

House of Representatives

Supplementary Order Paper

Tuesday, 12 December 2006

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

Proposed amendments

Hon Peter Dunne, in Committee, to move the following:

Clause 2

Subclause (11): to omit “**16(a)**” (page 14, line 28) and substitute “**16(1)(a)**”.

Subclause (11): to omit “**69(2) and (5)**” (page 14, line 29) and substitute “**69(5)**”.

Subclause (11): to omit “**124**” (page 14, line 30) and substitute “**124(1) and (2)**”.

Subclause (20): to omit “**118**” (page 15, line 23) and substitute “**118(1)**”.

Subclause (20): to omit “**(15), (16)(b), (21)**” (page 15, line 23) and substitute “**(15), (15B), (15C), (16)(b), (21), (29B)**”.

New subclause (20B): to insert after *subclause (20)* (page 15, after line 25) the following:

(20B) **Sections 118(2) to (6), 119, 126(20BA) and (20BAB), and 165GB to 165GI** come into force on 1 July 2007.

Clause 5(3)

Paragraph (a): to omit “1 April 2007” (page 17, line 27) and substitute “the first day of the first income year”.

Paragraph (b): to insert after “beginning with” (page 17, line 29) “the later of the first day of the first income year and”.

Clause 7

Subclause (1): to omit this subclause (page 19, lines 14 to 17) and substitute the following:

- (1) In section CQ 5(1)(c),—
 - (a) in subparagraph (ii), “(Grey list exemption)” is replaced by “(Exemptions: Direct income interests in FIF in grey list country)”:
 - (b) after subparagraph (ii), the following is inserted:

- “(iib) the exemptions limited by income years in **section EX 33B** (Exemptions limited by income years: shares in certain grey list companies):
- “(iic) the exemption for shares in a listed Australian company in **section EX 33C** (Exemption: shares in listed Australian company):
- “(iid) the exemption for units in certain Australian unit trusts in **section EX 33D** (Exemption: units in certain Australian unit trusts):
- “(iie) the Australian superannuation fund exemption in **section EX 33E** (Australian superannuation fund exemption):”.

Subclause (7)(a): to omit “1 April 2007” (page 22, line 6) and substitute “the first day of the first income year”.

Subclause (7)(b): to insert after “beginning with” (page 22, line 8) “the later of the first day of the first income year and”.

Clause 13(1): new section CZ 20(2)(b)

Subparagraph (ii): to omit “(Geothermal wells between 31 March 2003 and 17 May 2006)” (page 31, lines 5 to 7).

New clause 14B

To insert after *clause 14* (page 31, after line 21) the following:

14B Cost of revenue account property

- (1) Section DB 17(1) and (2) are replaced by the following:

“When this section applies

- “(1) This section applies if a person incurs expenditure as a cost of revenue account property.

“Deduction

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

“Exclusion for portfolio investment entities

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

“Link with subpart DA

- “(4) The link between this section and subpart DA (General rules) is—
- “(a) **subsection (2)** overrides the capital limitation but the general permission must still be satisfied; and
 - “(b) **subsection (3)** overrides the general permission; and
 - “(c) the other general limitations still apply.”

- (2) In section DB 17, in the list of defined terms, “portfolio investment entity” is inserted.

Clause 16B

To omit this clause (page 32, line 22 to page 33, line 11).

Clause 17: new section DB 43B

Subsection (2): to omit this subsection, other than the heading, (page 34, lines 11 to 14) and substitute the following:

- “(2) The amount of a deduction allowed to an investor under **subsection (1)** is reduced by the lesser of the following:
- “(a) the amount of the deduction:
 - “(b) the amount of the portfolio entity formation loss allocated to the investor for the income year that has not previously reduced—
 - “(i) a credit, under **section HL 26(7B)** (Credits received by portfolio tax rate entity or portfolio investor proxy):
 - “(ii) a rebate, under **section KI 1(3)** (Rebate for portfolio tax rate entity relating to certain investors):
 - “(iii) a deduction, under this subsection.

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

Clause 19(2)

Paragraph (a): to omit “1 April 2007” (page 36, line 27) and substitute “the first day of the first income year”.

Paragraph (b): to insert after “beginning with” (page 36, line 29) “the later of the first day of the first income year and”.

Clause 20

Subclause (3): to omit this subclause (page 37, lines 15 to 18) and substitute the following:

- (3) In section DN 6(1)(c),—
- (a) in subparagraph (ii), “(Grey list exemption)” is replaced by “(Exemptions: Direct income interests in FIF in grey list country)”:
 - (b) after subparagraph (ii), the following is inserted:
 - “(iib) the exemptions limited by income years in **section EX 33B** (Exemptions limited by income years: shares in certain grey list companies):
 - “(iic) the exemption for shares in a listed Australian company in **section EX 33C** (Exemption: shares in listed Australian company):
 - “(iid) the exemption for units in certain Australian unit trusts in **section EX 33D** (Exemption: units in certain Australian unit trusts):

“(ie) the Australian superannuation fund exemption in
section EX 33E (Australian superannuation fund
exemption):”.

Subclause (4): to omit this subclause (page 37, lines 19 and 20) and substitute the following:

- (4) In section DN 6(1)(c)(vi), “exemption):” is replaced by “exemption); and”.

Subclause (10)(a): to omit “1 April 2007” (page 40, line 3) and substitute “the first day of the first income year”.

Subclause (10)(b): to insert after “beginning with” (page 40, line 5) “the later of the first day of the first income year and”.

Clause 22(2)

Paragraph (a): to omit “1 April 2007” (page 41, line 3) and substitute “the first day of the first income year”.

Paragraph (b): to insert after “beginning with” (page 41, line 5) “the later of the first day of the first income year and”.

Clause 46

To add, as *subclause (2)*, (page 65, after line 35) the following subclause:

- (2) **Subsection (1)** applies for income years corresponding to the 2005–06 and subsequent tax years.

Clause 51

Subclause (1), new section EX 33D(1)(b): to insert after “part B” (page 75, line 14) “(Foreign investment funds)”.

Subclause (2)(a): to omit “1 April 2007” (page 76, line 14) and substitute “the first day of the first income year”.

Subclause (2)(b): to insert after “beginning with” (page 76, line 16) “the later of the first day of the first income year and”.

New clause 54

New subclause (2B): to insert after *subclause (2)* (page 79, after line 9) the following:

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

Subclause (4)(a): to omit “1 April 2007” (page 79, line 14) and substitute “the first day of the first income year”.

Subclause (4)(b): to insert after “beginning with” (page 79, line 16) “the later of the first day of the first income year and”.

Clause 55

Subclause (2), new section EX 40(7)(b): to omit “does not satisfy **subsection (5)(a) or (b)**” (page 82, line 12) and substitute “for which the person would be allowed, in the absence of this paragraph, to use the fair dividend rate method”.

Subclause (4)(a): to omit “1 April 2007” (page 83, line 11) and substitute “the first day of the first income year”.

Subclause (4)(b): to insert after “beginning with” (page 83, line 13) “the later of the first day of the first income year and”.

Clause 55B(2)

Paragraph (a): to omit “1 April 2007” (page 84, line 7) and substitute “the first day of the first income year”.

Paragraph (b): to insert after “beginning with” (page 84, line 9) “the later of the first day of the first income year and”.

Clause 56

New subclause (1A): to insert before *subclause (1)* (page 85, before line 2) the following:

(1A) In section EX 41(1)(b), “, **EX 40B,**” is inserted after “EX 40”.

Subclause (3)(a): to omit “1 April 2007” (page 85, line 30) and substitute “the first day of the first income year”.

Subclause (3)(b): to insert after “beginning with” (page 85, line 32) “the later of the first day of the first income year and”.

Clause 56B(2)

Paragraph (a): to omit “1 April 2007” (page 86, line 14) and substitute “the first day of the first income year”.

Paragraph (b): to insert after “beginning with” (page 86, line 16) “the later of the first day of the first income year and”.

Clause 57

Subclause (1), new section EX 44(6B), paragraphs (a) and (b): to omit these paragraphs (page 87, lines 8 to 11) and substitute the following:

- “(a) that is a direct income interest in a foreign company of less than 10% at a time in the relevant income year; and
- “(b) that is not a right of a type referred to in **section EX 40(7)(a)(i) to (v).**”

Subclause (4)(a): to omit “1 April 2007” (page 88, line 3) and substitute “the first day of the first income year”.

Subclause (4)(b): to insert after “beginning with” (page 88, line 5) “the later of the first day of the first income year and”.

Clause 58

To omit this clause (page 95, line 21 to page 104, line 23) and substitute the following:

58 New sections EX 44B to EX 44E inserted

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

“EX 44B Fair dividend rate method

“Alternative formulas used

“(1) If a person is using the **fair dividend rate method** to calculate FIF income or loss from an attributing interest in a FIF, the calculation depends on whether the person is a unit trust or other entity (the **unit valuer**) that—

“(a) makes investments for the benefit of other persons (the **investors**); and

- “(b) assigns each investor an interest in a proportion of the net returns from the investments; and
- “(c) determines the value of the investor’s interest for each of a number of periods (the **unit valuation periods**) making up the income year.

“FIF income for person not unit valuer

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

“FIF income for unit valuer

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

“FIF loss

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

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

“EX 44C Fair dividend rate method: usual method

“FIF income

- “(1) If this section applies to a person who calculates FIF income from attributing interests in FIFs under the fair dividend rate method for an income year, the FIF income is the total of the amounts, each calculated for a FIF for the income year using the formula in **subsection (2)**.

“Formula

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

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

“Definition of items in formula

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

“Opening

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

- “(a) for which the person uses the fair dividend rate method;
and
- “(b) that the person holds at the beginning of the income
year.

“*Quick sale adjustment*

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

“*Peak holding adjustment*

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

“*Formula*

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

“*Definition of items in formula*

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

“*Quick sales*

- “(9) **Quick sales** is,—
 - “(a) if the person in the income year does not acquire or
increase the attributing interest in the FIF for considera-
tion or does not dispose of or reduce the attributing
interest in the FIF after such an acquisition or increase,
zero; or

- “(b) if **paragraph (a)** does not apply and no share reorganisation occurs in the income year, the lesser of the following, determined in terms of the amount of the attributing interest in the FIF (the **interest size**) that the person holds at a time in the income year:
 - “(i) the difference between the interest size that is the greatest for the income year and the interest size at the beginning of the income year:
 - “(ii) the difference between the interest size that is the greatest for the income year and the interest size at the end of the income year; or
- “(c) if **paragraph (a)** does not apply and a share reorganisation occurs in the income year, the amount calculated under **section EX 44E** for the income year.

“Average cost

“(10) **Average cost** is,—

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

“Conversion of foreign currency amounts

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

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

“Identifying attributing interests disposed of in income year

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

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

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

“FIF income

“(1) If this section applies to an entity who calculates FIF income from attributing interests in FIFs under the fair dividend rate method, the FIF income of the entity from the interests is the total of the amounts calculated using the formula in **subsection (2)** for each of the periods making up the income year (the **unit valuation periods**) for which the entity determines the value of investors’ interests.

“Formula

“(2) The formula for the entity is—

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

“Definition of items in formula

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

“Opening

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

“(a) for which the entity uses the fair dividend rate method;
and

“(b) that the entity holds at the beginning of the unit valuation period.

“Period

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

“Year

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

“Quick sale adjustment

“(7) **Quick sale adjustment** is,—

“(a) zero, if the unit valuation period is 1 day; or

“(b) zero, if the entity in the unit valuation period—

“(i) acquires or increases the attributing interest in no FIF for consideration:

- “(ii) disposes of or reduces the attributing interest in no FIF after an acquisition or increase of the interest for consideration; or
- “(c) if **paragraphs (a) and (b)** do not apply, the lesser of—
 - “(i) the amount (the **peak holding adjustment**) determined under **subsection (8)**:
 - “(ii) the amount (the **quick sale gains**) that is the greater of zero and the total for the income year of amounts calculated, for each attributing interest that is both acquired and disposed of in the income year, by taking the total amount derived by the entity from holding or disposing of the interest and subtracting the total expenditure that the entity incurs in acquiring the interest.

“Peak holding adjustment

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

“Formula

- “(9) The formula referred to in **subsection (8)** is—

$$0.05 \times \text{quick sales} \times \text{average cost.}$$

“Definition of items in formula

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

“Quick sales

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

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

“Average cost

“(12) **Average cost** is,—

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

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

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

“Conversion of foreign currency amounts

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

“(a) each foreign currency amount in the income year be converted into New Zealand dollars using the exchange rate on the day for which the market value is determined or on which the amount is incurred; or

“(b) all foreign currency amounts in the income year be converted into New Zealand dollars at the average of the close of trading spot exchange rates for the 15th day of each month that falls in the income year.

“Identifying attributing interests disposed of in income year

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

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

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

“Items and formulas

- “(1) This section provides for the calculation, for an income year or unit valuation period (the **affected period**) in which a share reorganisation occurs, of the following:
- “(a) the item **quick sales**, for the purposes of the formulas in **sections EX 44C(7), EX 44D(9), and EX 45B(2)**:
 - “(b) the item **average cost**, for the purposes of the formulas in **sections EX 44C(7), EX 44D(9), and EX 45B(2) and (7)(b)**:
 - “(c) the item **change**, for the purposes of the formula in **section EX 45B(7)(b)**.

“Treatment of affected period in which share reorganisation occurs

- “(2) For the purposes of calculating the items for an affected period under this section,—
- “(a) the affected period is treated as consisting of periods (the **reorganisation periods**) that do not overlap:
 - “(b) each reorganisation period in the affected period—
 - “(i) begins with the beginning of the affected period or a share reorganisation in the affected period; and
 - “(ii) ends before the next later event that is a share reorganisation or the end of the affected period:
 - “(c) the amount of the attributing interest in the FIF held by the person at any time (the **comparison time**) in a reorganisation period, is treated as corresponding to an amount (the **equivalent interest size**) equal to the amount of the attributing interest in the FIF that the person would hold at the end of the affected period if, after the comparison time, the person did not increase or reduce the attributing interest in the FIF except under share reorganisations occurring in the affected period:
 - “(d) the amount of an acquisition or increase (the **acquired interest**) by the person of the attributing interest in the FIF, other than under a share reorganisation, is treated as corresponding to an amount (the **equivalent acquired interest**) equal to the difference between—
 - “(i) the equivalent interest size for the time of the acquisition or increase; and
 - “(ii) the amount that would be the equivalent interest size for the time of the acquisition or increase if the person were not to have the acquired interest.

“Quick sales

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

“Average cost

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

“Change

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

“Conversion of foreign currency amounts

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

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

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

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

Clause 59(2)

Paragraph (a): to omit “1 April 2007” (page 105, line 7) and substitute “the first day of the first income year”.

Paragraph (b): to insert after “beginning with” (page 105, line 9) “the later of the first day of the first income year and”.

Clause 60(2)

Paragraph (a): to omit “1 April 2007” (page 112, line 24) and substitute “the first day of the first income year”.

Paragraph (b): to insert after “beginning with” (page 112, line 26) “the later of the first day of the first income year and”.

Clause 61(2)

Paragraph (a): to omit “1 April 2007” (page 113, line 11) and substitute “the first day of the first income year”.

Paragraph (b): to insert after “beginning with” (page 113, line 13) “the later of the first day of the first income year and”.

Clause 63(4)

Paragraph (a): to omit “1 April 2007” (page 116, line 24) and substitute “the first day of the first income year”.

Paragraph (b): to insert after “beginning with” (page 116, line 26) “the later of the first day of the first income year and”.

Clause 66(1)

Subclause (1), new section EX 50(2)(g): to omit “**(2)(a)**” (page 118, line 8).

Subclause (4)(a): to omit “1 April 2007” (page 118, line 33) and substitute “the first day of the first income year”.

Subclause (4)(b): to insert after “beginning with” (page 118, line 35) “the later of the first day of the first income year and”.

Clause 67(4)

Paragraph (a): to omit “1 April 2007” (page 122, line 13) and substitute “the first day of the first income year”.

Paragraph (b): to insert after “beginning with” (page 122, line 15) “the later of the first day of the first income year and”.

Clause 69

Subclause (8): to omit “**(2),**” (page 125, line 10).

Subclause (9)(a): to omit “1 April 2007” (page 125, line 14) and substitute “the first day of the first income year”.

Subclause (9)(b): to insert after “beginning with” (page 125, line 16) “the later of the first day of the first income year and”.

Clause 70(10)

Paragraph (a): to omit “1 April 2007” (page 127, line 30) and substitute “the first day of the first income year”.

Paragraph (b): to insert after “beginning with” (page 127, line 32) “the later of the first day of the first income year and”.

Clause 71

Subclause (1), new section EX 54B(3): to omit “applies the FIF rules to rights in a FIF for the first time in an income year and” (page 130, lines 11 and 12).

Subclause (1), new section EX 54B(3)(a)(ii): to omit “**paragraph (a)**” (page 130, line 21 to 22) and substitute “**subparagraph (i)**”.

Subclause (2)(a): to omit “1 April 2007” (page 131, line 1) and substitute “the first day of the first income year”.

Subclause (2)(b): to insert after “beginning with” (page 131, line 3) “the later of the first day of the first income year and”.

Clause 72(7)

Paragraph (a): to omit “1 April 2007” (page 133, line 3) and substitute “the first day of the first income year”.

Paragraph (b): to insert after “beginning with” (page 133, line 5) “the later of the first day of the first income year and”.

Clause 73(3)

Paragraph (a): to omit “1 April 2007” (page 134, line 10) and substitute “the first day of the first income year”.

Paragraph (b): to insert after “beginning with” (page 134, line 12) “the later of the first day of the first income year and”.

Clause 75(2)

Paragraph (a): to omit “1 April 2007” (page 135, line 15) and substitute “the first day of the first income year”.

Paragraph (b): to insert after “beginning with” (page 135, line 17) “the later of the first day of the first income year and”.

Clause 77C(1): new section FC 24

Subsection (4)(a): to insert after “person” (page 139, line 3) “, if the person is eligible to be a transitional resident and has not made an election under **subsection (3)**”.

Subsection (5), paragraph (a): to omit this paragraph (page 139, line 14).

Clause 79(2)

Paragraph (a): to omit “1 April 2007” (page 141, line 25) and substitute “the first day of the first income year”.

Paragraph (b): to insert after “beginning with” (page 141, line 27) “the later of the first day of the first income year and”.

Clause 79B

New subclause (1A): to insert before *subclause (1)* (page 142, before line 11) the following:

- (1A) In the heading to section FI 4, “**spouse or de facto partner**” is replaced by “**spouse, civil union partner, or de facto partner**”.

Subclause (1): to omit “spouse or de facto partner” where it second appears (page 142, line 15) and substitute “spouse, civil union partner, or de facto partner”.

Clause 82(3)

Paragraph (a): to omit “1 April 2007” (page 145, line 3) and substitute “the first day of the first income year”.

Paragraph (b): to insert after “beginning with” (page 145, line 5) “the later of the first day of the first income year and”.

Clause 85

Heading to *new section HL 1*: to omit “**investment**” (page 167, line 17) and substitute “**tax rate**”.

New section HL 1(1): to insert after “Act” (page 167, line 21) “on a portfolio investment entity that is a portfolio tax rate entity and on an investor in a portfolio tax rate entity”.

Heading to *new section HL 1(3)*: to omit “*investment*” (page 168, line 10) and substitute “*tax rate*”.

New section HL 2(10): to omit “tax year” from both places where it appears (page 171, lines 14 and 15) and substitute “period”.

New section HL 3(6): to omit “**subsection (9) and**” (page 173, line 4).

New section HL 5(1)(c): to omit “investor entity” (page 175, line 2) and substitute “investment entity”.

New section HL 5(1)(c): to omit “**(f), (g), (i), (j), or (k)**” (page 175, line 4) and substitute “**(e), (f), (g), (h), or (i)**”.

New section HL 6(1)(d), subparagraph (i): to omit this subparagraph (page 176, lines 6 and 7) and substitute the following:

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

New section HL 6(3)(b): to omit “1990.” (page 177, line 11) and substitute “1990.”.

New section HL 6(3): to add, as *paragraph (c)*, (page 177, after line 11) the following paragraph:

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

New section HL 7(3)(a)(i): to omit “**or HL 22**” (page 178, line 10).

New section HL 7(3)(a), subparagraph (ii): to omit this subparagraph (page 178, lines 11 to 13) and substitute the following:

“(ii) within 3 months of the end of the tax year, if the entity has made an election under **section HL 21**.”.

New section HL 9(1): to insert after “interests” (page 179, line 7) “of investors”.

New section HL 9(2)(b): to omit “1990.” (page 179, line 19) and substitute “1990.”.

New section HL 9(2): to add, as *paragraph (c)*, (page 179, after line 19) the following paragraph:

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

New section HL 9(4): to omit “A person” (page 179, line 30) and substitute “An investor”.

New section HL 10(5)(a): to omit “carry” (page 182, line 26) and substitute “correspond to”.

New section HL 10(5), paragraph (b): to omit this paragraph (page 182, lines 27 to 31) and substitute the following:

- “(b) have a market value that, together with the market value of the class’s other interests that correspond to voting interests in a company of more than 20%, is less than 10% of the total market value of the class’s interests in investments.”

New section HL 11(4), paragraph (c): to omit this paragraph (page 183, line 27) and substitute the following:

- “(c) the date of receipt.”

New section HL 12(2): to omit “becomes a portfolio tax rate entity on a day that is not the first day of a tax year” (page 184, lines 12 to 13) and substitute “with a non-standard income year chooses to become a portfolio tax rate entity making payments of tax under **section HL 20 or HL 22**”.

New section HL 12, subsection (4): to omit this subsection (page 185, lines 4 to 9).

New section HL 14(3)(a): to omit “**section CX 44C(a) and (b)** (Certain income of portfolio investment entities)” (page 186, lines 26 to 27) and substitute “**section CX 44C(1)(a) and (b)** (Proceeds from disposal of certain shares by portfolio investment entities)”.

New section HL 15(2)(c): to omit “an income year,” (page 187, line 17) and substitute “a day, month, quarter, or income year,”.

New section HL 17(4)(b)(ii): to omit “portfolio entity investment” (page 190, line 21) and substitute “portfolio investment entity”.

Heading to *new section HL 19(2)*: to omit “**HL 25**” (page 192, line 19) and substitute “**KI 1**”.

New section HL 19(2): to omit “**HL 25**” (page 192, line 20) and substitute “**KI 1** (Rebate for portfolio tax rate entity relating to certain investors)”.

New section HL 23(1): to omit “investment” from both places where it appears (page 197, lines 8 and 9) and substitute “tax rate”.

New section HL 24(2): to omit “**43B**” (page 198, line 34) and substitute “**43B(1)**”.

New section HL 25(1): to omit “, of an amount given by **section HL 19(2)**” (page 199, lines 14 and 15).

New section HL 25, subsection (2): to omit this subsection, other than the heading, (page 199, lines 22 to 30) and substitute the following:

- “(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, 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.”

Heading to *new section HL 26*: to omit “**investment**” (page 200, line 2) and substitute “**tax rate**”.

New section HL 26(6)(a): to omit “**subsection (7)** applies” (page 201, line 12) and substitute “**subsections (7) and (7B)** apply”.

New section HL 26, subsection (7B): to omit this subsection, other than the heading, (page 202, line 10 to 13) and substitute the following:

“(7B) The amount of a credit received by an investor under **subsection (7)(b) or (8)** is reduced by the lesser of the following:

“(a) the amount of the credit:

“(b) the amount found by multiplying 0.33 and the amount of portfolio entity formation loss allocated to the investor for the income year that has not previously reduced—

“(i) a deduction, under **section DB 43B(2)** (Zero-rated portfolio investor and portfolio investor allocated loss):

“(ii) a rebate, under **section KI 1(3)** (Rebate for portfolio tax rate entity relating to certain investors):

“(iii) a credit, under this subsection.”

New section HL 26, subsection (8): to omit this subsection, other than the heading, (lines 16 to 28 on page 202) and substitute the following:

“(8) The investor is treated as receiving for the tax year of the portfolio calculation period, for credits other than under subpart LC, the unused allocated amount of each type of credit.”

New section HL 26(9)(a)(ii): to omit “received” (page 203, line 4) and substitute “used”.

New section HL 26(10)(b): to omit “investment” (page 203, line 18) and substitute “tax rate”.

New section HL 27(3): to insert after “portfolio tax rate entity” (page 204, lines 10 and 11) “that makes payments of tax under **section HL 20 or HL 22**”.

Heading to *new section HL 28(4)*: to omit “*formulas*” (page 205, line 14) and substitute “*formula*”.

Clause 86: new section IE 1(2BB)

To insert after “entity” (page 208, line 26) “that does not make payments of tax under **section HL 21**”.

Clause 87(2)

Paragraph (a): to omit “1 April 2007” (page 209, line 7) and substitute “the first day of the first income year”.

Paragraph (b): to insert after “beginning with” (page 209, line 9) “the later of the first day of the first income year and”.

Clause 88(3)

Paragraph (a): to omit “1 April 2007” (page 210, line 19) and substitute “the first day of the first income year”.

Paragraph (b): to insert after “beginning with” (page 210, line 21) “the later of the first day of the first income year and”.

Clause 98

New section KI 1(1)(b): to insert after “**HL 21**” (page 216, line 12) “(Payments of tax by portfolio tax rate entity choosing to pay provisional tax)”.

New section KI 1(1)(c): to insert after “**HL 20**” (page 216, line 14) “(Payments of tax by portfolio tax rate entity making no election)”.

New section KI 1(2), paragraph (b): to omit this paragraph (page 216, lines 23 to 26) and substitute the following:

- “(b) the amount of a rebate under **section HL 19(2)** (Portfolio entity tax liability and rebates of portfolio tax rate entity for period) arising from portfolio investor allocated loss of the investor for the portfolio calculation period.”

New section KI 1, subsection (3): to omit this subsection, other than the heading, (page 216, lines 28 to 31) and substitute the following:

- “(3) The amount of a rebate received by an entity under **subsection (2)** is reduced by the lesser of the following:
 - “(a) the amount of the rebate:
 - “(b) the amount found by multiplying 0.33 and the amount of portfolio entity formation loss allocated to the investor for the income year that has not previously reduced—
 - “(i) a deduction, under **section DB 43B(2)** (Zero-rated portfolio investor and portfolio investor allocated loss):
 - “(ii) a credit, under **section HL 26(7B)** (Credits received by portfolio tax rate entity or portfolio investor proxy):
 - “(iii) a rebate, under this subsection.”

Clause 105B

Subclause (1): to omit the example in this subclause (page 221) and substitute the following:

Clause 118

To omit this clause (page 233, lines 17 to 20) and substitute the following:

118 Specified superannuation contribution withholding tax to be deducted

- (1) In section NE 3, “sections NE 2, NE 2AA, and NE 2AB” is replaced by “section NE 2 or **NE 2B**”.
- (2) Section NE 3(2) is replaced by the following:
 - “(2) Subsection (1), and whichever is applicable of sections NE 2(1), NE 2A(2), and **NE 2B**, do not apply to the specified superannuation contribution (the **current specified superannuation contribution**) to the extent to which that contribution is for the employee’s KiwiSaver scheme, and the contribution is not more than the lesser of—
 - “(a) an amount calculated under subsection (3):
 - “(b) an amount calculated under subsection (4).
 - “(2B) Subsection (1), and whichever is applicable of sections NE 2(1), NE 2A(2), and **NE 2B**, do not apply to the current specified superannuation contribution to the extent to which that contribution—
 - “(a) is for the employee’s complying superannuation fund; and
 - “(b) is subject to complying fund rules; and
 - “(c) is not more than the lesser of—
 - “(i) an amount calculated under **section NE 3B(1)**;
 - “(ii) an amount calculated under **section NE 3B(2)**.”
- (3) In section NE 3(3), “subsection (2)(b)(i)” is replaced by “**subsection (2)(a)**”.
- (4) In section NE 3(4),—
 - (a) “subsection (2)(b)(ii)” is replaced by “**subsection (2)(b)**”:
 - (b) “previous exempt contributions” is replaced by “previous exempt KiwiSaver contributions”.
- (5) In section NE 3(5),—
 - (a) in paragraph (b)(ii), “subsection (2)” is replaced by “**subsection (2) or (2B)**”:
 - (b) in paragraph (c), “period.” is replaced by “period.”, and the following is added:
 - “(d) **previous exempt KiwiSaver contributions** means the total specified superannuation contributions for the employee’s KiwiSaver scheme, to the extent to which—
 - “(i) those contributions are made in the KiwiSaver calculation period, but excluding the current specified superannuation contribution; and
 - “(ii) **subsection (2)** applied to the contributions (excluding the current one):”.

- (6) In section NE 3(6), the definitions of **KiwiSaver contributions** and **KiwiSaver scheme** are omitted.

119 New section NE 3B

After section NE 3, insert the following:

“NE 3B Calculation amounts in relation to current specified superannuation contribution for complying superannuation fund

- “(1) For the current specified superannuation contribution, in **section NE 3(2B)(c)(i)** the amount is calculated using the formula—

$$0.04 \times \text{total salary or wages} \\ - \text{previous exempt contributions.}$$

- “(2) For the current specified superannuation contribution, in **section NE 3(2B)(c)(ii)** the amount is calculated using the formula—

$$\text{total complying fund contributions} \\ - \text{previous exempt complying fund contributions.}$$

- “(3) In the formulas,—

“(a) **total salary or wages** means the total salary or wages paid to the employee in the complying fund calculation period, but excluding salary or wages for which there are no superannuation contributions for the employee’s complying superannuation fund that are subject to complying fund rules:

“(b) **previous exempt contributions** means the total specified superannuation contributions for the employee, to the extent to which—

“(i) the contributions are made in the complying fund calculation period, but excluding the current specified superannuation contribution; and

“(ii) **section NE 3(2) or (2B)** applied to those contributions (excluding the current one):

“(c) **total complying fund contributions** means the total superannuation contributions that are—

“(i) deducted from the employee’s salary or wages in the complying fund calculation period; and

“(ii) subject to complying fund rules:

“(d) **previous exempt complying fund contributions** means the total specified superannuation contributions for the employee’s complying superannuation fund, to the extent to which—

“(i) those contributions are made in the complying fund calculation period, but excluding the current specified superannuation contribution; and

“(ii) **section NE 3(2B)** applied to those contributions (excluding the current one).

- “(4) In this section, **complying fund calculation period** means, for the current specified superannuation contribution, a period—
- “(a) beginning with the later of—
 - “(i) 1 year before when the employer makes the current specified superannuation contribution:
 - “(ii) when the employer is first required to deduct superannuation contributions that are subject to complying fund rules from the employee’s salary or wages; and
 - “(b) ending with when the employer makes the current specified superannuation contribution.”

Clause 124

Subclause (2): to omit this subclause (page 236, lines 8 to 10) and substitute the following:

- (2) In section NG 1(2)(d), “applies.” is replaced by “applies; or”, and the following is added:
 - “(e) exempt income; or
 - “(f) income that is excluded income under **section CX 44D(3)**.”

Clause 126

New subclause (5): to insert after *subclause (4)* (page 238, after line 10) the following:

- (5) After the definition of **completed**, the following is inserted:
 - “**complying fund calculation period** is defined in **section NE 3B(4)** (Calculation amounts in relation to a current specified superannuation contribution for complying superannuation fund) for the purposes of that section
 - “**complying fund rules**, for a superannuation fund, and for an employee’s superannuation accumulation, means rules that—
 - “(a) are the same as the rules for KiwiSaver schemes in schedule 1, clauses 4(1) to (4), 7, and 9 of the KiwiSaver Act 2006 (with necessary modifications); and
 - “(b) allow withdrawals in some or all of the circumstances described in the rules for KiwiSaver schemes in schedule 1, clauses 8 and 10 to 14 of the KiwiSaver Act 2006 (with necessary modifications), or in none of those circumstances; and
 - “(c) do not allow withdrawals under any other circumstances except those described in **paragraphs (a) and (b)**; and
 - “(d) require a transfer of all or part of an employee’s superannuation accumulation to another complying superannuation fund, or to a KiwiSaver scheme, if the employee requests such a transfer and, in the case of a

- transfer to a KiwiSaver scheme, the requirements of the KiwiSaver Act 2006 are met; and
- “(e) require that an employee’s superannuation accumulation is subject to complying fund rules, if it is transferred to another complying superannuation fund in accordance with **paragraph (d)**; and
 - “(f) require a transfer of an employee’s superannuation accumulation to a KiwiSaver scheme, if the employee does not request a transfer in accordance with **paragraphs (d) and (e)**, and the employee—
 - “(i) ceases to be eligible to be a member of their complying superannuation fund;
 - “(ii) may not remain a member for any reason except a transfer in accordance with **paragraphs (d), (e), and (g)**, or a withdrawal of all or part of an employee’s superannuation accumulation in accordance with complying fund rules; and
 - “(g) require a transfer of an employee’s superannuation accumulation to a KiwiSaver scheme, if the Government Actuary revokes approval of the superannuation fund as a complying superannuation fund and the accumulation is not transferred to another complying superannuation fund and is not subject to complying fund rules; and
 - “(h) require that the Commissioner is notified that the employee’s superannuation accumulation must be transferred in accordance with **paragraphs (f) and (g)**, and the notice must include the name, address, and tax file number of the employee, the name and address of their employer, and the name and tax file number of the employee’s complying superannuation fund; and
 - “(i) require total minimum superannuation contributions to be deducted in relation to an employee, equal to at least the amount required to be contributed to a superannuation scheme under section 25(1)(d) of the KiwiSaver Act 2006; and
 - “(j) for the purposes of calculating whether or not superannuation contributions count towards the total minimum superannuation contributions described in **paragraph (i)**,—
 - “(i) are the same as section 26 of the KiwiSaver Act 2006 (with necessary modifications); and
 - “(ii) do not count a superannuation contribution unless the contribution is for the payment of future benefits to the employee, or for fees, under the superannuation fund; and
 - “(k) require that any specified superannuation contribution that counts towards the total minimum superannuation

contributions described in **paragraph (i)** vests completely in the employee, immediately after the contribution is made; and

“(l) are the same as the rules in section 196 of the KiwiSaver Act 2006 for KiwiSaver schemes (with necessary modifications); and

“(m) commit an employee to continue to be a member unless otherwise provided by rules described in **paragraphs (a) to (l)**; and

“(n) do not derogate from rules described in **paragraphs (a) to (m)**

“**complying superannuation fund** means a superannuation fund that is approved as a complying superannuation fund by the Government Actuary under **section 35 of the Superannuation Schemes Act 1989**”.

Subclause (9): to omit this subclause (page 239, lines 20 to 22).

New subclause (11B): to insert after *subclause (11)* (page 240, after line 25) the following:

(11B) After the definition of **employee share loan**, the following is inserted:

“**employee’s superannuation accumulation** means the total superannuation contributions, together with any return on them, that are subject to complying fund rules and are—

“(a) specified superannuation contributions vested completely in an employee:

“(b) deducted from the employee’s salary or wages”.

New subclauses (20BA) and (20BAB): to insert after *subclause (20)* (page 245, after line 34) the following:

(20BA) The definition of **KiwiSaver contributions** is replaced by the following:

“**KiwiSaver contributions** means contributions required to be deducted under Part 3, subpart 1 of the KiwiSaver Act 2006”.

(20BAB) The definition of **KiwiSaver scheme** is replaced by the following:

“**KiwiSaver scheme** means a KiwiSaver scheme, as defined in section 4 of the KiwiSaver Act 2006”.

Subclause (22): to insert after “service” (page 246, line 14) “or police”.

Subclause (25), in the new definition of **portfolio entity tax liability**: to insert before “of portfolio” (page 250, line 25) “and rebates”.

Subclause (25), in the new definition of **portfolio investor exit period**, *new paragraph (a)(ii)*: to insert before “of portfolio” (page 251, line 25) “and rebates”.

Subclause (25), in the new definition of **portfolio investor exit period**, *new paragraph (b)*: to omit “payments on the investor leaving” (page 251, line 32) and substitute “to make payments when investor leaves”.

Subclause (25), in the new definition of **portfolio investor rate**, *new paragraphs (a) and (b)*: to omit these paragraphs (page 252, lines 16 to 25) and substitute the following:

- “(a) 33%, if **paragraphs (b) and (c)** do not apply; or
- “(b) the rate, if **paragraph (c)** does not apply, that the investor notifies to the entity as the prescribed investor rate for the investor and the period—
 - “(i) before the end of the period; and
 - “(ii) by a notice satisfying **section 28B** of the Tax Administration Act 1994; or” .

Subclause (25), in the new definition of **portfolio investor rate**, *new paragraph (c)(ii)*: to omit “person” (page 252, line 30) and substitute “investor”.

Subclause (26), in the new definition of **prescribed investor rate**, *new paragraph (a)(i)*: to omit “**(b), (c), and (d)** apply” (page 254, line 20) and substitute “**(b) and (c)** applies”.

Subclause (26), in the new definition of **prescribed investor rate**, *new paragraph (b)*: to omit “**or (d)**” (page 254, line 25).

Subclause (38)(a): to omit “1 April 2007” (page 260, line 15) and substitute “the first day of the first income year”.

Subclause (38)(b): to insert after “beginning with” (page 260, line 17) “the later of the first day of the first income year and”.

New clauses 165GB to 165GI

To insert after *clause 165G* (page 298, after line 21) the following:

KiwiSaver Act 2006

165GB KiwiSaver Act 2006

Sections 165GC to 165GI amend the KiwiSaver Act 2006.

165GC Interpretation

In section 4(1), after the definition of **Commissioner**, the following is inserted:

“**complying superannuation fund** has the same meaning as in section OB 1 of the Income Tax Act 2004”.

165GD Heading to Part 2, subpart 3

In the heading to Part 2, subpart 3, “KiwiSaver schemes” is replaced by “KiwiSaver schemes and between complying superannuation fund and KiwiSaver scheme”.

165GE Application

Section 54 is replaced by the following:

“54 Application

- “(1) Sections 55 and 56 apply if a person wishes to transfer KiwiSaver schemes or to transfer from a complying superannuation fund to a KiwiSaver scheme (a **voluntary transfer**).
- “(2) Sections 57 to 59 apply if a person has to transfer KiwiSaver schemes or to transfer from a complying superannuation fund to a KiwiSaver scheme (an **involuntary transfer**). An example of an involuntary transfer may be where a person ceases to be eligible to be a member of their current KiwiSaver scheme, or their complying superannuation fund.”

165GF People may transfer between KiwiSaver schemes

- (1) In the heading to section 55, “**KiwiSaver schemes**” is replaced by “**KiwiSaver schemes and between complying superannuation fund and KiwiSaver scheme**”.
- (2) In section 55(1), “one KiwiSaver scheme (an **old scheme**) to another KiwiSaver scheme” is replaced by “a KiwiSaver scheme or a complying superannuation fund (an **old scheme**) to a new KiwiSaver scheme”.

165GG Notification of transfers and requirement to transfer funds and information

In section 56(3)(c)(i), “KiwiSaver scheme” is replaced by “KiwiSaver scheme, if the old scheme is a KiwiSaver scheme”.

165GH Involuntary transfers

In section 57(1),—

- (a) in the words before the paragraphs, “transfer KiwiSaver schemes” is replaced by “transfer KiwiSaver schemes or from a complying superannuation fund to a KiwiSaver scheme”;
- (b) in paragraph (c), “section 210(2).” is replaced by “section 210(2); or”;
- (c) the following is added:
- “(d) the Commissioner has received notice in accordance with **paragraph (h)** of the definition of complying fund rules in section OB 1 of the Income Tax Act 2004.”

165GI Schedule 1—KiwiSaver scheme rules

In schedule 1, clause 4(2),—

- (a) in paragraph (b), “years.” is replaced by “years; or”;
- (b) the following is added:

- “(c) the date on which the member has been a member of a complying superannuation fund (or of a complying superannuation fund and a KiwiSaver scheme) for 5 years.”

New clauses 165N to 165R

To insert after *clause 165M* (page 299, after line 31) the following:

Superannuation Schemes Act 1989

165N Superannuation Schemes Act 1989

Sections 165O to 165R amend the Superannuation Schemes Act 1989.

165O Interpretation

In section 2(1), after the definition of **benefit**, the following is inserted:

“**complying fund rules** means complying fund rules, as defined in section OB 1 of the Income Tax Act 2004”.

165P Disclosure of information to Government Actuary

In section 18A(2),—

- (a) in paragraph (b), “inadequate.” is replaced by “inadequate; or”:
- (b) the following is added:
- “(c) for a registered scheme approved as a complying superannuation fund for the purposes of the Income Tax Act 2004, the registered scheme no longer meets the requirements in **section 35(1)(a) to (c)**.”

165Q New sections 34 to 36

The following is added to Part 2:

“34 Complying superannuation funds

- “(1) A person may apply to the Government Actuary for approval of a registered scheme as a complying superannuation fund for the purposes of the Income Tax Act 2004.
- “(2) The application must be accompanied by all information relevant to the Government Actuary dealing with the application under **section 35**.

“35 Dealing with applications for complying superannuation funds

- “(1) The Government Actuary must complete consideration of whether or not the relevant registered scheme is approved as a complying superannuation fund, within 28 days after receiving an application from a person under **section 34** and the relevant information required to accompany the application.

The Government Actuary must approve a registered scheme if—

- “(a) the registered scheme and any relevant participation agreement evidence rules that subject relevant contributions to complying fund rules; and
 - “(b) the registered scheme is a defined contribution scheme, as defined in section 4(1) of the KiwiSaver Act 2006; and
 - “(c) the registered scheme has at least 20 members, treating all interests in the registered scheme or account held by persons associated under section OD 8(3) of the Income Tax Act 2004 as being held by 1 person; and
 - “(d) the registered scheme is registered on or before 1 July 2007; and
 - “(e) any relevant participation agreement is entered into on or before 1 July 2007.
- “(2) The Government Actuary must notify the person whether or not the relevant registered scheme is approved as a complying superannuation fund for the purposes of the Income Tax Act 2004 as soon as practicable after completing consideration under **subsection (1)**.
- “(3) If the relevant registered scheme is approved as a complying superannuation fund for the purposes of the Income Tax Act 2004, the Government Actuary must notify the Commissioner of Inland Revenue of that approval, at the same time as giving notice under **subsection (2)**.
- “(4) Approval notified under **subsections (2) and (3)** is effective on and after the date the Government Actuary must complete consideration under **subsection (1)**, or earlier, if consideration is completed earlier. The notices must contain the date on and after which approval is effective, under this subsection.

“36 Revocation of approval

- “(1) If the Government Actuary has reasonable cause to believe that a registered scheme that is approved as a complying superannuation fund no longer meets the requirements in **section 35(1)(a) to (c)**, or has failed to specify in an annual report the information required by **schedule 2, item (o)**, the Government Actuary may revoke that approval immediately.
- “(2) The Government Actuary must, as soon as practicable after revoking approval under **subsection (1)**, notify that revocation to—
- “(a) the registered scheme; and
 - “(b) the person that originally applied for approval under **section 34**; and
 - “(c) the Commissioner of Inland Revenue.

- “(3) Revocation notified under **subsection (2)** is effective on and after the date the Government Actuary revokes approval under **subsection (1)**. The notices must contain the date on and after which approval is revoked, under this subsection.
- “(4) A registered scheme that is notified that approval is revoked must immediately notify that revocation to each member who may be affected, and to their employers. At the same time, the registered scheme must notify the Commissioner of each member who may be affected, and of their employers.”

165R Schedule 2—Matters to be specified in annual report

In schedule 2, item (n), “1978.” is replaced by “1978:”, and the following is added:

- “(o) If the registered scheme is a complying superannuation fund for the purposes of the Income Tax Act 2004,—
- “(i) the market value of assets subject to complying fund rules; and
 - “(ii) the number of members to which the assets relate; and
 - “(iii) the value of withdrawals subject to complying fund rules.”

Explanatory note

This Supplementary Order Paper amends the Taxation (Annual Rates, Savings Investment, and Miscellaneous Provisions) Bill.

The majority of the amendments make minor corrections to the Bill, mainly to the proposed foreign investment fund and portfolio investment entity (**PIE**) rules. Most of the minor corrections are drafting in nature (cross-references, for example).

Also, the amendments extend the recently enacted capped exemption from specified superannuation contribution withholding tax (**SSCWT**) for employer contributions to KiwiSaver schemes. It is proposed that the KiwiSaver exemption from SSCWT is extended to employer contributions to superannuation funds or accounts that comply with rules which are similar to the rules for KiwiSaver schemes.

The amendment to *clause 2* aligns the commencement date for the extended SSCWT exemption with the current KiwiSaver SSCWT exemption. Also, commencement dates for the foreign investment rules are corrected.

The amendments to *clauses 5(3), 7(7), 19(2), 20(10), 22(2), 51(2), 54(4), 55(4), 55B(2), 56(3), 56B(2), 57(4), 58(2), 59(2), 60(2), 61(2), 63(4), 66(4), 67(4), 69(9), 70(10), 71(2), 72(7), 73(3), 75(2), 79(2), 82(3), 87(2), 88(3), and 126(38)* clarify the application date for the proposed foreign investment fund rules.

The amendment to *clause 13* corrects a cross-reference error.

The new *clause 14B* and the omission of *clause 16B* re-order material in the Bill.

The amendments to *clauses 17, 20, 46, and 51* are minor remedial matters, chiefly drafting. So are the new *clause 54(2B)*, the amendment in *clause 55(2)*, the new *clause 56(1A)*, and the amendment in *clause 57(1)*.

The amendment to *clause 58* re-orders and reorganises material in the Bill, for reasons of clarity. Some minor cross-reference and typographical errors are also corrected.

The amendments to *clause 126(9), (22), (25), and (26)* correct minor drafting errors (mainly cross-referencing).

Amendments to *clauses 66(1), 69(8), and 77(1)* correct cross-references.

Amendments to *clauses 77C and 79B* address minor remedial matters.

The amendments to *clause 85* propose changes to the new *subpart HL (Portfolio investment entities) of the Income Tax Act 2004*. The amendments are drafting-related, and chiefly correct cross-references. Some minor remedial matters are also included.

The amendments to *clauses 86 and 98* correct cross-references and make minor changes to the PIE rules.

The new *clauses 118, 119, and 126(5), (11B), (20BA), and 20(BAB)* introduce changes to *sections NE 3 and OB 1 of the Income Tax Act 2004*, and a new *section NE 3B of the Income Tax Act 2004*. The changes to the *Income Tax Act 2004* exempt specified superannuation contributions from SSCWT, if the amount of contribution is paid by an employer to an employee's complying superannuation fund, and the amount does not exceed the cap provided.

A complying superannuation fund is a registered superannuation scheme that has incorporated certain KiwiSaver rules, in particular, lock-in, transfer, and reporting rules.

The cap is the lesser of the employee's superannuation contributions or 4% of the employee's gross salary or wages. The cap is adjusted for previously exempted amounts and for how long the employer has been deducting contributions from the employee's salary or wages. Contributions that have already been subject to the KiwiSaver SSCWT exemption are also accounted for.

The new *clauses 165GB to 165GI* amend the *KiwiSaver Act 2006*, to ensure there are transfer rules for a complying superannuation fund transferring funds into a KiwiSaver scheme. These transfer rules ensure that there is lock-in, which is a condition of granting the proposed extended SSCWT exemption.

The new *clauses 165N to 165R* amend the *Superannuation Schemes Act 1989*, providing effective administrative procedures in respect of approving a complying superannuation fund. Government Actuary approval is a condition of granting the extended SSCWT exemption. The amendments to the *Superannuation Schemes Act 1989* also provide information reporting requirements for complying superannuation funds. Failure to meet information reporting requirements may nullify the extended SSCWT exemption.

**Proposed amendments to
Taxation (Annual Rates, Savings Investment, and Miscellaneous
Provisions) Bill**

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