: amount, portfolio entity investment, portfolio entity period, portfolio investment entity, portfolio investor attributed income, portfolio investor attributed loss, portfolio investor class, portfolio investor class fraction, portfolio investor class net loss, portfolio investor interest, portfolio investor interest fraction 25

**“HL 10 Income tax liability**

The income tax liability of a portfolio investment entity for a tax year is the total amount of portfolio investment entity tax that the portfolio investment entity is liable to pay for the portfolio entity periods in the tax year. 30

“Defined in this Act: portfolio entity period, portfolio entity tax, portfolio investment entity, tax year 35

**Struck out (unanimous)**

**“HL 11 Portfolio entity periods**

The portfolio entity period for a portfolio investment entity for a tax year is—

- “(a) a quarter, if the entity does not choose a shorter portfolio entity period under **paragraph (b)**; or 5
- “(b) a period of less than a quarter, if—
  - “(i) the first portfolio entity period in a tax year begins with the beginning of the tax year; and
  - “(ii) no portfolio entity period begins in 1 quarter and ends in another quarter; and 10
  - “(iii) the entity chooses the period by giving a notice to the Commissioner before the tax year.

“Defined in this Act: Commissioner, notice, portfolio entity period, portfolio investment entity, quarter, tax year

**“HL 12 Portfolio investment entity tax 15**

*“Liability of portfolio investment entity*

- “(1) A portfolio investment entity is liable to pay an amount of **portfolio investment entity tax** for a portfolio entity period that is the total of the amounts calculated using the formula in **subsection (2)** for— 20
  - “(a) each day of the period; and
  - “(b) each portfolio entity investment; and
  - “(c) each investor with a portfolio investor interest in the portfolio entity investment on the day, treating an interest in the portfolio entity investment that is not held by an investor as being a portfolio investor interest held by the entity as the sole investor in a portfolio investor class. 25

*“Formula*

- “(2) The formula is— 30
$$\text{investor fraction} \times (\text{class income} \times \text{rate} - \text{credits})$$
days in period.

**Struck out (unanimous)**

*“Definition of items in formula*

“(3) The items in the formula are defined in **subsections (4) to (8)**.

*“Investor fraction*

“(4) **Investor fraction** is the investor’s portfolio investor interest fraction on the day. 5

*“Class income*

“(5) **Class income** is the portfolio investor class net income for the investor’s portfolio investor class and the portfolio entity investment.

*“Rate*

“(6) **Rate** is— 10  
 “(a) the portfolio investor rate for the investor for the period;  
 or  
 “(b) 33%, if the entity is treated as the investor.

*“Credits*

“(7) **Credits** is the lesser of the following amounts: 15  
 “(a) the amount of credits for tax paid or withheld that are received by the entity from the portfolio entity investment for the period:  
 “(b) the amount found by multiplying the class net income 20  
 under **subsection (5)** by the rate under **subsection (6)**.

*“Days in period*

“(8) **Days in period** is the number of days in the portfolio entity period. 25  
 “Defined in this Act: amount, investor, portfolio entity investment, portfolio entity period, portfolio investment entity, portfolio investor class, portfolio investor class net income, portfolio investor interest, portfolio investor interest fraction, portfolio investor rate, taxable income

**“HL 13 Portfolio entity formation loss**

*“Losses arising before election 30*

“(1) If an entity that chooses to become a portfolio investment entity has a net loss arising from a period ending before the

**Struck out (unanimous)**

entity becomes a portfolio investment entity, the net loss may be carried forward under subparts IE and IF (which relate to tax losses generally) to a period during which the entity is a portfolio investment entity.

*“Liquidation losses*

5

“(2) If an entity that chooses to become a portfolio investment entity is treated as having a loss resulting from the liquidation and formation required by **section HL 2(3)(b) and (c)**, the loss is treated under **subsection (1)** as being a net loss arising before the entity becomes a portfolio investment entity.

10

*“Portfolio entity formation loss*

“(3) The total for the entity of the net losses referred to in **subsection (1) or (2)** is the amount of the portfolio investment entity’s **portfolio entity formation loss** and—

“(a) may be offset against portfolio class net income for a portfolio entity period under **section HL 8**:

15

“(b) may not be offset against the net income of another person.

“Defined in this Act: amount, net loss, portfolio class net income, portfolio entity formation loss, portfolio entity period, portfolio investment entity

20

**“HL 14 Loss of entity from portfolio entity period**

If a portfolio investment entity has a net loss arising from a portfolio entity period, the net loss may not be—

“(a) carried forward under subparts IE and IF (which relate to tax losses generally) to a later period:

25

“(b) offset against the net income of another person.

“Defined in this Act: net income, net loss, portfolio entity period, portfolio investment entity

**“HL 15 Portfolio investor attributed income and portfolio investor attributed loss**

30

*“Portfolio investor attributed income for period*

“(1) A person who is an investor in a portfolio investment entity on a day in a portfolio entity period is treated as deriving in the

## Struck out (unanimous)

- period from the entity an amount of **portfolio investor attributed income** equal to—
- “(a) the amount described in **subsection (3)**, if that amount is more than or equal to zero; or
- “(b) zero, if **paragraph (a)** does not apply. 5
- “*Portfolio investor attributed loss for period*
- “(2) A person who is an investor in a portfolio investment entity on a day in a portfolio entity period is treated as having in the period in relation to the entity an amount of **portfolio investor attributed loss** equal to— 10
- “(a) the amount by which zero is more than the amount given by **subsection (3)**, if the amount given by **subsection (3)** is less than zero; or
- “(b) zero, if **paragraph (a)** does not apply.
- “*Amount* 15
- “(3) The amount that determines whether an investor has portfolio investor attributed income or portfolio investor attributed loss for a period is the total of the amounts calculated using the formula in **subsection (4)** for—
- “(a) each day of the period; and 20
- “(b) each portfolio investor class to which the investor belongs on the day.
- “*Formula*
- “(4) The formula is— 25
- $$\text{investor fraction} \times (\text{class taxable income} - \text{class loss})$$
- days in period.
- “*Definition of items in formula*
- “(5) 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; 30
- “(b) **class taxable income** is the portfolio investor class taxable income for the period under **section HL 8**:

**Struck out (unanimous)**

“(c) **class loss** is the amount of the portfolio investor class net loss for the portfolio investor class for the period under **section HL 9**:

“(d) **days in period** is the number of days in the portfolio entity period. 5

“Defined in this Act: amount, investor, portfolio entity period, portfolio investment entity, portfolio investor attributed income, portfolio investor attributed loss, portfolio investor class, portfolio investor class net loss, portfolio investor class taxable income, portfolio investor interest, portfolio investor interest fraction

**“HL 16 Treatment of portfolio investor attributed loss 10**

*“Treatment of loss by zero-rated portfolio investors*

“(1) For each zero-rated portfolio investor who has an amount of portfolio investor attributed loss under **section HL 15** for a portfolio entity period, the amount is treated as a deduction under **section DB 43B** (Zero-rated portfolio investor and portfolio investor attributed loss) in the income year corresponding to the tax year containing the period. 15

*“Treatment of loss by other investors*

“(2) Each investor who is not a zero-rated portfolio investor and has an amount of portfolio investor attributed loss under **section HL 15** for a period has, as a rebate of tax under **section KI 1** (Rebate for investor in portfolio investment entity other than zero-rated portfolio investor) for the period, an amount calculated using the formula— 20

rate × loss. 25

*“Definition of items in formula*

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

“(a) **rate** is the portfolio investor rate for the investor for the period:

“(b) **loss** is the amount of portfolio investor attributed loss for the period. 30

“Defined in this Act: amount, income year, investor, portfolio entity period, portfolio investment entity, portfolio investor attributed loss, portfolio investor rate, tax year, zero-rated portfolio investor

## Struck out (unanimous)

**“HL 17 Income and expenditure from certain real property***“When this section applies*

- “(1) This section applies if, at the end of a quarter in a tax year,—
- “(a) investors in a portfolio investor class have interests in portfolio entity investments that are interests in land; 5  
and
- “(b) the total value given by **subsection (2)** for such portfolio entity investments is more than 10% of the total value given by **subsection (2)** for all interests of the investors in portfolio entity investments. 10

*“Value of portfolio entity investment*

- “(2) The value of a portfolio entity investment for the purposes of **subsection (1)** is the portfolio investor class fraction of the market value of the portfolio entity investment at the end of the quarter. 15

*“Portfolio investor class land loss*

- “(3) If, in the tax year, the entity is allowed an amount of deductions for expenditure or loss incurred in deriving assessable income from an interest in land that is more than the amount of assessable income derived by the entity from the interest in land, the portfolio investor class fraction of the amount of the excess is the **portfolio investor class land loss** for the investors in the portfolio investor class and the tax year. 20

*“Portfolio investor class land gain*

- “(4) If, in the tax year, the amount of assessable income derived by the entity from an interest in land is more than the amount of deductions allowed for expenditure or loss incurred by the entity in deriving assessable income from the interest in land, the amount of the excess is the **portfolio investor class land gain** for the entity and the tax year. 25  
30

*“Portfolio investor class available land loss*

- “(5) The **portfolio investor class available land loss** for an entity that is a portfolio investment entity is,—

**Struck out (unanimous)**

“(a) at the beginning of the tax year in which the entity becomes a portfolio investment entity, zero:	
“(b) at the end of a period, the amount calculated using the formula— opening value + period loss – period gain – loss used.	5
“ <i>Definition of items in formula</i>	
“(6) In the formula in <b>subsection (5)</b> ,—	
“(a) <b>opening value</b> is the portfolio investor class available land loss at the beginning of the period:	
“(b) <b>period loss</b> is the amount of the portfolio investor class land loss for the period:	10
“(c) <b>period gain</b> is the amount of the portfolio investor class land gain for the period:	
“(d) <b>loss used</b> is the amount of the land loss used for the period under <b>section HL 8(7)</b> .	15
“Defined in this Act: amount, portfolio entity investment, portfolio entity period, portfolio investment entity, portfolio investor class, portfolio investor class available land loss, portfolio investor class fraction, portfolio investor class land gain, portfolio investor class land loss, portfolio investor class net loss, portfolio investor interest, portfolio investor interest fraction, taxable income	20
<b>“HL 18 Credits received by portfolio investment entity</b>	
“ <i>Use of credit by portfolio investment entity</i>	
“(1) A portfolio investment entity that receives a credit for tax paid or withheld may not, except under this section,—	
“(a) use the credit to reduce the liability of the entity for income tax or portfolio investment entity tax or to obtain a refund of tax:	25
“(b) attach the credit to any distribution or transfer the credit to any other person.	
“ <i>Tax credit associated with investor</i>	30
“(2) For a portfolio entity period for which a portfolio investment entity receives a credit for tax paid or withheld, the amount of the credit that is associated with an investor in the entity is the total of the amounts calculated using the formula in <b>subsection (3)</b> for each day of the period.	35

## Struck out (unanimous)

*“Formula*

“(3) The formula is—

$$\text{credit} \times \text{class fraction} \times \text{investor fraction} \\ \text{days in period.}$$

*“Definition of items in formula*

5

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

“(a) **credit** is the amount of the credit received by the portfolio investment entity in relation to the portfolio entity investment:

“(b) **class fraction** is the portfolio investor class fraction, of the investor’s portfolio investor class, in relation to the portfolio entity investment that gives rise to the credit:

10

“(c) **investor fraction** is the portfolio investor interest fraction of the investor:

“(d) **days in period** is the number of days in the period.

15

*“Zero-rated portfolio investor*

“(5) A zero-rated portfolio investor is treated as receiving for the period as a credit of the type received by the entity, the amount of the credit received by the entity that is associated with the investor under **subsection (2)**.

20

*“Other investor*

“(6) For an investor who is not a zero-rated portfolio investor, the amount of the credit associated with the investor under **subsection (2)** is treated as—

“(a) a credit, of the type received by the entity, to the extent that such a credit reduces the liability of the entity for portfolio investment entity tax arising from net income associated with the investor under **section HL 12**:

25

“(b) a rebate of tax under **section KI 1** (Rebate for investor in portfolio investment entity other than zero-rated portfolio investor) for the period, of an amount equal to the amount of the credit that is not used under **paragraph (a)**.

30

**Struck out (unanimous)**

*“Portfolio investment entity*

“(7) For property of a portfolio investment entity in which no investor has a portfolio investor interest, the portfolio investment entity is treated under **subsection (5)** as being the sole zero-rated portfolio investor in a portfolio investor class having an interest in the property.

5

“Defined in this Act: amount, investor, net income, portfolio class fraction, portfolio entity investment, portfolio entity period, portfolio investment entity, portfolio investment entity tax, portfolio investor class, portfolio investor interest, portfolio investor interest fraction, zero-rated portfolio investor”.

10

(2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.

**New (unanimous)**

**85 New subpart HL inserted**

After subpart HK, the following is inserted:

“Subpart HL—Portfolio investment entities

15

*“Introductory provisions*

**“HL 1 Intended effect on portfolio investment entities and investors**

*“What this section does*

“(1) This section describes the intended effects of this subpart and related provisions of the Act.

20

*“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—

25

“(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

30

**New (unanimous)**

“(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	5
“(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.	
<i>“Intended effect on investor in portfolio investment entity</i>	10
“(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	15
“(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	20
“(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.	25
“Defined in this Act: investor, portfolio investment entity, portfolio investor rate, portfolio tax rate entity, tax	
<b>“HL 2 Scheme of subpart</b>	
<i>“Eligibility to be portfolio investment entity</i>	
“(1) The eligibility of an entity to be a portfolio investment entity is determined by <b>sections HL 3 to HL 10.</b>	30

**New (unanimous)**

- “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* 5
- “(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**. 10
- “Portfolio allocation period and portfolio calculation period*
- “(5) An entity who is a portfolio tax rate entity has under **section HL 15**— 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. 20
- “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**. 25
- “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— 30
- “(a) the portfolio class net income or portfolio class net loss calculated under **section HL 17**—

## New (unanimous)

“(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:	5
“(b) the portfolio class taxable income or portfolio class taxable loss calculated under <b>section HL 18</b> —	
“(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 <b>section HL 27</b> , and any portfolio class taxable loss under <b>section HL 28</b> that is portfolio class land loss under <b>section HL 29</b> :	10
“(c) the portfolio entity tax liability calculated under <b>section HL 19</b> —	15
“(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.	20
“ <i>Payments of tax by portfolio tax rate entity</i>	
“(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 <b>sections HL 20 to HL 22</b> , depending on the entity’s portfolio allocation period and portfolio calculation period.	25
“ <i>Portfolio investor allocated income and portfolio investor allocated loss</i>	30
“(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 <b>section HL 23</b> for the tax year exceeds the	35

**New (unanimous)**

- investor's total portfolio investor allocated loss under **section HL 23** for the tax year:
- “(b) having, if the investor is a zero-rated portfolio investor, for the tax year a deduction under **section HL 24** equal to the amount by which the investor's total portfolio investor allocated loss under **section HL 23** for the tax year exceeds the investor's total portfolio investor allocated income under **section HL 23** for the tax year. 5
- “*Rebate to entity for some portfolio investor allocated loss*
- “(10) If a portfolio tax rate entity does not make an election under **section HL 21**, the entity has a rebate under **section HL 25** 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 tax year exceeding the investor's total portfolio investor allocated income for the tax year. 10 15
- “*Treatment of tax credits*
- “(11) If a portfolio tax rate entity does not make an election under **section HL 21**, 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 26** for credits that are received by the entity and allocated to the investor for the portfolio allocation period. 20
- “*Portfolio investor proxies*
- “(12) An entity who meets the requirements of **section HL 30**—
- “(a) may be a portfolio investor proxy; and 25
- “(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 30

**New (unanimous)**

***“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* 5

“(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* 10

“(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* 15

“(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)**. 20

*“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**. 25

*“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)**. 30

**New (unanimous)**

*“Further eligibility requirements for portfolio defined benefit fund*

- “(6) A portfolio defined benefit fund must meet the further eligibility requirements described in **subsection (9) and sections HL 6, HL 9, and HL 10.** 5

*“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. 10

*“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. 15

*“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. 20

*“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. 25

“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 30

## New (unanimous)

**“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— 5

“(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— 10

“(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 15

“(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 20

“(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)**. 25

“Defined in this Act: investor, portfolio defined benefit fund, portfolio investment entity, portfolio listed company, portfolio tax rate entity, quarter 30

**“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 35

**New (unanimous)**

- “(c) has investors that would, if the entity were a portfolio investor entity, be a portfolio investor class meeting the investor membership requirements under **section HL 6(1)(a), (b), (d), (f), (g), (i), (j), or (k)**; 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 5
- “(e) meets the further eligibility requirements relating to investments under **section HL 10**, not including the exception in **section HL 10(4)(b)**. 10
- “*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— 15
- “(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)**. 20
- “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* 25
- “(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— 30
- “(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: 35

## New (unanimous)

- |   |    |
|---|----|
| “(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—  | 5  |
| “(i) meets the eligibility requirements in <b>sections HL 3</b> that are relevant to the entity; and  |    |
| “(ii) has not chosen to be a portfolio investment entity:   |    |
| “(e) a life insurer:  |    |
| “(f) the New Zealand Superannuation Fund:   | 10 |
| “(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 <b>paragraph (a)</b> , if—   | 15 |
| “(i) the entity has 1 or more other portfolio investor classes that satisfy <b>paragraph (a)</b> ; 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  | 20 |
| “(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. | 25 |
| <br><i>“Investor membership requirement for listed company</i>  |    |
| “(2) The investor membership requirement for an entity that is a company listed on a recognised exchange in New Zealand is that—  | 30 |
| “(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  | 35 |
| “(c) each portfolio investor interest in the company must be a share traded on the recognised exchange.   |    |

**New (unanimous)**

*“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: 5
  - “(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. 10

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

- “(5) 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— 15
- “(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 20
  - “(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 25

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

*“When this section applies 30*

- “(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— 35

**New (unanimous)**

“(a) the amount of the entity’s portfolio entity tax liability; and “(b) the amount of a rebate under <b>section HL 25 or HL 26.</b>	
<i>“Nature of adjustment</i>	
“(3) An adjustment reflecting the effect of the investor’s portfolio investor rate must be made to—	5
“(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 <b>section HL 21 or HL 22;</b> or	10
“(ii) within 2 months of the end of the tax year, if the entity has made an election under <b>section HL 21 or HL 22:</b>	
“(b) the amount of each distribution to each investor.	
<i>“Investor may be offered choice of method</i>	15
“(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	20
<b>“HL 8 Imputation credit distribution requirement: imputation credit account company</b>	
<i>“When this section applies</i>	
“(1) This section applies to a portfolio investment entity that is an imputation credit account company.	25
<i>“Imputation credit requirement</i>	
“(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.	30
“Defined in this Act: company, group investment fund, imputation credit, imputation credit account, investor, portfolio entity tax liability, portfolio investor	

**New (unanimous)**

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 in the class. 5

*“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,— 10

“(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: 15

“(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.

*“Exception for certain investors* 20

- “(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)**: 25

“(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) A person 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— 30

“(a) a portfolio investment entity:

“(b) a foreign investment vehicle:

## New (unanimous)

- “(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 5
- “(ii) has not chosen to be a portfolio investment entity:
- “(e) a life insurer:
- “(f) the New Zealand Superannuation Fund: 10
- “(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)**. 15
- “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. 20  
25
- “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— 30
- “(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 35

**New (unanimous)**

“(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

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**“HL 10 Further eligibility requirements relating to investments**

*“Investment type requirement*

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“(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:

15

“(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,—

20

“(a) be derived from property referred to in **subsection (1)**; and

“(b) consist of the following:

“(i) dividends:

25

“(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:

30

“(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)**,—

35

**New (unanimous)**

“(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.	5
<i>“Investments not affected by shareholding investment requirement</i>	
“(4) The investments referred to in <b>subsection (3)</b> do not include shares in—	10
“(a) a portfolio investment entity:	
“(b) a foreign investment vehicle:	
“(c) an entity that—	
“(i) meets the requirements in <b>section HL 3</b> that would be relevant if the entity were choosing to be a portfolio investment entity; and	15
“(ii) has not chosen to be a portfolio investment entity:	
“(d) a life insurer:	
“(e) a portfolio land company.	20
<i>“Class shareholding investment requirement</i>	
“(5) The class shareholding investment requirement is that, for each portfolio investor class and each investment referred to in <b>subsection (3)</b> , the portfolio class fraction of the investment must—	25
“(a) carry voting interests in the company of less than 20%:	
“(b) have a market value that, together with the market value of the entity’s other investments carrying voting interests in a company of more than 20%, is less than 10% of the total market value of the class’s investments.	30
“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	35

**New (unanimous)**

*“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** 5  
for an electing entity may choose to be a portfolio investment  
entity by giving a notice in the prescribed form to the Com-  
missioner at any time after 1 April 2007.

*“When election effective*

- “(2) An election received by the Commissioner is effective on the 10  
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. 15

*“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 20  
received by the Commissioner takes effect from the later of  
the following:  
“(a) the date on which the entity became a portfolio invest-  
ment entity: 25  
“(b) the date nominated in the notice:  
“(c) the date 30 days before the day of receipt.

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

## New (unanimous)

**“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,— 5

“(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 **sections HL 3**. 10

*“Income year for electing entity*

“(2) If an entity becomes a portfolio tax rate entity on a day that is not the first day of a tax year, section 39 of the Tax Administration Act 1994 applies as if— 15

“(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 20*

“(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— 25

“(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 30

“(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 35

**New (unanimous)**

“(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)**.

*“Paying tax and making returns*

“(4) An entity that has chosen to be a portfolio tax rate entity must— 5

“(a) pay income tax as required by **section HL 19**; and

“(b) make the returns required by **section 57B** of the Tax Administration Act 1994.

“Defined in this Act: amount, Commissioner, company, group investment fund, life insurer, portfolio investment entity, portfolio tax rate entity, share, superannuation fund, tax year 10

**“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— 15

“(a) the effect of the election on the length of the entity’s income year under **section HL 12(2)**: 20

“(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— 25

“(a) one third of the tax amount, in the tax year in which the entity becomes a portfolio investment entity; and 30

“(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

**New (unanimous)**

“(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 5

**“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— 10

“(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— 15

“(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. 20

*“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— 25

“(a) disposing of all shares held by the entity that satisfy **section CX 44C(a) and (b)** (Certain income of 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)**. 30

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

New (unanimous)

*“Periods relevant to calculation of portfolio entity tax liability*

**“HL 15 Portfolio allocation period and portfolio calculation period**

*“When this section applies* 5

“(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 10

“(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 15

“(c) an 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)**. 20

*“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— 25

“(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 30

“(c) an income year, if the entity—

“(i) chooses under **section HL 21** to pay provisional tax; and

## New (unanimous)

“(ii) chooses the portfolio calculation period by giving a notice to the Commissioner when the entity makes the election under **section HL 21**.

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

5

*“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.

10

15

*“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 19** for the period if—

20

“(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

25

“(c) the agreement exists before the portfolio allocation period; and

“(d) the vesting period ends after the portfolio allocation period; and

30

“(e) the vesting period,—

“(i) if the entity exists on 17 May 2006, does not exceed the longest vesting period allowed by the

**New (unanimous)**

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

5

**“HL 16B 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—

10

“(a) the investor acquires portfolio investor interests that the entity intends to qualify the investor as a member of the class; and

15

“(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.

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

25

*“Calculating portfolio entity tax liability*

**“HL 17 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—

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“(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.

**New (unanimous)**

*“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 5
  - “(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— 10
- 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— 15
    - “(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 20
    - “(ii) incurred by the portfolio entity investment in deriving assessable income allocated to the portfolio investor class; and
    - “(iii) allocated by the entity to the portfolio allocation period. 25

“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 18 Portfolio class taxable income and portfolio class taxable loss for portfolio allocation period 30**

*“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—

**New (unanimous)**

- “(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— 5
- “(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. 10
- “*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— 15
- 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 17** of the class for the period. 20
- “*Class net loss*
- “(6) **Class net loss** is the amount of the portfolio class net loss under **section HL 17** of the class for the period.
- “*Other loss used*
- “(7) **Other loss used** is the lesser of the following amounts: 25
- “(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 27:** 30
- “(ii) the portfolio class land loss that has not been offset against portfolio class net income for an

**New (unanimous)**

earlier allocation period and may be allocated to the allocation period under <b>section HL 29</b> :	
“(b) the total amount of the class net income referred to in <b>subsection (5)</b> .	
“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	5
<b>“HL 19 Portfolio entity tax liability and rebates of portfolio tax rate entity for period</b>	10
<i>“Portfolio entity tax liability</i>	
“(1) The <b>portfolio entity tax liability</b> of a portfolio tax rate entity, for a period (the <b>calculation period</b> ) for which the entity is required to calculate the portfolio entity tax liability, is—	
“(a) the total of the amounts calculated under <b>subsection (3)</b> for the calculation period and each investor to which the liability relates, if the total is more than zero; or	15
“(b) zero, if <b>paragraph (a)</b> does not apply.	
<i>“Amount of rebate under section HL 25</i>	
“(2) For the purposes of <b>section HL 25</b> , the amount of a rebate for a portfolio tax rate entity for a calculation period is—	20
“(a) the amount by which zero exceeds the total of the amounts calculated under <b>subsection (3)</b> for the calculation period and each investor to which the rebate relates, if the total is less than zero; or	25
“(b) zero, if <b>paragraph (a)</b> does not apply.	
<i>“Calculation of amount for calculation period</i>	
“(3) The amount calculated under this subsection for an investor and calculation period is the total of the amounts calculated using the formula in <b>subsection (4)</b> for—	30
“(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.	35

**New (unanimous)**

*“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

“(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*

10

“(7) **Income** is the portfolio class taxable income under **section HL 18** for the investor’s portfolio investor class and the portfolio allocation period.

*“Loss*

“(8) **Loss** is the portfolio class taxable loss under **section HL 18** for the investor’s portfolio investor class and the portfolio allocation period.

15

*“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**.

20

*“Days in allocation period*

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

25

“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

**New (unanimous)**

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

**“HL 20 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 5  
if the entity does not make an election under **section HL 21 or HL  
22** for the tax year.

*“Portfolio calculation period*

- “(2) The portfolio calculation period of the entity for the tax year 10  
must be a quarter.

*“Amount of payments*

- “(3) After each portfolio calculation period for the tax year, the 15  
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 20  
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 25  
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 portfo-  
lio calculation period in which the portfolio investor exit  
period ends. 30

*“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*

**New (unanimous)**

**“HL 21 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—

5

“(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.

10

*“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—

15

“(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.

20

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

**“HL 22 Payments of tax by portfolio tax rate entity choosing to make payments when investor leaves**

*“When this section applies*

25

“(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.

30

## New (unanimous)

<i>“Amount of payment for withdrawing investor</i>	
“(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—	5
“(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.	10
<i>“Amount of payment for investors remaining at end of tax year</i>	
“(3) After each tax year, the entity must make a payment to the Commissioner—	15
“(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 <b>subsection (2)</b> by the entity for any of the investors; and	20
“(b) within the period of 1 month beginning from the end of the tax year.	
<i>“Entity not required to pay provisional tax</i>	
“(4) The entity is not required to pay provisional tax under subpart MB (Provisional tax) for the tax year.	25
<i>“Notice of election</i>	
“(5) The entity must give the Commissioner notice of an election to be subject to this section—	
“(a) in the prescribed form; and	30
“(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,	35

**New (unanimous)**

portfolio investor class, portfolio investor exit period, portfolio tax rate entity,  
provisional tax, tax year

***“Results for investors***

- “HL 23 Portfolio investor allocated income and portfolio investor allocated loss** 5
- “When this section applies*
- “(1) This section applies to a person who is treated by a portfolio investment entity or portfolio investor proxy as an investor in a portfolio investment entity on a day in a tax year.
- “Portfolio investor allocated income for period* 10
- “(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 15
- “(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— 20
- “(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* 25
- “(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 30
- “(b) each day of the portfolio allocation period; and
- “(c) each portfolio investor class to which the investor belongs on the day.

**New (unanimous)**

*“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*

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“(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 18** of the portfolio class taxable income for the portfolio allocation period:

10

“(c) **class loss** is the amount under **section HL 18** of the portfolio class taxable loss for the portfolio investor class for the portfolio allocation period:

15

“(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

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**“HL 24 Treatment of portfolio investor allocated loss for zero-rated portfolio investors and investors with portfolio investor exit period**

*“When this section applies*

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“(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 20** and the period is a portfolio investor exit period for the investor.

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*“Deduction for excess of portfolio investor allocated loss*

“(2) The investor has a deduction under **section DB 43B** (Zero-rated portfolio investor and portfolio investor allocated loss) in the

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**New (unanimous)**

income year corresponding to the tax year of an amount equal to the total amount of portfolio investor allocated loss under **section HL 23** 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

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*“Rebate for entity*

**“HL 25 Treatment of portfolio investor allocated loss for other investors**

*“Investor in entity making payments of tax under section HL 20*

10

“(1) A portfolio tax rate entity that makes payments of tax under **section HL 20** has a rebate of tax under **section KI 1** (Rebate for portfolio tax rate entity relating to certain investors), of an amount given by **section HL 19(2)** for a portfolio calculation period and an investor if—

15

“(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 22*

20

“(2) A portfolio tax rate entity that makes payments of tax under **section HL 22** has a rebate of tax under **section KI 1**, for a tax year and an investor who is not a zero-rated portfolio investor,—

25

“(a) of an amount given by **section HL 19(2)**; and  
“(b) 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.

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“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

**New (unanimous)**

*“Treatment of credits received by entity*

**“HL 26 Credits received by portfolio investment 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— 5
- “(a) a portfolio tax rate entity that has not made an election under **section HL 21**: 10
- “(b) a portfolio investor proxy for an investor in a portfolio tax rate entity that has not made an election under **section HL 21**. 10

*“Use of credit by entity*

- “(2) The entity may not, except as allowed by this section,— 15
- “(a) use the credit to reduce the liability of the entity for income tax or to obtain a refund of income tax: 15
- “(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. 20

*“Formula*

- “(4) The formula is— 25
- $$\frac{\text{credit} \times \text{class fraction} \times \text{investor fraction}}{\text{days in period.}}$$

*“Definition of items in formula*

- “(5) In the formula in **subsection (4)**,— 30
- “(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:

**New (unanimous)**

- “(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: 5
- “(d) **days in period** is the number of days in the portfolio allocation period.
- “*Application of subsections (7) to (10)*
- “(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,— 10
- “(a) **subsection (7)** applies—
- “(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 20** and the investor is not a zero-rated portfolio investor: 15
- “(b) **subsection (8)** 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 22** and the investor is not a zero-rated portfolio investor: 20
- “(c) **subsections (9) and (10)** apply if **subsections (7) and (8)** do not apply. 25
- “*Zero-rated portfolio investor or investor with portfolio investor exit period for interest in entity that makes payments under section HL 20* 30
- “(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: 35
- “(i) the amount of the allocated credits:

## New (unanimous)

- |  |    |
|--|----|
| “(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): | 5  |
| “(b) if the credits are not under subpart LC, the allocated amount of each type of credit.   |    |
| <i>“Reduction of credit</i>  |    |
| “(7B) The amount of a credit received by an investor under <b>sub-section (7)(b)</b> is reduced by the amount found by multiplying 0.33 and the portfolio entity formation loss allocated to the investor for the income year.   | 10 |
| <i>“Investor with portfolio investor exit period for interest in entity that makes payments under section HL 22</i>  |    |
| “(8) The investor is treated as receiving for the tax year of the portfolio calculation period, for the unused allocated credits,—   | 15 |
| “(a) if the credits are under subpart LC, a credit against income tax payable by the investor of the amount that is the lesser of the following:   | 20 |
| “(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:  | 25 |
| “(b) if the credits are not under subpart LC, the allocated amount of each type of credit.   |    |
| <i>“Other investor: credit for entity for foreign tax credits</i>  |    |
| “(9) 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:  | 30 |
| “(a) the total of—   | 35 |

**New (unanimous)**

<p>“(i) the credits allocated to the portfolio calculation period; and</p> <p>“(ii) the credits allocated to earlier portfolio calculation periods in the tax year and not received by the entity as a credit against income tax payable for those portfolio calculation periods:</p> <p>“(b) the amount of the entity’s portfolio entity tax liability for the portfolio calculation period for the investor.</p> <p>“<i>Other investor: credit for entity for other credits</i></p> <p>“(10) The amount of the credits not under subpart LC allocated to the investor under <b>subsection (2)</b> is treated as—</p> <p>“(a) a credit against tax payable by the entity of the amount that is the lesser of the following:</p> <p>“(i) the amount of the credits:</p> <p>“(ii) the amount referred to in <b>subsection (9)(b)</b>, reduced by the amount of the credit given by <b>subsection (9)</b>:</p> <p>“(b) a rebate of tax under <b>section KI 1</b> (Rebate for portfolio investment entity relating to certain investors), for the entity and the portfolio calculation period, of the amount of the credits that is not used under <b>paragraph (a)</b>.</p> <p>“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</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p>
<p><b>“Treatment of losses for entity</b></p>	
<p><b>“HL 27 Portfolio entity formation loss</b></p> <p>“<i>Portfolio entity formation loss</i></p> <p>“(1) The <b>portfolio entity formation loss</b> 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.</p>	

**New (unanimous)**

<i>“Carrying forward portfolio entity formation loss of entity other than portfolio tax rate entity</i>	
“(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 <b>section HL 21</b> may be carried forward under subparts IE and IF to an income year in which the entity is a portfolio investment entity.	5
<i>“Increase in portfolio entity formation loss if allocation results in reduction of deduction, credit, or rebate</i>	
“(3) If portfolio entity formation loss is allocated by a portfolio tax rate entity to an investor for an income year (the <b>current year</b> ), 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:	10
“(a) the amount of any reduction under <b>section DB 43B(2)</b> (Zero-rated portfolio investor and portfolio investor allocated loss) of a deduction under <b>section DB 43B(1)</b> for the current year:	15
“(b) the amount of any reduction of credit under <b>section HL 26(7B)</b> divided by 0.33 for the current year:	20
“(c) the amount of any reduction of rebate under <b>section KI 1(3)</b> (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	25
<b>“HL 28 Portfolio class taxable income and portfolio class taxable loss for tax year</b>	
<i>“Portfolio class taxable income for tax year</i>	30
“(1) The <b>portfolio class taxable income</b> under this section for a portfolio investor class for a tax year is—	
“(a) the amount calculated for the tax year under <b>subsection (3)</b> , if the calculated amount is more than zero; or	
“(b) zero, if <b>paragraph (a)</b> does not apply.	35

**New (unanimous)**

*“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

5

“(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—

10

class tax income – class tax loss.

*“Definition of items in formulas*

“(4) The items in the formula are defined in **subsections (5) and (6)**.

15

*“Class tax income*

“(5) **Class tax income** is the amount of the portfolio class taxable income under **section HL 18** of the portfolio investor class for the portfolio allocation period.

*“Class tax loss*

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“(6) **Class tax loss** is the amount of the portfolio class taxable loss under **section HL 18** 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

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**“HL 29 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*

30

“(1) If a portfolio investor class has, for a portfolio calculation period, a portfolio class taxable loss that is not a portfolio

**New (unanimous)**

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 18** for a later portfolio allocation period. 5

*“Meaning of portfolio class land loss 10*

“(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— 15

“(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 20

“(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 25

*“Portfolio investor proxies*

**“HL 30 Portfolio investor proxies**

*“Eligibility of person to be portfolio investor proxy 30*

“(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—

**New (unanimous)**

- “(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— 5
  - “(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* 10
- “(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— 15
  - “(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— 20
    - “(i) of the entity; and
    - “(ii) to which the investor is entitled by the portfolio investor interest.
  
- “*Responsibilities of portfolio investor proxy* 25
- “(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 30
  - “(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 35

**New (unanimous)**

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”.

**Struck out (unanimous)****86 Net losses may be offset against future net income**

(1) After section IE 1(2B), the following is inserted:

“(2BB) If a taxpayer is a portfolio investment entity,—

“(a) the taxpayer may not carry forward a net loss under this section unless permitted by **section HL 13**; and

“(b) in the calculation of the taxpayer's liability to pay portfolio investment entity tax for a period, this section and section IF 1 apply as if the period were an income year.”

(2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.

**New (unanimous)****86 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, the taxpayer may not carry forward a net loss under this section.”

**87 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.

**Struck out (unanimous)**

- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.

**New (unanimous)**

- (2) **Subsection (1)** applies for income years beginning on or after 1 April 2007— 5
- (a) beginning with 1 April 2007 for a person who does not make an election under **paragraph (b)**; or
- (b) beginning with 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— 10
- (i) before 1 April 2007, if the person exists before that date; or 15
- (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. 20

**87B 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”.

**88 Group of companies FIF net losses**

- (1) Section IG 5(2) is repealed. 25
- (2) In section IG 5(4), “subsection (2) or (3)” is replaced by “subsection (3)”.

**Struck out (unanimous)**

- (3) **Subsection (1) and (2)** apply for income years beginning on or after—
- (a) 1 April 2007, for a person who does not make an election under **paragraph (b)**; or
  - (b) 1 October 2007, for 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.

**New (unanimous)**

- (3) **Subsections (1) and (2)** apply for income years beginning on or after 1 April 2007—
- (a) beginning with 1 April 2007 for a person who does not make an election under **paragraph (b)**; or
  - (b) beginning with 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.

**89 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: 5
  - “(cr) DIPS’N Charitable Trust (International): 5
  - “(cs) The New Zealand Council of the Ramabai Mukti Mission Trust Board: 10
  - “(ct) Waterharvest Trust: 10
  - “(cu) Zonta International District 16 (New Zealand) Charitable Trust.” 10
- (2) **Subsection (1)** applies for the 2006–07 and later income years.

**Struck out (unanimous)**

**90 Determination of net income**

- In section KD 1(1)(g)(ii),—
- (a) in the formula, “(c – d)” is replaced with “c”: 15
  - (b) in the definition of the item **c**, “corresponds” is replaced with “corresponds; and”:
  - (c) the definition of the item **d** is repealed.

**New (unanimous)**

**90 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”. 20
- (2) In section KD 1(1)(g)(ii),—
- (a) in the formula, “(c – d)” is replaced by “c”: 25
  - (b) in the definition of the item **c**, “corresponds” is replaced by “corresponds; and”:
  - (c) the definition of the item **d** is repealed.

**91 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”. 30
- (2) **Subsection (1)** applies for the 2006–07 and later income years.

**92 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: 5
- “**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: 10
- “(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”: 15
- (c) in subsection (5)(a),— 20
- (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:” 25
- (2) **Subsection (1)** applies for the 2006–07 and later income years. 30

**93 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— 35
- “(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* 5

- “(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.” 10

- (3) **Subsections (1) and (2)** apply for the 2006–07 and later income years.

**Struck out (unanimous)**

- |           |   |    |
|-----------|---|----|
| <b>94</b> | <b>Calculation of family tax credit</b>   | 15 |
|           | In section KD 3(1), “In this section” is replaced by “In this section and section KD 3A”. |    |

**New (unanimous)**

- |           |  |    |
|-----------|--|----|
| <b>94</b> | <b>Calculation of family tax credit</b>  |    |
| (1)       | In section KD 3(1), “In this section” is replaced by “In this section and section KD 3A”.  | 20 |
| (2)       | In section KD 3(1), paragraphs (bb) and (bc) of the definition of <b>qualifying person</b> 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 <b>section FC 24(3)</b> (Transitional resident); and”. | 25 |

**94B Allowance of credit of tax in end of year assessment**

- (1) 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 30

**New (unanimous)**

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	5
“(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 <b>section FC 24(4)</b> (Transitional resident) as an election under <b>section FC 24(3)</b> .”	10

**95 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”: 15
  - (b) “KD 2” is replaced by “KD 2, KD 2AAA,”.
- (2) **Subsection (1)** applies for the 2006–07 and later income years.

- 96 Adjustment of family support amounts, abatement threshold amounts, amounts of in-work payment and parental tax credit, and amount of family tax credit** 20
- 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”.

- 97 Commissioner to deliver credit of tax by instalments** 25
- (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.

**Struck out (unanimous)**

**98 New subpart KI inserted**

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

**Struck out (unanimous)**

“Subpart KI—Portfolio investor rebates

“**KI 1 Rebate for investor in portfolio investment entity other than zero-rated portfolio investor**

“*Portfolio investor rebate*

“(1) An investor in a portfolio investment entity who is not a zero-rated portfolio investor is allowed a **portfolio investor rebate** as a rebate of income tax arising in a tax year if the entity has, for a portfolio entity period in the tax year,—

“(a) an imputation credit or a credit for tax paid or withheld giving rise to a tax credit for the investor under **section HL 18** (Credits received by portfolio investment entity):

“(b) a net loss giving rise to a rebate for the investor under **section HL 16** (Treatment of portfolio investor attributed loss).

“*Amount* 15

“(2) The amount of an investor’s portfolio investor rebate that produces a rebate of tax for a tax year (the **current year**) is the lesser of the following amounts—

“(a) the total of—  
“(i) the amount of each credit referred to in **subsection (1)(a)** arising in the current year: 20

“(ii) the amount of each rebate under **section HL 16** arising in the current year:

“(iii) the amount of credits referred to in **subsection (1)(a)** and rebates under **section HL 16** arising before the current year that have not produced a rebate before the current year: 25

“(b) the total for the tax year of provisional tax, tax deductions, and resident withholding tax paid to the Commissioner in the tax year for the credit of the investor. 30

“Defined in this Act: Commissioner, imputation credit, investor, net loss, portfolio entity period, portfolio investment entity, portfolio investor rebate, provisional tax, resident withholding tax, tax deductions, tax year, zero-rated portfolio investor”.

(2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007. 35

**New (unanimous)**

**98    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**

5

*“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 21**; and

10

“(c) for an entity that makes payments of tax under **section HL 20**, the portfolio calculation period does not include part of a portfolio investor exit period for the investor.

15

*“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 26** (Credits received by portfolio tax rate entity or portfolio investor proxy) from an imputation credit or a credit for tax paid or withheld:

20

“(b) the amount of a rebate under **section HL 25** (Treatment of portfolio investor allocated loss for other investors) arising from portfolio investor allocated loss of the investor for the portfolio calculation period.

25

*“Reduction of rebate*

“(3) The amount of a rebate received by an entity under **subsection (2)** is reduced by the amount found by multiplying 0.33 and the portfolio entity formation loss allocated to the investor for the income year.

30

“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”.

**99 Credit of tax for imputation credit**

After section LB 2(2B), the following is inserted:

“(2C) A taxpayer that is a portfolio (*investment*) 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). 5

“(2D) A taxpayer that is an investor in a portfolio (*investment*) 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)**.”

**Struck out (unanimous)**

(2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007. 10

**100 Credits in respect of tax paid in country or territory outside New Zealand**

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

“(1B) A (*taxpayer that is a*) portfolio (*investment*) 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). 15

“(1C) (*A taxpayer that is an*) An investor in a portfolio (*investment*) 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)**.” 20

**Struck out (unanimous)**

(2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.

**101 Resident withholding tax payments to be credited against income tax assessed**

In section LD 3, the following is inserted after subsection (1):

“(1B) A (*taxpayer that is a*) portfolio (*investment*) 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). 25

“(1C) (*A taxpayer that is an*) An investor in a portfolio (*investment*) tax rate entity is, to the extent allowed by **subpart HL**, allowed a 30

credit of tax to which the entity’s entitlement is restricted by **subsection (1B).**”

**Struck out (unanimous)**

(2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.

**102 Credit of tax for dividend withholding payment credit in hands of shareholder** 5

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

“(1B) A taxpayer that is a portfolio (*investment*) 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). 10

“(1C) A taxpayer that is an investor in a portfolio (*investment*) 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).**”

**Struck out (unanimous)**

(2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007. 15

**103 Refund to non-resident or exempt shareholders**

Section LD 9(1B)(b) is repealed.

**New (unanimous)**

**103B New sections LD 10 and LD 11 added** 20

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— 25

“(a) is not excluded income of the taxpayer; and

**New (unanimous)**

- “(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: 5
- “(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)**: 10
- “(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 20(5) by entity for portfolio investor exit period** 15
- “(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 20
- “(b) the entity makes a payment under **section HL 20(5)** (Payment 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: 25
- “(a) the amount of the payment by the entity under **section HL 20(5)**: 30
- “(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.”

**Struck out (unanimous)**

**104 New section LF 2B inserted**

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

**“LF 2B Restriction for portfolio investment entity**

“(1) A taxpayer that is a portfolio investment entity is allowed under this section an amount of underlying foreign tax credit to no more than the extent allowed by **subpart HL** (Portfolio investment entities). 5

“(2) A taxpayer that is an investor in a portfolio investment entity is, to the extent allowed by **subpart HL**, allowed an amount of underlying foreign tax credit to which the entity’s entitlement is restricted by **subsection (1)**.” 10

(2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.

**New (unanimous)**

**104B 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”. 15

**105 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. 20

**New (unanimous)**

**105B Example: Section MB 13**

(1) The example after section MB 13 is replaced by the following:

**New (unanimous)**

<p><b>Example:</b> Section MB 13</p> <p>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 20 January and 7 May.</p>												
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.

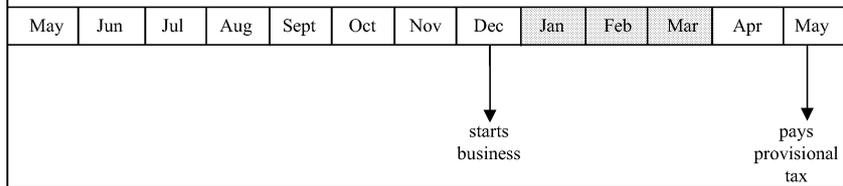
**105C Example: Section MB 14**

- (1) The example after section MB 14 is replaced by the following:

**New (unanimous)**

**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.

**106 Choosing to use GST ratio**

- (1) In section MB 16, in the list of defined terms, “notice” and “notify” are omitted. 5
- (2) **Subsection (1)** applies for provisional tax payments for the 2008–09 and later income years.

**107 Changing determination method**

- (1) In section MB 17(4), in the heading, “first instalment date” is replaced by “date of instalment A”. 10
- (2) **Subsection (1)** applies for provisional tax payments for the 2008–09 and later income years.

**108 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”. 15

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

**109 Example: Sections MB 20 to MB 24**

**Struck out (unanimous)**

- (1) In the example after section MB 24, “20 January” is replaced by “15 January”.

5

**New (unanimous)**

- (1) The example after section MB 24 is replaced by the following:

**New (unanimous)**

**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.

**110 Examples: Sections MB 26 and MB 27 (using March  
balance dates)**

**Struck out (unanimous)**

- (1) In the examples after section MB 27, “20 January” is replaced  
wherever it occurs, by “15 January”.

**New (unanimous)**

- (1) The examples after section MB 27 are replaced by the  
following:

5

**New (unanimous)**

<b>Examples:</b> 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"> <li>the change takes effect on 30 September (s MB 26(2))</li> <li>provisional tax instalment payable on old cycle on 28 August</li> <li>provisional tax instalment due on 7 May (s MB 27(2)).</li> </ul>											
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"> <li>the change takes effect on 30 September (s MB 26(2))</li> <li>provisional tax instalment payable on old cycle on 28 October</li> <li>provisional tax instalments due on 15 January, 7 May (s MB 27(4)).</li> </ul>											
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"> <li>the change takes effect on following 31 March</li> <li>provisional tax instalments paid on old cycle on 28 August, 15 January, 7 May (ss MB 26(3), MB 27(5)).</li> </ul>											
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"> <li>the change takes effect for provisional tax purposes on 10 June (s MB 25(5))</li> <li>provisional tax instalments due on 28 August, 15 January, 7 May (s MB 25(4)).</li> </ul>											

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

<b>111</b>	<b>Application of provisions of Tax Administration Act 1994</b>	
(1)	In section MB 28(1), “residual income tax” is replaced by “provisional tax”.	
(2)	<b>Subsection (1)</b> applies for provisional tax payments for the 2008–09 and later income years.	5
<b>112</b>	<b>Limit on refunds and allocations of tax</b>	
	In section MD 2(4), “after the date of <i>(instalment B specified in schedule 13, part A, for the company’s income year that corresponds to)</i> 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,”.	10
<b>New (unanimous)</b>		
<b>112B</b>	<b>Limits on refunds of tax for certain qualifying unit trusts and group investment funds</b>	15
(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 <b>subsection (2)</b> if the trust or fund—	20
	“(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—	25
	“(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—	30

**New (unanimous)**

credit balance × 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

5

“**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’.”

10

- (2) **Subsection (1)** applies for income years beginning on or after 1 April 2007.

**Struck out (unanimous)**

**113 Companies required to maintain imputation credit account**

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

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“(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:

20

“(k) a portfolio investment entity.”

**New (unanimous)**

**113 Companies required to maintain imputation credit account**

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

25

“(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”.

**New (unanimous)**

- |   |                     |
|---|---------------------|
| <p>(2) In section ME 1(2)(j), “authority.” is replaced by “authority; or” and the following is added:<br/>“(k) a portfolio tax rate entity.”</p> <p>(3) <b>Subsection (1)</b> applies for income years beginning on or after 1 October 2007.</p>  | 5                   |
| <br>  |                     |
| <b>113B Debits arising to imputation credit account</b>   |                     |
| <p>(1) In section ME 5(1)(ac), “or as a person associated with a share user,” is omitted.</p> <p>(2) <b>Subsection (1)</b> applies for the 2005–06 and later income years.</p>  |                     |
| <br>  |                     |
| <b>113C Company may elect to maintain dividend withholding payment account</b>  |                     |
| <p>In section MG 2(1), “and is not a portfolio tax rate entity” is inserted after “New Zealand”.</p>  |                     |
| <br>  |                     |
| <b>113D Qualifying unit trust or group investment fund may elect to maintain supplementary available subscribed capital amount</b>  |                     |
| <p>In section MJ 1(1), “is not a portfolio tax rate entity and” is inserted after “category A income”.</p>  |                     |
| <br>  |                     |
| <b>114 Revocation of listing</b>  |                     |
| <p>(1) In section NBB 4(2), “30 days” is replaced by “notice”.</p> <p>(2) Section NBB 4(3) is replaced (<i>with</i>) <u>by</u> the following:<br/>“(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.”</p> <p>(3) In section NBB 4(4), “a notice” is replaced by “the 14 days notice of revocation given”.</p> | <p>20</p> <p>25</p> |

**New (unanimous)**

**114B 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).” 5
- (2) **Subsection (1)** applies for pay periods beginning on or after 1 October 2006.

**115 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”. 10
- (2) After section ND 1A(1D), the following is added:
  - “(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— 15
    - “(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: 20
      - “(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— 25
    - “(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.” 30
- (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. 35

**New (unanimous)**

**115B 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.

**115C 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.

**115D Private use of motor vehicle: when schedular value not used** 15

- (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.

**115E 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.” 25
- (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. 30

**Struck out (unanimous)****116 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 2B** applies”.

5

**New (unanimous)****116 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”.

10

**Struck out (unanimous)****117 Sections NE 2AA, NE 2AB, and NE 2A replaced by new section NE 2B**

Sections NE 2AA, NE 2AB, and NE 2A are replaced by the following:

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

15

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)** for the SSCWT rate threshold amount for the employee.”

20

**New (unanimous)****117 Sections NE 2AA and NE 2AB repealed**

Sections NE 2AA and NE 2AB are repealed.

25

**New (unanimous)**

**117B 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.”

**Struck out (unanimous)**

**118 Specified superannuation contribution withholding tax to be deducted**

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

**New (unanimous)**

**118 Specified superannuation contribution withholding tax to be deducted**

In section NE 3, “sections NE 2, NE 2AA, and NE 2AB” is replaced by “sections NE 2 and **NE 2B**”.

**Struck out (unanimous)**

**119 Tax deemed for certain purposes to have been received by superannuation fund**

In section NE 6(a),—

- (a) “commitments—” is replaced by “commitments, the amount of any specified superannuation contribution withholding tax payable in accordance with the SSCWT rules; and”:
- (b) subparagraphs (i) and (ii) are repealed.

**Struck out (unanimous)**

**120 Application of RWT rules**

- (1) In section NF 1(2)(b)(viii), “CW 50:” is replaced by “CW 50; or” and the following is added:

“(ix) dividends that are excluded income by virtue of the application of **section CX 44D**:”.

5

- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.

**New (unanimous)**

**120 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”.

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- (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:”.

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- (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):”.

20

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

25

**120B 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—

30

**New (unanimous)**

- “(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.

**121 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.

**122 Certificates of exemption**

- In section NF 9(1), after paragraph (b), the following is inserted:
- “(c) any portfolio investment entity:”.

**Struck out (unanimous)**

- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.

**123 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”.

**124 Application of NRWT rules**

- (1) In section NG 1(2), in the words before paragraph (a), “assessable income” is replaced by “income”. 5

**New (unanimous)**

(1B) In section NG 1(2)(a), “and dividends from portfolio listed companies” is inserted after “investment society dividends”.

- (2) In section NG 1(2)(d), “applies.” is replaced by “applies; or”, and the following is added:  
“**(e)** exempt income.” 10
- (3) **Subsections (1) and (2)** apply for the 2005–06 and later income years.

**125 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”. 15
- (2) **Subsection (1)** applies for the 2005–06 and later income years.

**New (unanimous)**

**125B 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”. 20

**126 Definitions**

- (1) This section amends section OB 1.
- (2) The definition of **acquire** is replaced by the following:  
“**acquire**, for depreciable property, includes— 25  
“**(a)** make:  
“**(b)** be granted, for a patent or plant variety rights:  
“**(c)** lodge, for a patent application or a plant variety rights application”.

**Struck out (unanimous)**

- (3) After the definition of **applicable basic tax rate**, the following is inserted:  
“**approved deposit fund** is defined in **section EX 33B** (Australian superannuation fund exemption) for the purposes of that section”.

5

**New (unanimous)**

- (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)”.
- (3B) 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)”.

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- (4) The definition of **calculation method** is replaced by the following:

**Struck out (unanimous)**

“**calculation method**, for the calculation of FIF income or FIF loss, means any of the accounting profits method, the branch equivalent method, the market value method, the smoothed market value method, and the cost method”.

25

**New (unanimous)**

“**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”.

5

**Struck out (unanimous)**

- (5) The definition of **comparative value method** is replaced by the following:

“**comparative value method** means the method of calculating FIF income or FIF loss under former **section EX 44** before the repeal of that section”.

10

**New (unanimous)**

- (5B) 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)”.

**Struck out (unanimous)**

- (6) The definition of **deemed rate of return method** is replaced by the following:

“**deemed rate of return method** means the method of calculating FIF income or FIF loss under former **section EX 45** before the repeal of that section”.

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- (7) In the definition of **diminished value**—

- (a) in item **a**, paragraph (a) is replaced by the following:

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“(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”:

25

- (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)”. 5
- (8) In the definition of **dispose**, paragraph (e) is replaced by the following: 10
- “(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: 15
- “(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:”.
- (9) In the definition of **distribution**, in the words before paragraph (a), “sections CQ 2” is replaced by “sections **CP 2** (Distributions by portfolio investment entities), CQ 2”. 20

**Struck out (unanimous)**

- (10) In the definition of **eligible company**, in paragraph (d)(ii), “equity)” is replaced by “equity); and”, and the following is added: 25
- “(e) is—
- “(i) incorporated in New Zealand; or
- “(ii) carrying on a business in New Zealand through a fixed establishment; and
- “(f) 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”. 30

## New (unanimous)

- (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 5
  - “(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 10
  - “(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 15
    - “(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”. 25

## Struck out (unanimous)

- (12) In the definition of **employer’s contributions to superannuation savings**, in paragraph (a), subparagraphs (i) and (ii) are replaced by the following:
- “(i) those that were treated as salary and wages under section NE 2A before that section was replaced by **section NE 2B** (Employer election that progressive rates of specified superannuation contribution withholding tax apply) on 1 April 2007; or 30

**Struck out (unanimous)**

“(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”.

5

**New (unanimous)**

(12) 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”.

10

(13) 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

**Struck out (unanimous)**

(14) After the definition of **exempt interest**, the following is inserted:

“**exempt public sector superannuation scheme** is defined in **section EX 33B** (Australian superannuation fund exemption) for the purposes of that section”.

20

**New (unanimous)**

(14B) 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)”.

25

- (15) In the definition of **FIF net loss**, “sections **DN 8** (Ring-fencing cap on deduction: not branch equivalent method) and” is replaced by “section”.

**New (unanimous)**

- (15B) After the definition of **finance lease**, the following is inserted: 5
- “**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— 10
- “(a) an amount of interest incurred, other than an amount that arises only from movement in currency exchange rates: 15
- “(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”.
- (15C) In the definition of **financial statements**, “, **section EG 3** (Allocation of income and deductions by portfolio tax rate entity),” 20  
is inserted before “and section ME 5”.

**Struck out (unanimous)**

- (16) In the definition of **fixed rate share**, in paragraph (a), “and any imputation credits or dividend withholding payment credits attached to any dividend” is inserted after “issue of the share”. 25

**New (unanimous)**

- (16) 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”:

**New (unanimous)**

- (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)”.

**Struck out (unanimous)**

- (17) After the definition of **foreign expenditure**, the following is inserted: 5  
“**foreign investment vehicle** is defined in **section HL 6(10)** (Further eligibility requirements for entities)”.

**New (unanimous)**

- (17) After the definition of **foreign investment fund**, the following is inserted: 10  
“**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)**”.” 15

**Struck out (unanimous)**

- (18) After the definition of **forestry company**, the following is inserted:  
“**formula FIF income or loss** is defined in **section EX 44C(6)** (Smoothed market value method)”.  
(19) After the definition of **generally accepted accounting practice**, the following is inserted: 20  
“**geothermal energy proving period** means, for a geothermal well that is not used to exploit geothermal energy, a period—  
“(a) starting with the completion or acquisition of the well; 25  
and

**Struck out (unanimous)**

- “(b) 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 5
- “**geothermal well** means a bore or well solely for the purpose of investigating or exploiting geothermal energy in New Zealand”.

**New (unanimous)**

- (19) After the definition of **generally accepted accounting practice**, the following is inserted: 10
- “**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; 15  
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— 20
- “(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”. 25
- (19B) 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— 30

**New (unanimous)**

- “(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— 5
- “(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)”. 10
- (19C) In the definition of **grey list company**, “company or territory” is replaced by “country or territory”. 15
- (19D) In the definition of **imputation credit**, in paragraph (c), “section CD 10C(4)” is replaced by “section CD 10B(4)”. 15
- (20) The definition of **investor** is replaced by the following: 20
- “**investor** means— 20
- “(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: 25
- “(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”. 30

**New (unanimous)**

(20B) In the definition of **lease**, paragraph (ab) is repealed.

(21) In the definition of **non-participating redeemable share**, “for the purposes of that section” is omitted.

**New (unanimous)**

(21B) In the definition of **non-refundable credit**, the following is inserted after paragraph (a):

“(ab) a credit allowed under **section HL 26(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:”.

(22) After the definition of **operating lease**, the following is inserted:

“**operational allowance** is defined in **section CW 19(4)** (Income for military service in operational area) for the purposes of that section”.

**New (unanimous)**

(22B) 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)”.

(23) The definition of **patent application date** is repealed.

(24) The definition of **pay and allowances** is repealed.

**Struck out (unanimous)**

(25) After the definition of **portable veteran’s pension**, the following is inserted:

“**portfolio entity formation loss** is defined in **section HL 13** (Portfolio entity formation loss)

“**portfolio entity investment** means an investment of a portfolio investment entity in an item of property of a type to

**Struck out (unanimous)**

which **section HL 6(5)** (Further eligibility requirements for entity) refers

“**portfolio entity period** for a portfolio investment entity, means a period of a length given by **section HL 11** (Portfolio entity periods) for which the entity pays portfolio investment entity tax under **section HL 12** (Portfolio investment entity tax)

5

“**portfolio investment entity** means a company, superannuation fund, or group investment fund that has become a portfolio investment entity under **section HL 2** (Becoming portfolio investment entity) and has not ceased to be a portfolio investment entity under **section HL 4** (Ceasing to be portfolio investment entity)

10

“**portfolio investment entity tax** means the tax imposed on a portfolio investment entity under **section HL 12** (Portfolio investment entity tax)

15

“**portfolio investor attributed income** is defined in **section HL 15** (Portfolio investor attributed income and portfolio investor attributed loss)

“**portfolio investor attributed loss** is defined in **section HL 15** (Portfolio investor attributed income and portfolio investor attributed loss)

20

“**portfolio investor class** means a group of investors in a portfolio investment entity, each investor having an entitlement—

“(a) to a distribution by the entity of proceeds from portfolio entity investments that are the same as for the other investors in the group; and

25

“(b) to a proportion, that is the same for each portfolio entity investment, of a distribution by the entity—

“(i) of proceeds from a portfolio entity investment; and

30

“(ii) to the investors in the group

“**portfolio investor class available land loss** is defined in **section HL 17** (Income and expenditure from certain real property)

35

“**portfolio investor class fraction**, for a portfolio investment entity and a portfolio investor class, means the fraction of the

**Struck out (unanimous)**

- proceeds from a portfolio entity investment to which the investors in the portfolio investor class are entitled as a group
- “portfolio investor class investment value**, for a portfolio investment entity, a portfolio investor class, and a portfolio entity investment, means the portfolio investor class fraction of the market value of the portfolio entity investment 5
- “portfolio investor class land gain** is defined in **section HL 17** (Income and expenditure from certain real property)
- “portfolio investor class land loss** is defined in **section HL 17** (Income and expenditure from certain real property) 10
- “portfolio investor class net income** is defined in **section HL 9** (Portfolio investor class net income and portfolio investor class net loss)
- “portfolio investor class net loss** is defined in **section HL 9** (Portfolio investor class net income and portfolio investor class net loss) 15
- “portfolio investor class taxable income** is defined in **section HL 8** (Portfolio investor class taxable income)
- “portfolio investor interest**, means an interest in a portfolio investment entity that gives the holder a share of the capital of the entity or a beneficial interest in the assets of the entity 20
- “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 an amount of proceeds from a portfolio entity investment distributed by the entity to the investors in the portfolio investor class 25
- “portfolio investor rate**, for an investor in a portfolio investment entity and a portfolio entity period, means—
- “(a) 33%, if the investor does not, before the end of the period, notify the entity that a lower rate is the prescribed investor rate for the investor and the period; or 30
- “(b) the rate that the investor gives as the prescribed investor rate for the investor and the period in a notice to the entity—
- “(i) before the end of the period; and 35
- “(ii) with the number of the investor’s account with the Commissioner

**Struck out (unanimous)**

“**portfolio investor rebate** is defined in **section KI 1** (Rebate for investor in portfolio investment entity other than zero-rated portfolio investor)”.

**New (unanimous)**

- (25) After the definition of **portable veteran’s pension**, the following is inserted: 5
- “**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 10 15
- “**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 20
- “**portfolio class net income** is defined in **section HL 17** (Portfolio class net income and portfolio class net loss for portfolio allocation period) 25
- “**portfolio class net loss** is defined in **section HL 17** (Portfolio class net income and portfolio class net loss for portfolio allocation period)
- “**portfolio class taxable income** is defined,— 30
- “(a) for a tax year, in **section HL 28** (Portfolio class taxable income and portfolio class taxable loss for tax year):

## New (unanimous)

- “(b) for a portfolio allocation period, in **section HL 18** (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 28** (Portfolio class taxable income and portfolio class taxable loss for tax year): 5
- “(b) for a portfolio allocation period, in **section HL 18** (Portfolio class taxable income and portfolio class taxable loss for portfolio allocation period)
- “**portfolio defined benefit fund** means a defined benefit fund that— 10
- “(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) 15
- “**portfolio entity formation loss** is defined in **section HL 27** (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 20
- “**portfolio entity tax liability**, for a portfolio tax rate entity for a period, is defined in **section HL 19** (Portfolio entity tax liability of portfolio tax rate entity for period) 25
- “**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 23** (Portfolio investor allocated income and portfolio investor allocated loss) 30
- “**portfolio investor allocated loss** is defined in **section HL 23** (Portfolio investor allocated income and portfolio investor allocated loss) 35

**New (unanimous)**

- “**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 5
  - “(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 10
- “**portfolio investor exit period**, for an investor in a portfolio tax rate entity and a tax year, means,— 15
- “(a) for an entity that makes payments of tax under **section HL 20** (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 20
    - “(ii) for which the amount of the entity’s portfolio tax liability under **section HL 19** (Portfolio entity tax liability 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 25
  - “(b) for an entity that makes payments of tax under **section HL 22** (Payments of tax by portfolio tax rate entity choosing payments on investors leaving), a period— 30
    - “(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 35
    - “(ii) ending on a day in the tax year on which the amount of the entity’s portfolio tax liability under **section HL 19** for the investor for the period equals

**New (unanimous)**

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 5

“**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 10

“**portfolio investor proxy** is defined in **section HL 30** (Portfolio investor proxies)

“**portfolio investor rate**, for an investor in a portfolio tax rate entity and a portfolio calculation period, means— 15

“(a) 33%, if the investor does not, before the end of the period,—

“(i) notify the entity that a lower rate is the prescribed investor rate for the investor and the period; and

“(ii) provide the entity with the investor’s tax file number; or 20

“(b) the rate that the investor, before the end of the period, notifies to the entity as the prescribed investor rate for the investor and the period, if **paragraph (c)** does not apply; or 25

“(c) 0%, if—

“(i) the entity makes payments of tax under **section HL 20** (Payments of tax by portfolio tax rate entity making no election); and

“(ii) the portfolio investor rate for the person for the portfolio calculation period would, in the absence of this paragraph, be more than 0%; and 30

“(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— 35

“(a) is not a portfolio investment entity in the tax year; and

**New (unanimous)**

“(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	5
“ <b>portfolio listed company</b> means a company listed on a recognised exchange in New Zealand that—	
“(a) has become a portfolio investment entity under <b>section HL 12</b> (Becoming portfolio investment entity); and	10
“(b) has not ceased to be a portfolio investment entity under <b>section HL 14</b> (Ceasing to be portfolio investment entity)	
“ <b>portfolio tax rate entity</b> means a company, superannuation fund, or group investment fund that—	15
“(a) has become a portfolio tax rate entity under <b>section HL 12</b> (Becoming portfolio investment entity); and	
“(b) has not ceased to be a portfolio tax rate entity under <b>section HL 14</b> (Ceasing to be portfolio investment entity); and	20
“(c) is not a company listed on a recognised exchange in New Zealand; and	
“(d) is not a defined benefit fund”.	
(25B) In the definition of <b>prescribed interest</b> , “sections ND 1E (Employment-related loans: repayment)” is replaced by “sections ND 1D (Employment-related loans: value of benefit)”.	25

**Struck out (unanimous)**

(26) After the definition of <b>prescribed interest</b> , the following is inserted:	
“ <b>prescribed investor rate</b> , for a person who is an investor of a portfolio investment entity and a portfolio entity period in a tax year, means—	30
“(a) 33%, unless <b>paragraph (b) or (c)</b> applies to the person; or	
“(b) 19.5%, if the person—	

**Struck out (unanimous)**

- “(i) is a resident to whom **paragraph (c)** does not apply;  
and  
“(ii) had, in the latest income year ending before the  
tax year, \$48,000 or less in total of taxable  
income and attributed investment entity income; 5  
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: busi- 10  
ness income):  
“(ii) is a company:  
“(iii) derives income as a trustee.”.

**New (unanimous)**

- (26) After the definition of **prescribed interest**, the following is  
inserted: 15  
“**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), (c), and (d)** apply to the 20  
person:  
“(ii) the person is a resident who derives income as a  
trustee and chooses to be subject to this para-  
graph for the tax year; or  
“(b) 19.5%, unless **paragraph (c) or (d)** applies to the person, if 25  
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 30  
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:

**New (unanimous)**

non-business income) or CW 35 (Charities: business income):	
“(ii) is a portfolio investment entity:	
“(iii) is a company:	
“(iv) is a superannuation fund:	5
“(v) derives income as a trustee and does not choose to be subject to <b>paragraph (a)</b> for the tax year:	
“(vi) is a portfolio investor proxy for the portfolio allocation period”.	
(26B) In the definition of <b>principal caregiver</b> , paragraph (ab) is replaced by the following:	10
“(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 <b>section FC 24(3)</b> (Transitional resident); and”.	15

**Struck out (unanimous)**

(27) In the definition of <b>provisional taxpayer</b> , after paragraph (b)(i), the following is inserted:	
“(ib) a portfolio investment entity; or”.	

**New (unanimous)**

(27) In the definition of <b>provisional taxpayer</b> , after paragraph (b)(i), the following is inserted:	20
“(ib) a portfolio tax rate entity that does not make an election under <b>section HL 21</b> (Payments of tax by portfolio tax rate entity choosing to pay provisional tax); or”.	25

**Struck out (unanimous)**

- (28) In the definition of **qualifying person**, in paragraph (c), “that section” is replaced by “that section and section KD 3A (Rules for family tax credit)”.

**New (unanimous)**

- (28) In the definition of **qualifying person**,—
- (a) paragraph (a)(iib) and (iic) are replaced by the following: 5
- “(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”: 10
- (b) in paragraph (c), “that section” is replaced by “that section and section KD 3A (Rules for family tax credit)”.
- (28B) In paragraph (c) of the definition of **refundable credit**, “credit” is replaced by “credit; or” and the following is added: 15
- “(d) for a payment made by a portfolio tax rate entity under **section HL 20(5)** (Payments of tax by portfolio tax rate entity making no election)”. 20

**Struck out (unanimous)**

- (29) After the definition of **registered security**, the following is inserted:
- “**regulated superannuation fund** is defined in **section EX 33B** (Australian superannuation fund exemption) for the purposes of that section”. 25

**New (unanimous)**

- (29B) In the definition of **resident in Australia**, “and for the purposes of the imputation rules” is omitted.

**Struck out (unanimous)**

- (30) After the definition of **retained earnings**, the following is inserted:  
 “**retirement savings account** is defined in **section EX 33B** (Australian superannuation fund exemption) for the purposes of that section”. 5
- (31) In the definition of **salary or wages**, paragraph (b)(iii) is repealed.
- (32) In the definition of **schedular income**, after paragraph (d), the following is inserted:  
 “(db) income derived by a portfolio (*investment*) tax rate entity:”. 10

**New (unanimous)**

- (32B) 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”. 15
- (32C) The definition of **specified lease** is replaced by the following: 20  
 “**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— 25  
 “(i) the lessee becomes the owner of the asset at the end of the term of the lease: 30  
 “(ii) the lessee has the option to purchase the asset at the end of the term of the lease at a price that the

## New (unanimous)

- 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: 5
- “(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: 10
- “(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: 15
- “(c) the lease is entered in the period starting on 28 October 1983 and ending on 19 May 1999 and— 20
- “(i) a person other than the lessee acquires the asset; and
- “(ii) the lessee and the person who acquires the asset are associated”.
- (33) After the definition of **spreading method**, the following is inserted: 25
- “**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 (*previous to*) before the tax year (*to*) in which the specified superannuation contribution (*relates*) is paid, the total amount of— 30
- “(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 (*makes*) pays 35

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 *(to)* in which the specified superannuation contribution *(relates)* is paid; and 5
  - “(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 *(to)* in which the specified superannuation contribution *(relates)* is paid”. 10

**Struck out (unanimous)**

- (34) After the definition of **year of determination**, the following is inserted: 15
- “**zero-rated portfolio investor** means an investor in a portfolio investment entity who has a prescribed investor rate of 0%”.

**New (unanimous)**

- (34) After the definition of **year of determination**, the following is inserted: 20
- “**zero-rated portfolio investor**, for a portfolio tax rate entity that makes payments of tax under **section HL 20** (Payments of tax by portfolio tax rate entity making no election) or **HL 22** (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”. 25
- (35) **Subsections (8), (10), (11), (15B), (16)(a), (and )(19), (19B), and (32C)** apply for the 2005–06 and later income years. 30

**Struck out (unanimous)**

- (36) **Subsection (10)** applies for a person for the 2005–06 and later income years, unless the person took a tax position in a return provided to the Commissioner before **16 May 2006** that relies on the definition of **eligible company** that would apply if **subsection (6)** did not come into force. 5
- (37) If **subsection (10)** does not apply for a person for an income year because of **subsection (36)**, the definition of **eligible company** that would apply if **subsection (10)** did not come into force applies for the person for the income year.
- (38) **Subsections (4), (5), (6), (9), (15), (17), (18), (20), (21), (25), (26), (27), (32), (33), and (34)** apply for income years and portfolio entity periods beginning on or after 1 April 2007. 10

**New (unanimous)**

- (38) **Subsections (4), (5B), (14B), (15), and (21)** apply for income years beginning on or after 1 April 2007— 15
- (a) beginning with 1 April 2007 for a person who does not make an election under **paragraph (b)**; or
- (b) beginning with 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— 20
- (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
- (39) **Subsections (15C), (16)(b), (21B), (29B), and (33)** apply for income years beginning on or after 1 October 2007. 30

**Struck out (unanimous)**

**127 Meaning of income tax**

- (1) In section OB 6(3)(d),—
  - (a) “**EX 44**,” is omitted:
  - (b) “**EZ 7B**,” is inserted after “EY 47,”.
- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007. 5

**128 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”. 10
- (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 **16 May 2006** that relies on the law that would apply if **subsection (1)** did not come into force; and 15
  - (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. 20

**New (unanimous)**

**128B Modifications to voting and market value interests for application of continuity provisions to reverse takeover** 25

- (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”: 30

**New (unanimous)**

- (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.

**129 Further definitions of associated persons**

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**Struck out (unanimous)**

- (1) In section OD 8(1), “**EX 33,**” is inserted after “EJ 14,”:

In section OD 8(3),—

- (a) “EE 34” is replaced by “EE 33”;
- (b) “**HL 6, HL 9,**” is inserted after “HK 11,”.

**Struck out (unanimous)**

- (3) **Subsection (2)(b)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.

10

**New (unanimous)**

**129B 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.

15

**Struck out (unanimous)**

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

In schedule 1,—

- (a) in 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”.

20

**Struck out (unanimous)**

- (b) in the heading to part C, “(aa)” is replaced by “(a)”:
- (c) in part C,—
  - (i) “The amount of salary or wages given by section NE 2AB” is replaced by “The SSCWT rate threshold amount”:
  - (ii) “\$9,500” is replaced, in both places it occurs, by “\$10,925”:
  - (iii) “\$38,000” is replaced, in both places it occurs, by “\$43,700”.

5

**New (unanimous)**

- 130 Schedule 1—Basic rates of income tax and specified superannuation contribution withholding tax** 10
- (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 19** by the number of dollars in the taxable income of the entity.” 15
  - (2) In schedule 1, part A, clause 10, paragraphs (a) and (aa) are replaced by the following: 20
    - “(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)”. 25
  - (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: 30
    - (c) “\$38,000” is replaced by “\$45,600”, in both places it occurs.

**131 Schedule 2—Fringe benefit values**

**New (unanimous)**

- |  |    |
|--|----|
| (1A) 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 <b>paragraphs (b) and (c)</b> do not apply; or   | 5  |
| “(b) the cost price of the vehicle, if the vehicle is acquired after the beginning of the tax year or income year and <b>paragraph (c)</b> does not apply; or  | 10 |
| “(c) determined under <b>clause 3B</b> , if, in the period of 2 years before the vehicle’s acquisition by the person ( <b>person A</b> ) providing it to the employee, the vehicle is owned by person A or by a person ( <b>person B</b> ) associated with them.   | 15 |
| “(3B) For person A and the purposes of <b>clause 3(c)</b> , 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— | 20 |
| “(a) <b>clause 3C</b> , 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 <b>clause 3(c)</b> and neither person A nor person B have used the tax value for the vehicle under clause 1:   | 25 |
| “(b) <b>clause 3D</b> , if person A did not own the vehicle and person B last used the tax value of the vehicle under clause 1:  | 30 |
| “(c) <b>clause 3E</b> , 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 <b>clause 3B(a)</b> :  |    |
| “(a) the highest cost of the vehicle to person A on any acquisition of it by them:   | 35 |

**New (unanimous)**

- “(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: 5
- “(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)**: 10
- “(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.” 15
- (1) In schedule 2, (*in*) part A, (*item*) 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—”. 20
- (2) **Subsection (1)** applies for a person’s liability for fringe benefit tax for a period beginning on or after 1 April 2006.

**New (unanimous)**

- 131B Schedule 4—Foreign investment funds** 25
- In the shoulder reference, “**EX 33B, EX 33C, EX 33D,**” is inserted after “EX 33”.
- 132 Schedule 6B—Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant** 30
- In schedule 6B, in part B item 7, “incurred in the cessation of a business,” is omitted.

**133 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.

**New (unanimous)**

**133B Schedule 13—Months for payment of provisional tax and terminal tax** 5

- (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. 10

**134 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.” 15

**135 Schedule 23—Comparative tables of old and new provisions**

In schedule 23,— 20

- (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”:25
30
35

**New (unanimous)**

- |  |    |
|--|----|
| <p>(ab) the entry in part A corresponding to GD 9 is replaced by—</p> <p style="margin-left: 20px;">(i) an entry corresponding to GD 9(1) in which the third column is “CB 13”:</p> <p style="margin-left: 20px;">(ii) an entry corresponding to GD 9(2) in which the third column is “omitted”:</p> | 5  |
| <hr/>  |    |
| <p>(b) in the second column of part B,—</p> <p style="margin-left: 20px;">(i) the entry corresponding to EE 33 is replaced by “EG 17(1)–(5), (8)”:</p> <p style="margin-left: 20px;">(ii) the entry corresponding to EE 34 is replaced by “EG 17(3B), FE 5(2)”.</p>                                  | 10 |

**Part 3  
Amendments to Tax Administration Act 1994**

- 136 Tax Administration Act 1994**  
This Part amends the Tax Administration Act 1994. 15
- 137 Interpretation**

**Struck out (unanimous)**

- |   |    |
|---|----|
| <p>(1) This section amends section 3.</p> <p>(2) After the definition of <b>fringe benefit</b>, the following is inserted:</p> <p style="margin-left: 20px;"><b>“full and complete inspection</b> includes use as evidence in court proceedings”.</p> | 20 |
|---|----|

**New (unanimous)**

- |   |    |
|---|----|
| <p>(1) In subsection 3(1), after the definition of <b>fringe benefit</b>, the following is inserted:</p> <p style="margin-left: 20px;"><b>“full and complete inspection—</b></p> <p style="margin-left: 40px;">(a) includes use as evidence in court proceedings:</p> <p style="margin-left: 40px;">(b) does not include removal to make copies under section 16B”.</p> | 25 |
|---|----|

**New (unanimous)**

- |     |   |   |
|-----|---|---|
| (2) | In subsection 3(1), in the definition of <b>judicial officer</b> , “and section 16C” is added after “that section”. |   |
| (3) | In subsection 3(1), the following are repealed:   |   |
|     | (a) the definition of <b>new return date</b> :  |   |
|     | (b) the definition of <b>original return date</b> :   | 5 |
|     | (c) the definition of <b>return date</b> .  |   |

**138 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.” 10

**139 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.” 15

**140 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.” 20

**Struck out (unanimous)**

**141 Power to remove and copy documents**

- |      |   |    |
|------|---|----|
| (1)  | In the heading to section 16B, “ <b>and copy</b> ” is omitted.  |    |
| (2)  | Section 16B(1) is replaced by the following:  |    |
| “(1) | The Commissioner, or an officer of the Department authorised by the Commissioner, may remove books or documents accessed under section 16 to— | 25 |
|      | “(a) make copies:   |    |
|      | “(b) retain them for a full and complete inspection:”.  |    |

**Struck out (unanimous)**

- (3) In section 16B(2), “unless **subsection (2B)** applies” is inserted after “as soon as practicable”.
- (4) After section 16B(2), the following is inserted:  
“(2B) Books or documents retained for a full and complete inspection may be retained for so long as is necessary for the inspection.” 5

**New (unanimous)**

**141 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— 10
- “(a) the consent of an occupier: 15
- “(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. 20 25
- “(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— 30
- “(a) on first entering the place; and
- “(b) whenever subsequently reasonably required to do so.

**New (unanimous)**

- “(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: 5
- “(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. 10
- “(8) In this section, **judicial officer** means a judicial officer as defined in section 16(7).” 15

**141B 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”. 20

**141C 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”. 25

**141CB New clause 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.” 30

**New (unanimous)**

**141D 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.

5

**142 Statement to share supplier when share user makes replacement payment under share-lending arrangement**  
Section 30B(d) and (h) are repealed.

**New (unanimous)**

**142B Maori authority to give notice of amounts distributed**

In section 31(1)(e), “section NF 8B” is replaced by “section NF 8A”.

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**142C New clause 31B inserted**

After section 31, the following is inserted:

**“31B Portfolio tax rate entity to give statement to investors and request information**

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“(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

20

“(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—

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“(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.

30

“(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

**New (unanimous)**

- 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.”

**Struck out (unanimous)**

- 143 Certification requirements for withdrawals subject to section CS 1 of Income Tax Act 2004** 10
- Section 32B(1)(b) and (c) are 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: 15
  - “(c) The amount of specified superannuation contributions that were treated as salary and wages under section NE 2A of the Income Tax Act 2004 before that section was replaced by **section NE 2B** on 1 April 2007:” 20

**New (unanimous)**

- 143 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:” 25 30

**Struck out (unanimous)**

**144 Annual returns of income**

In section 33(1), after “section 33A applies”, “or a portfolio investment entity” is inserted.

**New (unanimous)**

**144 Annual returns of income**

In section 33(1), “or a portfolio tax rate entity” is inserted after “section 33A applies”. 5

**144B Annual returns of income not required**

In section 33A(1)(a), in the words before subparagraph (i), “gross income” is replaced by “assessable income”.

**145 New section 36AB inserted**

10

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 (*investment entity*) tax rate entity or portfolio investor proxy. 15

“(2) A format prescribed under **subsection (1)** is subject to the conditions specified by the Commissioner, whether generally or in a particular case.” 20

**Struck out (unanimous)**

(2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.

**New (unanimous)**

**145B 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 21** of the Income Tax Act 2004 must not make an election under subsection (1).”

5

**146 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”. 10
- (3) **Subsections (1) and (2)** apply for the 2005–06 and later income years.

**147 Resident withholding tax deduction reconciliation statements**

15

- (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. 20

**Struck out (unanimous)**

**148 New section 57B inserted**

- (1) After section 57, the following is inserted:

**“57B Portfolio investment entity to make quarterly returns, file annual reconciliation statement**

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“(1) An entity that is a portfolio investment entity in a portfolio entity period must, by the end of the first month beginning on or after the end of the period,—

“(a) file a return in the prescribed electronic format showing—

30

**Struck out (unanimous)**

- “(i) the portfolio investment entity tax payable by the entity for the period; and  
“(ii) further information that the Commissioner considers relevant; and  
“(b) pay the portfolio investment entity tax payable by the entity for the period 5  
“(2) An entity that is a portfolio investment entity in a tax year must, by 20 May of the calendar year in which the tax year ends, file for the tax year a return in the prescribed electronic format showing— 10  
“(a) the portfolio investment entity tax paid by the entity for the tax year; and  
“(b) further information that the Commissioner considers relevant.”  
(2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007. 15

**New (unanimous)**

- 148 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** 20  
“(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 21 or HL 22** of the Income Tax Act 2004 for the tax year must perform the responsibilities referred to in **subsection (4)**— 25  
“(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 21** of the Income Tax Act 2004 for the tax year must perform the responsibilities of a provisional taxpayer under the provisional tax rules. 30

## New (unanimous)

- |  |    |
|--|----|
| “(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 <b>section HL 22</b> of the Income Tax Act 2004 for the tax year must perform the responsibilities referred to in <b>subsection (4)</b> ,— |    |
| “(a) for an investor with a portfolio investor exit period in the tax year,—   | 5  |
| “(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  | 10 |
| “(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.  | 15 |
| “(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 <b>section HL 21 or HL 22</b> of the Income Tax Act 2004, the amount of each payment required by <b>section HL 20(5)</b> of that Act for a portfolio investor exit period ending in the period; and                   | 20 |
| “(iii) further information that the Commissioner considers relevant; and   | 25 |
| “(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—   | 30 |
| “(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 <b>subsection (5)</b> to file a return must file the return—   | 35 |

**New (unanimous)**

- “(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.”

- 148B Officers to maintain secrecy** 10  
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:”.

- 149 Notices of proposed adjustment required to be issued by Commissioner** 15  
In section 89C(eb), “(has) left New Zealand and may have” is omitted.

**New (unanimous)**

- 149B Taxpayers and others with standing may issue notices of proposed adjustment** 20  
(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.

- 150 Determination on economic rate** 25  
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: 30

“(ii) an item of property to which section EE 25B, EE 25C, EE 25E, or EZ 21B of the Income Tax Act 2004 applies.”

**New (unanimous)**

**150B New heading and section 91AAO inserted**

After section 91AAN, the following is inserted:

5

***“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— 10

“(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 15

“(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 arrange-  
ment and the principles that— 20

“(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. 25

“(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. 30  
35

**New (unanimous)**

“(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.” 5

**150C 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: 10

“(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).”

**151 Definitions**

In section 120C(1), in the definition of **date interest starts**, paragraph (f) is replaced by the following: 15

**Struck out (unanimous)**

“(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 all instalments of provisional tax (including terminal tax) payable by the deceased person are paid by their due date 20

**New (unanimous)**

“(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 25

**New (unanimous)**

“(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”.

**152 Example: Section 120KC**

**Struck out (unanimous)**

- (1) In the example after section 120KC,—
- (a) “20 January” is replaced in both places it occurs, by “15 January”:
  - (b) “21 January” is replaced in both places it occurs, by “16 January”.

5

**New (unanimous)**

- (1) The example after section 120KC is replaced by the following:

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**New (unanimous)**

**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.

**153 Example: Section 120KD**

**Struck out (unanimous)**

- (1) In the example after section 120KD,—
- (a) “21 January” is replaced by “16 January”:
  - (b) “21 Jan” is replaced by “16 January”.

**New (unanimous)**

- (1) The example after section 120KD is replaced by the following: 5

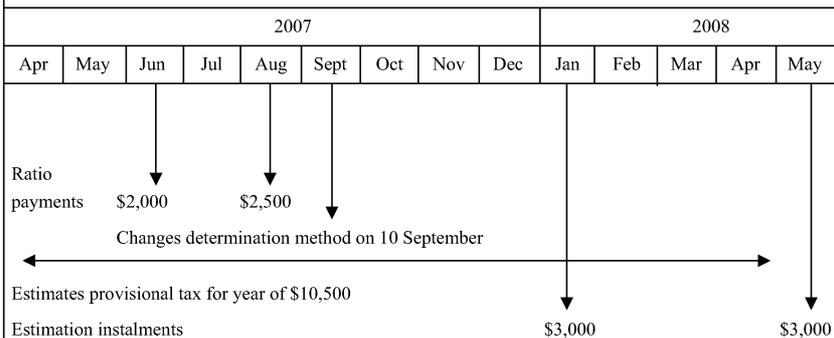
**New (unanimous)**

**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)).



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.

**154 Late filing penalties**

(1) After section 139A(2)(a)(iii), the following is inserted:  
“(iib) a return required to be furnished under **section 57B:**”

5

**Struck out (unanimous)**

(2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.

**155 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:

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**Struck out (unanimous)**

“(2) An employer, a portfolio investment entity, or a PAYE intermediary is liable to a non-electronic filing penalty if the employer, the portfolio investment entity, or the PAYE intermediary furnishes a return required to be in electronic format in a format that is not prescribed.”

15

**New (unanimous)**

“(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.”

20

**Struck out (unanimous)**

(3) **Subsections (1) and (2)** apply for income years and portfolio entity periods beginning on or after 1 April 2007.

**Part 4**  
**Amendments to other Acts and regulations**

*Income Tax Act 1994*

<b>156</b>	<b>Income Tax Act 1994</b>																															
	<b>Sections (157) <u>156B</u> to <u>162B</u></b>	amend the Income Tax Act 1994. 5																														
	<b>New (unanimous)</b>																															
<table border="0" style="width: 100%; border-collapse: collapse;"> <tr> <td style="vertical-align: top;"><b>156B</b></td> <td style="vertical-align: top;"><b>What constitutes an interest in a foreign investment fund</b></td> <td style="vertical-align: top;"></td> </tr> <tr> <td style="vertical-align: top;">(1)</td> <td style="vertical-align: top;">After section CG 15(2)(c), the following is inserted:</td> <td style="vertical-align: top;"></td> </tr> <tr> <td></td> <td style="vertical-align: top;">“(cb) if the person is a natural person and, at the time, the FIF is a foreign superannuation scheme, constituted in Australia, that is—</td> <td style="vertical-align: top;">10</td> </tr> <tr> <td></td> <td style="vertical-align: top;">    “(i) an approved deposit fund as defined in section 10 of the Superannuation Industry (Supervision) Act 1993 (Aust):</td> <td style="vertical-align: top;"></td> </tr> <tr> <td></td> <td style="vertical-align: top;">    “(ii) an exempt public sector superannuation scheme as defined in section 10 of the Superannuation Industry (Supervision) Act 1993 (Aust):</td> <td style="vertical-align: top;">15</td> </tr> <tr> <td></td> <td style="vertical-align: top;">    “(iii) a regulated superannuation fund as defined in section 19 of the Superannuation Industry (Supervision) Act 1993 (Aust):</td> <td style="vertical-align: top;">20</td> </tr> <tr> <td></td> <td style="vertical-align: top;">    “(iv) a retirement savings account as defined in section 8 of the Retirement Savings Accounts Act 1997 (Aust); or”.</td> <td style="vertical-align: top;"></td> </tr> <tr> <td style="vertical-align: top;">(2)</td> <td style="vertical-align: top;"><b>Subsection (1)</b> applies for tax on income derived by a person in—</td> <td style="vertical-align: top;">25</td> </tr> <tr> <td></td> <td style="vertical-align: top;">(a) the 1994–95 income year, if the corresponding accounting year for the person ends on or after 1 April 1995:</td> <td style="vertical-align: top;"></td> </tr> <tr> <td></td> <td style="vertical-align: top;">(b) the 1995–96 and later income years.</td> <td style="vertical-align: top;"></td> </tr> </table>			<b>156B</b>	<b>What constitutes an interest in a foreign investment fund</b>		(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—	10		“(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):	15		“(iii) a regulated superannuation fund as defined in section 19 of the Superannuation Industry (Supervision) Act 1993 (Aust):	20		“(iv) a retirement savings account as defined in section 8 of the Retirement Savings Accounts Act 1997 (Aust); or”.		(2)	<b>Subsection (1)</b> applies for tax on income derived by a person in—	25		(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.	
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**Struck out (unanimous)****“CZ 7 Geothermal wells between 31 March 2003 and 16 May 2006**

- “(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 16 May 2006: 5
    - “(ii) acquired between 31 March 2003 and 16 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: 10
    - “(ii) disposes of the well. 15
- “(2) The person’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 person has been allowed for the well under **section DZ 7**; or 20
  - “(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 person has been allowed for the well under **section DZ 7.**” 25

**New (unanimous)****“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: 30
    - “(ii) acquired between 31 March 2003 and 17 May 2006; and
  - “(b) the taxpayer—

**New (unanimous)**

- “(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: 5
- “(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 10
- “(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.” 15
- (2) **Subsection (1)** applies for the 2003–04 and later income years.
- 158 Expenditure to prevent or combat pollution of environment** 20
- (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.” 25
- (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,— 30
- (i) provides a return: 35

- (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 5
- (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 10
- (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. 15

**159 New section DZ 7 added**

- (1) After section DZ 6, the following is added:

**Struck out (unanimous)**

- “DZ 7 Geothermal wells between 31 March 2003 and 16 May 2006** 20
- “(1) This section applies to a person's geothermal well, if—
- “(a) the well's geothermal proving period ends between 31 March 2003 and 16 May 2006; and
  - “(b) the well is— 25
    - “(i) both started and completed between 31 March 2003 and 16 May 2006:
    - “(ii) acquired between 31 March 2003 and 16 May 2006; and
  - “(c) a deduction for expenditure on the well is not allowed under another provision. 30
- “(2) The person is allowed a deduction, for the income year in which the well's geothermal proving period ends, for expenditure on the well.”

**New (unanimous)**

**“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 5
  - “(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 10
  - “(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.” 15

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

**160 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.

**161 Limit on refunds and allocations of tax 20**

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,”. 25

**162 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”: 30
  - (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”.

**Struck out (unanimous)**

- |     |   |    |
|-----|---|----|
| (3) | After the definition of <b>geophysical prospecting</b> , the following is inserted:   | 5  |
|     | <p>“<b>geothermal energy proving period</b> means, for a geothermal well that is not used for exploiting geothermal energy, a period—</p> <p>“(a) starting with the completion or acquisition of the well; and</p> <p>“(b) ending when the well, for the foreseeable future, is not intended, and cannot reasonably be expected, to be used or available for use in—</p> <p style="padding-left: 20px;">“(i) deriving assessable income:</p> <p style="padding-left: 20px;">“(ii) carrying on a business for the purpose of deriving assessable income</p> <p>“<b>geothermal well</b> means a bore or well solely for the purpose of investigating or exploiting geothermal energy in New Zealand”.</p> | 10 |
|     |   | 15 |

**New (unanimous)**

- |     |   |    |
|-----|---|----|
| (3) | After the definition of <b>geophysical prospecting</b> , the following is inserted:   | 20 |
|     | <p>“<b>geothermal energy proving period</b> means, for a taxpayer’s geothermal well that is not used for exploiting geothermal energy, a period—</p> <p>“(a) starting with the completion or acquisition of the well; and</p> <p>“(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—</p> <p style="padding-left: 20px;">“(i) deriving gross income:</p> <p style="padding-left: 20px;">“(ii) carrying on a business for the purpose of deriving gross income</p> | 25 |
|     |   | 30 |

**New (unanimous)**

“**geothermal well** means a bore or well solely for the purpose of investigating or exploiting geothermal energy in New Zealand”.

(3B) The definition of **specified lease** is replaced by the following:

“**specified lease** means a lease of a lease asset if— 5

“(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— 10

“(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: 15

“(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: 20

“(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: 25

“(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: 30

“(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 35

“(ii) the lessee and the person who acquires the lease asset are associated”.

**Struck out (unanimous)**

- (4) **Subsection (2)** applies for a person for the 1997–98 and later income years, unless the person took a tax position in a return provided to the Commissioner before **16 May 2006** that relies on the definition of **eligible company** that would apply if **subsection (2)** did not come into force.

5

**New (unanimous)**

- (4) **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.

- (5) If **subsection (2)** does not apply for a person for an income year because of **subsection (4)**, the definition of eligible company that would apply if **subsection (2)** did not come into force applies for the person for the income year.
- (6) **Subsection (3)** applies for the 2003–04 and later income years.

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**New (unanimous)****162B Modifications to voting and market value interests for application of continuity provisions to reverse takeover**

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- (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.

20

25

**New (unanimous)**

***Income Tax Act 1976***

**162C 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: 5
- “(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): 10
- “(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” 15
- (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: 20
- (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*** 25

**163 Goods and Services Tax Act 1985**

**Sections (164 and 165) 163B to 165F** amend the Goods and Services Tax Act 1985.

**New (unanimous)**

**163B Meaning of associated persons**

- In section 2A(1),— 30
- (a) paragraph (c)(iv) is repealed:

**New (unanimous)**

- (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):”.

**Struck out (unanimous)**

**164 Meaning of term financial services**

In section 3,—

- (a) after subsection (1)(ka), the following is inserted:
- “(kb) the investment in an entity, if the investment is an actively managed investment that is made up of—
- “(i) an equity security;
  - “(ii) a participatory security:”.
- (b) in subsection (2), before the definition of **cheque**, the following is inserted:
- “**actively managed investment** means an investment that—
- “(a) is equal to or greater than 10% of all participatory securities and equity securities issued by the entity into which the investment is made; and
  - “(b) allows the investor, or a person associated with the investor, to influence the management of the business of the entity”.

**New (unanimous)**

**164 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

**New (unanimous)**

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:	5
“(n) the evaluation by an investor of an investment referred to in <b>paragraph (m)</b> 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.”	10

**165 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—	15
“(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 <b>paragraph (b)</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 <b>paragraph (a)</b> .”	20
(2) <b>Subsection (1)</b> applies for fringe benefits provided or granted on or after the date on which this Act receives the Royal assent.	25

**New (unanimous)**

<b>165B Changes in taxable periods</b>	
(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.	30
“(3C) A person to whom section 15(1)(c) applies may apply to the Commissioner, in a way acceptable to the Commissioner, to	

**New (unanimous)**

- 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: 5
  - (b) a taxable period that begins on or after 1 April 2008, if **paragraph (a)** does not apply.
- 165C When change in taxable period takes effect** 10
- (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: 15
  - (b) a taxable period that begins on or after 1 April 2008, if **paragraph (a)** does not apply.
- 165D Taxable period returns** 20
- (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 25
  - “(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 30
  - “(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.”

**New (unanimous)**

- (3) **Subsections (1) and (2)** apply for taxable periods ending on or after 31 March 2007.

**165E 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”.

5

**165F 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—

10

“(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.”

15

- (2) In section 55(1), as inserted by **subsection (1)**, “Income Tax Act 1994” is replaced by “Income Tax Act 2004”.

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- (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

25

“(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.”:

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(b) the words after paragraph (d) are omitted.

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

**New (unanimous)**

- “(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.” 5
- (6) In section 55(4), as amended by **subsection (4)**,— 10
- (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.” 15
- (7) Section 55(4AA), as inserted by **subsection (5)**, is repealed.

***Companies Act 1993***

**165G 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. 20

***Public Trust Act 2001***

**165H Public Trust Act 2001**

**Sections 165I and 165J** amend the Public Trust Act 2001.

**165I Interpretation** 25

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”.

**New (unanimous)**

**165J 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*

**165K Securities Act 1978**

**Sections 165L and 165M** amend the Securities Act 1978.

**165L 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”.

**165M 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.”

*Trustee Act 1956***166 Trustee Act 1956**

**Sections 167 and 168** amend the Trustee Act 1956.

**167 Interpretation and application**

In section 2, after the definition of **possession**, the following is inserted: 5

“**portfolio investment entity** means a portfolio investment entity within the meaning of the Income Tax Act 2004”.

**Struck out (unanimous)**

(2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007. 10

**168 New heading and new section 42E inserted**

(1) 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 15**

Where any property is employed in a business 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 6(3)** of the Income Tax Act 2004 despite any provision in the Superannuation Schemes Act 1989.” 20

(2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.

**New (unanimous)**

**168 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** 5

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, 10  
in the Superannuation Schemes Act 1989, or in any instrument creating the trust under which the property is held.”

*Trustee Companies Act 1967*

**168B Trustee Companies Act 1967**

**Sections 168C and 168D** amend the Trustee Companies Act 1967. 15

**168C 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”. 20

**168D 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** 25

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 30

**New (unanimous)**

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***

- 169 Unit Trusts Act 1960** 5  
**Sections 170 and 171** amend the Unit Trusts Act 1960.
- 170 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”. 10

**Struck out (unanimous)**

- (2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.
- 171 New section 12A inserted** 15  
(1) 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. 20  
“(2) Where any money, investments or other property of the unit trust is employed in a business 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 6(3)** of the Income Tax Act 2004.” 25  
(2) **Subsection (1)** applies for income years and portfolio entity periods beginning on or after 1 April 2007.

**New (unanimous)**

<b>171</b>	<b>New section 12A inserted</b>	
	After section 12, the following is inserted:	
	<b>“12A Implied provision in trust deed of portfolio investment entity</b>	
	<b>“(1)</b> The provision in <b>subsection (2)</b> 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.	5
	<b>“(2)</b> 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 <b>section HL 7</b> of the Income Tax Act 2004.”	10
	<i><b>Tax Administration (Form of Warrant) Regulations 2003</b></i>	
<b>172</b>	<b>Tax Administration (Form of Warrant) Regulations 2003</b>	15
	<b>Sections 173 to 175</b> amend the Tax Administration (Form of Warrant) Regulations 2003.	
<b>173</b>	<b>Warrant to enter private dwelling</b>	
	In regulation 4, “the Schedule” is replaced by “schedule 1”.	20
<b>174</b>	<b>New regulation 4B</b>	
	After regulation 4, the following is inserted:	
	<b>“4B Warrant to remove and retain books or documents</b>	
	A warrant issued under <b>section 16C of the Tax Administration Act 1994</b> must be in the form set out in <b>schedule 2.</b> ”	25
<b>175</b>	<b>New schedule 2 inserted</b>	
	After the schedule, <b>schedule 2</b> in the schedule of this Act is added.	

New (unanimous)

s 175 **Schedule**  
**New Schedule 2 inserted in principal regulations**

r 4B **Schedule 2**  
**Form of warrant**

	<b><i>Warrant to remove and retain books or documents</i></b>	5
	<i>Section 16C(2), Tax Administration Act 1994</i>	
1	<b>To</b> every officer of the Inland Revenue Department ( <b>you</b> ) authorised by the Commissioner of Inland Revenue under sections 16 and <b>16C of the Tax Administration Act 1994</b> (or <b>To</b> [full name], officer of the Inland Revenue Department ( <b>you</b> ) authorised by the Commissioner of Inland Revenue under sections 16 and <b>16C of the Tax Administration Act 1994</b> ).	10
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.	20
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 <b>section 16C of that Act</b> .	
4	Other persons whom you consider necessary for the effective exercise of your inspection functions may (or may not) accompany you.	25
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].	30

**New (unanimous)**

**Schedule 2—*continued***

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))

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Schedule **Taxation (Annual Rates, Savings  
Investment, and Miscellaneous Provisions)**

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**Legislative history**

17 May 2006

Introduction (Bill 48–1)

25 May 2006

First reading and referral to Finance and Expenditure  
Committee

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