

# **Taxation (Annual Rates, Business Taxation, KiwiSaver, and Remedial Matters) Bill**

Government Bill

As reported from the Finance and  
Expenditure Committee

## **Commentary**

### **Recommendation**

The Finance and Expenditure Committee has examined the Taxation (Annual Rates, Business Taxation, KiwiSaver, and Remedial Matters) 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 2007–08 tax year. It introduces some of the changes the Government announced in Budget 2007 to the KiwiSaver scheme and business taxation:

- matching compulsory employer contributions for an employee contributing to a KiwiSaver scheme or a complying superannuation fund
- an employer tax credit of up to \$20 a week for each employee, to reimburse employers for their contributions to a KiwiSaver scheme or a complying superannuation fund
- a number of technical amendments to refine the KiwiSaver scheme
- a tax credit for research and development by New Zealand businesses

- a number of consequential amendments as a result of the reduction of the company tax rate from 33 percent to 30 percent from the start of the 2008-09 tax year.

The bill also proposes amendments relating to

- the International Financial Reporting Standards
- a new withholding tax applicable to certain contributions to retirement savings schemes
- the taxation of life insurers
- remedial changes to the new off-shore portfolio share investment rules
- the cap on charitable donations that are eligible for tax relief.

### **Supplementary order papers**

In addition to these measures, the Minister of Revenue invited the committee to consider Supplementary Order Papers 119, 130, and 139 to the bill. We agreed to consider the amendments on these supplementary order papers alongside the main bill and invited submissions from interested parties.

SOPs 130 and 139 relate to KiwiSaver and propose amendments to the following aspects of the scheme:

- the member tax credit rules, to clarify the relevant period of membership for the calculation of the credit, and correcting a drafting error in the basic formula for calculating the amount of the credit
- complying superannuation funds, to require that employer participation agreements be lodged with the Government Actuary and that members of these schemes have the option of making a lump sum withdrawal
- the rules under which an employer's contributions to an existing superannuation scheme count towards compulsory employer contributions, to explicitly include employer contributions and superannuation subsidies paid to Members of Parliament, judicial officers, and sworn members of the police.

An amendment is also proposed to require providers to disclose their approach to responsible investment from 1 April 2008.

### **Supplementary Order Paper 119—Finance lease rules**

The amendments proposed on SOP 119 sought to change the finance lease rules in the Income Tax Act 2004 to require a certain type of cross-border leases to be classified for tax purposes as finance leases rather than operating leases from the beginning of the income year after the date of announcement (20 June 2007).

We heard evidence on SOP 119 from those interested parties who accepted our invitation to make a submission on the paper. In the light of issues raised during this process, the Minister of Revenue announced on 8 October 2007 that, for the time being, he does not wish to pursue the amendments proposed on SOP 119. The majority of us therefore agreed not to include these amendments in the bill.

However, as the amendments proposed on SOP 119 are stalled only while policy is finalised, the majority of us considered there was merit in advising the House of the issues regarding the reclassification of these cross-border leases.

The majority of us accept that a change was necessary because a small number of cross-border leases have been classified as operating leases for tax purposes even though they are financial transactions and treated as such in the financial accounts of the taxpayers. This has allowed the New Zealand parties to the leases to claim depreciation deductions for assets in which they have no economic ownership interest, posing significant fiscal risk. The majority of us is also aware that other jurisdictions have passed similar legislation to prevent tax-driven leasing schemes.

In the reclassification of existing leases, however, an adjustment is required to prevent any tax benefits continuing. We are aware of serious concerns about the alleged retrospective effect of application of the rules to leases entered into before 20 June 2007. It was pointed out that this had the potential to force the cancellation of the leases, leading to the disruption of the business activities of the foreign lessees and to litigation between the parties to the leases.

We asked officials to consider further the application of the legislation to existing arrangements. We understand that officials have since been working on alternative transitional options for existing leases, but that the task has been made more complex because the arrangements in question appear to be very dependent on the tax deferral advantage derived from their classification as operating leases.

The remainder of this commentary outlines the main issues we considered and the amendments we propose should be made to the bill.

### **KiwiSaver enhancements**

While there was some opposition to the introduction of the compulsory employer contribution and the age of eligibility, most submitters are generally supportive of the enhancements to the KiwiSaver scheme proposed in the bill. Most submissions focussed on technical matters. We note comments to the effect that the design and administration of KiwiSaver need to be practicable and to minimise compliance costs for employers, employees and providers. We agree, and have endeavoured to reflect these considerations in our recommendations.

#### **Age eligibility**

It was suggested that people aged 65 or over should be allowed to join KiwiSaver. The majority of us disagree because when people receive a Government pension, it would be inequitable for them to continue to benefit from a Government policy aimed at promoting retirement savings.

It was also proposed that people below the age of 18 should be eligible for KiwiSaver member tax credits. The majority of us do not agree, mainly because this might reduce incentives for young people to remain in education and training.

#### **Funding employer contributions**

To clarify how the KiwiSaver compulsory employer contributions should be funded, the majority of us recommend introducing a new section 101B of the KiwiSaver Act (clause 219) to provide that

- any employment agreement provisions entered into before the date of enactment of this bill, which in effect bind employees to fund KiwiSaver compulsory employer contributions will have no effect
- initially, KiwiSaver compulsory employer contributions will be in addition to current remuneration
- further into the transition period (after the date of assent of this bill), KiwiSaver compulsory employer contributions may be offset in part against pay movements, subject to mutual

agreement between the employers and employees concerned as part of good faith bargaining.

The majority of us consider that these amendments will address the question raised by employers and employees as to whether KiwiSaver should form part of an employee's total employment package. We are aware of concern that, in the absence of Government intervention, there may be opportunities for one party to "game" industrial settlements and therefore sought clarification on

- the legal standing of existing employment agreements that purport to require employees to fund KiwiSaver compulsory employer contributions through a reduction in the employees' gross pay
- whether employee funding of compulsory employer contributions can legitimately be negotiated into future employment agreements
- whether the employer tax credit is available to employers who require employees to fund the compulsory employer contributions through a reduction in their gross pay.

As introduced the bill was silent on these matters, assuming that employers and employees would negotiate the terms and conditions of the employment relationship in good faith, including those regarding KiwiSaver. The resultant uncertainty about the initial treatment of KiwiSaver employer contributions and its implications for bargaining in good faith, however, threatened to disrupt the smooth introduction of KiwiSaver. The majority of us therefore recommend amending the KiwiSaver legislation to clarify the policy preference for the funding of KiwiSaver compulsory employer contributions during the phase-in of compulsory contributions.

#### **Definition of "salary or wages" applicable to complying superannuation funds**

The majority of us recommend that redundancy payments be excluded from the definition of "salary or wages" for KiwiSaver purposes (section 4 of the KiwiSaver Act). The majority of us consider that people being made redundant are unlikely to be able to afford to forgo part of their redundancy payment to contribute to KiwiSaver.

The majority of us recommend that accommodation benefits and taxable allowances for accommodation and living costs overseas be

excluded from the definition of “salary or wages”. They would otherwise significantly affect the affordability of KiwiSaver.

The majority of us also recommend amending the definition of “salary or wages” in section 4 of the KiwiSaver Act to make it clear that ACC (Accident Compensation Corporation) weekly compensation and paid parental leave are treated as salary or wages for the purposes of KiwiSaver.

To minimise administrative and compliance costs for complying superannuation funds, the majority of us recommend that “salary or wages” continue to be defined as gross base salary and wages for the purpose of calculating employee deductions and matching employer contributions.

### **Shareholder-employees**

The majority of us did not support amending the bill to allow shareholder-employees in a close company who have opted for non-source deduction from their salaries to be eligible for the employer tax credit and the employer compulsory contribution. The majority of us consider that allowing these for shareholder-employees who do not contribute from salary and wages and that are not subject to PAYE would create significant administration costs, and result in pressure to extend the compulsory employer contribution and employer tax credit to other self-employed persons.

Shareholder-employees have the option of joining and contributing to KiwiSaver either as employees through the PAYE system at four percent or eight percent, or as self-employed persons (non-employees) by contracting directly with a provider. We understand that shareholder-employees participating in KiwiSaver as employees will receive the compulsory employer contribution (and their employer the accompanying employer tax credit) whereas shareholder-employees participating as self-employed will not. Shareholder-employees who contribute outside the PAYE system will be entitled to the member tax credit (to the extent that they contribute), as it is not limited to those making contributions from salary or wages.

### **Employer contributions**

The majority of us do not support arguments that the compulsory employer contributions provisions in the bill were likely to impose

significant financial strain on many businesses, particularly the smaller and newer ones.

We understand that the compulsory employer contribution will be phased in over time (one percent of an employee's salary and wages from 1 April 2008, rising to four percent by 1 April 2011) to ease the transition. Employers will be reimbursed for KiwiSaver contributions with a matching tax credit up to a maximum of \$20 per week per employee. Any compliance costs incurred by integrating KiwiSaver into the PAYE system will be minimised.

We are advised that the employer tax credit will be paid through the PAYE system by offsetting the credit against the employer's contribution and other PAYE liabilities, which will minimise the effect on cash flow. Contributions will also be exempt from Specified Superannuation Contribution Withholding Tax (SSCWT) up to a cap. This means that by means of the tax credits and the SSCWT exemption employers can provide staff with larger benefits through KiwiSaver contributions than through other remuneration, at the same cost to the employer.

#### **Employer contributions to be paid through Inland Revenue**

The majority of us recommend amending the proposed definition of "employer contribution" in section 4 of the KiwiSaver Act in clause 201 so that employer contributions for purposes other than retirement benefits are paid directly to the provider. An inconsistency in the bill as drafted meant that all KiwiSaver contributions must be paid through Inland Revenue but, for example, life insurance cannot be paid.

We are advised that the KiwiSaver Act 2006 does not prohibit money being paid to providers for purposes other than retirement benefits (such as life insurance). Under section 68 of the Act, however, such money cannot count in determining the contribution rate, and cannot be paid via the Commissioner of Inland Revenue.

We understand that with the introduction of compulsory employer contributions, section 93 of the KiwiSaver Act was amended to require that all employer contributions be paid via the Commissioner of Inland Revenue. This means that contributions for purposes other than retirement benefits must currently be paid via the Commissioner.

The Inland Revenue system that will be modified for the collection of compulsory employer contributions is premised on the assumption that an employer contribution is for a particular employee. The collection of amounts that do not relate to a particular employee, such as the payment of group life insurance premiums and contributions to the costs of the administration of the scheme, cannot be integrated into the current system without significant change. Since the need to modify the system is likely to place the 1 April 2008 implementation target at risk, the majority of us recommend the bill be amended so that employer contributions for anything other than retirement benefits are paid directly to the provider.

#### **Employer contribution—collective agreement commitments**

The majority of us recommend amending the proposed section 101D of the KiwiSaver Act (clause 219) to allow contributions that were made for employees enrolled in a registered superannuation scheme under the terms of a collective agreement settled before 17 May 2007 to count against KiwiSaver compulsory employment contributions. Without such an amendment, the majority of us believe certain employees could “double-dip”, as their employers would have to pay contributions to both KiwiSaver and the existing superannuation scheme.

#### **Impact on defined benefit schemes**

To prevent employers from having to contribute to both KiwiSaver and defined benefit schemes, the majority of us recommend that new sections 101C and 101D of the KiwiSaver Act in clause 219 be amended to exempt employers from compulsory employer contributions if they are making contributions to a defined benefit scheme that meets the following criteria:

- the scheme is a registered superannuation scheme
- the scheme existed on 17 May 2007
- the contribution is for an employee who was in employment on 1 April 2008 or is employed under a collective agreement negotiated before 17 May 2007
- the contribution is specified in the terms of the employment agreement
- the contribution is made towards a benefit for the member that is established as a component of an annual remuneration package.



We understand the intention of this provision is to ensure that contributions to defined benefit schemes would count towards the compulsory KiwiSaver contribution. The provision should also ensure that employers who are not required to make additional compulsory contributions are in fact contributing an equivalent amount to an employee's retirement savings. For this reason, the majority of us consider that employers making contributions to defined benefit schemes should be exempt from compulsory employer contributions where the existing contribution meets the criteria outlined above.

This approach would exempt employers currently offering a defined benefit scheme from the requirement to make compulsory contributions. The exemption would be limited to employers who offer defined benefits in their defined benefit schemes; it would not cover cash accumulation schemes, which are defined benefit schemes but operate much more like defined contribution schemes.

The majority of us intend that this exemption should extend to Crown schemes, such as the Government Superannuation Fund, as they are likely to meet the criteria. The exemption will not affect the ability of anyone employed after 1 April 2008 (or on a collective agreement formed after 17 May 2007) to contribute to a KiwiSaver scheme or a complying fund for which employers will be required to make employer contributions.

#### **Vesting of contributions to an existing superannuation scheme**

Compulsory employer contributions to existing schemes would have to be immediately vested for the contribution to count towards the compulsory employer amount. We heard arguments that this is contrary to the normal design of schemes, inconsistent with the goal of promoting long-term savings, and likely to result in higher costs for employers who also offer a workplace scheme, as it would permit double-dipping.

The majority of us accept these arguments, and have therefore recommended amendments to allow an offset to the extent that the contribution is vested with the employee. The majority of us believe this approach would allow any employer contribution that is vested to count towards the compulsory rate, without requiring the full contribution to be vested. This reflects the original policy intent that vested contributions should count towards the compulsory rate. The majority of us have recommended that this approach be adopted for

the proposed five-year vesting requirements, and that employer contributions to an existing superannuation scheme should count towards the compulsory rate to the extent that the contributions are vested by the end of the fifth year.

### Minimum contribution rate

The bill proposes a transition period during which the minimum four percent employee contributions may be shared between the employer and employee for those joining KiwiSaver before 1 April 2008. After that date, new employees would be enrolled at four percent.

The following table shows how the bill requires the employer contribution to be phased in:

Table 1

From	Employee	Employer	Total
1 April 2008	4 percent	1 percent	5 percent
1 April 2009	4 percent	2 percent	6 percent
1 April 2010	4 percent	3 percent	7 percent
1 April 2011	4 percent	4 percent	8 percent

We heard arguments for providing for new entrants to KiwiSaver to be able to contribute at less than four percent, or for employers to make up the minimum employee contributions, either for a transition period or as a permanent feature. It was argued that this would make it easier for lower paid workers to enter KiwiSaver.

We note these arguments. Therefore, providing an employer agrees to enter into an agreement to contribute at least two percent to an employee's four percent minimum contribution, the majority of us recommend that the minimum contribution rate for employees be two percent of gross salary or wages until 31 March 2010, three percent from 1 April 2010 to 31 March 2011, and four percent from 1 April 2011 onwards. The majority of us do not recommend any changes to increase the employer compulsory contribution rate for the year starting 1 April 2008. Under this option the current option of splitting the four percent (2+2) contribution between employer and employee would remain on offer to all employees until April 2010, and then be converted to a 6 and 8 percent split. All the provisions in Table 2 below would be available to all employees until 1 April 2010.

Table 2

Pay period	Minimum employee contribution	Minimum employer contribution	Total contribution
1 April 2008 to April 2010	2 percent	2 percent	4 percent
1 April 2010 to April 2011	3 percent	3 percent	6 percent
1 April 2011 onwards	4 percent	4 percent	8 percent

To implement these recommendations, section 66 and the proposed new section 66A of the KiwiSaver Act need to be amended. For the year starting 1 April 2008, the employer would have to agree to contribute two percent (which includes the one percent compulsory employer contribution) to the employee's contribution.

#### **Cap on salary subject to employer contribution**

We heard arguments for a cap on the amount of an employee's gross salary or wages that is used to calculate the compulsory employer contribution to KiwiSaver. The majority of us disagree, as this presumes that the Government can define an adequate level of retirement savings, and that everyone needs the same amount of employer contributions to ensure their savings for retirement are adequate.

#### **Invalid enrolments**

We note that KiwiSaver enrolments can be invalid for various reasons. For example, someone who is not entitled to join KiwiSaver, perhaps because he or she does not meet residence requirements, might "opt in"; or someone might be automatically enrolled who was under 18 or over the New Zealand superannuation qualification age.

While occasional instances of invalid enrolment can be expected, we believe that certainty is needed on the way contributions and accumulations from invalid enrolments are to be treated. The majority of us therefore recommend inserting a new clause 211B to establish the following rules:

- At the discretion of the Commissioner of Inland Revenue, enrolments can be subsequently validated when employees meet the criteria.

- Refunds can be made when a membership cannot be validated.
- The opt-out mechanism applies to those who are not eligible to be automatically enrolled as members. Such invalid enrolments will be validated if the person does not opt out and meets the criteria for KiwiSaver membership. This would ensure that anyone automatically enrolled then identified as ineligible could use the normal KiwiSaver opt-out process to terminate their membership. The Commissioner's discretion to accept late opt-out notices would also apply in such instances. When an enrolment cannot be validated and a member cannot opt out, a refund will be necessary—Inland Revenue would manage the process of refunding individuals, employers and other third parties.
- When a refund is necessary, providers would be required to refund the value of the investment to Inland Revenue, along with details of contributions received and any amount diverted under the mortgage diversion facility. This means that any gains or losses between the investment values and contributions paid out would be borne by the Crown.
- Inland Revenue would make refunds to individuals on the basis of contributions received (paid to providers) with interest—not on investment values. Regarding employer contributions, individual circumstances are likely to vary—some employer contributions will represent income the employee would otherwise have received, while some will constitute an additional cost that the employer is not legally required to bear. (As the employee is not entitled to be a KiwiSaver member, the employer is not legally required to make contributions.) Inland Revenue would therefore refund employer contributions to the employer so that the employer and employee could resolve the matter.
- A Permanent Legislative Authority would be established to allow Inland Revenue to make a refund, including interest, to a KiwiSaver member if the contributions and the interest payable on them were more than the value of the investment returned to Inland Revenue by the provider in respect of the particular member.

The majority of us also consider that interest should be payable on amounts refunded, set at the current rate payable under the KiwiSaver Act for money in the holding account. The rate is subject to change but at the time of writing sits at 5.36 percent.

The majority of us believe these rules would address the issue regarding invalid enrolments. The majority of us agree that establishing a permanent authority is the most appropriate way to manage the refunds to KiwiSaver members from invalid enrolments.

### **Refund of employer contribution by provider**

The provider of a KiwiSaver scheme may refund to Inland Revenue any amount of employer contribution that it was paid in excess of the amount Inland Revenue was required to on-pay to the provider. The provider is not, however, required to make a refund if this would reduce the amount of the employee's contribution to below the minimum contribution rate required under the KiwiSaver Act.

However, as the provider does not hold the necessary information about employees' income, the provider will always refund any amount requested by Inland Revenue, even if it would breach the minimum employee contribution rate required for KiwiSaver.

We therefore recommend that section 101(2) of the KiwiSaver Act be repealed and section 101(1) be consequentially amended to require that the provider of a KiwiSaver scheme refund to the Commissioner of Inland Revenue any amount of employer contribution that was paid by the Commissioner in excess of the amount of the employer contribution that the Act requires—to apply from the date the bill receives Royal assent.

### **Home ownership—second-chance buyers**

The majority of us recommend amending the KiwiSaver Regulations 2006 so that second-chance home buyers who have a determination from Housing New Zealand that they are in the same financial situation as a first home buyer are eligible for first home ownership withdrawal. Currently a person fails to qualify for first home withdrawal if they have ever held an interest in land.

Further, the majority of us recommend amending the KiwiSaver Regulations 2006 to ensure that they cover not only KiwiSaver schemes, but also complying superannuation funds in respect of mortgage diversion. For clarification, the majority of us also recommend amending section 229 of the KiwiSaver Act so that mortgage

diversion would apply for the remainder of the term of the loan after the diversion is made available, but only in relation to a mortgage over the person's principal residence.

### **Research and development tax credit**

The credit is available for eligible businesses that have made eligible expenditure on research and development activities. The submissions we received on research and development tax credits generally supported their introduction. We note the general theme of submissions that clear legislation and guidelines were important, with wide consultation on guidelines.

We believe that the sustainability of the credit is critical for increasing research and development. In proposing amendments to the bill we have therefore adopted a cautious approach, to reduce the likelihood that substantive changes to reduce the scope of the concession will subsequently be required. The major changes concern the eligibility criteria.

#### **Requirement to be in business in New Zealand through a fixed establishment**

The majority of us recommend amending proposed section LH 2 of the Income Tax Act 2004 (clause 100) so that residents are not required to have a fixed establishment in order to be eligible for the tax credit for research and development. The majority of us consider this requirement to be unnecessarily restrictive.

The majority of us recommend changes to make it clear that a person who starts a business part-way through an income year will qualify for a tax credit if he or she meets the eligibility requirements of the proposed section LH 2(2) of the Income Tax Act (clause 100).

#### **Capital expenditure on prototypes**

The majority of us recommend amending section LH 2(2) of the Income Tax Act (clause 100) to specify the eligibility for the research and development tax credit of certain types of capital expenditure on creating assets. The types of capital expenditure that are eligible for the tax credit when the expenditure is incurred are as follows:

- Capital expenditure incurred in seeking to create a depreciable intangible asset that is the object of the research and development activities.

- Capital expenditure incurred in seeking to create a depreciable tangible asset to be used solely for research and development. Such expenditure would include the cost of labour, materials, and depreciation on facilitative assets used in developing a prototype.

While the majority of us recommend these changes, the majority of us suggest that the rules be reviewed at an early stage to determine how well they work in practice. We note that the Government is to review these rules in the next three years.

### **Joint research and development**

In the bill as introduced, proposed section LH 2(2)(b) of the Income Tax Act in clause 100 sets out the criteria that must be satisfied to qualify for the tax credit relating to expenditure for research and development. We are concerned that the wording of this section creates uncertainty regarding the eligibility of research and development performed collaboratively.

To address this concern, the majority of us recommend amendments to make it clear that these criteria would apply to collaborations. If the research and development were carried out by an unincorporated joint venture, the criteria would apply to the unincorporated joint venture rather than the individual parties to the venture. The majority of us recommend including a provision that if the joint venture met the criteria, the parties to it would also be treated as having met the criteria. Furthermore, the majority of us recommend providing that the research and development activities must be carried out on behalf of the claimant and not anyone else.

### **Partnerships**

The majority of us recommend that individual partners in a partnership be treated as having satisfied the eligibility requirements for the tax credit for expenditure for research and development in proposed section LH 2(2)(b) if the partnership meets them and the partnership includes only eligible partners. If a partnership includes ineligible partners, the majority of us recommend that eligible partners be able to claim the tax credit if they can show that they meet the criteria in their own right.

### **Research and development carried out on behalf of overseas affiliates**

It was suggested that research and development activities carried out on behalf of overseas affiliates should qualify for the research and development tax credit. The majority of us do not support this because it would effectively mean that New Zealand taxpayers would have to subsidise foreign companies' research and development. The majority of us believe that the potential benefits of allowing overseas affiliates to qualify, such as job opportunities, are far outweighed by the potential costs.

### **Definition of research and development activities**

For clarity, the majority of us recommend amending the definition of "research and development activities" in section LH 5 of the Income Tax Act (clause 100) to refer to activities that seek to achieve an advance in science or technology by resolving scientific or technological uncertainty. The majority of us do not believe that adding this term would reduce the scope of the definition.

We note that the term "appreciable element of novelty" in the definition of "research and development activities" could result in uncertainty. The majority of us therefore recommend that guidance on the meaning of this term be provided in Inland Revenue's guidelines.

### **Core activities**

The majority of us recommend that in proposed section LH 5(1)(b) of the Income Tax Act (clause 100) support activities qualify as research and development activities only if they are wholly or mainly for the purpose of core research and development as defined in the proposed section LH 5(1)(a). The majority of us propose tightening the eligibility test for support activities to ensure that routine business activities are not eligible for the tax credit relating to expenditure for research and development.

### **Research and development conducted overseas as part of a New Zealand-based project**

Section LH 7(2)(k) of the Income Tax Act (clause 100) specifies how much overseas research and development expenditure, as a proportion of the eligible expenditure for the entire research and development project, would be eligible for the tax credit relating to expenditure for research and development.



The majority of us recommend that for the purpose of determining the amount of eligible overseas research and development expenditure, expenditure incurred overseas on a research and development project need not be incurred in the same tax year as that incurred locally on the same project. For example, if there were an excess of overseas research and development expenditure in any given year, it would be permissible to carry it forward so that it could be linked to any new local expenditure on the same research and development project and would therefore become eligible for a credit in subsequent years.

The majority of us consider that this amendment would minimise the need for claimants to restructure their research and development activities to ensure that their local expenditure would cover their overseas expenditure in the same year.

#### **Cap on internal software development**

In the bill as introduced, section LH 9 of the Income Tax Act (clause 100) specifies the maximum expenditure on internal software development that would be eligible for the research and development tax credit.

The majority of us recommend that the definition of “internal software development” in section LH 12 of the Income Tax Act in clause 100 be amended to include software that is used for the internal administrative functions of the claimant or for providing the claimant’s customers with a service other than a computer service.

The majority of us recommend that the definition in section LH 12 also be altered so that the limit on the eligible amount of expenditure on internal software development applies to both core and supporting research and development activities, rather than just core activities. The majority of us believe this would prevent attempts to reclassify core software development activities as supporting activities. To reflect its coverage of both core and supporting research and development, the majority of us recommend increasing the general limit in section LH 9 of the Income Tax Act in clause 100 to \$3 million.

The majority of us recommend clarifying the definition in section LH 12 of the Income Tax Act in clause 100 to make it clear that the limit on eligible expenditure on internal software development does not apply to firmware, such as software included in goods developed

by the claimant mainly for sale. The majority of us consider such software to be intended for sale, rather than for internal use.

The proposed section LH 10(15) of the Income Tax Act (clause 100) provides for ministerial discretion to raise the cap on the eligible expenditure on internal software development in certain cases. The majority of us recommend amending this section to clarify that a person may apply for the ministerial discretion before the research and development expenditure is incurred. The majority of us also recommend that the Minister be given the corresponding power to impose conditions on the waiver.

### **Removal of cap on internal software development**

We are aware of opposition to the general cap on eligible expenditure on internal software development as provided for in the proposed section LH 10 of the Income Tax Act (clause 100).

However, the majority of us do not recommend removing the general cap because doing so would expose the Government to significant fiscal risk. We note that there is a ministerial discretion to raise the cap in certain circumstances.

We will monitor the implementation of the rules on internal software development.

### **Crown Research Institutes, tertiary institutions, and district health boards and their associates**

In the bill as introduced, proposed section LH 2(1)(b) of the Income Tax Act (clause 100) provides that Crown Research Institutes, tertiary education institutions, district health boards, and associates of these entities are not eligible for the tax credit for research and development expenditure.

The majority of us recommend that the tripartite test of association in section OD 8(3) of the Income Tax Act should not apply to the research and development tax credit. This test means that if firm A is associated with firm B and firm B is associated with firm C, then A and C will also be treated as associated firms. The majority of us consider this test too wide for the purpose of assessing whether a claimant for the tax credit is associated with a Crown Research Institute, a tertiary education institution, or a district health board.

The majority of us also recommend amending section LH 2(1)(b) of the Income Tax Act (clause 100) to ensure that partnerships with Crown Research Institutes, tertiary institutions, or district health

boards are not eligible for the tax credit. The majority of us consider that the intent of the legislation is that the tax credit be targeted at research and development activities conducted by private-sector firms only.

### **Compliance and penalties**

The compliance and penalties legislation in the Tax Administration Act 1994 came into effect on 1 April 1997. It is designed to promote more effective and fairer enforcement of the Inland Revenue Acts by improving the incentives for taxpayers to comply voluntarily with their tax obligations. In October 2006 Inland Revenue released a discussion document, *Tax penalties, tax agents and disclosures*. It examined the current compliance and penalty rules, and specified several areas where the rules could be clearer, more consistent, and better targeted to encourage compliance. It discussed options for the relaxation of penalties when taxpayers have genuinely and consistently tried to do the right thing.

Most of the amendments in this bill result from proposals in the discussion document. Submitters were generally supportive of the provisions relating to compliance and penalties, and we were assured that the proposed amendments are taxpayer-friendly and will help ensure that the rules are applied more consistently and fairly.

There was some concern, however, about the unacceptable tax position penalty. Submitters asked that the unacceptable tax position shortfall penalty be repealed, that discretion be introduced for “simple mistakes and clear oversights”, and that the amendment be backdated.

#### **Unacceptable tax position**

The proposal in the bill is to limit the application of the unacceptable tax position penalty by removing Goods and Services Tax and withholding-type taxes from its scope, and to raise the threshold at which this penalty can apply. Currently, the penalty can apply only where the shortfall exceeds both \$20,000 and the lesser of \$250,000 or one percent of the taxpayer’s total tax for the return period. The bill proposes to increase this so that the penalty could apply only where the shortfall exceeds both \$50,000 and one percent of the taxpayer’s total tax for the return period. The amendment is proposed to take effect for tax positions taken on or after 1 April 2008.

While we are aware that there have been significant problems with this penalty since it was introduced in 2003, the majority of us believe that the amendments we propose to the bill—increasing the thresholds for the application of the penalty and limiting its scope to income tax—would deal with the vast majority of concerns about its application.

The amendments to the unacceptable tax position penalty in the bill have not been made retrospective because the discretion enacted in 2006 (and repealed in this bill) was backdated to 1 April 2003. The majority of us consider that this dealt with the cases where the imposition of that penalty may have been unfair.

We understand that the cases which remained subject to a shortfall penalty after the Inland Revenue Commissioner applied the discretion were those to which the “not taking reasonable care” criterion applied. The majority of us accept that the proposed amendments will not substantially change the application of this penalty, but making the amendments to the unacceptable tax position penalty retrospective would not alter their effect.

### **Company tax rate—transitional period for imputation and DWP credits**

At the current company tax rate of 33 percent, imputation and dividend withholding payment credits can be attached to dividends at the ratio of 33:67. With the company tax rate dropping to 30 percent, however, the new ratio will become 30:70. As a result shareholders may need to top up their tax on dividends to their marginal rate, which will often be either 33 or 39 percent. The bill proposes that the transitional period during which companies can allocate their tax paid at 33 percent to dividends using the ratio of 33:67 should end on 31 March 2010.

Submitters argued strongly that this period is too short and should be extended indefinitely, or for at least five to 10 years. The majority of us do not recommend that the transitional period be extended beyond 31 March 2010.

If relief were to be allowed for a significantly longer period, we understand that a dual imputation system would be required, whereby tax paid at the 30 percent rate would need to be recorded in a separate account from that paid at 33 percent. Credits paid at 33 percent would have to be used before the 30 percent pool could be

allocated. The majority of us believe that such a system would have higher compliance and administration costs than the proposal in the bill. Furthermore, any subsequent company tax rate reductions would mean that three or more different accounts might be required.

We are advised that the two-year simplified transition was chosen for the 33:67 credits to allow companies to choose whether they credited at 33:67 or the new standard ratio of 30:70. We understand that some companies will go straight to a 30:70 split because it will be in their shareholders' interests, particularly when the company tax is effectively a final tax, as it will be for most savings vehicles and for non-resident shareholders.

The proposals in the bill do not require dual accounts to be formally maintained, and the majority of us do not consider that they should, because of the compliance and administration costs involved. The majority of us therefore concluded that a transitional period ending on 31 March 2010 provides the best balance between providing relief and minimising compliance and fiscal costs.

### **Offshore portfolio share investment rules**

The majority of us recommend various changes to the offshore portfolio share investment rules. The major changes we recommend relate to exemptions, the fair dividend rate method, and the cost method. They are mostly of a remedial nature, and include measures to ensure that the rules for portfolio investment entities that derive income from land, such as listed property trusts that own commercial property, achieve their intended policy effect.

### **Prescribed investor rate for trustees**

We note suggestions that the PIE rules should be changed to allow trustees to elect a prescribed investor tax rate of 19.5 percent in addition to the current options of zero and 33 percent. The income would then be taxable, rather than excluded, income to the trustee, with a credit available for the 19.5 percent tax deducted at the portfolio investment entity level. This would allow trustees to manage their fiduciary obligations and minimise compliance costs, because it would reduce the risk of beneficiaries becoming subject to the provisional tax rules.

While the majority of us accept that this measure might minimise compliance costs and reduce the risk of beneficiaries becoming

subject to the provisional tax rules, the majority of us have not recommended incorporating such a rule change into this bill. We do ask, however, that the proposal be considered further by Inland Revenue for possible inclusion in a later tax bill.

### **Commissioner's power to make a determination on the use of the fair dividend rate method**

In the bill as introduced, clause 165 repeals section 91AAO(2) of the Tax Administration Act 1994, which sets out the criteria the Commissioner must use in making determinations on the use of fair dividend rate method. We are concerned that this repeal would significantly widen the Commissioner's power to determine when the fair dividend rate method could be used for a particular type of investment. Nevertheless, we recognise that section 91AAO(2) of the Tax Administration Act needs to be clarified. Therefore, instead of repealing section 91AAO(2) of the Tax Administration Act, the majority of us recommend that the criteria in this section be replaced with new criteria in clause 165.

We understand that the Commissioner can delegate the determination-making power under new section 91AAO(2) of the Tax Administration Act. As this determination-making power is quite wide, we consider that the Commissioner should delegate it only to very senior staff members of Inland Revenue. We will closely monitor the way the Commissioner and Inland Revenue exercise this power.

### **Life insurance and portfolio investment rules**

The bill introduces a number of measures to ensure consistency between the tax treatment of life insurance savings products and those of other savings vehicles. We note that the changes deal with two particular problems. The first is an unexpected consequence of the fair dividend rate rules, which arises because of the complex interplay between a life insurer's life office base and its policyholder base tax calculations. The second problem concerns applying the Australasian capital gains exclusion in the portfolio investment entity rules to unit-linked life products.

We note the issues raised by submitters. Some expressed support for the amendments on unit-linked products, but all wanted the Australasian capital gains exclusion to be extended to non-unit-linked life savings products. Some questioned the percentages of income exclusion from the policyholder base income calculations and suggested

alternative approaches. The status of attributed income derived by a life insurer, and technical issues on actuarial concepts and definitions were also raised.

We understand that some of these issues are to be considered in Inland Revenue's current review of the taxation of life insurance. While the majority of us have recommended some technical amendments to the life insurance and portfolio investment rules, the majority of us believe the more complex issues we considered should be examined in the review, rather than in isolation in the context of this bill.

### **Tax incentives for charitable donations**

We are aware of suggestions for increasing the tax incentives for charitable giving. Inland Revenue advised us that it will consider these suggestions in its review of tax incentives. We note that the results of the review will be reported to the Minister of Finance and the Minister of Revenue by 31 March 2008.

### **Goods and Services Tax shared invoicing**

Proposed section 24 BA of the Goods and Services Tax Act 1985, inserted by clause 251, allows two or more suppliers to issue a joint tax invoice for GST purposes, if they are members of the same GST group or suppliers who have a statutory obligation that makes it practical to use a single invoice. We considered arguments that this provision should be widened so that any two registered persons can issue a shared invoice.

The majority of us do not recommend such an amendment, however, because it could create potential for abuse. Allowing one supplier to issue a tax invoice on behalf of multiple suppliers would make it difficult to identify any taxpayers who had failed to account for GST. However, we recognise that this suggestion has some merit if it were accompanied by appropriate safeguards. We therefore recommend that Inland Revenue look into the possibility of widening the scope of section 24 BA of the Goods and Services Tax Act.

### **Minority view—National Party**

The National Party recognises that the company tax rates will be dropping to 30 percent, but we believe that personal income tax rates should also be lowered.

## Appendix

### Committee procedure

The Taxation (Annual Rates, Business Taxation, KiwiSaver, and Remedial Matters) Bill was referred to the committee on 17 May 2007. The closing date for submissions was 12 July 2007. We received and considered 103 submissions from interested groups and individuals. We heard 44 submissions.

We received advice from Inland Revenue and Treasury, and independent specialist advisory services were provided to us by Ms Therese Turner.

### Committee membership

Charles Chauvel (Chairperson) (from 7 November 2007)

Shane Jones (Chairperson) (until 6 November 2007)

Hon Bill English

Jeanette Fitzsimons

Craig Foss

Hon Mark Gosche

Hone Harawira

Rodney Hide

Moana Mackey (from 7 November 2007)

Dr the Hon Lockwood Smith (Deputy Chairperson)

Hon Paul Swain

Chris Tremain

Judy Turner

R Doug Woolerton

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## Key to symbols used in reprinted bill

### As reported from a select committee

#### Struck out (majority)

Subject to this Act,

Text struck out by a majority

#### New (majority)

Subject to this Act,

Text inserted by a majority

⟨*Subject to this Act,*⟩

Words struck out by a majority

⟨Subject to this Act,⟩

Words inserted by a majority

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*Hon Peter Dunne*

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Government Bill

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

**1 Title**

This Act is the Taxation (Annual Rates, Business Taxation, KiwiSaver, and Remedial Matters) Act **2007**.

## 2 Commencement

- (1) This Act comes into force on the date on which it receives the Royal assent, except as provided in this section.

### New (majority)

- (1B) **Section 255B** is treated as coming into force on 1 April 1995.

- (2) **Sections 256 and 257** are treated as coming into force on 1 April 1997. 5

### Struck out (majority)

- (3) **Section 244(1)** is treated as coming into force on 1 April 1999.

### New (majority)

- (3) **Sections 174, and 244(1)** are treated as coming into force on 1 April 1999.

- (4) **Sections 253 and 254(3)** are treated as coming into force on 1 April 2001. 10

### New (majority)

- (4B) **Section 248(2), (4), and (5)** are treated as coming into force on 24 October 2001.

- (4C) **Section 255C** is treated as coming into force on 1 April 2002.

- (5) **Section 244(2)** is treated as coming into force on 1 April 2003. 15

- (6) **Section 88(2)** is treated as coming into force on 4 June 2004.

- (7) **Section 258(3)** is treated as coming into force on 16 November 2004.

### Struck out (majority)

- (8) **Sections 16, 17, 19, 20, 21, 22, 28, 32, 41, 42, 43, 44, 84, 118, 120, 135(31), (36), and (57), 138(1), 167(1) and (2), and 247** are treated as coming into force on 1 April 2005. 20

**New (majority)**

(8) **Sections 5C, 6, 6B, 7, 8, 9B, 16, 17, 19, 20, 21, 22, 28, 31B, 32, 32B, 41, 42, 43, 44, 58D, 58E, 59B, 78C, 84, 107B, 118, 120, 135(28), (33), (39), and (66), 138(1), 167(1) and (2), and 247** are treated as coming into force on 1 April 2005.

(9) **Section 85(1)** is treated as coming into force on 1 July 2005.

5

(10) **Sections 131 and 132** are treated as coming into force on 1 April 2006.

**Struck out (majority)**

(11) **Sections 5, 10, 13, 14, 23, 24, 25, 26, 31, 34, 35, 36, 37, 38, 40, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 79, 86, 87, 93(2), 94, 96, 107, 133, 135(2), (4), (5), (6), (7), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19), (20), (21), (25), (27), (28), (32), (34), (41), (43), (45), (46)(a), (47), (48), (50), (51), (52), and (53), 137, 139, 147(2) and (5), 148, 149, 150, 155, 159, 162, 164, 165, 168, 184(1), 193, 264, 268, 269, 271, 273, and 274** are treated as coming into force on 1 April 2007.

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15

(12) **Sections 108(2) and (4), 117(1), 119(1), 188, 190, and 275** are treated as coming into force on 17 May 2007.

(13) **Sections 141, 144(2)(a), 204, 205, 206, 208, 209, 210, 211, 213, 218(1), 229, 230, 232, 234, and 240** are treated as coming into force on 1 July 2007.

20

(14) **Sections 9, 77, 78, 80, 81, 82, 83, 92, 93(1), 97, 98, 99, 101, 102(1), 103, 104, 105, 106, 108(1), 109, 110, 112, 113, 114, 115, 116, 117(2), 119(2), 121, 122, 123, 124, 125, 126, 127, 128, 130, 134, 135(24), (30), (35), (37), (38), (39), and (40), 173, 177, 178, 179, 180, and 181** are treated as coming into force on 1 October 2007.

25

(15) **Section 249** is treated as coming into force on 30 November 2007.

(16) **Sections 88(1), 89, 90, 91, 135(29), 142, 143, 144(2)(b) to (d), (3), (4), (5), and (6), 174, 176, 182(3), 183, 184(2), 185, 186, 187, 189, 191, 192, 194, 197, 198, 199, 201, 202, 203, 212, 15, 216, 217, 218(2), 219, 222, 225, 227, 231, 237, and 260** come into force on 1 April 2008.

30

**Struck out (majority)**

- (17) **Sections 11, 12, 18, 29, 30, 95, 135(3), 136, 151, 152, and 272** come into force on 1 July 2008.
- (18) **Section 220** comes into force on 1 April 2009.

**New (majority)**

- (11) **Sections 5, 13, 23, 24, 25, 26, 31, 34, 35, 36, 37, 38, 40, 45, 46, 47, 48, 49, 50, 51, 52, 53, 53B, 54, 55, 56, 57, 57B, 58, 58B, 60, 61, 62, 63, 64, 65, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 78B, 79, 86, 87, 93(2), 94, 96, 97B, 107, 133, 133B(1) and (3), 134B, 135(5), (6), (7), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19), (20), (21), (23), (27), (30), (34), (36), (49), (50), (52), (54), (55)(a) and (b), (56), (57), (59), (60), (61), (62), and (67), 137, 147(2) and (5), 148, 149, 150, 155, 159, 162, 164, 165, 168, 184(1), 193, 264, 268, 269, 271, 273, and 274** are treated as coming into force on 1 April 2007. 5
- (12) **Sections 108(2) and (4), 188, 190, 248(1) and (3), 248B, 274B, 274C, and 275** are treated as coming into force on 17 May 2007. 10
- (13) **Sections 141, 142B to 142E, 144(2)(a), (4), and (7), 198B, 201(4), (6)(d), (8), and (9)(a), 201B, 204, 205 to 205D, 206, 208, 209, 210, 211, 211B, 211C, 211D, 212B, 212C, 212D, 213, 214D, 218(1), 224C, 224D, 229, 230(1), 231B, 232, 234(1) and (3), 236(6), and 240** are treated as coming into force on 1 July 2007. 15
- (14) **Sections 5B, 9, 24B, 24C, 24D, 27B, 58C, 77, 78, 78D, 80, 80B, 81, 81B, 81C, 81D, 81E, 82, 82B, 82C, 83, 83B, 83C, 83D, 83E, 83F, 83G, 83H, 83I, 83J, 83K, 83L, 83M, 83N, 92, 93(1), 97, 98, 99, 101, 102, 103, 103B, 104, 105, 106, 106B, 106C, 106D, 108(1), 109, 110, 110B, 112, 113, 114, 115, 116, 117(2), 119(2), 121, 122, 123, 124, 125, 126, 127, 128, 130, 133B(2), 134, 135(2), (4), (26), (32), (37), (41), (42), (43), (44), (45), (46), (47), and (48), 139B, 147B, 147C, 150B, 150C, 157B, 157C, 172B, 172C, 172D, 172E, 173, 177, 178, 179, 180, 181, 226B, and 251B** are treated as coming into force on 1 October 2007. 20
- (15) **Section 249** is treated as coming into force on 30 November 2007. 25
- (16) **Sections 88(1), 89, 90, 91, 135(31), 142, 143, 143B, 144(2) (b) to (e), (3), (5), (6), (8), and (9), 147C, 175, 176, 176B, 182(1) to (3), 183, 184(1A) and (2), 185, 186, 187, 189, 191, 192, 192B, 194, 194B, 194C,** 30



**New (majority)**

- |   |                             |
|---|-----------------------------|
| <p><b>194D, 197, 198, 199 to 199G, 201(1), (2), (3), (5), (7), (9)(b), and (10), 202, 203, 212, 214C, 215, 216, 217, 218(2), 219, 222, 224E, 225, 227, 227B, 229B, 230(3), 231, 236(1B), 237, and 260</b> come into force on 1 April 2008.</p> <p>(17) <b>Sections 11, 12, 18, 29, 30, 95, 135(38), 136, 151(1) to (3), 152, and 272</b> come into force on 1 July 2008.</p> <p>(18) <b>Sections 214B(2) and 220</b> come into force on 1 April 2009.</p>   | <p></p> <p>5</p> <p></p>    |
| <p>(19) <b>Sections 160(1), 263, 266, and 267</b> come into force on the earlier of the following:</p> <p style="padding-left: 20px;">(a) a date to be fixed by the Governor-General by Order in Council:</p> <p style="padding-left: 20px;">(b) 1 April 2009.</p> <p>(20) <b>Section 166</b> comes into force on the earlier of the following:</p> <p style="padding-left: 20px;">(a) a date to be fixed by the Governor-General by Order in Council:</p> <p style="padding-left: 20px;">(b) 1 April 2010.</p> | <p>10</p> <p></p> <p>15</p> |

**Part 1**

**Annual rates of income tax, amendments to  
Income Tax Act 2004**

- |   |                             |
|---|-----------------------------|
| <p><b>3</b> <b>Rates of income tax for 2007–08 tax year</b></p> <p>(1) Income tax imposed by section BB 1 of the Income Tax Act 2004 must, for the 2007–08 tax year, be paid at the basic rates specified in schedule 1 of that Act.</p> <p>(2) The Taxation (Annual Rates of Income Tax 2006–07) Act 2006 is repealed.</p> | <p>20</p> <p></p> <p>25</p> |
|---|-----------------------------|

***General amendments to Income Tax Act 2004***

- |  |         |
|--|---------|
| <p><b>4</b> <b>Income Tax Act 2004</b></p> <p><b>Sections 5 to 139B</b> amend the Income Tax Act 2004.</p> | <p></p> |
|--|---------|

## **5 Withholding liabilities**

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

*“Retirement scheme contributions*

“(5B) A person who makes a retirement scheme contribution to a retirement savings scheme must pay retirement scheme contribution withholding tax under the RSCWT rules.” 5

- (2) In section BE 1, in the list of defined terms, “retirement savings scheme”, “retirement scheme contribution”, “retirement scheme contribution withholding tax”, and “RSCWT rules” are inserted. 10

### **New (majority)**

## **5B Section CB 4B replaced**

Section CB 4B is replaced by the following:

**“CB 4B Disposal of certain shares by portfolio investment entity or New Zealand Superannuation Fund after declaration of dividend 15**

*“When this section applies*

- “(1) This section applies to a portfolio investment entity or the New Zealand Superannuation Fund (the **entity**) if—
- “(a) the entity disposes of a share in a company; and
  - “(b) section CX 44C (Proceeds from disposal of certain shares by portfolio investment entities or New Zealand Superannuation Fund) applies to the disposal; and 20
  - “(c) 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

*“Income*

- “(2) The entity derives an amount of income that is the greater of zero and the amount calculated using the formula—  
(declaration shares – distribution shares) × distribution. 30

**New (majority)**

*“Definition of items in formula*

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

*“Declaration shares*

- “(4) **Declaration shares** is the number of shares in the company held by the entity when the dividend is declared. 5

*“Distribution shares*

- “(5) **Distribution shares** is the number of shares in the company for which the entity derives the dividend.

*“Distribution*

- “(6) **Distribution** is the amount for a share of— 10

“(a) the dividend that is not fully imputed as that term is defined in section NG 2(3) (Application of NRWT rules), if the share is issued by a company that has an imputation credit account; or

“(b) the dividend, if **paragraph (a)** does not apply. 15

“Defined in this Act: amount, company, dividend, imputation credit account, income, portfolio investment entity, share”.

**5C New section CB 5A inserted**

- (1) Before section CB 5, the following is inserted:

**“CB 5A Land partially sold or sold with other land 20**

Sections CB 5 to CB 21 apply to amounts derived from the disposal of land if the land—

“(a) is part of the land to which the relevant section applies:

“(b) is the whole of the land to which the relevant section applies: 25

“(c) is disposed of together with other land.

“Defined in this Act: amount, dispose, land”.

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

**6 Disposal: amount from major development or division and not already in income 30**

- (1) Section CB 11(2) is replaced by the following:

*“Exclusions*

- “(2) Subsection (1) is overridden by the exclusions for residential land in section CB 15, for business premises in section CB 18, for farm land in section CB 19, and for investment land in section CB 21.” 5
- (2) **Subsection (1)** applies for—
- (a) a disposal of land occurring on or after the date on which this Act receives the Royal assent:
  - (b) a person and a disposal of land occurring before the date on which this Act receives the Royal assent, if the person— 10
    - (i) is the person disposing of the land; and
    - (ii) takes a tax position relating to the disposal in a return for the income year of the disposal; and
    - (iii) in taking the tax position, relies on the law that would apply if **subsection (1)** applied for the disposal; and 15
    - (iv) provides the return to the Commissioner by the due date for the return.

**New (majority)**

- |           |  |    |
|-----------|--|----|
| <b>6B</b> | <b>Residential exclusion from sections CB 10 and CB 11</b><br>In section CB 15(1), in the words before paragraph (a), “Section CB 10 does” is replaced by “Sections CB 10 and CB 11 do”. | 20 |
|-----------|--|----|

- 7 Business exclusion from section CB 10**
- (1) In the heading to section CB 18, “**section CB 10**” is replaced by “**sections CB 10 and CB 11**”. 25
  - (2) In section CB 18, in the words before paragraph (a), “Section CB 10 does” is replaced by “Sections CB 10 and CB 11 do”.
  - (3) **Subsection (2)** applies for—
    - (a) a disposal of land occurring on or after the date on which this Act receives the Royal assent: 30
    - (b) a person and a disposal of land occurring before the date on which this Act receives the Royal assent, if the person—
      - (i) is the person disposing of the land; and 35

- (ii) takes a tax position relating to the disposal in a return for the income year of the disposal; and
- (iii) in taking the tax position, relies on the law that would apply if **subsection (2)** applied for the disposal; and 5
- (iv) provides the return to the Commissioner by the due date for the return.

**8 Investment exclusion from section CB 10**

- (1) In the heading to section CB 21, “**section CB 10**” is replaced by “**sections CB 10 and CB 11**”. 10
- (2) In section CB 21, in the words before paragraph (a), “Section CB 10 does” is replaced by “Sections CB 10 and CB 11 do”.
- (3) **Subsection (2)** applies for—
  - (a) a disposal of land occurring on or after the date on which this Act receives the Royal assent: 15
  - (b) a person and a disposal of land occurring before the date on which this Act receives the Royal assent, if the person—
    - (i) is the person disposing of the land; and
    - (ii) takes a tax position relating to the disposal in a return for the income year of the disposal; and 20
    - (iii) in taking the tax position, relies on the law that would apply if **subsection (2)** applied for the disposal; and
    - (iv) provides the return to the Commissioner by the due date for the return. 25

**New (majority)**

**8B Foreign investment fund income**

Section CD 26(b) is replaced by the following:

- “(b) the person calculates their FIF income or loss in relation to the interest and the period in which the amount is paid under— 30
  - “(i) the comparative value method:
  - “(ii) the deemed rate of return method:
  - “(iii) the cost method:
  - “(iv) the fair dividend rate method; and 35

**New (majority)**

- “(c) if the calculation referred to in **paragraph (b)** is under the fair dividend rate method,—
- “(i) the FIF is not a grey list company:
- “(ii) the person does not hold a direct income interest of 10% or more in the FIF at the beginning of the income year of the period.”

5

**9 Determination of amount of credit in certain cases**

In section CD 32(26)(b), “dividend<:⟩” is replaced by “dividend (**section <MZ 15> <MZ 18>** (Fully credited: modifying the actual ratio) modifies this paragraph)<:⟩”.

10

**New (majority)**

**9B When does a person have attributed repatriation from a CFC?**

- (1) In section CD 34(1)(b), “EX 16” is replaced by “EX 17”.
- (2) **Subsection (1)** applies for the 2005–06 and later income years.

**Struck out (majority)**

**10 Prevention of double taxation of share cancellation dividends**

15

In section CD 42(5)(b), “(Basic rates of income tax and specified superannuation contribution withholding tax)” is replaced by “(Basic rates of income tax, specified superannuation contribution withholding tax, and retirement scheme contribution withholding tax)”.

20

**11 New heading and section CE 12 inserted**  
After section CE 11, the following is added:

**Struck out (majority)**

***“Tax credits***

**“CE 12 Tax credits under section LD 1B added to caregiver’s  
income**

5

*“When this section applies*

- “(1) This section applies when a person is allowed under **section LD 1B** (Tax deductions from certain accident compensation payments: credit allowed to caregiver) a credit against the person’s income tax liability in an income year.

10

*“Income*

- “(2) An amount equal to the credit is income of the person in the income year, if the amount is not income under any other provision.

*“Defined in this Act: income, income year, payment”.*

15

**New (majority)**

***“Tax credits***

**“CE 12 Tax credits under section LD 1B added to provider’s  
income**

*“When this section applies*

- “(1) This section applies when a person is allowed under **section LD 1B** (Tax deductions from certain accident compensation payments: credit allowed to provider) a credit against the person’s income tax liability in an income year.

20

**New (majority)**

*“Income*

- “(2) An amount equal to the credit is income of the person in the income year, if the amount is not income under any other provision.

“Defined in this Act: income, income year, payment”.

5

**12 Benefits, pensions, compensation, and government grants**

- (1) In section CF 1(2), in the definition of **accident compensation payment** (paragraph (f)), “of that Act” is replaced by “of that Act:”, and the following is added:

10

**Struck out (majority)**

“(g) an amount paid under section 81(1)(b) of the Injury Prevention, Rehabilitation, and Compensation Act 2001.”

**New (majority)**

- “(g) a personal service rehabilitation payment for a claimant under the Injury Prevention, Rehabilitation, and Compensation Act 2001.”
- (2) In section CF 1, in the list of defined terms, “personal service rehabilitation payment” is inserted.

15

**13 When FIF income arises**

**New (majority)**

- (1) In section CQ 5(1),—
- (a) in paragraph (d), in the words before subparagraph (i), “any time during the income year” is replaced by “any time in the year”:

20



- (b) in paragraph (db), in the words before subparagraph (i), “, at any time in the year,” is inserted after “the person holds”:
- (c) in paragraph (f), “, EX 48 (Top-up FIF income: deemed rate of return method), or EX 49 (Top-up FIF income: 1 April 1993 uplift interests)” is inserted after “income or loss”.

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

*“Treatment of deemed transaction under section EX 53 or EX 54B*

“(1B) If a person is treated under section EX 53 (Changes in applications of FIF exemptions) or EX 54B (FIF rules first applying to interest for income year beginning on or after 1 April 2007) as disposing of or acquiring rights in an income year, the disposal or acquisition is ignored for the purposes of subsection (1)(d) and (db).”

*“Treatment of deemed transaction under section EX 51, EX 53, or EX 54B*

“(1B) If a person is treated under section EX 51 (Consequences of changes in method), EX 53 (Changes in applications of FIF exemptions), or EX 54B (FIF rules first applying to interest for income year beginning on or after 1 April 2007) as disposing of or acquiring rights in an income year, the disposal or acquisition is ignored for the purposes of subsection (1)(d) and (db).”

**Struck out (majority)**

**14 Withdrawals**

In section CS 1(5), “(Basic rates of income tax and specified superannuation contribution withholding tax)” is replaced by “(Basic rates of income tax, specified superannuation contribution withholding tax, and retirement scheme contribution withholding tax)”.

5

**15 Exclusions of withdrawals of various kinds**

Section CS 2(4B) is repealed.

**16 Meaning of petroleum miner**

(1) Section CT 6(1), other than the heading, is replaced by the following:

10

“(1) **Petroleum miner**, for a permit area, means a person who undertakes petroleum mining operations in the permit area.”

**New (majority)**

(1B) In section CT 6(2), in the words before paragraph (a), “an activity described in subsection (3)” is replaced by “petroleum mining operations”.

15

(2) Section CT 6(3) and (4) are repealed.

(3) In the list of defined terms in section CT 6,—

(a) “petroleum mining operations” is inserted:

(b) “removal or restoration operations” is omitted.

20

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

**17 New section CT 6B inserted**

(1) After section CT 6, the following is inserted:

**“CT 6B Meaning of petroleum mining operations**

25

*“Meaning*

“(1) **Petroleum mining operations** means an activity included in the activities described in **subsection (2)** and not excluded by **subsection (3)**.

*“Activities: inclusions*

- “(2) The activities are those carried out in connection with—
- “(a) prospecting or exploring for petroleum:
  - “(b) developing a permit area for producing petroleum:
  - “(c) producing petroleum: 5
  - “(d) processing, storing, or transmitting petroleum before its dispatch to a buyer, consumer, processor, refinery, or user:
  - “(e) removal or restoration operations.

*“Activities: exclusions 10*

- “(3) The activities do not include further treatment to which all the following apply:
- “(a) it occurs after the well stream has been separated and stabilised into crude oil, condensate, or natural gas; and
  - “(b) it is done— 15
    - “(i) by liquefaction or compression; or
    - “(ii) for the extraction of constituent products; or
    - “(iii) for the production of derivative products; and
  - “(c) it is not treatment at the production facilities.

“Defined in this Act: permit area, petroleum, petroleum mining operations, removal or restoration operations”. 20

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

**New (majority)**

**17B Proceeds of share disposal by qualified foreign equity investor**

- (1) In section CW 11B(4), in the definition of **foreign exempt entity**,— 25
- (a) paragraph (c) is replaced by the following:
  - “(c) under the laws of the territory, or of the part of the territory, is not subject to a tax on income other than as a body that handles income of the members; and”: 30
  - (b) in paragraph (f)(iii), “taxation laws” is replaced by “laws” in both places that it occurs:
  - (c) in paragraph (f)(iii), “subparagraph (ii)” is replaced by “subparagraph (ii); and” and the following is added:

**New (majority)**

- |   |  |
|---|--|
| <p>“(g) does not have a holder of a direct or indirect interest in the capital of the legal entity who—</p> <p style="padding-left: 20px;">“(i) is a resident of New Zealand; and</p> <p style="padding-left: 20px;">“(ii) holds a total direct or indirect interest of 10% or more in the capital of the legal entity, when treated as holding the interests of any person who is associated with the holder under section OD 8(1)”.</p> <p>(2) In section CW 11B(4), in the definition of <b>foreign exempt partnership</b>,—</p> <p style="padding-left: 20px;">(a) paragraph (c) is replaced by the following:</p> <p style="padding-left: 40px;">“(c) under the laws of the territory, or of the part of the territory, is not subject to a tax on income other than as a body that handles income of the partners; and”:</p> <p style="padding-left: 20px;">(b) in paragraph (h)(ii), “taxation laws” is replaced by “laws” in both places that it occurs:</p> <p style="padding-left: 20px;">(c) in paragraph (h)(ii), “subparagraph (i)” is replaced by “subparagraph (i); and” and the following is added:</p> <p style="padding-left: 40px;">“(i) does not have a holder of a direct or indirect interest in the capital of the unincorporated body who—</p> <p style="padding-left: 60px;">“(i) is a resident of New Zealand; and</p> <p style="padding-left: 60px;">“(ii) holds a total direct or indirect interest of 10% or more in the capital of the unincorporated body, when treated as holding the interests of any person who is associated with the holder under section OD 8(1)”.</p> <p>(3) In section CW 11B(4), in the definition of <b>foreign exempt person</b>,—</p> <p style="padding-left: 20px;">(a) paragraph (d) is replaced by the following:</p> <p style="padding-left: 40px;">“(d) under the laws of the territory, or of the part of the territory, derives the proceeds from a disposal of shares or options that are held by the person; and”:</p> <p style="padding-left: 20px;">(b) in paragraph (e)(ii), “taxation laws” is replaced by “laws” in both places that it occurs:</p> <p style="padding-left: 20px;">(c) in paragraph (e)(ii), “subparagraph (i)” is replaced by “subparagraph (i); and” and the following is added:</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> |
|---|--|

**New (majority)**

- |  |                              |
|--|------------------------------|
| <p>“(f) does not have a holder of a direct or indirect interest in the person who—</p> <p style="padding-left: 20px;">“(i) is a resident of New Zealand; and</p> <p style="padding-left: 20px;">“(ii) holds a total direct or indirect interest of 10% or more in the capital of the person, when treated as holding the interests of any person who is associated with the holder under section OD 8(1).”</p> <p>(4) Section CW 11B(5)(a) and (b) are replaced by the following:</p> <p style="padding-left: 20px;">“(a) under a double tax agreement between New Zealand and the territory that is in force under the terms of the double tax agreement, if—</p> <p style="padding-left: 40px;">“(i) there is such a double tax agreement; and</p> <p style="padding-left: 40px;">“(ii) the double tax agreement provides for the residency of the person:</p> <p style="padding-left: 20px;">“(b) under the laws of the territory, if <b>paragraph (a)</b> does not apply.”</p> | <p>5</p> <p>10</p> <p>15</p> |
|--|------------------------------|

**Struck out (majority)**

- |   |                               |
|---|-------------------------------|
| <p><b>18 New section CW 28B inserted</b></p> <p>After section CW 28, the following is inserted:</p> <p><b>“CW 28B Payment of certain accident compensation payments</b></p> <p>The amount paid to a person for an income year under section 81(1)(b) of the Injury Prevention, Rehabilitation, and Compensation Act 2001 is exempt income of the person if—</p> <p style="padding-left: 20px;">“(a) the person is a claimant under that Act; and</p> <p style="padding-left: 20px;">“(b) the person pays an amount to a caregiver for providing attendant care to the person in the year; and</p> <p style="padding-left: 20px;">“(c) the amount paid to the caregiver is equal to or more than the amount, after any deduction of tax under this Act, paid to the person for the year under section 81(1)(b) of that Act.</p> <p>“Defined in this Act: attendant care, exempt income, income year, payment”.</p> | <p>20</p> <p>25</p> <p>30</p> |
|---|-------------------------------|

**New (majority)**

**18 New section CW 28B inserted**

After section CW 28, the following is inserted:

**“CW 28B Payment of certain accident compensation  
payments**

The amount paid to a person (the **claimant**) for an income year as a personal service rehabilitation payment for the person under the Injury Prevention, Rehabilitation, and Compensation Act 2001 is exempt income of the claimant if—

“(a) the claimant pays an amount to another person for providing a key aspect of social rehabilitation referred to in the definition of personal service rehabilitation payment in section OB 1; and

“(b) the amount paid by the claimant for a key aspect of social rehabilitation for the income year is equal to or more than the amount of personal service rehabilitation payments, after any deduction of tax under this Act, paid to the claimant for the year.

“Defined in this Act: exempt income, income year, payment, personal service rehabilitation payment”.

**19 Local authorities** 20

Section CW 32(4)(c)(i) is replaced by the following:

“(i) a council-controlled organisation, other than a council-controlled organisation operating a hospital as a charitable activity on behalf of the local authority:”. 25

**20 Charities: non-business income**

Section CW 34(3), other than the heading, is replaced by the following:

“(3) This section does not apply to income derived by—  
“(a) a council-controlled organisation, other than a council-controlled organisation operating a hospital as a charitable activity: 30

- “(b) a local authority from a council-controlled organisation, other than from a council-controlled organisation operating a hospital as a charitable activity on behalf of the local authority.”
- 21 Charities: business income** 5
- Section CW 35(2), other than the heading, is replaced by the following:
- “(2) This section does not apply to income derived by—
- “(a) a council-controlled organisation, other than a council-controlled organisation operating a hospital as a charitable activity: 10
- “(b) a local authority from a council-controlled organisation, other than from a council-controlled organisation operating a hospital as a charitable activity on behalf of the local authority.” 15
- 22 New heading and sections CW 49C and CW 49D inserted**
- (1) After section CW 49B, the following is inserted:
- “Income of, and distributions by, certain international funds* 20
- “CW 49C Income of certain international funds**
- An amount of income derived by a person is exempt income if the person is—
- “(a) the trustee of the Niue International Trust Fund:
- “(b) the trustee of the Tokelau International Trust Fund. 25
- “Defined in this Act: amount, exempt income, income, Niue International Trust Fund, Tokelau International Trust Fund, trustee
- “CW 49D Distributions by certain international funds**
- An amount of income derived by a person is exempt income if the income is a distribution by— 30
- “(a) the trustee of the Niue International Trust Fund:
- “(b) the trustee of the Tokelau International Trust Fund.
- “Defined in this Act: amount, distribution, exempt income, income, Niue International Trust Fund, Tokelau International Trust Fund, trustee”.
- (2) **Subsection (1)** applies for the 2005–06 and later income years. 35

**23 Heading above section CX 42 replaced**

The heading above section CX 42 is replaced by “*Contributions to superannuation scheme or retirement savings scheme*”.

**24 New section CX 42B inserted**

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After section CX 42, the following is inserted:

**“CX 42B Contributions to retirement savings scheme**

*“Excluded income*

“(1) A retirement scheme contribution is excluded income of—

“(a) the person for whose benefit the retirement scheme contribution is provided, to the extent to which the retirement scheme contribution is—

10

“(i) money:

“(ii) an amount of imputation credit or Maori authority credit that is used to meet the liability of the retirement scheme contributor for retirement scheme contribution withholding tax on the retirement scheme contribution:

15

**Struck out (majority)**

“(b) the trustee of the retirement savings scheme.

**New (majority)**

“(b) the retirement savings scheme.

20

*“Exclusion*

“(2) **Subsection (1)(a)** does not apply if the person for whose benefit the retirement scheme contribution is provided—

**Struck out (majority)**

“(a) supplies to the retirement scheme contributor, or to the trustee of the retirement savings scheme, a withholding rate that is less than the retirement scheme prescribed rate for the person:

25



**Struck out (majority)**

“(b) includes the retirement scheme contribution in a return of income for the income year in which the retirement scheme contribution is provided:

“Defined in this Act: excluded income, income year, retirement savings scheme, retirement scheme contribution, retirement scheme contributor, retirement scheme prescribed rate, return of income, trustee

5

**New (majority)**

“(a) supplies to the retirement scheme contributor, or to the trustee of the retirement savings scheme, a retirement scheme withholding rate that is less than the retirement scheme prescribed rate for the person:

10

“(b) includes the retirement scheme contribution in a return of income for the income year in which the retirement scheme contribution is provided:

“(c) is a non-resident and the retirement scheme contribution is non-resident withholding income.

15

“Defined in this Act: excluded income, income year, non-resident, non-resident withholding income, retirement savings scheme, retirement scheme contribution, retirement scheme contributor, retirement scheme prescribed rate, retirement scheme withholding rate, return of income, trustee”.

**24B Proceeds from disposal of certain shares by portfolio investment entities or New Zealand Superannuation Fund**

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(1) In section CX 44C(1), in the words before paragraph (a), “portfolio investment entity” is replaced by “portfolio investment entity or by a life insurer, in relation to that part of the life insurer that is a portfolio investment-linked life fund,”.

25

(2) Section CX 44C(1)(a)(i) is replaced by the following:

“(i) resident in Australia and not treated as being resident in a country other than Australia in an agreement between Australia and another country that would be a double tax agreement if the agreement were negotiated between New Zealand and the other country; and”.

30

**New (majority)**

- |   |   |
|---|---|
| <p>(3) In section CX 44C(1)(b), “share.” is replaced by “share; and” and the following is added:</p> <p style="padding-left: 40px;">“(c) the entity disposing of the share is not assured, under an arrangement entered with another person when the share is acquired, of having a gain on the disposal.”</p> <p>(4) In section CX 44C, in the list of defined terms, “portfolio investment-linked life fund” is inserted.</p>   | 5   |
| <p><b>24C Portfolio investor allocated income and distributions of income by portfolio investment entities</b></p>  |   |
| <p>(1) Section CX 44D(1) is replaced by the following:</p> <p style="padding-left: 40px;"><i>“Portfolio investor allocated income</i></p> <p>“(1) Portfolio investor allocated income derived under section CP 1 (Portfolio investor allocated income) in a portfolio calculation period in an income year by an investor in a portfolio tax rate entity is excluded income of the investor if—</p> <p style="padding-left: 40px;">“(a) the prescribed investor rate for the investor and the portfolio calculation period is more than zero; and</p> <p style="padding-left: 40px;">“(b) the prescribed investor rate for the investor and the portfolio calculation period is not more than the portfolio investor rate for the investor and the portfolio calculation period when the entity calculates in relation to the portfolio investor allocated income—</p> <p style="padding-left: 80px;">“(i) the portfolio entity tax liability of the entity; or</p> <p style="padding-left: 80px;">“(ii) the amount of a payment under section HL 23B (Optional payments of tax by portfolio tax rate entities) that the entity intends to be a final payment of the portfolio entity tax liability of the entity in relation to the portfolio investor allocated income; and</p> <p style="padding-left: 40px;">“(c) for a portfolio tax rate entity making payments of tax under section HL 21 (Payments of tax by portfolio tax rate entity making no election), the portfolio investor allocated income is not allocated to a portfolio allocation period that includes part of a portfolio investor exit period for the investor.”</p> | <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> |

**New (majority)**

- |   |   |
|---|---|
| <p>(2) In section CX 44D(2), “distribution by” is replaced by “distribution or dividend of”.</p> <p>(3) In section CX 44D(3), in the words before paragraph (a), “distribution by” is replaced by “distribution or dividend of”.</p> <p>(4) Section CX 44D(3)(a)(i) is replaced by the following:</p> <p style="padding-left: 40px;">“(i) is a natural person or a trustee; and”.</p> | 5 |
|---|---|

**24D Cost of revenue account property**

- |  |    |
|--|----|
| <p>(1) Section DB 17(3)(a) is replaced by the following:</p> <p style="padding-left: 40px;">“(a) the person is a portfolio investment entity or a life insurer in relation to that part of the life insurer that is a portfolio investment-linked life fund; and”.</p> <p>(2) In section DB 17, in the list of defined terms, “portfolio investment-linked life fund” is inserted.</p> | 10 |
|--|----|

**25 Research or development**

- |  |   |
|--|---|
| <p>(1) In section DB 26(2), “paragraph 5.1 or 5.2 of the reporting standard” is replaced by “paragraph 68(a) of the reporting standard, applying, for the purposes of that paragraph, paragraphs 54 to 67 of the reporting standard”.</p> <p>(2) Section DB 26(3) is repealed.</p> <p>(3) In section DB 26(4)(a), “of paragraph 2.3 of the reporting standard” is replaced by “it is an amount written off due to its being an immaterial amount for financial reporting purposes”.</p> <p>(4) Section DB 26(4)(b) is replaced by the following:</p> <p style="padding-left: 40px;">“(b) would be required, if the expenditure were material, to recognise it for financial reporting purposes under paragraph 68(a) of the reporting standard, applying, for the purposes of that paragraph, paragraphs 54 to 67 of the reporting standard.”</p> <p>(5) Section DB 26(5)(b) is replaced by the following:</p> <p style="padding-left: 40px;">“(b) has written off the expenditure due to its being an immaterial amount for financial reporting purposes; and”.</p> <p>(6) <b>Subsections (1) to (5)</b> apply for—</p> | <p>15</p> <p></p> <p>20</p> <p></p> <p>25</p> <p>30</p> |
|--|---|

Taxation (Annual Rates, Business Taxation, KiwiSaver, and Remedial Matters)	
Part 1 cl 25	
(a) the 2007–08 and later income years, unless <b>paragraph (b)</b> applies; or	
(b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year.	5
<b>26 Some definitions</b>	
(1) Section DB 27(1) is replaced by the following:	
<i>“Definitions</i>	
“(1) In this section, and in section DB 26,—	10
<b>“development</b> is defined in paragraph 8 of the reporting standard	
<b>“reporting standard</b> means the New Zealand Equivalent to International Accounting Standard 38, approved by the Accounting Standards Review Board, and as amended from time to time or an equivalent standard issued in its place	15
<b>“research</b> is defined in paragraph 8 of the reporting standard.”	
(2) In section DB 27, in the list of defined terms, “Financial Reporting Standard No 13 1995 (Accounting for Research and Development Activities),” is omitted.	20
(3) <b>Subsections (1) and (2)</b> apply for—	
(a) the 2007–08 and later income years, unless <b>paragraph (b)</b> applies; or	
(b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year.	25
<b>27 Gifts of money by company</b>	
(1) Section DB 32(1), other than the heading, is replaced by the following:	30
“(1) This section applies to a company.”	
(2) In section DB 32(3), “5% of” is omitted.	
(3) <b>Subsection (1)</b> applies for the 2008–09 and later income years.	

**New (majority)**

**27B Certain investors have deduction for portfolio investor allocated loss**

Section DB 43B(2)(a) is replaced by the following:

“(a) the portfolio tax rate entity makes payments of tax under section HL 21 (Payments of tax by portfolio tax rate entity making no election) and the investor’s income year includes the end of the portfolio tax rate entity’s income year.”.

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**28 Sale of business: transferred employment income obligations**

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(1) In section DC 9(2)(a), “any part” is replaced by “the provision made by the seller for a part”.

(2) In section DC 9(2)(b), “of the provision” is inserted after “the amount”.

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

15

“(3) If the seller and the buyer are associated persons at the time of the sale,—

“(a) the buyer is allowed a deduction for the provision made by the seller for the amount of employment income if the seller would have been allowed a deduction for the amount if the business, or the part of the business, had not been sold; and

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**Struck out (majority)**

“(b) subsection (2) does not apply; and

“(c) section EA 4(5) (Deferred payment of employment income) applies.

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**New (majority)**

“(b) section EA 4(5) (Deferred payment of employment income) applies.

*“Deduction: Buyer’s payment exceeding provision*

“(3B) The buyer is allowed a deduction for any part of the amount of employment income that the buyer pays and that exceeds the provision made by the seller for that amount.”

(4) In section DC 9(4)(b), “subsection (3) overrides” is replaced by “subsections (3) and **(3B)** override”. 5

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

## 29 **Heading to subpart DF**

In the heading to subpart DF, “**grants**” is replaced by “**grants and compensation**”. 10

## 30 **New section DF 4 added**

After section DF 3, the following is added:

### Struck out (majority)

“**DF 4 Payment for attendant care by person receiving certain accident compensation payments**” 15

### New (majority)

“**DF 4 Payment by claimant receiving personal service rehabilitation payment**”

### Struck out (majority)

*“When this section applies*

“(1) This section applies when a person who is a claimant under the Injury Prevention, Rehabilitation, and Compensation Act 2001 is paid an amount under section 81(1)(b) of that Act for an income year, and the amount is assessable income. 20

*“Deduction*

“(2) The person is allowed a deduction for the amount paid by them to a caregiver for providing attendant care to the person 25

**Struck out (majority)**

in the income year, to the extent to which the amount is equal to or less than the amount, after any deduction of tax under this Act, paid to the person under section 81(1)(b) of that Act for the year.

*“Link with subpart DA*

5

- “(3) This section supplements the general permission and overrides the capital limitation and private limitation for the amount described in **subsection (2)**. The other general limitations still apply.

**New (majority)**

*“When this section applies*

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- “(1) This section applies when a person (the **claimant**) is paid a personal service rehabilitation payment for the claimant under the Injury Prevention, Rehabilitation, and Compensation Act 2001 for an income year, and the amount of the payment is assessable income.

15

*“Deduction*

- “(2) The claimant is allowed a deduction for the income year of the amount given by **subsection (3)**.

*“Formula*

- “(3) The amount of the deduction allowed under **subsection (2)** is calculated using the following formula:

20

$$\frac{\text{amount paid}}{1 - \text{tax rate.}}$$

*“Definition of items in formula*

- “(4) In the formula,—  
“(a) **amount paid** is the amount paid by the claimant for an income year for a key aspect of social rehabilitation referred to in the definition of personal service rehabilitation payment in section OB 1, to the extent to which

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**New (majority)**

the amount is less than the amount of personal service rehabilitation payments, after any deduction of tax under this Act, paid to the claimant for the income year:

“(b) **tax rate** is the rate at which tax is deducted under this Act from personal service rehabilitation payments for the income year. 5

“*Link with subpart DA*

“(5) This section supplements the general permission and overrides the capital limitation and private limitation for the amount described in **subsection (2)**. The other general limitations still apply. 10

“Defined in this Act: assessable income, capital limitation, general limitation, general permission, income year, payment, personal service rehabilitation payment, private limitation”.

**31 When FIF loss arises 15**

**New (majority)**

(1) In section DN 6(1),—

(a) in paragraph (d), in the words before subparagraph (i), “any time during the income year” is replaced by “any time in the year”:

(b) in paragraph (db), in the words before subparagraph (i), “, at any time in the year,” is inserted after “the person holds”. 20

**Struck out (majority)**

After section DN 6(1), the following is inserted:

“*Treatment of deemed transaction under section EX 53 or EX 54B* 25

“(1B) If a person is treated under section EX 53 (Changes in applications of FIF exemptions) or EX 54B (FIF rules first applying to interest for income year beginning on or after 1 April 2007)



**Struck out (majority)**

as disposing of or acquiring rights in an income year, the disposal or acquisition is ignored for the purposes of subsection (1)(d) and (db).”

**New (majority)**

(2) After section DN 6(1), the following is inserted:

*“Treatment of deemed transaction under section EX 51,  
EX 53, or EX 54B* 5

“(1B) If a person is treated under section EX 51 (Consequences of changes in method), EX 53 (Changes in applications of FIF exemptions), or EX 54B (FIF rules first applying to interest for income year beginning on or after 1 April 2007) as disposing of or acquiring rights in an income year, the disposal or acquisition is ignored for the purposes of subsection (1)(d) and (db).” 10

**31B Acquiring film rights**

(1) In section DS 1(2)(c), “expenditure.” is replaced by “expenditure; or” and the following is added: 15

“(d) **section DS 2B** applies to the expenditure.”

(2) In section DS 1(4), “except under **section DS 2B**” is inserted after “under any other provision of this Act”.

**32 Film production expenditure** 20

(1) Section DS 2(3) and (4) are replaced by the following:

*“Exclusion*

“(3) This section does not apply to film production expenditure if—

“(a) the film is produced mainly for broadcast in New Zealand by a person who operates a television station, a television network, or a cable television system: 25

**Struck out (majority)**

“(b) the film is intended to be shown as an advertisement.

**New (majority)**

“(b) the film is intended to be shown as an advertisement:  
“(c) **section DS 2B** applies to the film production expenditure.

*“Timing of deduction*

- “(4) The deduction is allocated under— 5
- “(a) section EJ 7 (Film production expenditure for New Zealand films having no large budget screen production grant) or EJ 8 (Film production expenditure for other films having no large budget screen production grant) if the film is not one for which a large budget screen production grant is made; or 10
- “(b) section EJ 4 (Expenditure incurred in acquiring film rights in feature films) or EJ 5 (Expenditure incurred in acquiring film rights in films other than feature films) if the film is one for which a large budget screen production grant is made.” 15

**New (majority)**

(1B) In section DS 2(5), “except under **section DS 2B**” is inserted after “under any other provision of this Act”.

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

**New (majority)**

**32B New section DS 2B inserted** 20

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

**New (majority)**

**“DS 2B Expenditure in acquiring film, or film right, intended for disposal**

*“Deduction*

- “(1) A person is allowed a deduction for film production expenditure or expenditure incurred in acquiring a film right if, when the person incurs the expenditure, the person intends to dispose of the film or film right. 5

*“Timing of deduction*

- “(2) The deduction is allocated under section EA 2 (Other revenue account property). 10

*“Link with subpart DA*

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

“Defined in this Act: capital limitation, deduction, film, film production expenditure, film right, general limitation, general permission”. 15

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

**33 Maori authorities: donations**

- (1) In section DV 11(2), “5% of” is omitted.  
(2) **Subsection (1)** applies for the 2008–09 and later income years. 20

**34 Cost**

- (1) In section EB 6(1), “, unless **subsection (1B)** applies” is inserted after “accounting practice”.  
(2) After section EB 6(1), the following is inserted:  
*“Valuation at cost: agricultural produce 25*  
“(1B) Despite subsection (1), a person who uses NZIAS 41 for their trading stock in their financial statements must—  
“(a) value their closing stock at cost; and  
“(b) include and allocate costs so that the value of their closing stock is not materially different from the value 30

- of the closing stock obtained by applying NZIAS 2 ignoring paragraph 20 of NZIAS 2.”
- (3) In section EB 6(2), “Financial Reporting Standard No 4 (Accounting for Inventories) approved under the Financial Reporting Act 1993” is replaced by “NZIAS 2”. 5
- (4) The following is added to section EB 6:
- “Definitions*
- “(3) In this section, **NZIAS 41** means New Zealand Equivalent to International Accounting Standard 41, approved by the Accounting Standards Review Board and as amended from time to time, or an equivalent standard issued in its place.” 10
- (5) In section EB 6, in the list of defined terms, “NZIAS 2” and “NZIAS 41” are inserted.
- (6) **Subsections (1) to (5)** apply for—
- (a) the 2007–08 and later income years, unless **paragraph (b)** applies; or 15
- (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year. 20
- 35 Discounted selling price**
- (1) In section EB 9(3)(a), “Financial Reporting Standard No 4 (Accounting for Inventories) approved under the Financial Reporting Act 1993” is replaced by “NZIAS 2”.
- (2) In section EB 9, in the list of defined terms, “NZIAS 2” is inserted. 25
- (3) **Subsections (1) and (2)** apply for—
- (a) the 2007–08 and later income years, unless **paragraph (b)** applies; or
- (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year. 30

- 36 Valuing closing stock consistently**
- (1) In section EB 12, “Financial Reporting Standard No 1 (Disclosure of Accounting Policies) approved under the Financial Reporting Act 1993” is replaced by “NZIAS 8”.
  - (2) In section EB 9, in the list of defined terms, “NZIAS 8” is inserted. 5
  - (3) **Subsections (1) and (2)** apply for—
    - (a) the 2007–08 and later income years, unless **paragraph (b)** applies; or
    - (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year. 10
- 37 Discounted selling price for low-turnover traders**
- (1) In section EB 19(4)(a), “Financial Reporting Standard No 4 (Accounting for Inventories) approved under the Financial Reporting Act 1993” is replaced by “NZIAS 2”. 15
  - (2) In section EB 9, in the list of defined terms, “NZIAS 2” is inserted.
  - (3) **Subsections (1) and (2)** apply for— 20
    - (a) the 2007–08 and later income years, unless **paragraph (b)** applies; or
    - (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year. 25
- 38 Valuing closing stock consistently for low-turnover traders**
- (1) In section EB 22(1), “Financial Reporting Standard No 1 (Disclosure of Accounting Policies) approved under the Financial Reporting Act 1993” is replaced by “NZIAS 8”. 30
  - (2) In section EB 22, in the list of defined terms, “NZIAS 8” is inserted.
  - (3) **Subsections (1) and (2)** apply for— 35
    - (a) the 2007–08 and later income years, unless **paragraph (b)** applies; or

- (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year.
- 39 Reduction: bloodstock not previously used for breeding in New Zealand** 5
- (1) In the heading to section EC 41, “**other than as shuttle stallions**” is added after “**New Zealand**”.
- (2) Section EC 41(1)(b) is replaced by the following:
- “(b) before a person (**person A**) acquired it, was not used for breeding in New Zealand by any other person.” 10
- (3) After section EC 41(1), the following is inserted:
- “Further bloodstock to which this section applies*
- “(1B) This section also applies to bloodstock that, before person A acquired it, was used by another person for breeding in New Zealand if— 15
- “(a) the other person transferred the bloodstock to person A under a matrimonial agreement to which section FF 12 (Bloodstock) applies:
- “(b) the other person was a company in the same wholly-owned group as person A at the time person A acquired the bloodstock from the other person: 20
- “(c) the bloodstock is a stallion that, for each year in which the stallion was used for breeding in New Zealand before being acquired by person A, was— 25
- “(i) owned by a non-resident; and
- “(ii) removed from New Zealand after the breeding season; and
- “(iii) not subject to a reduction under this section.”
- (4) **Subsections (2) and (3)** apply to bloodstock acquired on or after 1 August 2007. 30
- 40 Valuation of excepted financial arrangements**
- (1) In section ED 1(3), “Financial Reporting Standard No 1 (Disclosure of Accounting Policies) approved under the Financial Reporting Act 1993” is replaced by “NZIAS 8”. 35

**Struck out (majority)**

- (2) In section EB 1, in the list of defined terms, “NZIAS 8” is inserted.

**New (majority)**

- (2) In section ED 1, in the list of defined terms, “NZIAS 8” is inserted.

- (3) **Subsections (1) and (2)** apply for— 5
- (a) the 2007–08 and later income years, unless **paragraph (b)** applies; or
  - (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 10  
income year.

**New (majority)**

**40B Allocation of income and deductions by portfolio tax rate entity**

- (1) In the heading to section EG 3, “**income and deductions**” is replaced by “**income, deductions, and credits**”. 15
- (2) After section EG 3(2), the following is added:
- “Credits*
- “(3) A credit received by a portfolio tax rate entity is allocated to the portfolio allocation period under subsection (2) of the income to which the credit relates.” 20

**41 Expenditure incurred in acquiring film rights in feature films**

- (1) Section EJ 4(1) is replaced by the following:
- “Feature films*
- “(1) A deduction for expenditure that a person incurs in acquiring a film right is allocated under this section if the film is a feature film and— 25

- “(a) the deduction is under section DS 1 (Acquiring film rights):
  - “(b) the deduction is under section DS 2 (Film production expenditure) and the film is one for which a large budget screen production grant is made.” 5
- (2) **Subsection (1)** applies for the 2005–06 and later income years.
  
- 42 Expenditure incurred in acquiring film rights in films other than feature films**
- (1) Section EJ 5(1) is replaced by the following:
  - “*Films other than feature films* 10
  - “(1) A deduction for expenditure that a person incurs in acquiring a film right is allocated under this section if the film is not a feature film and—
    - “(a) the deduction is under section DS 1 (Acquiring film rights): 15
    - “(b) the deduction is under section DS 2 (Film production expenditure) and the film is one for which a large budget screen production grant is made.”
- (2) **Subsection (1)** applies for the 2005–06 and later income years.
  
- 43 Film production expenditure for New Zealand films** 20
- (1) The heading to section EJ 7 is replaced by “**Film production expenditure for New Zealand films having no large budget screen production grant**”.
- (2) Section EJ 7(1) is replaced by the following:
  - “*New Zealand films* 25
  - “(1) A deduction under section DS 2 (Film production expenditure) for film production expenditure is allocated under this section if—
    - “(a) the film is not one for which a large budget screen production grant is made; and 30
    - “(b) the film has a final certificate under section EJ 6.”
- (3) **Subsections (1) and (2)** apply for the 2005–06 and later income years.



- 44 Film production expenditure for films other than New Zealand films**
- (1) The heading to section EJ 8 is replaced by “**Film production expenditure for other films having no large budget screen production grant**”. 5
- (2) Section EJ 8(1) is replaced by the following:  
*“Films other than New Zealand films*  
 “(1) A deduction under section DS 2 (Film production expenditure) for film production expenditure is allocated under this section if— 10  
 “(a) the film is not one for which a large budget screen production grant is made; and  
 “(b) the film does not have a final certificate under section EJ 6.”  
 (3) **Subsections (1) and (2)** apply for the 2005–06 and later income years. 15

**Struck out (majority)**

- 45 What spreading methods do**
- (1) Before section EW 14(2)(a), the following is inserted:  
 “(aa) the IFRS method, to which **sections EW 15B and EW 15C** are relevant; or”. 20
- (2) Section EW 14(2)(e) is repealed.
- (3) **Subsections (1) and (2)** apply for—  
 (a) the 2007–08 and later income years, unless **paragraph (b)** applies; or  
 (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply **subsections (1) and (2)** in a return of income for that year. 25
- 46 What is included when spreading methods used** 30
- (1) In section EW 15(1)(b), “ignoring non-contingent fees; and” is replaced by “ignoring—”, and the following is added:  
 “(i) non-contingent fees, if the relevant spreading method is not the IFRS method:

**Struck out (majority)**

- “(ii) non-integral fees, if the relevant spreading method is the IFRS method; and”.
- (2) In section EW 15, in the list of defined terms, “non-integral fee” is inserted.
- (3) **Subsections (1) and (2)** apply for— 5
- (a) the 2007–08 and later income years, unless **paragraph (b)** applies; or
- (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply **subsections (1) and (2)** in a return of income for that year. 10
- 47 New sections EW 15B and EW 15C inserted**
- (1) After section EW 15, the following is inserted: 15
- “EW 15B IFRS method**
- “Who must use the IFRS method*
- “(1) A person who is a party to a financial arrangement must use the IFRS method if the person prepares financial reports for financial arrangements using NZIAS 39.
- “Compliance* 20
- “(2) A person who must use the IFRS method for an arrangement must comply with the requirements of **section EW 15C**.
- “Defined in this Act: financial arrangement, NZIAS 39
- “EW 15C IFRS method: requirements**
- “Who this section applies to* 25
- “(1) This section applies to a person who must use the IFRS method for a financial arrangement under **section EW 15B**.
- “Applying IFRS*
- “(2) For the financial arrangement, a person must allocate an amount to an income year in accordance with NZIAS 39, as 30

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modified by **subsections (3) and (4)**, unless the exception in **subsection (5)** applies.

*“Modification: impaired credit adjustment*

- “(3) For a financial arrangement, an amount arising from an impaired credit adjustment under NZIAS 39 is not allocated to an income year. 5

*“Modification: equity reserves*

- “(4) For a financial arrangement, an amount arising from the fair value method under NZIAS 39 is allocated to an income year, even though the amount is allocated to equity reserves under NZIAS 39. 10

*“Exception for determinations*

- “(5) For a financial arrangement, a person who in the absence of this subsection would be required to allocate an amount arising from the fair value method under NZIAS 39 (as modified by this section) may instead apply the following alternative methods to the arrangement, if relevant: 15

“(a) Determination G9C: Financial arrangements that are denominated in a currency other than New Zealand dollars: an expected value approach: 20

“(b) Determination G14B: Forward contracts for foreign exchange and commodities: an expected value approach:

“(c) Determination G27: Swaps:

“(d) a determination made by the Commissioner under **section 90AC(1)(ba)** of the Tax Administration Act 1994: 25

“(e) an alternative method to 1 of those described in **paragraphs (a) to (d)**, if that alternative—

“(i) has regard to the principles of accrual accounting; and 30

“(ii) conforms with commercially acceptable practice; and

“(iii) results in the allocation to each income year of amounts that are not materially different from

**Struck out (majority)**

those that would have been allocated using 1 of  
those described in **paragraphs (a) to (d)**.

*“Some definitions*

“(6) In this section,—

“**fair value method** means a method of calculating income or  
expenditure for an income year that takes into account move- 5  
ments in fair value as determined under NZIAS 39

“**impaired credit adjustment** means,—

“(a) for a financial arrangement accounted for using the fair  
value method, the movement in fair value due to the 10  
decline in credit quality of the arrangement:

“(b) for a financial arrangement not accounted for using the  
fair value method, credit impairment adjustments made  
under paragraph 63 or 66 of NZIAS 39.

“Defined in this Act: amount, Commissioner, fair value method, financial arrange- 15  
ment, forward contract, futures contract, impaired credit adjustment, income year,  
NZIAS 39”.

(2) **Subsection (1)** applies for—

(a) the 2007–08 and later income years, unless **paragraph (b)**  
applies; or 20

(b) the first income year for which a person adopts IFRSs  
for the purposes of financial reporting and later income  
years, if that first income year is before the 2007–08  
income year and the person chooses to apply **subsection**  
**(1)** in a return of income for that year. 25

**48 Yield to maturity method or alternative**

(1) In section EW 16(1), “method” is replaced by “method, if the  
person is not required to use the IFRS method under **section EW**  
**15B**”.

(2) In section EW 16(2), “method,” is replaced by “method if the 30  
person is not required to use the IFRS method under **section EW**  
**15B**,”.

(3) **Subsections (1) and (2)** apply for—

(a) the 2007–08 and later income years; or

**Struck out (majority)**

- |  |   |    |
|--|---|----|
| (b)  | the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply <b>subsections (1) and (2)</b> in a return of income for that year. | 5  |
| <b>49 Straight-line method</b>                   |   |    |
| (1)  | In section EW 17(1)(b), “EW 25(1).” is replaced by “EW 25(1); and”, and the following is added:   |    |
|  | “(c) the person is not required to use the IFRS method under <b>section EW 15B.</b> ”   | 10 |
| (2)  | <b>Subsection (1)</b> applies for—  |    |
|  | (a) the 2007–08 and later income years, unless <b>paragraph (b)</b> applies; or   |    |
|  | (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply <b>subsection (1)</b> in a return of income for that year.      | 15 |
| <b>50 Market valuation method</b>                |   |    |
| (1)  | In section EW 18(1)(f), “way).” is replaced by “way); and”, and the following is added:   | 20 |
|  | “(g) the person is not required to use the IFRS method under <b>section EW 15B.</b> ”   |    |
| (2)  | <b>Subsection (1)</b> applies for—  |    |
|  | (a) the 2007–08 and later income years, unless <b>paragraph (b)</b> applies; or   | 25 |
|  | (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply <b>subsection (1)</b> in a return of income for that year.      | 30 |
| <b>51 Choice among first 3 spreading methods</b> |   |    |
| (1)  | In the heading to section EW 19, “ <b>first 3</b> ” is replaced by “ <b>some</b> ”.   |    |

**Struck out (majority)**

- |   |  |    |
|---|--|----|
| (2)   | <b>Subsection (1)</b> applies for— <ul style="list-style-type: none"> <li>(a) the 2007–08 and later income years, unless <b>paragraph (b)</b> applies; or</li> <li>(b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply <b>subsection (1)</b> in a return of income for that year.</li> </ul>                 | 5  |
| <b>52 Determination method or alternative</b> |  |    |
| (1)   | In section EW 20(1)(b)(ii), “do so.” is replaced by “do so; and”, and the following is added: <ul style="list-style-type: none"> <li>“(c) the person is not required to use the IFRS method under <b>section EW 15B.</b>”</li> </ul>   | 10 |
| (2)   | After section EW 20(2)(b), the following is inserted: <ul style="list-style-type: none"> <li>“(bb) the person is not required to use the IFRS method under <b>section EW 15B; and</b>”.</li> </ul>   | 15 |
| (3)   | <b>Subsections (1) and (2)</b> apply for— <ul style="list-style-type: none"> <li>(a) the 2007–08 and later income years, unless <b>paragraph (b)</b> applies; or</li> <li>(b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply <b>subsections (1) and (2)</b> in a return of income for that year.</li> </ul> | 20 |
| <b>53 Section EW 21 repealed</b>              |  |    |
| (1)   | Section EW 21 is repealed.   | 25 |
| (2)   | <b>Subsection (1)</b> applies for— <ul style="list-style-type: none"> <li>(a) the 2007–08 and later income years, unless <b>paragraph (b)</b> applies; or</li> <li>(b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply <b>subsection (1)</b> in a return of income for that year.</li> </ul>                 | 30 |

**Struck out (majority)**

**54 Failure to use method for financial reporting purposes**

- (1) In section EW 23(1) and (2), “EW 20(2)(f), and EW 21(e)” is replaced by “and EW 20(2)(f)” in each place where it appears.
- (2) **Subsection (1)** applies for—
  - (a) the 2007–08 and later income years, unless **paragraph (b)** applies; or
  - (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply **subsection (1)** in a return of income for that year.

**55 Consistency of use of spreading method**

- (1) After section EW 24(2), the following is inserted:  
     “*IFRS method*”
- “(2B) **Section EW 25B** sets out a particular consistency requirement for the IFRS method.”
- (2) **Subsection (1)** applies for—
  - (a) the 2007–08 and later income years, unless **paragraph (b)** applies; or
  - (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply **subsection (1)** in a return of income for that year.

**56 New section EW 25B inserted**

- (1) After section EW 25, the following is inserted:  
     “**EW 25B Consistency of use of IFRS method**  
     A person who starts to apply a method under **section EW 15C** for a financial arrangement must use it over the arrangement’s remaining term until section EW 29 requires them to calculate a base price adjustment for the arrangement, unless section EW 26(2) applies.

    “Defined in this Act: financial arrangement, income year”.

**Struck out (majority)**

- (2) **Subsection (1)** applies for—
- (a) the 2007–08 and later income years, unless **paragraph (b)** applies; or
  - (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply **subsection (1)** in a return of income for that year. 5
- 57 Change of spreading method** 10
- (1) In section EW 26, the following is added:
- “Sound commercial reason*
- “(6) In this section, **sound commercial reason** includes starting to and ceasing to prepare financial accounts using IFRSs in accordance with the Financial Reporting Act 1993.”
- (2) In section EW 26, in the list of defined terms, “IFRS” is inserted. 15
- (3) **Subsections (1) and (2)** apply for—
- (a) the 2007–08 and later income years, unless **paragraph (b)** applies; or
  - (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply **subsections (1) and (2)** in a return of income for that year. 20
- 58 Base price adjustment formula** 25
- (1) In section EW 31(7), “ignoring non-contingent fees.” is replaced by “ignoring—”, and the following is added:
- “(a) non-contingent fees, if the relevant spreading method is not the IFRS method:
  - “(b) non-integral fees, if the relevant spreading method is the IFRS method.” 30
- (2) In section EW 31, in the list of defined terms, “non-integral fee” is inserted.
- (3) **Subsections (1) and (2)** apply for—



- (a) the 2007–08 and later income years, unless **paragraph (b)** applies; or
- (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply **subsections (1) and (2)** in a return of income for that year.

**45 What spreading methods do**

(1) Before section EW 14(2)(a), the following is inserted:

“(aa) the IFRS taxpayer method, to which **sections EW 15B to EW 15E** are relevant; or”.

(2) Section EW 14(2)(e) is repealed.

(3) In section EW 14, in the list of defined terms, “IFRS taxpayer method” is inserted.

(4) **Subsections (1) to (3)** apply for—

(a) the 2007–08 and later income years, unless **paragraph (b) or (c)** applies; or

(b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; or

(c) the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007.

**46 What is included when spreading methods used**

(1) In section EW 15(1)(a), “ignoring non-contingent fees; and” is replaced by “ignoring—”, and the following is added:

“(i) non-contingent fees, if the relevant method is not the IFRS method described in **section EW 15C**:

**New (majority)**

- |  |  |
|--|--|
| <p>“(ii) non-integral fees, if the relevant method is the IFRS method described in <b>section EW 15C</b>; and”.</p> <p>(2) In section EW 15(1)(b), “ignoring non-contingent fees; and” is replaced by “ignoring—”, and the following is added:</p> <p style="padding-left: 40px;">“(i) non-contingent fees, if the relevant method is not the IFRS method described in <b>section EW 15C</b>;</p> <p style="padding-left: 40px;">“(ii) non-integral fees, if the relevant method is the IFRS method described in <b>section EW 15C</b>; and”.</p> <p>(3) In section EW 15, in the list of defined terms, “non-integral fee” is inserted.</p> <p>(4) <b>Subsections (1) to (3)</b> apply for—</p> <p style="padding-left: 20px;">(a) the 2007–08 and later income years, unless <b>paragraph (b) or (c)</b> applies; or</p> <p style="padding-left: 20px;">(b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; or</p> <p style="padding-left: 20px;">(c) the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007.</p> <p><b>47 New sections EW 15B to EW 15E inserted</b></p> <p>(1) After section EW 15, the following is inserted:</p> <p style="padding-left: 20px;"><b>“EW 15B IFRS taxpayer method</b></p> <p style="padding-left: 40px;"><i>“Who this section applies to</i></p> <p style="padding-left: 20px;">“(1) This section applies to a person who is a party to a financial arrangement if the person uses IFRSs to prepare financial statements and to report for financial arrangements.</p> <p style="padding-left: 40px;"><i>“IFRS taxpayer method</i></p> <p style="padding-left: 20px;">“(2) The person must use the IFRS taxpayer method, described in this section and in <b>sections EW 15C to EW 15E</b>.</p> | <p></p> <p></p> <p>5</p> <p></p> <p>10</p> <p></p> <p>15</p> <p></p> <p>20</p> <p></p> <p></p> <p>25</p> <p></p> <p></p> <p>30</p> |
|--|--|

**New (majority)**

- |  |  |    |
|--|--|----|
| <i>“Compulsory use of some determinations</i>  |  |    |
| “(3) The person must use 1 of the following methods for the financial arrangement, if the terms of the relevant method allow,—   |  |    |
| “(a) <i>Determination G5C: Mandatory conversion convertible notes</i> or a determination that succeeds it:   |  | 5  |
| “(b) <i>Determination G22: Optional conversion convertible notes denominated in New Zealand dollars convertible at the option of the holder:</i>   |  |    |
| “(c) <i>Determination G22A: Optional convertible notes denominated in New Zealand dollars</i> or a determination that succeeds it:   |  | 10 |
| “(d) <i>Determination G29: Agreements for sale and purchase of property denominated in foreign currency: exchange rate to determine the acquisition price and method for spreading income and expenditure</i> or a determination that succeeds it: |  | 15 |
| “(e) an alternative method to 1 of those methods described in <b>paragraphs (a) to (d)</b> , if that alternative—  |  |    |
| “(i) has regard to the purposes of the financial arrangements rules under section EW 1(3); and   |  | 20 |
| “(ii) is for financial arrangements similar to those arrangements to which the methods described in <b>paragraphs (a) to (d)</b> may apply; and  |  |    |
| “(iii) results in the allocation to each income year of amounts that are not materially different from those that would have been allocated using 1 of those methods described in <b>paragraphs (a) to (d)</b> .                                   |  | 25 |
| <i>“Compulsory use of other methods for certain arrangements</i>   |  | 30 |
| “(4) The person must use 1 of the methods in <b>subsection (5)</b> to allocate an amount to an income year for the financial arrangement if—   |  |    |
| “(a) the person is not required under <b>subsection (3)</b> to use a method for the financial arrangement; and   |  | 35 |
| “(b) the financial arrangement—  |  |    |

**New (majority)**

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| <p>“(i) includes an excepted financial arrangement:</p> <p>“(ii) is treated by the person or the issuer of the financial arrangement as an equity instrument in whole or in part under IFRSs:</p> <p>“(iii) is an agreement for the sale and purchase of property or services; and</p> <p>“(c) the terms of the relevant method allow.</p> <p style="padding-left: 40px;"><i>“Methods for arrangements under subsection (4)</i></p> <p>“(5) The methods referred to in <b>subsection (4)</b> are—</p> <p>“(a) the yield to maturity method:</p> <p>“(b) <i>Determination G26: Variable rate financial arrangements</i> or a determination that succeeds it:</p> <p>“(c) a determination made by the Commissioner under <b>section 90AC(1)(ba)</b> of the Tax Administration Act 1994:</p> <p>“(d) an alternative method to 1 of those methods described in <b>paragraphs (a) to (c)</b>, if that alternative—</p> <p style="padding-left: 40px;">“(i) has regard to the purposes of the financial arrangements rules under section EW 1(3); and</p> <p style="padding-left: 40px;">“(ii) is for financial arrangements similar to those arrangements to which the methods described in <b>paragraphs (a) to (c)</b> may apply; and</p> <p style="padding-left: 40px;">“(iii) results in the allocation to each income year of amounts that are not materially different from those that would have been allocated using 1 of those methods described in <b>paragraphs (a) to (c)</b>.</p> <p style="padding-left: 40px;"><i>“IFRS method and 3 alternatives</i></p> <p>“(6) If the person is not required under <b>subsection (3) or (4)</b> to use a method for the financial arrangement, the person must use 1 of the following methods for the financial arrangement:</p> <p>“(a) the IFRS method described in <b>section EW 15C</b>:</p> <p>“(b) a determination alternative to IFRS described in <b>section EW 15D</b>:</p> <p>“(c) the expected value method described in <b>section EW 15E</b>:</p> <p>“(d) the equity-free fair value method described in <b>section EW 15E</b>.</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> |
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**New (majority)**

*“Equity instrument*

“(7) In this section, **equity instrument** has the same meaning as in NZIAS 32.

“Defined in this Act: equity instrument, financial arrangement, financial arrangements rules, financial statements, IFRS, IFRS taxpayer method, income year, NZIAS 32

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**“EW 15C IFRS method**

*“Who this section applies to*

“(1) This section applies to a person and a financial arrangement if—

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“(a) **section EW 15B(6)** applies; and

“(b) the person does not use **section EW 15D or EW 15E**.

*“IFRS method*

“(2) The person must allocate an amount to an income year for the financial arrangement in accordance with IFRSs, as modified by **subsection (3)**.

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*“Modification of IFRS method*

“(3) When a person applies the IFRS method, the following modifications are made to the method, if relevant—

“(a) an amount arising from an impaired credit adjustment under IFRSs is not allocated to an income year, if the financial arrangement is a financial asset:

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“(b) an amount arising from the fair value method under IFRSs is allocated to an income year, even though the amount is allocated to equity reserves under IFRSs.

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*“Impaired credit adjustment*

“(4) In this section, **impaired credit adjustment** means,—

“(a) for a financial arrangement accounted for using the fair value method, the movement in fair value due to the decline in credit quality of the arrangement:

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**New (majority)**

“(b) for a financial arrangement not accounted for using the fair value method, credit impairment adjustments made under IFRSs.

“Defined in this Act: amount, Commissioner, fair value method, financial arrangement, impaired credit adjustment, IFRS, income year

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**“EW 15D Determination alternatives to IFRS**

*“Who this section applies to*

“(1) This section applies to a person and a financial arrangement if—

“(a) **section EW 15B(6)** applies; and 10

“(b) the person chooses in a return of income to use a determination alternative to IFRS for the financial arrangement; and

“(c) the terms of the relevant method, as modified by **subsection (3)**, allow the person to use it for the financial arrangement; and 15

“(d) the financial arrangement is not treated under IFRSs as a hedge of a financial arrangement for which the IFRS method described in **section EW 15C** applies or has applied. 20

*“Determination alternatives to IFRS*

“(2) The person must use 1 of the following methods for the financial arrangement, as modified by **subsection (3)**:

“(a) *Determination G9C: Financial arrangements that are denominated in a currency other than New Zealand dollars: an expected value approach* or a determination that succeeds it: 25

“(b) *Determination G14B: Forward contracts for foreign exchange and commodities: an expected value approach* or a determination that succeeds it: 30

“(c) *Determination G27: Swaps* or a determination that succeeds it:

“(d) a determination made by the Commissioner under **section 90AC(1)(ba)** of the Tax Administration Act 1994:

**New (majority)**

- “(e) an alternative method to 1 of those described in  
**paragraphs (a) to (d)**, if that alternative—
- “(i) has regard to the purposes of the financial  
arrangements rules under section EW 1(3); and 5
- “(ii) is for financial arrangements similar to those  
arrangements to which the methods described in  
**paragraphs (a) to (d)** may apply; and
- “(iii) results in the allocation to each income year of  
amounts that are not materially different from 10  
those that would have been allocated using 1 of  
those described in **paragraphs (a) to (d)**.
- “*Determination alternatives to IFRS: G9C and G14B*  
*modified*
- “(3) When a person applies a determination alternative to IFRS  
that is *Determination G9C* or *Determination G14B*, the fol- 15  
lowing modifications are made to the relevant method:
- “(a) the term **forward contract** is treated as including a  
conditional or unconditional agreement to pay or be  
paid an amount calculated by reference to the price of  
property or services, without the property being deliv- 20  
ered or the services being performed:
- “(b) a requirement that all members of a group of companies  
to which the person belongs make an election to use the  
determination alternative is treated as met if—
- “(i) all members of the group of companies make an 25  
election on or before the 63rd day after the person  
enters into the relevant financial arrangement, or  
they make the election within such further time as  
the Commissioner may allow; and
- “(ii) the financial arrangement is the first financial 30  
arrangement of the group of companies for which  
*Determination G9C* or *Determination G14B* may  
be used; and
- “(iii) the election is in writing; and

**New (majority)**

“(iv) the election is for *Determination G9C* or *Determination G14B*.

“Defined in this Act: amount, Commissioner, fair value method, financial arrangement, financial arrangements rules, forward contract, group of companies, IFRS

<b>“EW 15E Expected value method and equity-free fair value method</b>	5
<i>“Who this section applies to</i>	
“(1) This section applies to a person and a financial arrangement if—	
“(a) <b>section EW 15B(6)</b> applies; and	10
“(b) the financial arrangement is denominated in a currency other than New Zealand dollars or is a derivative instrument; and	
“(c) the financial arrangement is not treated under IFRSs as a hedge of a financial arrangement for which the IFRS method described in <b>section EW 15C</b> applies or has applied; and	15
“(d) the person is not in the business of dealing in the financial arrangement; and	
“(e) the person has entered into the financial arrangement in the ordinary course of their business; and	20
“(f) the person and all members of a group of companies to which the person belongs have chosen to use the expected value method described in <b>subsection (2)</b> or the equity-free fair value method described in <b>subsection (3)</b> by notifying the Commissioner in writing at the time the person must furnish a return of income for the relevant tax year.	25
<i>“Expected value method</i>	
“(2) A person who has chosen under <b>subsection (1)(f)</b> to use the expected value method for the financial arrangement must use a method that:	30
“(a) has the features of an expected value approach described in <i>Determination G9C</i> and <i>Determination G14B</i> ; and	35



**New (majority)**

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| <p>“(b) allocates a reasonable amount, having regard to the purposes of the financial arrangements rules under section EW 1(3), for each income year over the financial arrangement’s term.</p> <p style="padding-left: 40px;"><i>“Equity-free fair value method</i></p> <p>“(3) If the person chooses under <b>subsection (1)(f)</b> to use the equity-free IFRS method for the financial arrangement, the person must use a method that is the fair value method under IFRSs. However, an amount allocated to equity reserves under IFRSs must not be allocated to an income year.</p> <p style="padding-left: 40px;"><i>“Derivative instrument</i></p> <p>“(4) In this section, <b>derivative instrument</b> has the same meaning as in NZIAS 39.</p> <p style="padding-left: 40px;">“Defined in this Act: amount, Commissioner, derivative instrument, fair value method, financial arrangement, financial arrangements rules, IFRS, IFRS taxpayer method, income year, NZIAS 39, tax year”.</p> <p>(2) <b>Subsection (1)</b> applies for—</p> <p style="padding-left: 20px;">(a) the 2007–08 and later income years, unless <b>paragraph (b) or (c)</b> applies; or</p> <p style="padding-left: 20px;">(b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; or</p> <p style="padding-left: 20px;">(c) the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007.</p> <p><b>48 Yield to maturity method or alternative</b></p> <p>(1) In section EW 16(1), “method” is replaced by “method, if the person is not required to use the IFRS taxpayer method by <b>section EW 15B</b>”.</p> | <p></p> <p>5</p> <p>10</p> <p></p> <p>15</p> <p></p> <p>20</p> <p>25</p> <p></p> <p>30</p> |
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**New (majority)**

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| (2)                            | In section EW 16(2), “method,” is replaced by “method if the person is not required to use the IFRS taxpayer method by <b>section EW 15B</b> ,”.   |    |
| (3)                            | In section EW 16, in the list of defined terms, “IFRS taxpayer method” is inserted.  | 5  |
| (4)                            | <b>Subsections (1) to (3)</b> apply for—   |    |
| (a)                            | the 2007–08 and later income years, unless <b>paragraph (b) or (c)</b> applies; or   |    |
| (b)                            | the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; or | 10 |
| (c)                            | the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007.   | 15 |
| <b>49 Straight-line method</b> |  |    |
| (1)                            | In section EW 17(1)(b), “EW 25(1).” is replaced by “EW 25(1); and”, and the following is added:<br>“ <b>(c)</b> the person is not required to use the IFRS taxpayer method by <b>section EW 15B</b> .”   | 20 |
| (2)                            | In section EW 17, in the list of defined terms, “IFRS taxpayer method” is inserted.  | 25 |
| (3)                            | <b>Subsections (1) and (2)</b> apply for—  |    |
| (a)                            | the 2007–08 and later income years, unless <b>paragraph (b) or (c)</b> applies; or   |    |
| (b)                            | the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; or | 30 |
| (c)                            | the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and   | 35 |

**New (majority)**

the person has not adopted IFRSs for the purposes of  
financial reporting before 1 January 2007.

**50 Market valuation method**

- (1) In section EW 18(1)(f), “way).” is replaced by “way); and”,  
and the following is added: 5  
    “(g) the person is not required to use the IFRS taxpayer  
    method by **section EW 15B.**”
- (2) In section EW 18, in the list of defined terms, “IFRS taxpayer  
method” is inserted.
- (3) **Subsections (1) and (2)** apply for— 10
  - (a) the 2007–08 and later income years, unless **paragraph (b)**  
**or (c)** applies; or
  - (b) the first income year for which a person adopts IFRSs  
for the purposes of financial reporting and later income  
years, if that first income year is before the 2007–08 15  
income year and the person chooses to apply the IFRS  
taxpayer method in a return of income for that first year;  
or
  - (c) the 2008–09 and later income years, if a person’s  
2008–09 income year starts before 1 January 2008 and 20  
the person has not adopted IFRSs for the purposes of  
financial reporting before 1 January 2007.

**51 Choice among first 3 spreading methods**

- (1) In the heading to section EW 19, “**first 3**” is replaced by  
“**YTM or alternative, SL, and MV**”. 25
- (2) In section EW 19,—
  - (a) “A person who” is replaced by “A person who is not  
required to use the IFRS taxpayer method and who”.
  - (b) in the list of defined terms, “IFRS taxpayer method” is  
inserted. 30
- (3) **Subsections (1) and (2)** apply for—
  - (a) the 2007–08 and later income years, unless **paragraph (b)**  
**or (c)** applies; or

**New (majority)**

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| <p>(b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year;</p> <p>or</p> <p>(c) the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007.</p>   | <p>5</p> <p>10</p>  |
| <p><b>52 Determination method or alternative</b></p>   |                     |
| <p>(1) In section EW 20(1)(b)(ii), “do so.” is replaced by “do so; and”, and the following is added:</p> <p>“(c) the person is not required to use the IFRS taxpayer method by <b>section EW 15B.</b>”</p>   | <p>15</p>           |
| <p>(2) After section EW 20(2)(b), the following is inserted:</p> <p>“(bb) the person is not required to use the IFRS taxpayer method by <b>section EW 15B;</b> and”.</p>   |                     |
| <p>(3) In section EW 20, in the list of defined terms, “IFRS taxpayer method” is inserted.</p>   | <p>20</p>           |
| <p>(4) <b>Subsections (1) to (3)</b> apply for—</p> <p>(a) the 2007–08 and later income years, unless <b>paragraph (b) or (c)</b> applies; or</p> <p>(b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year;</p> <p>or</p> <p>(c) the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007.</p> | <p>25</p> <p>30</p> |

**New (majority)**

**53 Section EW 21 repealed**

- (1) Section EW 21 is repealed.
- (2) **Subsection (1)** applies for—
  - (a) the 2007–08 and later income years, unless **paragraph (b) or (c)** applies; or 5
  - (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; 10
  - or
  - (c) the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007. 15

**53B Default method**

- (1) In section EW 22(c), “, or a financial reporting method” is omitted.
- (2) Section EW 22(d) is repealed.
- (3) **Subsections (1) and (2)** apply for— 20
  - (a) the 2007–08 and later income years, unless **paragraph (b) or (c)** applies; or
  - (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; 25
  - or
  - (c) the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007. 30

**New (majority)**

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| <b>54</b>     | <b>Failure to use method for financial reporting purposes</b>  |    |
| (1)           | In section EW 23(1) and (2), “EW 20(2)(f), and EW 21(e)” is replaced by “and EW 20(2)(f)” in each place where it appears.  |    |
| (2)           | After section EW 23(3), the following is added:  | 5  |
|               | <i>“Relationship with subject matter: transitional rule for IFRS financial reporting</i>   |    |
| “(4)          | This section is modified by <b>section EZ 50</b> (Transitional rule for IFRS financial reporting method).”   |    |
| (3)           | <b>Subsections (1) and (2)</b> apply for—  | 10 |
|               | (a) the 2007–08 and later income years, unless <b>paragraph (b) or (c)</b> applies; or   |    |
|               | (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; or | 15 |
|               | (c) the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007.   | 20 |
| <br><b>55</b> | <br><b>Consistency of use of spreading method</b>  |    |
| (1)           | After section EW 24(2), the following is inserted:   |    |
|               | <i>“IFRS taxpayer method</i>   | 25 |
| “(2B)         | <b>Section EW 25B</b> sets out a particular consistency requirement for the IFRS taxpayer method.”   |    |
| (2)           | In section EW 24, in the list of defined terms, “IFRS taxpayer method” is inserted.  |    |
| (3)           | <b>Subsections (1) and (2)</b> apply for—  | 30 |
|               | (a) the 2007–08 and later income years, unless <b>paragraph (b) or (c)</b> applies; or   |    |
|               | (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08  | 35 |

**New (majority)**

	income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; or	
	(c) the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007.	5
<b>56</b>	<b>New section EW 25B inserted</b>	
(1)	After section EW 25, the following is inserted:	
	<b>“EW 25B Consistency of use of specific individual methods under IFRS taxpayer method</b>	10
	<i>“Consistency for financial arrangement</i>	
“(1)	A person using a specific individual method under 1 of the 4 methods described in <b>section EW 15B(6)</b> must use that specific individual method for—	15
	“(a) the remaining term of the financial arrangement, until section EW 29 requires them to calculate a base price adjustment for the arrangement; and	
	“(b) other financial arrangements that are the same as, or similar to, the financial arrangement, unless different accounting treatments under IFRSs are used for those financial arrangements.	20
	<i>“Exception: change allowed</i>	
“(2)	<b>Subsection (1)(a)</b> does not apply, and a change in specific individual method under the IFRS taxpayer method is allowed, if—	25
	“(a) the person may use the new specific individual method under the IFRS taxpayer method; and	
	“(b) the accounting treatment for the relevant financial arrangement under IFRSs is changed for the purposes of financial reporting in the same income year as the change in specific individual method.	30

**New (majority)**

- “Change allowed: spreading method adjustment*
- “(3) When a person changes their specific individual method under **subsection (2)**, sections EW 26(3), (4), and EW 27 are treated as applying as if the person’s change in specific individual method were their change in spreading method under section EW 26(2). 5
- “Exception: no spreading method adjustment for change from fair value method*
- “(4) Despite **subsection (3) of this section**, sections EW 26(3), (4), and EW 27 are not treated as applying as described, if the old specific individual method changed from is the fair value method under the IFRS method described in **section EW 15C**. Instead, **section EW 29(13)** applies. 10
- “Defined in this Act: fair value method, financial arrangement, IFRS, IFRS taxpayer method, income year”.* 15
- (2) **Subsection (1)** applies for—
- (a) the 2007–08 and later income years, unless **paragraph (b) or (c)** applies; or
  - (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; or 20
  - (c) the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007. 25
- 57 Change of spreading method**
- (1) In section EW 26, the following is added: 30
- “Exception: fair value method*
- “(6) Despite **subsection (3)**, that subsection, subsection (4), and section EW 27 do not apply to the extent to which the person’s



**New (majority)**

spreading method change involves, for a financial arrangement, a change from the fair value method under the IFRS method described in <b>section EW 15C</b> . Instead, <b>section EW 29(13)</b> applies.	
<i>“Sound commercial reason</i>	5
“(7) In this section, <b>sound commercial reason</b> includes—	
“(a) starting to use or ceasing to use IFRSs to prepare financial statements:	
“(b) starting to use, for the first time, the IFRS taxpayer method for a financial arrangement.”	10
(2) In section EW 26, in the list of defined terms, “fair value method”, “financial statements”, “IFRS”, and “sound commercial reason” are inserted.	
(3) <b>Subsections (1) and (2)</b> apply for—	
(a) the 2007–08 and later income years, unless <b>paragraph (b) or (c)</b> applies; or	15
(b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; or	20
(c) the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007.	25
<b>57B When calculation of base price adjustment required</b>	
(1) After section EW 29(12), the following is added:	
<i>“Change from fair value method under IFRS method</i>	
“(13) A party to a financial arrangement who, for the financial arrangement, changes from the fair value method under the IFRS method described in <b>section EW 15C</b> to any other method must calculate a base price adjustment as at the date of the change.”	30

**New (majority)**

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| (2)                                     | In section EW 29, in the list of defined terms, “fair value method” is inserted.   |    |
| (3)                                     | <b>Subsections (1) and (2)</b> apply for—  |    |
|   | (a) the 2007–08 and later income years, unless <b>paragraph (b) or (c)</b> applies; or   | 5  |
|   | (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; or | 10 |
|   | (c) the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007.   | 15 |
| <b>58 Base price adjustment formula</b> |  |    |
| (1)                                     | In section EW 31(7), “ignoring non-contingent fees.” is replaced by “ignoring—”, and the following is added:   |    |
|   | “(i) non-contingent fees, if the relevant method is not the IFRS method described in <b>section EW 15C</b> ;   | 20 |
|   | “(ii) non-integral fees, if the relevant method is the IFRS method described in <b>section EW 15C</b> .”   |    |
| (2)                                     | In section EW 31, in the list of defined terms, “non-integral fee” is inserted.  |    |
| (3)                                     | <b>Subsections (1) and (2)</b> apply for—  | 25 |
|   | (a) the 2007–08 and later income years, unless <b>paragraph (b) or (c)</b> applies; or   |    |
|   | (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; or | 30 |
|   | (c) the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and   | 35 |

**New (majority)**

the person has not adopted IFRSs for the purposes of  
financial reporting before 1 January 2007.

**58B New heading and new section EW 48B inserted**

(1) After section EW 48, the following is inserted:

*“Consideration when change from fair value method under  
IFRS method* 5

**“EW 48B Consideration when change from fair value method  
under IFRS method**

*“Who this section applies to*

“(1) This section applies to a party to a financial arrangement who, 10  
for the financial arrangement,—

“(a) changes from the fair value method under the IFRS  
method described in **section EW 15C** to any other method;  
and

“(b) must calculate a base price adjustment as at the date of 15  
the change, as provided by **section EW 29(13)**.

“(2) A person is treated as having been paid, on the date of the  
change, an amount of consideration equal to the financial  
arrangement’s market value on that date.

“Defined in this Act: amount, consideration, fair value method, financial 20  
arrangement”.

(2) **Subsection (1)** applies for—

- (a) the 2007–08 and later income years, unless **paragraph (b)**  
**or (c)** applies; or
- (b) the first income year for which a person adopts IFRSs 25  
for the purposes of financial reporting and later income  
years, if that first income year is before the 2007–08  
income year and the person chooses to apply the IFRS  
taxpayer method in a return of income for that first year;  
or 30
- (c) the 2008–09 and later income years, if a person’s  
2008–09 income year starts before 1 January 2008 and  
the person has not adopted IFRSs for the purposes of  
financial reporting before 1 January 2007.

**New (majority)**

**58C Meaning of CFC**

In section EX 1(1B), “1 of the tests” is replaced by “a test”.

**58D Options and similar rights in certain cases**

- (1) In section EX 11(3)(b), “under sections EX 14 to EX 17” is inserted after “10%”.
- (2) **Subsection (1)** applies for the 2005–06 and later income years.

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**58E Associates and 10% threshold**

- (1) Section EX 15(1), other than the heading, is replaced by the following:  
“(1) For the purpose of applying the 10% threshold in section EX 14, a person’s income interest in a CFC is increased by each income interest in the CFC, for the relevant accounting period, of a person associated with the person.”
- (2) **Subsection (1)** applies for the 2005–06 and later income years.

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**Struck out (majority)**

**59 Taxable distribution from non-qualifying trust**

In section EX 19(4), “(Basic rates of income tax and specified superannuation contribution withholding tax)” is replaced by “(Basic rates of income tax, specified superannuation contribution withholding tax, and retirement scheme contribution withholding tax)”.

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**New (majority)**

**59B CFC rules exemption**

- (1) In section EX 32(b), “, under sections EX 14 to EX 17” is inserted after “falls”.
- (2) **Subsection (1)** applies for the 2005–06 and later income years.

**60 Exemptions: direct income interests in FIF in grey list country**

- (1) In section EX 33(3)(c), the words before subparagraph (i) are replaced by the following:

“(c) the person has held shares in the company at all times after a time when—”.

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**New (majority)**

- (1B) Section EX 33(3)(d)(i) is replaced by the following:

“(i) carried on a business in New Zealand; and”.

**Struck out (majority)**

- (2) In section EX 33(3)(g)(i), “or more” is added after “\$1,000,000”.

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**New (majority)**

- (2) Section EX 33(3)(g)(i) and (ii) are replaced by the following:

“(i) incurs in the year expenditure, other than interest, equal to or more than the lesser of \$1,000,000 and 25% of the total expenditure, other than interest, incurred by the company in the year:

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“(ii) at all times in the year, engages a number of full-time employees or contractors equal to or more than the lesser of 10 and 25% of the total number engaged by the company; and”.

- (3) Section EX 33(4)(c) is replaced by the following:

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“(c) the person has held shares in the grey list company at all times after a time when the shares were not listed on a recognised exchange; and”.

**Struck out (majority)**

- (4) In section EX 33(4)(d), in the words before subparagraph (i), “directly or indirectly owns” is replaced by “holds more than 50% of the voting interests in”.

**New (majority)**

- (4) Section EX 33(4)(d) is replaced by the following:
- “(d) at all times in the year, the grey list company holds more than 50% of the voting interests in a company (the **resident company**) that, for 12 months or more, has—
- “(i) carried on a business in New Zealand; and
- “(ii) had in New Zealand more than 50% of the resident company’s assets and employees; and”.

**Struck out (majority)**

- (5) In section EX 33(4)(f)(i), “or more” is added after “\$1,000,000”.
- (6) Section EX 33(5)(f) is replaced by the following:
- “(f) the share purchase agreement includes a restriction on the disposal of the shares that affects for the income year the value of the benefit to the person under the agreement; and”.

**New (majority)**

- (5) Section EX 33(4)(f)(i) and (ii) are replaced by the following:
- “(i) incurs in the year expenditure, other than interest, equal to or more than the lesser of \$1,000,000 and 25% of the total expenditure, other than interest, incurred by the company in the year: 20
- “(ii) at all times in the year, engages a number of full-time employees or contractors equal to or more than the lesser of 10 and 25% of the total number engaged by the company; and”.

**New (majority)**

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|---|---------|
| (6) After section EX 33(4), the following is inserted:<br><i>“Shares acquired under venture investment agreement</i><br>“(4B) A person’s rights in a FIF that is a grey list company at a time<br>in an income year are not an attributing interest at the time if<br>the person first acquires a share or option to buy a share in the<br>company—<br>“(a) under a venture investment agreement; and<br>“(b) at the same time and on the same terms as an acquisition<br>of an interest in the FIF by the Venture Investment Fund<br>or a company owned by the Venture Investment Fund.” | 5<br>10 |
| (7) Section EX 33(5)(f) is replaced by the following:<br>“(f) the share purchase agreement includes a restriction on<br>the disposal of the shares; and”.   |         |
| (8) In section EX 33, in the list of defined terms, “non-resident”<br>is inserted.  | 15      |

**61 Exemptions limited by income years: shares in certain  
grey list companies**

**Struck out (majority)**

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|---|----|
| (1) In section EX 33B(1)(a)(ii), “is listed” is replaced by “has<br>shares in it listed”. |    |
| (2) In section EX 33B(1)(a)(v), “is listed” is replaced by “has<br>shares in it listed”.  | 20 |
| (3) In section EX 33B(2)(a)(ii), “is listed” is replaced by “has<br>shares in it listed”. |    |
| (4) In section EX 33B(2)(a)(iv), “is listed” is replaced by “has<br>shares in it listed”. | 25 |

**New (majority)**

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|---|--|
| (1) Section EX 33B(1), other than the heading, is replaced by the<br>following: |  |
|---|--|

**New (majority)**

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|---|--|
| <p>“(1) A person’s rights in a FIF are not an attributing interest in an income year beginning before 1 April 2012 if—</p> <p style="padding-left: 20px;">“(a) the rights are shares (the <b>shares</b>) in a grey list company (the <b>company</b>); and</p> <p style="padding-left: 20px;">“(b) on 17 May 2006, the company—</p> <p style="padding-left: 40px;">“(i) is not an entity described in schedule 4, part B (Foreign investment funds); and</p> <p style="padding-left: 40px;">“(ii) has more than 20 000 shareholders who have addresses in New Zealand on the company’s share register in New Zealand; and</p> <p style="padding-left: 40px;">“(iii) has shareholders referred to in <b>subparagraph (ii)</b> who between them hold shares in the company carrying voting interests of more than 50%; and</p> <p style="padding-left: 40px;">“(iv) is liable to income tax in a country listed in the grey list; and</p> <p style="padding-left: 40px;">“(v) has assets of which more than 50% in total value are shares in other companies carrying voting interests of more than 50%; and</p> <p style="padding-left: 20px;">“(c) on 17 May 2006, the shares—</p> <p style="padding-left: 40px;">“(i) are listed on a recognised exchange in New Zealand; and</p> <p style="padding-left: 40px;">“(ii) are listed on a recognised exchange in a grey list country; and</p> <p style="padding-left: 20px;">“(d) in the period of 30 days beginning from 18 December 2006, the company gives to the Commissioner the notice required by <b>paragraph (b)</b>, as that paragraph read before being substituted by <b>section 61</b> of the Taxation (Annual Rates, Business Taxation, KiwiSaver, and Remedial Matters) Act <b>2007</b>.”</p> | <p></p> <p></p> <p>5</p> <p></p> <p>10</p> <p></p> <p>15</p> <p></p> <p>20</p> <p></p> <p>25</p> |
| <p>(2) Section EX 33B(2), other than the heading, is replaced by the following:</p>   | <p>30</p>  |
| <p>“(2) A person’s rights in a FIF are not an attributing interest in an income year beginning before 1 April 2009 if—</p> <p style="padding-left: 20px;">“(a) the rights are shares (the <b>shares</b>) in a grey list company (the <b>company</b>); and</p> <p style="padding-left: 20px;">“(b) on 17 May 2006, the company—</p>  | <p></p> <p>35</p>  |



**New (majority)**

<p>“(i) is not an entity described in schedule 4, part B; and</p> <p>“(ii) has shareholders of which more than 40% have addresses in New Zealand on the company’s share register in New Zealand; and</p> <p>“(iii) has shareholders referred to in <b>subparagraph (ii)</b> who between them hold shares in the company carrying voting interests of more than 50%; and</p> <p>“(iv) is liable to income tax in a country listed in the grey list; and</p> <p>“(v) has assets of which 50% or more in total value are shares in other companies each of which is resi- dent in New Zealand; and</p> <p>“(vi) has assets of which 90% or more in total value are shares in other companies each of which is resi- dent in Australia or New Zealand and is listed on a recognised exchange in Australia or New Zealand; and</p> <p>“(c) on 17 May 2006, the shares—</p> <p style="padding-left: 20px;">“(i) are listed on a recognised exchange in New Zealand; and</p> <p style="padding-left: 20px;">“(ii) are listed on a recognised exchange in a grey list country; and</p> <p>“(d) in the period of 30 days beginning from 18 December 2006, the company gives to the Commissioner the notice required by <b>paragraph (b)</b>, as that paragraph read before being substituted by <b>section 61</b> of the Taxation (Annual Rates, Business Taxation, KiwiSaver, and Remedial Matters) Act <b>2007</b>; and</p> <p>“(e) at all times in the year, the company—</p> <p style="padding-left: 20px;">“(i) has assets of which 50% or more in total value are shares in other companies each of which is resi- dent in New Zealand; and</p> <p style="padding-left: 20px;">“(ii) has assets of which 90% or more in total value are shares in other companies each of which is resi- dent in Australia or New Zealand and is listed on a recognised exchange in Australia or New Zealand.”</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p>
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**Struck out (majority)**

**62 Exemption: shares in listed Australian company**

Section EX 33C, other than the heading and list of defined terms, is replaced by the following:

*“Exemption*

“(1) A person’s rights in a FIF in an income year are not an attributing interest if— 5

“(a) the rights are a share; and

“(b) the share is not a share that may not, or ordinarily may not, be disposed of unless together with rights in another company; and 10

“(c) the FIF is a company that meets the requirements of **subsection (2)**.

*“Australian listed company on approved index*

“(2) The company must—

“(a) at all times in the income year, be 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 15

“(b) have shares included in an index that is an approved index under the ASX Market Rules, made under Chapter 7 of the Corporations Act 2001 (Aust),— 20

“(i) at a time in the income year, if **subparagraphs (ii) and (iii)** do not apply; or

“(ii) for the first unit valuation period under section EX 44B(1) for the person in the income year, if the person is a unit valuer under that section; or 25

“(iii) for the first day in the income year, if the person values the shares at market value for each day in the income year and would calculate FIF income or loss from the shares for the income year under section EX 44B(2)(b) in the absence of this section; and 30

“(c) at all times in the income year, is not an entity described in schedule 4, part B (Foreign investment funds); and

**Struck out (majority)**

“(d) at all times in the income year, is required under the Income Tax Assessment Act 1997 (Aust) and Income Tax Assessment Act 1936 (Aust) to maintain a franking account.”

**New (majority)**

- 62 Exemption: shares in listed Australian company** 5
- (1) Section EX 33C, other than the heading and list of defined terms, is replaced by the following:
- “*Exemption*
- “(1) A person’s rights in a FIF in an income year are not an attributing interest if— 10
- “(a) the rights are a share; and
- “(b) the share is not a share that may not, or ordinarily may not, be disposed of unless together with rights in another company; and
- “(c) the FIF is a company that meets the requirements of **subsection (2)**. 15
- “*Australian listed company on approved index*
- “(2) The company must—
- “(a) at all times in the income year when the person holds a right in the company, be resident in Australia; and 20
- “(b) at all times in the income year when the person holds a right in the company, not be treated as resident in a country other than Australia under and for the purposes of an agreement that—
- “(i) is between Australia and the other country; and 25
- “(ii) would be a double tax agreement if negotiated between New Zealand and the other country; and
- “(c) have shares included in an index that is an approved index under the ASX Market Rules, made under Chapter 7 of the Corporations Act 2001 (Aust),— 30
- “(i) at the beginning of the income year, if **subparagraph (ii)** does not apply; or

**New (majority)**

- |  |                                    |
|--|------------------------------------|
| <p>“(ii) when the person acquires the shares, if the person does not own shares in the company earlier in the income year; and</p> <p>“(d) at all times in the income year when the person holds a right in the company, not be an entity described in schedule 4, part B (Foreign investment funds); and</p> <p>“(e) at all times in the income year when the person holds a right in the company, be required under the Income Tax Assessment Act 1997 (Aust) and Income Tax Assessment Act 1936 (Aust) to maintain a franking account.”</p> <p>(2) In section EX 33C, in the list of defined terms, “direct income interest”, “income”, and “income tax” are omitted.</p> | <p></p> <p>5</p> <p>10</p> <p></p> |
|--|------------------------------------|

**63 Exemption: units in certain Australian unit trusts**

- |  |   |
|--|---|
| <p>(1) Section EX 33D(1)(c) to (e) are replaced by the following:</p> <p>“(c) at all times in the year when the person holds a right in the FIF, the unit trust is resident in Australia; and</p> <p>“(d) at all times in the year when the unit trust makes a distribution to investors, 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</p> <p>“(e) the unit trust meets the requirements of—</p> <p style="padding-left: 20px;">“(i) <b>subsection (2)</b> relating to the assets of the unit trust that are shares (the <b>held shares</b>) being held by the unit trust at the end of the trust’s accounting year (the <b>trust’s year</b>) ending in the person’s income year and having then a market value greater than or equal to the cost of the share for the unit trust:</p> <p style="padding-left: 40px;">“(ii) <b>subsection (4)</b> relating to the distributions by the unit trust during the trust’s year.”</p> <p>(2) Section EX 33D(2) to (4) are replaced by the following:</p> <p style="padding-left: 20px;"><i>“Requirements for unit trust’s assets that are shares</i></p> <p>“(2) A unit trust meets the requirements of this subsection if the total market value of the held shares exceeds the total cost of</p> | <p></p> <p>15</p> <p>20</p> <p></p> <p>25</p> <p>30</p> <p></p> <p></p> <p></p> |
|--|---|

the held shares by an amount that is less than or equal to 3 times the amount calculated using the formula—  
disposal proceeds – share costs.

*“Definition of items in formula*

- “(3) In the formula in **subsection (2)**,— 5
- “(a) **disposal proceeds** is the total proceeds derived by the unit trust during the year from disposals of shares during the year:
- “(b) **share costs** is the total cost of the shares involved in the disposals referred to in **paragraph (a)**. 10

*“Requirements for unit trust’s distributions*

- “(4) A unit trust meets the requirements of this subsection if the total amount of distributions by the unit trust during the trust’s year is equal to or more than the amount calculated using the formula— 15
- $$\frac{0.7}{0.3} \times (\text{closing} - \text{opening} - \text{contributions}).$$

*“Definition of items in formula*

- “(5) In the formula in **subsection (4)**,— 20
- “(a) **closing** is the amount by which, at the end of the trust’s year, the market value of the unit trust’s assets exceeds the market value of the unit trust’s liabilities:
- “(b) **opening** is the amount by which, at the beginning of the trust’s year, the market value of the unit trust’s assets exceeds the market value of the unit trust’s liabilities: 25
- “(c) **contributions** is the total amount of contributions by investors to the unit trust during the trust’s year.

*“Currency of amounts in subsections (2) to (5)*

- “(6) In **subsections (2) to (5)**, all amounts are expressed in the currency used in the unit trust’s financial accounts.” 30
- (3) In section EX 33D, in the list of defined terms, “accounting year” is inserted.

**Struck out (majority)**

**64 Limits on choice of calculation methods**

- (1) In section EX 40(6)(d)(iii), “or deceased person” is added after “natural person”.
- (2) Section EX 40(8)(a) is replaced by the following:
  - “(a) the attributing interest is— 5
    - “(i) of a type that the Commissioner has determined under section 91AAO of the Tax Administration Act 1994 to be an interest for which the fair dividend method may be used: 10
    - “(ii) not of a type that is listed in **subsection (9)**; and”. 10
- (3) Section EX 40(9) is replaced by the following:
 

“*Fair dividend rate method: interests for which method not applicable*”
- “(9) An attributing interest of a person (the **investor**) that is not referred to in **subsection (8)(a)(i)** does not meet the requirements of subsection (8) if the interest is— 15
  - “(a) of a type that the Commissioner has determined under section 91AAO of the Tax Administration Act 1994 to be an interest for which the fair dividend method may not be used: 20
  - “(b) a fixed rate share under section LF 2(3) (Granting of underlying foreign tax credit):
  - “(c) a non-participating redeemable share:
  - “(d) an interest in a non-resident having assets of which 80% or more by value consist of financial arrangements denominated in New Zealand dollars: 25
  - “(e) a share that involves an obligation—
    - “(i) of another person to provide to the investor an amount exceeding the issue price of the share; and 30
    - “(ii) that is direct to the investor or indirect through an arrangement; and
    - “(iii) that is non-contingent or subject to a contingency that is sufficiently remote to be immaterial.”
- (4) Section EX 40(9)(d) is replaced by the following: 35

**Struck out (majority)**

- “(d) an interest in a non-resident having assets of which 80% or more by value consist, directly or indirectly, of debt instruments that are each denominated in New Zealand dollars or part of an arrangement having an economic effect as if the instrument were denominated in New Zealand dollars:” 5
- (5) **Subsection (4)** applies for the 2008–09 and later income years.

**New (majority)**

- 64 Limits on choice of calculation methods**
- (1) Section EX 40(6)(b) is replaced by the following:
- “(b) the attributing interest does not meet the requirements of **subsection (8)(a)**:” 10
- (2) Section EX 40(6)(d) is replaced by the following:
- “(d) the person is the trustee of a trust that—
- “(i) has no gifting settlor who is not a natural person or deceased person; and 15
- “(ii) at all times in the income year, would be a qualifying trust for a distribution made at the time; and
- “(iii) is mainly for the benefit of an organisation or trust with income that is exempt income under section CW 34 or CW 35 (which relate to the income of charities) or, at all times in the income year, mainly for the benefit of a natural person for whom the gifting settlors of the trust have natural love and affection or had natural love and affection when alive; and 20
- “(iv) is not a superannuation scheme.” 25
- (3) Section EX 40(8)(a) is replaced by the following:
- “(a) the attributing interest is—
- “(i) of a type that the Commissioner has determined under section 91AAO of the Tax Administration Act 1994 to be an interest for which the fair dividend rate method may be used: 30
- “(ii) not of a type that is listed in **subsection (9)**; and”.

**New (majority)**

- (4) Section EX 40(9) is replaced by the following:
- “Fair dividend rate method: interests for which method not applicable*
- “(9) An attributing interest of a person (the **investor**) for which the Commissioner has not made a determination referred to in **subsection (8)(a)(i)** does not meet the requirements of subsection (8) if the interest is—
- “(a) of a type that the Commissioner has determined under section 91AAO of the Tax Administration Act 1994 to be an interest for which the fair dividend rate method may not be used:
- “(b) a fixed rate share under section LF 2(3) (Granting of underlying foreign tax credit):
- “(c) a non-participating redeemable share:
- “(d) an interest in a non-resident having assets of which 80% or more by value consist of financial arrangements denominated in New Zealand dollars:
- “(e) a share that involves an obligation—
- “(i) of another person to provide to the investor an amount exceeding the issue price of the share; and
- “(ii) that is direct to the investor or indirect through an arrangement; and
- “(iii) that is non-contingent or subject to a contingency that is sufficiently remote to be immaterial.
- “Meaning of gifting settlor*
- “(10) A **gifting settlor**, for a trust (the **relevant trust**), is a person who is—
- “(a) a settlor, under section HH 1(1) (Interpretation) or paragraph (a)(i) of the definition of the term, of—
- “(i) the relevant trust:
- “(ii) a trust with a trustee who settles property on the relevant trust, directly or through the trustees of other trusts; and
- “(b) not the trustee of a trust.”



**New (majority)**

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|-----|---|----|
| (5) | Section EX 40(9)(d), as inserted by <b>subsection (3)</b> , is replaced by the following:   |    |
|     | “(d) an interest in a non-resident holding directly or indirectly assets of which 80% or more by value at a time in the income year consist of—   | 5  |
|     | “(i) fixed rate shares:   |    |
|     | “(ii) financial arrangements providing funds to a person and denominated in New Zealand dollars:  |    |
|     | “(iii) financial arrangements providing funds to a person and not denominated in New Zealand dollars that, under NZIAS 39, are hedged items having a value in New Zealand dollars governed by a hedging instrument that is highly effective.” | 10 |
| (6) | <b>Subsection (5)</b> applies for the 2008–09 and later income years.   |    |

- |           |  |    |
|-----------|--|----|
| <b>65</b> | <b>Use of particular calculation methods required</b>  | 15 |
|           | In section EX 40B, in the words before paragraph (a), “section EX 40(8)(a)” is replaced by “ <b>section EX 40(8)(a)(ii)</b> ”. |    |

**New (majority)**

- |            |   |    |
|------------|---|----|
| <b>65B</b> | <b>Default calculation method</b>   |    |
|            | Section EX 41(2)(b)(ii) and (iii) are replaced by the following:  |    |
|            | “(ii) the comparative value method, if subparagraph (i) does not apply and it is practical to use the comparative value method; or        | 20 |
|            | “(iii) the deemed rate of return method, if subparagraph (i) does not apply and it is not practical to use the comparative value method.” | 25 |

**Struck out (majority)**

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|-----------|--|
| <b>66</b> | <b>Branch equivalent method</b>  |
|           | In section EX 43(5)(c), “(Basic rates of income tax and specified superannuation contribution withholding tax)” is |

**Struck out (majority)**

replaced by “(Basic rates of income tax, specified superannuation contribution withholding tax, and retirement scheme contribution withholding tax)”.

**67 Comparative value method**

In section EX 44(4), “LB 2 (Credit of tax for imputation credit) or” is inserted before “LC 1”. 5

**New (majority)**

**67 Comparative value method**

- (1) In section EX 44(4), “tax that the person is allowed as a credit under section” is replaced by “amount that the person is allowed as a credit under section LB 2 (Credit of tax for imputation credit) or”. 10
- (2) Section EX 44(6B)(b) is replaced by the following:  
“(b) that meets the requirements of **section EX 40(8)(a)**.”

**68 Fair dividend rate method**

- (1) Section EX 44B(2), other than the heading, is replaced by the following: 15
- “(2) For a person who is not a unit valuer, the FIF income or loss 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— 20
  - “(a) section EX 44C, if **paragraph (b)** does not apply; or
  - “(b) section EX 44D, if the person—
    - “(i) determines the market value of the attributing interest for each period of a day in the income year; and 25
    - “(ii) chooses that this paragraph apply.”
- (2) After section EX 44B(4), the following is added:

**Struck out (majority)**

*“Treatment of attributing interests subject to returning  
share transfer*

- “(5) If an attributing interest in a FIF is an original share subject to a returning share transfer, for the purposes of a person using the fair dividend rate method to calculate FIF income or loss,— 5
- “(a) the attributing interest is treated as being held by the share supplier; and
- “(b) the share supplier is treated as deriving a dividend paid on the original share; and 10
- “(c) the share supplier is treated as not deriving a replacement payment for a dividend referred to in **paragraph (b)**.”

**New (majority)**

*“Treatment of attributing interests subject to returning  
share transfer*

- “(5) If an attributing interest in a FIF is an original share subject to a returning share transfer, for the purposes of a person using the fair dividend rate method to calculate FIF income or loss, the attributing interest is treated as being held by the share supplier.” 15

**69 Fair dividend rate method: usual method 20**

**New (majority)**

- (1A) In section EX 44C(4)(b), “year.” is replaced by “year; and” and the following is added:
- “(c) that are not, at the beginning of the income year, included in a direct income interest of 10% or more in a grey list company.” 25

- (1) Section EX 44C(5)(b)(ii) is replaced by the following:

- “(ii) the amount (the **quick sale gains**) determined under **subsection (10B)**.”
- (2) In section EX 44C(10)(b), “incurs during the income year in acquiring or increasing” is replaced by “incurs in acquiring or increasing during the income year”. 5
- (3) After section EX 44C(10), the following is inserted:
- “Quick sale gains*
- “(10B) The quick sale gains 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, using the formula— 10
- return – (interest × average cost).
- “Definition of items in formula*
- “(10C) In the formula—
- “(a) **return** is the total amount derived by the person from holding or disposing of the interest: 15
- “(b) **interest** is the amount of the interest that is both acquired and disposed of in the income year:
- “(c) **average cost** is 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 interest for each acquisition or increase.” 20
- (4) In section EX 44C(11), in the words before paragraph (a), “or is incurred on” is replaced by “or is derived from or incurred on”. 25
- (5) In section EX 44C(11)(a), “incurred” is replaced by “derived or incurred”.

**Struck out (majority)**

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- (6) After section EX 44C(12), the following is added:
- “Treatment of deemed transaction under section EX 54B* 30
- “(13) If a person is treated under section EX 54B as disposing of or acquiring a share in an income year, the disposal or acquisition is ignored for the purposes of **subsection (5)**.”
-

**New (majority)**

- (6) After section EX 44C(12), the following is added:

*“Treatment of deemed transaction under section EX 51 or  
EX 54B*

- “(13) If a person is treated under section EX 51 or EX 54B as disposing of or acquiring a share in an income year, the disposal or acquisition is ignored for the purposes of **subsection (5)**.”

5

**70 Fair dividend rate method: method for entities that value investors’ units**

- (1) In the heading to section EX 44D, “**entities that value investors’ units**” is replaced by “**unit valuers and persons valuing interests daily**”.

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- (2) Section EX 44D(1) is replaced by the following:

*“FIF income*

- “(1) If this section applies to an entity or person (the **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 period (the **unit valuation period**) of the income year for which the entity determines the value of the attributing interests or of investors’ interests in the entity.”

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**New (majority)**

- (2B) In section EX 44D(4)(b), “period.” is replaced by “period; and” and the following is added:

“(c) that are not, at the beginning of the income year, included in a direct income interest of 10% or more in a grey list company.”

25

- (3) Section EX 44D(7)(c)(ii) is replaced by the following:

“(ii) the amount (the **quick sale gains**) determined under **subsection (12B)**.”

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(4) In section EX 44D(12)(b), “incurs during the unit valuation period in acquiring or increasing” is replaced by “incurs in acquiring or increasing during the unit valuation period”.	
(5) After section EX 44D(12), the following is inserted:	
“ <i>Quick sale gains</i>	5
“(12B) The quick sale gains is the greater of zero and the total for the unit valuation period of amounts calculated, for each attributing interest that is both acquired and disposed of in the unit valuation period, using the formula—	
return – (interest × average cost).	10
“ <i>Definition of items in formula</i>	
“(12C) In the formula—	
“(a) <b>return</b> is the total amount derived by the entity from holding or disposing of the interest:	
“(b) <b>interest</b> is the amount of the interest:	15
“(c) <b>average cost</b> is 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 interest for each acquisition or increase.”	20
(6) In section EX 44D(13), in the words before paragraph (a), “or is incurred on” is replaced by “or is derived from or incurred on”.	
(7) In section EX 44D(13)(a), “incurred” is replaced by “derived or incurred”.	25
(8) After section EX 44D(14), the following is added:	
“ <i>Treatment of deemed transaction under section EX 54B</i>	
“(15) If a person is treated under section EX 54B as disposing of or acquiring a share in an income year, the disposal or acquisition is ignored for the purposes of <b>subsection (7)</b> .”	30

**71 Fair dividend rate method and cost method: calculating items in formulas for periods affected by share reorganisations**

In section EX 44E(4), “incurs during the affected period in acquiring or increasing” is replaced by “incurs in acquiring or increasing during the affected period”. 5

**Struck out (majority)**

**72 Cost method**

- (1) After section EX 45B(4)(a), the following is inserted:  
 “(ab) the amount that is shown as the net asset value of the interest in audited financial statements of the person for the relevant income year made available to the general public, if—  
     “(i) paragraph (a) does not apply; and  
     “(ii) the FIF makes available to the general public audited financial statements for its accounting year ending in the relevant income year; and  
     “(iii) the person chooses that this paragraph apply; or”. 10
- (2) In section EX 45B(4)(b), in the words before subparagraph (i), “paragraphs (a) and (ab) do not apply and” is inserted after “if”. 20
- (3) In section EX 45B(4)(b)(i), “for which the person has FIF income or loss” is inserted after “attributing interest”.
- (4) In section EX 45B(4)(c), “paragraphs (a), **(ab)**, and (b) do not apply and” is inserted after “if”.
- (5) In section EX 45B(4)(d), “paragraphs (a), **(ab)**, and (b) do not apply and” is inserted after “if”. 25
- (6) In section EX 45B(4)(e), “paragraphs (a), **(ab)**, and (b) do not apply and” is inserted after “if”.
- (7) In section EX 45B(6)(b), “incurs during the relevant income year in acquiring or increasing” is replaced by “incurs in acquiring or increasing during the relevant income year”. 30
- (8) In section EX 45B(6)(c), “section EX 44C” is replaced by “section EX 44E”.
- (9) In section EX 45B(12)(b), “incurs during the income year before the relevant income year in acquiring or increasing” is 35

**Struck out (majority)**

- replaced by “incurs in acquiring or increasing during the income year before the relevant income year”.
- (10) In section EX 45B(12)(c), “section EX 44C” is replaced by “section EX 44E”.

**New (majority)**

- 72 Cost method** 5
- (1) After section EX 45B(4)(a), the following is inserted:
- “(ab) the amount that is shown as the net asset value of the interest in audited financial statements of the person for the relevant income year made available to the general public, if— 10
- “(i) paragraph (a) does not apply; and
- “(ii) the FIF makes available to the general public audited financial statements for its accounting year ending in the relevant income year; and
- “(iii) the person chooses that this paragraph apply; or 15
- “(ac) the amount of the cost of the interest, if—
- “(i) paragraphs (a) and **(ab)** do not apply; and
- “(ii) the person acquires the interest in the 2005–06 or 2006–07 income year; or”.
- (2) In section EX 45B(4)(b), in the words before subparagraph (i), “paragraphs (a), **(ab)**, and **(ac)** do not apply and” is inserted after “if”. 20
- (3) In section EX 45B(4)(b)(i), “for which the person has FIF income or loss” is inserted after “attributing interest”.
- (4) In section EX 45B(4)(c), “paragraphs (a), **(ab)**, **(ac)**, and (b) do not apply and” is inserted after “if”. 25
- (5) In section EX 45B(4)(d), “paragraphs (a), **(ab)**, **(ac)**, and (b) do not apply and” is inserted after “if”.
- (6) In section EX 45B(4)(e), “paragraphs (a), **(ab)**, **(ac)**, and (b) do not apply and” is inserted after “if”. 30
- (7) In section EX 45B(6)(b), “incurs during the relevant income year in acquiring or increasing” is replaced by “incurs in acquiring or increasing during the relevant income year”.



**New (majority)**

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|--|--------------------|
| <p>(8) In section EX 45B(6)(c), “section EX 44C” is replaced by “section EX 44E”.</p> <p>(9) In section EX 45B(11)(b), “section EX 44C” is replaced by “section EX 44E”.</p> <p>(10) In section EX 45B(12)(b), “incurs during the income year before the relevant income year in acquiring or increasing” is replaced by “incurs in acquiring or increasing during the income year before the relevant income year”.</p> <p>(11) In section EX 45B(12)(c), “section EX 44C” is replaced by “section EX 44E”.</p> | <p>5</p> <p>10</p> |
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**72B Codes: comparative value method, deemed rate of return method, fair dividend rate method, and cost method**

Section EX 47(1)(c) is replaced by the following:

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|--|-----------|
| <p>“(c) the fair dividend rate method, if—</p> <p style="padding-left: 20px;">“(i) the FIF is not a grey list company:</p> <p style="padding-left: 20px;">“(ii) the person does not hold a direct income interest of 10% or more in the FIF at the beginning of the income year of the period:”.</p> | <p>15</p> |
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**Struck out (majority)**

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|---|-----------|
| <p><b>73 Limits on changes of method</b></p> <p>In section EX 50(8)(c), “or deceased person” is added after “natural person”.</p> | <p>20</p> |
|---|-----------|

**New (majority)**

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|--|-----------|
| <p><b>73 Limits on changes of method</b></p> <p>(1) In section EX 50(1), “subsections (2) to (7)” is replaced by “subsections (2) to (8)”.</p> <p>(2) Section EX 50(8)(a) to (d) are replaced by the following:</p> <p style="padding-left: 20px;">“(a) has no gifting settlor who is not a natural person or deceased person; and</p> | <p>25</p> |
|--|-----------|

**New (majority)**

- |   |                    |
|---|--------------------|
| <p>“(b) at all times in the income year, would be a qualifying trust for a distribution made at the time; and</p> <p>“(c) is mainly for the benefit of—</p> <p style="padding-left: 40px;">“(i) an organisation or trust with income that is exempt income under section CW 34 or CW 35 (which relate to the income of charities):</p> <p style="padding-left: 40px;">“(ii) at all times in the income year, a natural person for whom the gifting settlors of the trust have natural love and affection or had natural love and affection when alive; and</p> <p>“(d) is not a superannuation scheme.”</p> | <p>5</p> <p>10</p> |
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**74 Consequences of changes in method**

- |   |   |
|---|---|
| <p>(1) In section EX 51(4)(c)(ii), “year; or” is replaced by “year.”</p> <p>(2) After section EX 51(4), the following is added:</p> <p style="padding-left: 40px;"><i>“Changes between comparative value method and fair dividend rate method</i></p> <p>“(5) 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 the other 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—</p> <p style="padding-left: 40px;">“(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</p> <p style="padding-left: 40px;">“(b) reacquired the interest at the start of the income year; and</p> <p style="padding-left: 40px;">“(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.”</p> | <p>15</p> <p>20</p> <p>25</p> <p>30</p> |
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**Struck out (majority)**

**75 FIF rules first applying to interest on or after 1 April 2007**

Section EX 54B(1) is replaced by the following:

*“When this section applies*

- “(1) This section applies when a person has rights in a FIF that— 5
  - “(a) for the period ending on a day (the **preceding day**) are—
    - “(i) not an attributing interest:
      - “(ii) an attributing interest for which the person does not have FIF income or loss; and 10
  - “(b) for the period beginning on the day (the **application day**) following the preceding day are an attributing interest for which the person has FIF income or loss.”

**New (majority)**

**75 FIF rules first applying to interest for income year beginning on or after 1 April 2007**

- (1) Section EX 54B(1) is replaced by the following: 15
  - “(1) This section applies when a person has rights in a FIF that—
    - “(a) for the period ending on a day (the **preceding day**) are— 20
      - “(i) not an attributing interest:
        - “(ii) an attributing interest for which the person does not have FIF income or loss:
          - “(iii) rights for which the person is a share supplier in a returning share transfer; and 25
      - “(b) for the period beginning on the day (the **application day**) following the preceding day are an attributing interest for which the person has FIF income or loss.”
  - (2) In section EX 54B(3),—
    - (a) in the words before paragraph (a), “the disposal and acquisition referred to in subsection (2)” is replaced by 30
      - “the disposals in an income year, and related acquisitions, treated as occurring under this section”:

**New (majority)**

- |  |          |
|--|----------|
| <p>(b) in paragraph (a)(i), “disposal is” is replaced by “disposals are”:</p> <p>(c) in paragraph (a)(ii), “disposal is” is replaced by “disposals are”:</p> <p>(d) in paragraph (a)(iii), “disposal is” is replaced by “disposals are”:</p> <p>(e) in paragraph (b), “disposal” is replaced by “disposals”.</p> | <p>5</p> |
|--|----------|
- 76 Measurement of cost**
- Section EX 56(2) is replaced by the following:
- “FIFO cost flow identification*
- 10
- “(2) If sections EX 44C(12) and EX 44D(14) do not apply and it is not possible to specifically identify the cost of the interest because of multiple acquisitions or dispositions or both by the person, the first-in-first-out (the **FIFO**) method of identifying cost flows is applied.”
- 15
- 77 Policyholder income formula**
- (1) Section EY 42(1) is replaced by the following:
- “Formula*
- “(1) The **policyholder income formula** is—
- |   |    |
|---|----|
| claim due + (closing actuarial reserves | 20 |
| – opening actuarial reserves)           |    |
| – (FDR adjustment + PIE adjustment)     |    |
| – (premium – underwriting result)       |    |
| (1 – tax rate).”                        |    |
- (2) After section EY 42(5), the following is inserted:
- 25
- “FDR adjustment*
- “(5B) **FDR adjustment** is the amount given by **section EY 42B** to the extent to which it applies.
- “PIE adjustment*
- “(5C) **PIE adjustment** is the amount given by **section EY 42C** to the extent to which it applies.”
- 30
- (3) **Subsections (1) and (2)** apply to a life insurer,—

- (a) for the 2008–09 and later income years, unless they make an election under **paragraph (b) or (c)**; or
- (b) on and after 1 October 2007, if they make an election under this paragraph, stating the relevant date in a notice received by the Commissioner before 1 April 2008; or 5
- (c) for an income year beginning on or after 1 April 2007, if they make an election under this paragraph, stating the relevant date in a notice received by the Commissioner before 1 April 2008. 10

**Struck out (majority)**

**78 New sections EY 42B and 42C inserted**

(1) After section EY 42, the following is inserted:

**“EY 42B Policyholder income formula: FDR adjustment**

*“When this section applies*

- “(1) This section applies for the purposes of **section EY 42(5B)** to the extent to which— 15
  - “(a) property that the life insurer holds, to support actuarial reserves, is an attributing interest in a FIF; and
  - “(b) the life insurer uses the fair dividend rate method for the property; and 20
  - “(c) the property is not held in a portfolio investment entity that is a portfolio investment-linked life fund.

*“Formula*

- “(2) In using the policyholder income formula, the life insurer must calculate the item **FDR adjustment** using the following formula: 25

$$0.4 \times (\text{FIF result} - \text{FDR income}).$$

*“Definition of items in formula*

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

*“FIF result*

- “(4) **FIF result** is the gains and losses for the income year, for the property,— 30
  - “(a) calculated using accepted accounting practice; and

**Struck out (majority)**

- “(b) not differing materially from the amounts of FIF income or FIF loss that would have arisen for the property in the absence of the law enacting the fair dividend rate method.
- “*FDR income* 5
- “(5) **FDR income** is the amount for the income year of the life insurer’s income resulting from calculating their FIF income under the fair dividend rate method for the property.
- “Defined in this Act: amount, attributing interest, fair dividend rate method, FIF, FIF income, FIF loss, income, portfolio investment-linked life fund 10
- “EY 42C Policyholder income formula: PIE adjustment**
- “*When this section applies*
- “(1) This section applies for the purposes of **section EY 42(5C)** to the extent to which property that the life insurer holds, to support actuarial reserves for a portfolio investment entity that is a portfolio investment-linked life fund, is— 15
- “(a) an attributing interest in a FIF; and the life insurer uses the fair dividend rate method for it; or
- “(b) shares described in section CX 44C (Proceeds from disposal of certain shares by portfolio investment entities). 20
- “*Formula*
- “(2) In using the policyholder income formula, the life insurer must calculate the item **PIE adjustment** using the following formula: 25
- $0.9 \times (\text{FIF result} - \text{FDR income}) + 0.9 \times \text{excluded shares}.$
- “*Definition of items in formula*
- “(3) The items in the formula are defined in **subsections (4) to (6)**.
- “*FIF result*
- “(4) **FIF result** is the gains or losses for the income year, for the property described in **subsection (1)(a)**,— 30
- “(a) calculated using accepted accounting practice; and

**Struck out (majority)**

- “(b) not differing materially from the amounts of FIF income or FIF loss that would have arisen for the property in the absence of the law enacting the fair dividend rate method.
- “*FDR income* 5
- “(5) **FDR income** is the amount for the income year of the life insurer’s income resulting from calculating their FIF income under the fair dividend rate method for the property described in **subsection (1)(a)**.
- “*Excluded shares* 10
- “(6) **Excluded shares** is the total for the income year, for shares described in **subsection (1)(b)**, of—
- “(a) the positive amount of income excluded by section CX 44C(2) (Proceeds from disposal of certain shares by portfolio investment entities): 15
- “(b) the negative amount of a deduction not allowed by section DB 17(3)(b) (Cost of revenue account property):
- “(c) the gains and losses for the shares, calculated using accepted accounting practice, but excluding— 20
- “(i) amounts already accounted for under **paragraphs (a) and (b)**; and
- “(ii) dividends for the shares.
- “Defined in this Act: amount, attributing interest, deduction, dividend, excluded income, fair dividend rate method, FIF, FIF income, FIF loss, income, portfolio investment-linked life fund, share”. 25
- (2) **Subsection (1)** applies to a life insurer,—
- (a) for the 2008–09 and later income years, unless they make an election under **paragraph (b) or (c)**; or
- (b) on and after 1 October 2007, if they make an election under this paragraph, stating the relevant date in a notice received by the Commissioner before 1 April 2008; or 30

**Struck out (majority)**

- (c) for an income year beginning on or after 1 April 2007, if they make an election under this paragraph, stating the relevant date in a notice received by the Commissioner before 1 April 2008.

**New (majority)**

- 78 New sections EY 42B and EY 42C inserted** 5
- (1) After section EY 42, the following is inserted:
- “EY 42B Policyholder income formula: FDR adjustment**
- “When this section applies*
- “(1) This section applies for the purposes of **section EY 42(5B)** to property that supports only actuarial reserves to the extent to which— 10
- “(a) the property is an attributing interest in a FIF held by the life insurer, or by a portfolio tax rate entity that the life insurer has directly or indirectly invested in; and
- “(b) the life insurer or the portfolio tax rate entity uses the fair dividend rate method for the property; and 15
- “(c) **section EY 42C** does not apply to the property.
- “When has life insurer indirectly invested in portfolio tax rate entity?*
- “(2) For the purposes of **subsection (1)**, a life insurer is treated as indirectly investing in a portfolio tax rate entity (**PTRE A**) when a portfolio tax rate entity has invested in PTRE A and the investment may be traced back through an unbroken chain of investments in portfolio tax rate entities to a direct investment by the life insurer in a portfolio tax rate entity. 20 25
- “FDR adjustment*
- “(3) In using the policyholder income formula, the life insurer may calculate the item **FDR adjustment**—
- “(a) using the formula in **subsection (5)**; or
- “(b) by calculating, using any reasonable method for the information available to the life insurer, the amount 30



**New (majority)**

credited to actuarial reserves in relation to the property,  
but excluding amounts which are related to FIF income  
under the fair dividend rate method.

*“Consistency requirement*

- “(4) A life insurer, in using the policyholder income formula, must 5  
calculate the item **FDR adjustment** by always applying  
whichever of **subsection (3)(a) or (b)** they first apply.

*“Formula*

- “(5) The formula described in **subsection (3)(a)** for the calculation of 10  
the item **FDR adjustment** is—  
$$0.6 \times (\text{FIF result} - \text{FDR income}).$$

*“Definition of items in formula*

- “(6) The items in the formula are defined in **subsections (7) and (8)**.

*“FIF result*

- “(7) **FIF result** is the life insurer’s gains and losses for the income 15  
year, for the property, calculated using accepted accounting  
practice.

*“FDR income*

- “(8) **FDR income** is the amount for the income year of the life 20  
insurer’s income related to FIF income under the fair dividend  
rate method for the property, calculated using any reasonable  
method for the information available to the life insurer.

“Defined in this Act: amount, attributing interest, fair dividend rate method, FIF,  
FIF income, FIF loss, income, portfolio investment entity, portfolio investment-  
linked life fund

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**“EY 42C Policyholder income formula: PILF adjustment**

*“When this section applies*

- “(1) This section applies for the purposes of **section EY 42(5C)** to 30  
property that supports only actuarial reserves for a portfolio  
investment-linked life fund, to the extent to which the prop-  
erty is—

**New (majority)**

- |  |  |
|--|--|
| <p>“(a) an attributing interest in a FIF,—</p> <p style="padding-left: 20px;">“(i) held by the life insurer, or by a portfolio tax rate entity that the life insurer has directly or indirectly invested in; and</p> <p style="padding-left: 20px;">“(ii) for which the life insurer or the portfolio tax rate entity uses the fair dividend rate method for the property:</p> <p>“(b) shares described in section CX 44C (Proceeds from disposal of certain shares by portfolio investment entities) held by the life insurer.</p> <p style="margin-top: 10px;"><i>“When has life insurer indirectly invested in portfolio tax rate entity?”</i></p> <p>“(2) For the purposes of <b>subsection (1)</b>, a life insurer is treated as indirectly investing in a portfolio tax rate entity (<b>PTRE A</b>) when a portfolio tax rate entity has invested in PTRE A and the investment may be traced back through an unbroken chain of investments in portfolio tax rate entities to a direct investment by the life insurer in a portfolio tax rate entity.</p> <p style="margin-top: 10px;"><i>“PIE adjustment</i></p> <p>“(3) In using the policyholder income formula, the life insurer may calculate the item <b>PILF adjustment</b>—</p> <p style="padding-left: 20px;">“(a) using the formula in <b>subsection (5)</b>; or</p> <p style="padding-left: 20px;">“(b) by calculating, using any reasonable method for the information available to the life insurer, the amount credited to actuarial reserves in relation to the property, but excluding amounts that are—</p> <p style="padding-left: 40px;">“(i) related to FIF income under the fair dividend rate method:</p> <p style="padding-left: 40px;">“(ii) dividends or distributions for shares described <b>subsection (1)(b)</b>, other than distributions from a portfolio tax rate entity to which section CX 44D(2) (Portfolio investor allocated income and distributions of income by portfolio tax rate entities) applies.</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> |
|--|--|

**New (majority)**

*“Consistency requirement*

- “(4) A life insurer, in using the policyholder income formula, must calculate the item **PILF adjustment** by always applying whichever of **subsection (3)(a) or (b)** they first apply.

*“Formula*

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- “(5) The formula described in **subsection (3)(a)** for the calculation of the item **PILF adjustment** is—

$$0.9 \times (\text{FIF result} - \text{FDR income}) + 0.9 \times \text{excluded shares}.$$

*“Definition of items in formula*

- “(6) The items in the formula are defined in **subsections (7) to (9)**. 10

*“FIF result*

- “(7) **FIF result** is the life insurer’s gains and losses for the income year, for the property described in **subsection (1)(a)**, calculated using accepted accounting practice.

*“FDR income*

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- “(8) **FDR income** is the amount for the income year of the life insurer’s income related to FIF income under the fair dividend rate method for the property described in **subsection (1)(a)**, calculated using any reasonable method for the information available to the life insurer. 20

*“Excluded shares*

- “(9) **Excluded shares** is the total for the life insurer, for shares described in **subsection (1)(b)**, of—

- “(a) the positive amount of income excluded by section CX 44C(2): 25

- “(b) the negative amount of a deduction not allowed by section DB 17(3)(b) (Cost of revenue account property):

- “(c) the gains and losses for the shares, calculated using accepted accounting practice, but excluding— 30

- “(i) amounts already accounted for under **paragraph (a) or (b)** of this subsection, or under **subsection (7)**:

**New (majority)**

- “(ii) dividends and distributions for the shares, other than distributions from a portfolio tax rate entity to which section CX 44D(2) applies.
- “Defined in this Act: amount, attributing interest, deduction, dividend, excluded income, fair dividend rate method, FIF, FIF income, FIF loss, income, portfolio investment-linked life fund, portfolio tax rate entity, share”.
- (2) **Subsection (1)** applies to a life insurer for the 2008–09 and later income years, unless they make an election under **subsection (3)** or they choose that **subsection (1)** does not apply to them by furnishing a return of income for the 2008–09 tax year that ignores **subsection (1)**.
- (3) **Subsection (1)** applies—
- (a) on and after 1 October 2007, if the life insurer makes an election under this paragraph, stating the relevant date in a notice received by the Commissioner before 1 April 2008; or
- (b) for an income year beginning on or after 1 April 2007, if the life insurer makes an election under this paragraph, stating the relevant date in a notice received by the Commissioner before 1 April 2008.
- 78B New section EZ 50 inserted**
- After section EZ 49, the following is added:
- “EZ 50 Transitional rule for IFRS financial reporting method**
- “When this section applies*
- “(1) This section applies for a financial arrangement when—
- “(a) a person starts to use a spreading method for that financial arrangement before the person adopts IFRSs for the purposes of financial reporting; and
- “(b) that spreading method does not comply with whichever is relevant of sections EW 16(2)(d), EW 18(f), and EW 20(2)(f) because the person adopts IFRSs for the purposes of financial reporting; and
- “(c) the person is not required by **section EW 15B** to use the IFRS taxpayer method; and
- “(d) the income year is the 2007–08 income year or an earlier income year.

**New (majority)**

*“Transitional rule*

- “(2) For the financial arrangement, the person is treated as complying with whichever is relevant of sections EW 16(2)(d), EW 18(f), and EW 20(2)(f).

“Defined in this Act: financial arrangement, IFRS, IFRS taxpayer method, income year”.

5

**78C Variations in control or income interests in foreign companies**

- (1) In section GC 9(4)(c), “under sections EX 14 to EX 17” is inserted after “company”.
- (2) **Subsection (1)** applies for the 2005–06 and later income years.

10

**78D New section GC 14EB inserted**

After section GC 14E, the following is inserted:

**“GC 14EB Treatment of dividends as if from qualifying company**

15

*“When this section applies*

- “(1) This section applies to a company (an **attribution company**) that must attribute an amount to person C under section GC 14D, when the attribution company pays a dividend (the **dividend**) and the company—

20

“(a) has chosen to apply this section before paying the dividend; and

“(b) has not revoked the choice described in **paragraph (a)** when it pays the dividend; and

“(c) is not a qualifying company; and

25

“(d) has no net income for the tax year in which it pays the dividend that is not net income attributed under section GC 14D, ignoring interest income that is merely incidental to its business.

*“Treatment of dividends as if from qualifying company*

30

- “(2) For the attribution company and the dividend, section HG 13 is treated as applying as if the attribution company was a

**New (majority)**

qualifying company, and the dividend was a dividend paid by that qualifying company.

“Defined in this Act: attribution company, business, company, dividend, income, interest, qualifying company, net income”.

- 79 Tax credits for family support and family plus** 5
- (1) The heading before section GC 28 is replaced by “***Tax credits for families***”.
- (2) In section GC 28, the heading is replaced by “**Tax credits for families**”.

**Struck out (majority)**

- 80 Dividends from qualifying company** 10
- (1) In section HG 13(1)(a)(i), item c, “in respect of the income year of the shareholder in which the dividend is derived” is replaced by “at the time the shareholder derives the dividend (**section MZ 16** (Dividends from qualifying companies: modifying for tax rate change) modifies this item)”. 15
- (2) In section HG 13(3)(a), “section ME 8(1)” is replaced by “section ME 8(1) (**section MZ 16** modifies this paragraph)”.
- (3) In section HG 13(4)(a), “subsection (3)” is replaced by “subsection (3). **Section MZ 16** modifies this paragraph”.
- (4) **Subsection (1)** applies for the 2008–09 and later income years. 20

**New (majority)**

- 80 Dividends from qualifying company**
- (1) In section HG 13(1)(a)(i), item c, “in respect of the income year of the shareholder in which the dividend is derived” is replaced by “at the time the shareholder derives the dividend (**section MZ 19** (Dividends from qualifying companies: modifying for tax rate change) modifies this item)”. 25
- (2) In section HG 13(3)(a), “section ME 8(1)” is replaced by “section ME 8(1) (**section MZ 19** modifies this paragraph)”.

**New (majority)**

- (3) In section HG 13(4)(a), “subsection (3)” is replaced by “subsection (3). **Section MZ 19** modifies this paragraph”.
- (4) **Subsection (1)** applies for the 2008–09 and later income years.

**80B Scheme of subpart**

- (1) Section HL 2(2) is replaced by the following: 5  
*“Election to be type of portfolio investment entity*
- “(2) An entity may choose under section HL 11 to be a portfolio investment entity that is a—
- “(a) portfolio tax rate entity if the entity is—
- “(i) a company, superannuation fund, or group investment fund; and 10
- “(ii) eligible under **section HL 3(1)** to make an election; or
- “(b) portfolio listed company if the entity is—
- “(i) a company listed on a recognised exchange in New Zealand; and 15
- “(ii) eligible under **section HL 3(3)** to make an election; or
- “(c) portfolio defined benefit fund if the entity is—
- “(i) a defined benefit fund; and 20
- “(ii) eligible under **section HL 3(5)** to make an election; or
- “(d) portfolio investment-linked life fund if the entity is—
- “(i) a separate identifiable fund, forming part of a life insurer, holding investments subject to life insurance policies under which benefits are directly linked to the value of the investments held in the fund; and 25
- “(ii) eligible under **section HL 3(7)** to make an election.”
- (2) In section HL 2(7)(c)(ii), “period.” is replaced by “period:” 30  
and the following is added:
- “(d) the amount of fees paid to the entity by the investor on the day:
- “(e) the amount of rebates of fees credited to the investor by the entity on the day: 35

**New (majority)**

“(f) the amount of expenditure, for the income year ending with the day, transferred under subpart DV to the entity by the investor.”

**Struck out (majority)**

**81 Eligibility requirements for entities**

- (1) After section HL 3(5), the following is inserted: 5
- “Eligibility requirements for portfolio investment-linked life fund and electing entity*
- “(5B) A portfolio investment-linked life fund and an entity that is choosing under section HL 11 to be a portfolio investment entity and a portfolio investment-linked life fund must meet the eligibility requirements described in subsections (7)(a), (8), and (10). 10
- “Further eligibility requirements for portfolio investment-linked life fund*
- “(5C) A portfolio investment-linked life fund must meet the further eligibility requirements described in sections HL 6, HL 9, and HL 10.” 15
- (2) In section HL 3, in the list of defined terms, “portfolio investment-linked life fund” is inserted.

**New (majority)**

- 81 Section HL 3 replaced** 20
- Section HL 3 is replaced by the following:
- “HL 3 Eligibility requirements for entities**
- “Eligibility requirements for entity electing to be portfolio tax rate entity*
- “(1) An entity that is choosing under section HL 11 to be a portfolio investment entity and portfolio tax rate entity must meet the eligibility requirements described in **subsections (9), (10), and (11)**. 25



**New (majority)**

<i>“Eligibility requirements for portfolio tax rate entity</i>	
“(2) A portfolio tax rate entity must meet—	
“(a) the eligibility requirements described in <b>subsections (9), (10), and (11)</b> ; and	
“(b) the further eligibility requirements described in sections <b>HL 5C</b> , HL 6, HL 7, HL 9, and HL 10.	5
<i>“Eligibility requirements for entity electing to be portfolio listed company</i>	
“(3) An entity that is choosing under section HL 11 to be a portfolio investment entity and portfolio listed company must meet the eligibility requirements described in <b>subsections (9), (10), and (11)</b> .	10
<i>“Eligibility requirements for portfolio listed company</i>	
“(4) A portfolio listed company must meet—	
“(a) the eligibility requirements described in <b>subsections (9), (10), and (11)</b> ; and	15
“(b) the further eligibility requirements described in sections <b>HL 5C</b> , HL 6, HL 8, HL 9, and HL 10.	
<i>“Eligibility requirements for entity electing to be portfolio defined benefit fund</i>	
“(5) An entity that is choosing under section HL 11 to be a portfolio investment entity and portfolio defined benefit fund must meet the eligibility requirements described in <b>subsections (9), (10), and (11)</b> .	20
<i>“Eligibility requirements for portfolio defined benefit fund</i>	
“(6) A portfolio defined benefit fund must meet—	25
“(a) the eligibility requirements described in <b>subsections (9), (10), and (11)</b> ; and	
“(b) the further eligibility requirements described in sections HL 6, HL 9, and HL 10.	30

**New (majority)**

<i>“Eligibility requirements for separate identifiable fund electing to be portfolio investment-linked life fund</i>	
“(7) An entity that is choosing under section HL 11 to be a portfolio investment entity and portfolio investment-linked life fund must meet the eligibility requirements described in <b>subsections (10) and (11)</b> .	5
<i>“Eligibility requirements for portfolio investment-linked life fund</i>	
“(8) A portfolio investment-linked life fund must meet—	
“(a) the eligibility requirements described in <b>subsections (10) and (11)</b> ; and	10
“(b) the further eligibility requirements described in sections HL 6, HL 9, and HL 10.	
<i>“Business requirement</i>	
“(9) The business requirement is that the entity must not carry on a business of life insurance.	15
<i>“Residence requirement</i>	
“(10) 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.	20
<i>“Entity history requirement</i>	
“(11) 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 effective.	25
“Defined in this Act: company, double tax agreement, group investment fund, life insurance, portfolio defined benefit fund, portfolio investment entity, portfolio investment-linked life fund, portfolio listed company, portfolio tax rate entity, resident in New Zealand, superannuation fund”.	30

**New (majority)**

**81B Effect of failure to meet eligibility requirements for entities**

- (1) In section HL 4(2)(a), the words before subparagraph (i) are replaced by the following:
  - “(a) a portfolio investor class of the entity fails to meet a requirement under section HL 6 or HL 9, or the entity fails to meet a requirement under section HL 10, on the last day of a quarter—”. 5
- (2) In section HL 4(2)(b), the words before subparagraph (i) are replaced by the following: 10
  - “(b) the failure referred to in **paragraph (a)**—”. 10

**81C New sections HL 5B and HL 5C inserted**

After section HL 5, the following is inserted:

**“HL 5B Meaning of investor and portfolio investor class**

*“Investor”* 15

- “(1) An **investor**, in relation to a portfolio investment entity or foreign investment vehicle (the **entity**), means,—
  - “(a) if the entity is a company and **paragraph (d)** does not apply, a shareholder in the company;
  - “(b) if the entity is not a company and **paragraphs (c) and (d)** do not apply, a person who is entitled to a proportion of the funds available for distribution by the entity—
    - “(i) by reason of the rules of the entity or the terms of the trust under which the entity is established; and 25
    - “(ii) as if the entity were a company and the person were a shareholder in the company;
  - “(c) if the entity is a portfolio investment-linked life fund and **paragraph (d)** does not apply, a person whose benefits under the relevant life insurance policy are directly linked to the value of investments held in the portfolio investment-linked life fund: 30
  - “(d) for a share, entitlement, or life insurance policy held through a portfolio investor proxy by a person, the portfolio investor proxy. 35

**New (majority)**

*“Portfolio investor class*

- “(2) A **portfolio investor class** for a portfolio investment entity means a group of 1 or more investors in the entity with each investor having an entitlement to a distribution by the entity of proceeds from portfolio entity investments such that— 5
- “(a) the portfolio entity investments are the same for all the investors in the group; and
- “(b) each investor’s interest in a portfolio entity investment represents a proportion (the **investment proportion**) of the value of the investor’s entitlement; and 10
- “(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 except if **subsection (3)** applies. 15

*“Exception to requirement of subsection (2)(c)*

- “(3) The investment proportion for an investor in a group referred to in **subsection (2)** and a portfolio entity investment may differ by 2.5% or more from the average value for the group and the investment if— 20
- “(a) the portfolio entity investment is an arrangement under which the entity is assured of receiving, from investments, sufficient proceeds for the entity to repay each investor in the group an amount contributed to the entity; and 25
- “(b) the excess in difference between the investment proportion for the investor and the average value for the group arises from differences between the portfolio investor rates of members of the group. 30

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

**New (majority)**

**“HL 5C Income interest requirement**

*“Application*

- “(1) This section applies to a portfolio investment entity that is not a portfolio investment-linked life fund.

*“Requirement*

- “(2) 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.

“Defined in this Act: category B income, portfolio entity investment, portfolio investment entity, portfolio investment-linked life fund, portfolio investor interest”.

**81D Investor membership requirement**

- (1) Before section HL 6(1), the following is inserted:

*“General investor membership requirement*

- “(1A) The investor membership requirement for 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 each portfolio investor class of the entity must meet the requirements of subsection (1).”

- (2) In section HL 6(1),—

- (a) the heading is replaced by *“Investor membership requirement for portfolio investor class”*;
- (b) the words before paragraph (a) are replaced by “The investor membership requirement for a portfolio investor class is that the class must include—”;
- (c) in paragraph (j)(iii), “entity.” is replaced by “entity:” and the following is added:

“(k) Auckland Regional Holdings.”

- (3) In section HL 6(3), the words before paragraph (a) are replaced by “There is no investor membership requirement for a portfolio investor class, of an entity other than a

**New (majority)**

- company listed on a recognised exchange in New Zealand, that,—”.
- (4) In section HL 6(3)(c), “1956.” is replaced by “1956:” and the following is added:
- “(d) is a superannuation fund that— 5
- “(i) existed before 17 May 2006; and
- “(ii) on or after 17 May 2006, if treated as a unit trust, would have met the requirements of 1 or more of paragraphs (a) and (c) to (e) of the definition of **qualifying unit trust**; and 10
- “(iii) has no investor, other than the fund’s manager or trustee, that can control the investment decisions relating to that class.”
- 81E Further eligibility requirements relating to investments**
- Section HL 7(3), other than the heading, is replaced by the following: 15
- “(3) An adjustment reflecting the effect of the investor’s portfolio investor rate must be made to—
- “(a) the investor’s portfolio investor interest in the portfolio investor class or another portfolio investor class— 20
- “ (i) before the end of the second month after the portfolio calculation period, if the entity has made an election under section HL 21; or
- “ (ii) before the end of the third month after the end of the income year, if the entity has made an elec- 25
- tion under section HL 22; or
- “ (iii) before the end of the second month after the end of the tax year, if the entity has made an election under section HL 23:
- “(b) the amount of each distribution to the investor as a 30
- member of the portfolio investor class or another portfolio investor class:
- “(c) the amount of each payment required from the investor as a member of the portfolio investor class towards satisfying the entity’s portfolio entity tax liability.” 35

**Struck out (majority)**

**82 Imputation credit distribution requirement: imputation credit account company**

- (1) Section HL 8(1), except the heading, is replaced by the following:

“(1) This section applies to a portfolio investment entity that— 5  
 “(a) is an imputation credit account company; and  
 “(b) is not a portfolio investment-linked life fund.”

- (2) In section HL 8, in the list of defined terms, “portfolio investment-linked life fund” is inserted.

**New (majority)**

**82B Investor interest size requirement 10**

- (1) In section HL 9(2), the words before paragraph (a) are replaced by “There is no investor interest size requirement for an investor in a portfolio investor class that,—”.  
 (2) In section HL 9(4)(j), “subsection (5).” is replaced by “subsection (5):” and the following is added: 15  
 “(k) Auckland Regional Holdings.”

**82C Further eligibility requirements relating to investments**

- (1) In section HL 10(1), the words before paragraph (a) are replaced by “The investment type requirement is that 90% or more by value of the entity’s assets must be—”. 20  
 (2) In section HL 10(2)—  
 (a) paragraph (b)(iii) is replaced by the following:  
 “(iii) income under a lease of land:”:  
 (b) in paragraph (b)(iv), “referred to in subsection (1)(a) to (d)” is inserted after “property”. 25  
 (3) In section HL 10(4), the words before paragraph (a) are replaced by “The requirements of subsection (3)(a) and (b) do not apply to an investment consisting of shares in—”.

**83 Election to become portfolio investment entity and  
cancellation of election**

- (1) After section HL 11(2), the following is added:
- “Exception to when election effective: certain elections  
relating to portfolio investment-linked life funds* 5
- “(2B) Despite subsection (2), an election received by the Commis-  
sioner is effective on 1 October 2007, if—
- “(a) the election is in relation to an electing entity choosing  
to be a portfolio investment-linked life fund; and
- “(b) the date of receipt is before 1 April 2008; and 10
- “(c) 1 October 2007 is nominated in the notice.”
- (2) In section HL 11, in the list of defined terms, “portfolio  
investment-linked life fund” is inserted.

**New (majority)**

**83B Unlisted company may choose to become portfolio listed  
company** 15

Section HL 11B(1)(a) is replaced by the following:

“(a) has 100 shareholders; and”.

**83C Becoming portfolio investment entity**

- (1) In section HL 12(3)(a), the words before subparagraph (i) are  
replaced by— 20
- “(a) transferring to another person all shares held by the  
entity, or for which the entity is a share supplier in a  
returning share transfer, that—”.
- (2) After section HL 12(4), the following is added:
- “Refund of dividend withholding payments made before  
election* 25
- “(5) If a dividend withholding payment account company becomes  
a portfolio investment entity on a day in an imputation year  
other than the end of the imputation year, the balance of the  
company’s dividend withholding payment account at the end 30  
of the imputation year for the purposes of section NH 4(5)(f)  
(Refund for overpayment and to company in loss) is equal to  
the balance of the company’s dividend withholding payment



**New (majority)**

account immediately before the company becomes a portfolio investment entity.”

**83D Tax consequences from transition**

Section HL 13(1) is replaced by the following:

“*When subsection (1B) applies* 5

- “(1) **Subsection (1B)** applies when an entity chooses to become a portfolio investment entity in an income year and has an increased liability for provisional tax for the income year because of the election.

“*No penalty or interest arising from transition* 10

- “(1B) The entity is not liable to pay any penalty or interest for which the entity would otherwise be liable for an inaccuracy, arising from the increased liability for provisional tax, in—

“(a) an estimate of provisional tax made before the entity chooses to become a portfolio investment entity: 15

“(b) a payment of provisional tax due before the end of the 2-month period beginning after the entity becomes a portfolio investment entity.”

**83E Treatment of income from interest if no investor entitled or investor has conditional entitlement** 20

Section HL 16(2)(e) is replaced by the following:

- “(e) for an entity that exists on 17 May 2006, the vesting period does not exceed the longest vesting period allowed by the entity on 17 May 2006 for an interest created on that date; and 25

- “(f) for an entity that does not exist on 17 May 2006,—

“(i) the portfolio investor interest is transferred to the entity by a superannuation scheme that exists on 17 May 2006 and without significant change to the portfolio investor interest; or 30

“(ii) the vesting period does not exceed 5 years, if **subparagraph (i)** does not apply.”

**New (majority)**

- |  |    |
|--|----|
| <b>83F Credits received by portfolio tax rate entity or portfolio investor proxy</b>   |    |
| (1) In section HL 20(4), “fees” is replaced by “expenses”.   |    |
| (2) Section HL 20(11) is replaced by the following:  |    |
| <i>“Expenses</i>   | 5  |
| “(11) <b>Expenses</b> is the total amount for the day in the portfolio allocation period of—   |    |
| “(a) fees for ongoing management and administration services paid from or charged to the account of the investor as a member of the portfolio investor class:                          | 10 |
| “(b) expenditure of the investor transferred under subpart DV to the entity.”  |    |
| <b>83G Payments of tax by portfolio tax rate entity making no election</b>   |    |
| (1) After section HL 21(2), the following is inserted:   | 15 |
| <i>“Income tax liability</i>   |    |
| “(2B) The income tax liability of the entity for a tax year is equal to the total portfolio entity tax liability of the entity for the portfolio calculation periods in the tax year.” |    |
| (2) In section HL 21(3)(a), “for the tax year” is inserted after “income tax”.   | 20 |
| <b>83H Payments of tax by portfolio tax rate entity making no election</b>   |    |
| (1) After section HL 23(1), the following is inserted:   |    |
| <i>“Income tax liability</i>   | 25 |
| “(1B) The income tax liability of the entity for a tax year is equal to the total portfolio entity tax liability of the entity for the portfolio calculation periods in the tax year.” |    |
| (2) In section HL 23(2)(a), “for the tax year” is inserted after “income tax”.   | 30 |
| (3) Section HL 23(2)(b) is replaced by the following:  |    |
| “(b) by the day that is—   |    |

**New (majority)**

<p style="margin-left: 40px;">“(i) the end of the 1-month period beginning from the end of the portfolio investor exit period, if <b>subparagraphs (ii) and (iii)</b> do not apply; or</p> <p style="margin-left: 40px;">“(ii) the 15 January following the end of the portfolio investor exit period, if the portfolio investor exit period ends in November; or</p> <p style="margin-left: 40px;">“(iii) the end of the month beginning from the end of the month in which the portfolio investor exit period ends, if the day given by <b>subparagraph (i)</b> does not exist.”</p>	<p>5</p> <p>10</p>
<p><b>83I Optional payments of tax by portfolio tax rate entities</b></p>	
<p>(1) In section HL 23B(1), “investor’s portfolio investor interest in the entity” is replaced by “portfolio investor interest for which the investor is a member of a portfolio investor class of the entity”.</p> <p>(2) Section HL 23B(3) is replaced by the following:</p> <p style="margin-left: 40px;"><i>“Time of optional payment</i></p> <p>“(3) A payment under this section must be made by—</p> <p style="margin-left: 40px;">“(a) the end of the month beginning from the end of the month in which the portfolio calculation period ends, if <b>paragraph (b)</b> does not apply; or</p> <p style="margin-left: 40px;">“(b) the 15 January following the end of the portfolio calculation period, if the portfolio calculation period ends in November.”</p>	<p>15</p> <p>20</p>
<p><b>83J Portfolio investor allocated income and portfolio investor allocated loss</b></p>	
<p>(1) In section HL 24(5), “fees” is replaced by “expenses”.</p> <p>(2) Section HL 24(6)(e) is replaced by the following:</p> <p style="margin-left: 40px;">“(e) <b>expenses</b> is the total amount for the day in the portfolio allocation period of—</p> <p style="margin-left: 80px;">“(i) fees for ongoing management and administration services paid from or charged to the account of the investor as a member of the portfolio investor class:</p>	<p>25</p> <p>30</p>

**New (majority)**

“(ii) expenditure of the investor transferred under sub-  
part DV to the entity.”

- 83K Treatment of portfolio investor allocated loss for zero-rated portfolio investors and investors with portfolio investor exit period** 5
- (1) In section HL 25(2), “income year corresponding to the tax year” is replaced by “income year including the end of the portfolio tax rate entity’s income year”.
- (2) In the list of defined terms in section HL 25,—
- (a) “portfolio allocation period” and “portfolio investor allocated income” are omitted: 10
- (b) “income tax” and “portfolio tax rate entity” are inserted.
- 83L Credits received by portfolio tax rate entity or portfolio investor proxy** 15
- (1) Section HL 27(6) is replaced by the following:
- “Application of subsections (7) to (11)*
- “(6) For an investor in a portfolio tax rate entity who is allocated under subsection (3) credits for a portfolio calculation period in an income year of the entity,— 20
- “(a) **subsections (7)** and (8) apply to the credits, and the credits are allocated to the income year in which the entity’s income year ends, if—
- “(i) the investor is a zero-rated portfolio investor: 25
- “(ii) the investor is not a zero-rated portfolio investor and the entity makes payments of tax under section HL 21 and the portfolio calculation period includes part of a portfolio investor exit period:
- “(b) subsections (10) and (11) apply to the credits if **paragraph (a)** does not apply.” 30
- (2) Section HL 27(7) is replaced by the following:

**New (majority)**

- “Zero-rated portfolio investors and certain investors having portfolio investor exit period: credit*
- “(7) The investor is treated as receiving for the allocated credits, for the tax year corresponding to the investor’s income year,—
- 5
- “(a) a credit against income tax payable by the investor of the amount given by subsection (8) if—
- 10
- “(i) the credits are under subpart LC (Foreign tax); and
- “(ii) the investor is not a portfolio tax rate entity or portfolio investor proxy; or
- “(b) the allocated amount of each type of credit if—
- 15
- “(i) the credits are not under subpart LC:
- “(ii) the investor is a portfolio tax rate entity or portfolio investor proxy.”
- (3) In section HL 27(8), in the heading, “*portfolio investment entities*” is replaced by “*portfolio tax rate entities, portfolio investor proxies*”.
- (4) Section HL 27(9) is repealed.
- (5) In section HL 27(10B)(a)(ii), “section HL 22 or HL 23” is replaced by “section HL 23”.
- 20
- (6) Section HL 27(10B)(b) is replaced by the following:
- “(b) the investor as a member of—
- 25
- “(i) the portfolio investor class:
- “(ii) another portfolio investor class, if the entity chooses such a use for the credit.”
- (7) In section HL 27(11)(a)(ii),—
- (a) “in subsection (10B)(b)” is replaced by “in subsection (10C)(b):”
- 30
- (b) “by subsection (10B)” is replaced by “by subsection (10C)”.

**83M Portfolio investor proxies**

In section HL 31(3)(d), “or the payments required from the investor,” is inserted after “distributions to the investor,”.

**New (majority)**

**83N Companies included in group of companies**

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

- “(2B) For the purposes of this Act, in relation to any 2 or more companies of which 1 is a portfolio tax rate entity, the companies are treated as being a group of companies for an income year or other period if—
- 5 “(a) a portfolio tax rate entity owns 100% of the voting interests in the other companies; and
- 10 “(b) each company that is not a portfolio tax rate entity is a portfolio land company.”

**84 Net loss offset between group companies**

**Struck out (majority)**

- (1) In section IG 2(9), “Section IE 1(4)” is replaced by “Sections CG 2 and DE 28”.

**New (majority)**

- (1) In section IG 2(9), “Section IE 1(4) applies” is replaced by “Sections CG 2 and DB 38 apply”. 15
- (2) **Subsection (1)** applies for the 2005–06 and later income years.

**85 Rebate in respect of gifts of money**

- (1) Section KC 5(1)(be) is replaced by the following:
- “(be) Childfund New Zealand Limited:”.
- (2) In section KC 5(1)(cu), “Trust.” is replaced by “Trust:” and the following is added: 20
- “(cv) Hamlin Charitable Fistula Hospitals Trust:
- “(cw) Hope Foundation Development Trust:
- “(cx) Hope International Charitable Trust:
- “(cy) Limbs 4 All Charitable Trust: 25
- “(cz) New Zealand Disaster Assistance Response Team Trust:

- “(da) Operation Restore Hope Charitable Trust:  
“(db) The World Swim for Malaria Foundation (New Zealand).”
- (3) Section KC 5(2) is replaced by the following:
- “(2) The amount of the rebates provided for in this section is, for a taxpayer and a tax year, 33⅓% of the total amount of all gifts described in subsection (1) made by the taxpayer in the tax year.” 5
- (4) **Subsection (2)** applies for the 2007–08 and later tax years.
- (5) **Subsection (3)** applies for the 2008–09 and later tax years. 10
- 86 Amendments to subpart KD made in schedule 1**
- (1) The amendments to subpart KD specified in **schedule 1** are made in the manner shown in that schedule.
- (2) **Subsection (1)** applies for the 2007–08 and later income years.
- 87 Determination of net income** 15
- New (majority)**
- (1A) In section KD 1(1)(e)(viii), “and (c)” is inserted after “section CX 44D(1)(b)”.
- (1) After section KD 1(1)(e)(viii), the following is added:
- “(ix) any amount of retirement scheme contribution that is not excluded income of the person and would be excluded income of the person in the absence of **section CX 42B(2)**; and” 20
- (2) After section KD 1(1)(h), the following is inserted:
- “(hb) where the person receives a distribution from a retirement savings scheme of a retirement scheme contribution, the distribution is treated as assessable income derived by the person in the income year of the distribution if retirement scheme contribution withholding tax has been deducted from the contribution and, at the time of the distribution, the person is— 25
- “(i) not eligible to receive New Zealand superannuation; and 30

“(ii) eligible to receive a retirement scheme contribution from a retirement scheme contributor; and”.

## **88 Calculation of subpart KD credit**

- (1) In section KD 2(2), the item FCA is replaced by the following:
 

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“**FCA** is the total amount of—

  - “(a) family credit abatement under subsection (6) for the eligible period, excluding any amount unable to be debited and applied because of **sections KD 2A(2) and KD 2B**; and
  - “(b) parental tax credit abatement under **section KD 2B**, for the eligible period.”

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- (2) In section KD 2(6), as the provision applies for income years corresponding to the 2006–07 and subsequent tax years, in paragraph (b) of the definition of **full year abatement**, “spouse” is replaced by “spouse, civil union partner, or de facto partner”.
 

15
- (3) **Subsection (1)** applies for the 2008–09 and later income years.
- (4) **Subsection (2)** applies for the income year corresponding to the 2006–07 and later tax years.

## **89 Calculating net contributions to family tax credit, in-work tax credit, child tax credit, and parental tax credit**

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- (1) In section KD 2A, the following is added as subsection (2):
 

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“(2) Subsection (1)(b) and (c)(iii) is overridden to the extent to which **section KD 2B** applies.”
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

## **90 New section KD 2B inserted**

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

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“**KD 2B Parental tax credit abatement: lump sum at end of tax year**

“(1) This section applies when a qualifying person elects to receive a parental tax credit in a lump sum in the year in which the relevant birth occurs and that birth occurs within 56 days of the end of the tax year.

“(2) Despite section KD 2A, for an eligible period in which a person is entitled to a parental tax credit, an amount of tax

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credit abatement calculated using the following formula is treated as a debit and applied to a person's parental tax credit for the tax year:

$$\text{full-year abatement} \times \frac{56}{365} - \text{abatement used.} \quad 5$$

“(3) In the formula,—

“(a) **full-year abatement** means the same as **full-year abatement** in section KD 2(6):

“(b) **abatement used** means an amount of family credit abatement calculated under section KD 2(6) for an eligible period ending on the last day of the tax year, to the extent to which the abatement would be applied to reduce tax credits for that period under section KD 2A(1)(c)(i) and (ii).” 10

(2) **Subsection (1)** applies for the 2008–09 and later income years. 15

## 91 Effect of extra interim instalment on entitlement to tax credit

(1) In section KD 7A(1)(b)(i), “fortnight” is replaced by “fortnight or a week, as the case may be,”. 20

(2) In section KD 7A(1)(b)(ii), “week” is replaced by “fortnight or a week, as the case may be,”.

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

“(1B) For the purposes of section KD 4(2)(c), a person is entitled to a credit of tax for a tax year of the amount calculated using— 25

“(a) the formula in subsection (2), if the person has received instalments described in subsection (1)(c)(i):

“(b) the formula in subsection (3), if the person has received instalments described in subsection (1)(c)(ii).”

(4) In section KD 7A(2), the words before the formula are replaced by “The formula referred to in **subsection (1B)(a)** is—”. 30

(5) In section KD 7A(3), the words before the formula are replaced by “The formula referred to in **subsection (1B)(b)** is—”.

(6) **Subsections (1) to (5)** apply for the 2008–09 and later income years. 35

**Struck out (majority)**

**92 Determination of amount of credit in certain cases**

In section LB 1(1),—

- (a) in paragraph (c), “so calculated” is replaced by “so calculated (**section MZ 12** (Determination of credit: modifying maximum ratios) modifies this paragraph)”.
- (b) in paragraph (d), “so calculated” is replaced by “so calculated (**section MZ 12** modifies this paragraph)”.
- (c) in paragraph (e), “subsection (5)” is replaced by “subsection (5) (**section MZ 12** modifies this paragraph)”.

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**New (majority)**

**92 Determination of amount of credit in certain cases**

In section LB 1(1),—

- (a) in paragraph (c), “so calculated” is replaced by “so calculated (**section MZ 15** (Determination of credit: modifying maximum ratios) modifies this paragraph)”.
- (b) in paragraph (d), “so calculated” is replaced by “so calculated (**section MZ 15** modifies this paragraph)”.
- (c) in paragraph (e), “subsection (5)” is replaced by “subsection (5) (**section MZ 15** modifies this paragraph)”.

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**93 Credit of tax for imputation credit**

- (1) In section LB 2(2), “income year” is replaced by “income year (**section <MZ 13> <MZ 16>** (Credit of tax for imputation credits and dividend withholding payment credits: modifying amount) modifies this subsection)”.

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**Struck out (majority)**

- (2) After section LB 2(7), the following is inserted:

“(8) An amount is treated as if it were assessable income for the purpose of determining a taxpayer’s entitlement to a credit under this section if the amount would but for section EX 47 be assessable income of the taxpayer from an attributing interest in a foreign investment fund.”

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**New (majority)**

- |   |                        |    |
|---|------------------------|----|
| <p>(2) After section LB 2(7), the following is inserted:</p> <p>“(8) An amount is treated as if it were assessable income for the purpose of determining a taxpayer’s entitlement to a credit under this section if the amount would but for section EX 47 be assessable income of the taxpayer from an interest in an attributing interest in a foreign investment fund.”</p>  | 5                      |    |
|   |                        |    |
| <p><b>94 New section LB 3 inserted</b></p> <p>After section LB 2, the following is inserted:</p> <p><b>“LB 3 Credit of retirement scheme contribution withholding tax for imputation credit</b></p>   |                        | 10 |
| <p>“(1) If a retirement scheme contributor attaches an imputation credit to a retirement scheme contribution for a person in an income year, the retirement scheme contributor is entitled to a credit of retirement scheme contribution withholding tax equal to the lesser of the following amounts:</p> <p>“(a) the amount of the imputation credit:</p> <p>“(b) the liability of the retirement scheme contributor for retirement scheme contribution withholding tax on the retirement scheme contribution.</p>  | 15                     |    |
| <p>“(2) If the amount of the imputation credit exceeds the liability of the retirement scheme contributor for retirement scheme contribution withholding tax on the retirement scheme contribution,—</p> <p>“(a) the amount of the excess is treated as an imputation credit attached to a distribution from the retirement scheme contributor to the person; and</p> <p>“(b) the person responsible for withholding the retirement scheme contribution withholding tax must, within 30 days of the contribution, give a notice to the person showing the amount of the excess credit.”</p> | 20<br><br>25<br><br>30 |    |

**Struck out (majority)**

**95 New sections LD 1B and LD 1C inserted**

After section LD 1, the following is inserted:

**“LD 1B Tax deductions from certain accident compensation payments: credit allowed to caregiver**

- “(1) This section applies if— 5
- “(a) a claimant under the Injury Prevention, Rehabilitation, and Compensation Act 2001—
- “(i) is paid an amount under section 81(1)(b) of that Act for a period; and
- “(ii) pays a caregiver for providing attendant care to them for the period; or 10
- “(b) the Accident Compensation Corporation pays a caregiver, on behalf of a claimant, an amount under section 81(1)(b) of that Act for a period, for providing attendant care to the claimant. 15
- “(2) The caregiver is allowed a credit against the caregiver’s income tax liability for the tax year corresponding to the caregiver’s income year that includes the period.
- “(3) The amount of the credit allowed under **subsection (2)** is calculated using the following formula: 20
- $$\frac{\text{amount received} \times \text{tax rate}}{1 - \text{tax rate.}}$$
- “(4) In the formula,—
- “(a) **amount received** is the amount paid to the caregiver for providing attendant care to the claimant for the period, to the extent to which the amount is equal to or less than the amount paid for the period, after any deduction of tax under this Act, described in subsection **(1)(a)(i) or (b)**: 25
- “(b) **tax rate** is the rate at which tax is deducted from the amount paid under section 81(1)(b) of the Injury Prevention, Rehabilitation, and Compensation Act 2001. 30

Struck out (majority)

**“LD 1C Tax deductions from certain accident compensation  
payments: credit allowed to claimant**

“(1) This section applies if—

“(a) a claimant under the Injury Prevention, Rehabilitation,  
and Compensation Act 2001 is paid an amount under 5  
section 81(1)(b) of that Act for a period; and

“(b) the claimant pays a caregiver for providing attendant  
care to them for the period; and

“(c) for the period, the amount paid to the caregiver,  
described in **paragraph (b)**, is less than the amount paid to 10  
the claimant, after any deduction of tax under this Act,  
described in **paragraph (a)**.

“(2) The tax credits under section LD 1(2) for the tax deductions  
relating to the amount are limited to the amount calculated  
using the following formula: 15

$$\text{total tax deductions} = \frac{\text{amount paid} \times \text{tax rate}}{1 - \text{tax rate.}}$$

“(3) In the formula,—

“(a) **total tax deductions** is the total deductions of tax for 20  
the amount paid to the claimant under section 81(1)(b)  
of the Injury Prevention, Rehabilitation, and Compensa-  
tion Act 2001 for the period:

“(b) **amount paid** is the amount paid to the caregiver,  
described in **subsections (1)(b) and (c)**: 25

“(c) **tax rate** is the rate at which tax is deducted from the  
amount paid to the claimant under section 81(1)(b) of  
the Injury Prevention, Rehabilitation, and Compensa-  
tion Act 2001.”

New (majority)

**95 New sections LD 1B and LD 1C inserted**

After section LD 1, the following is inserted:

**“LD 1B Tax deductions from certain accident compensation payments: credit allowed to provider**

- “(1) This section applies if— 5
- “(a) a claimant under the Injury Prevention, Rehabilitation, and Compensation Act 2001—
- “(i) is paid a personal service rehabilitation payment for the claimant for a period, for a key aspect of social rehabilitation referred to in the definition of **personal service rehabilitation payment** in section OB 1 (the **key aspect of social rehabilitation**); and 10
- “(ii) pays another person for providing a key aspect of social rehabilitation to the claimant for a period; 15
- or
- “(b) the Accident Compensation Corporation pays another person a personal service rehabilitation payment for the claimant for a period, for providing a key aspect of social rehabilitation to the claimant for the period. 20
- “(2) The person (the **provider**) is allowed a credit against the provider’s income tax liability for the tax year corresponding to the provider’s income year that includes the period.
- “(3) The amount of the credit allowed under **subsection (2)** is calculated using the following formula: 25
- $$\frac{\text{amount received} \times \text{tax rate}}{1 - \text{tax rate.}}$$
- “(4) In the formula,—
- “(a) **amount received** is the amount paid to the provider for providing a key aspect of social rehabilitation to the claimant for the period, to the extent to which the amount is equal to or less than the amount of the personal service rehabilitation payment for a key aspect of social rehabilitation for the claimant for the period, after any deduction of tax under this Act: 30 35

**New (majority)**

- “(b) **tax rate** is the rate at which tax is deducted from a personal service rehabilitation payment for a key aspect of social rehabilitation for the period.
- “**LD 1C Tax deductions from certain accident compensation payments: credit allowed to claimant** 5
- “(1) This section applies if—
- “(a) a claimant under the Injury Prevention, Rehabilitation, and Compensation Act 2001 is paid a personal service rehabilitation payment for the claimant for a period, for a key aspect of social rehabilitation referred to in the definition of **personal service rehabilitation payment** in section OB 1 (the **key aspect of social rehabilitation**); and 10
- “(b) the claimant pays another person (the **provider**) for providing a key aspect of social rehabilitation to the claimant for the period; and 15
- “(c) the amount paid to the provider is less than the amount of personal service rehabilitation payment for the claimant for the period, after any deduction of tax under this Act. 20
- “(2) The tax credits under section LD 1(2) for the tax deductions relating to the amount are limited to the amount calculated using the following formula:
- $$\text{total tax deductions} = \frac{\text{amount paid} \times \text{tax rate}}{1 - \text{tax rate.}} \quad 25$$
- “(3) In the formula,—
- “(a) **total tax deductions** is the total of deductions of tax for the personal service rehabilitation payment paid to the claimant for the period: 30
- “(b) **amount paid** is the amount paid to the provider, described in **subsections (1)(b) and (c)**:
- “(c) **tax rate** is the rate at which tax is deducted from the personal service rehabilitation payment paid to the claimant for the period.” 35

**96 New section LD 4 inserted**

After section LD 3A, the following is inserted:

**“LD 4 Credit of retirement scheme contribution withholding tax for Maori authority credit**

- “(1) If a retirement scheme contributor attaches a Maori authority credit to a retirement scheme contribution for a person in an income year, the retirement scheme contributor is entitled to a credit of retirement scheme contribution withholding tax equal to the lesser of the following amounts: 5
- “(a) the amount of the Maori authority credit: 10
- “(b) the liability of the retirement scheme contributor for retirement scheme contribution withholding tax on the retirement scheme contribution.
- “(2) If the amount of the Maori authority credit exceeds the liability of the retirement scheme contributor for retirement scheme contribution withholding tax on the retirement scheme contribution,— 15
- “(a) the amount of the excess is treated as a Maori authority credit attached to a taxable Maori authority distribution from the retirement scheme contributor to the person; 20
- and
- “(b) the person responsible for withholding the retirement scheme contribution withholding tax must within 30 days of the contribution give a notice to the person showing the amount of the excess credit.” 25

**97 Credit of tax for dividend withholding payment credit in hands of shareholder**

In section LD 8(1)(a), “in assessable income” is replaced by “in assessable income (**section <MZ 13> <MZ 16>** (Credit of tax for imputation credits and dividend withholding payment credits: modifying amount) modifies this paragraph)”. 30

**New (majority)**

**97B New section LD 12 added**

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



**New (majority)**

**“LD 12 Credit for retirement scheme contribution**

**withholding tax if retirement scheme contribution not  
excluded income**

- “(1) This section applies for a taxpayer and a tax year if the taxpayer— 5
- “(a) derives income as a retirement scheme contribution for a period in the corresponding income year; and
- “(b) the retirement scheme contributor pays an amount of retirement scheme contribution withholding tax under **subpart NEB** in relation to the retirement scheme contribution; and 10
- “(c) the income is not excluded income of the taxpayer under **section CX 42B**.
- “(2) If the taxpayer is a New Zealand resident, the taxpayer is entitled to a credit of tax against the taxpayer’s income tax liability for the tax year equal to the amount paid as retirement scheme contribution withholding tax. 15
- “(3) If the taxpayer is a non-resident and **subsection (4)** does not apply, the taxpayer is entitled to a credit of tax against the taxpayer’s income tax liability for the tax year equal to any amount by which the amount paid as retirement scheme contribution withholding tax exceeds the amount treated under **section NG 16** as being non-resident withholding tax paid in relation to the retirement scheme contribution. 20
- “(4) If the taxpayer is a non-resident and the retirement scheme contribution is a taxable Maori authority distribution, the taxpayer is entitled to a credit of tax against the taxpayer’s income tax liability for the tax year equal to the amount paid as retirement scheme contribution withholding tax in relation to the retirement scheme contribution. 25 30
- “(5) For the purposes of section BC 10(2)(a) and (b), if a taxpayer has surplus credits from a tax credit under this section for the tax year, the Commissioner must—
- “(a) first, use the tax credit to satisfy the taxpayer’s income tax liability for a tax year before the tax year: 35

**Taxation (Annual Rates, Business  
Taxation, KiwiSaver, and  
Remedial Matters)**

Part 1 cl 97B

**New (majority)**

- |   |                    |
|---|--------------------|
| <p>“(b) second, use the tax credit to satisfy the taxpayer’s income tax liability for a tax year after the tax year, applying this paragraph to tax years in numerical order:</p> <p>“(c) third, use the tax credit to pay the taxpayer’s provisional tax for a tax year after the tax year, applying this paragraph to tax years in numerical order:</p> <p>“(d) fourth, use the tax credit to pay an amount that is payable by the taxpayer under an Inland Revenue Act:</p> <p>“(e) fifth, treat the tax credit as tax paid in excess and refundable or transferable to the extent that section MD 1 and Part 10B of the Tax Administration Act 1994 apply.”</p> | <p>5</p> <p>10</p> |
|---|--------------------|

**98 Credits in respect of dividends to non-resident investors**

- |   |           |
|---|-----------|
| <p>(1) In section LE 2(2), in the formula, “67/120” is replaced by “7/10”.</p> <p>(2) The following is added to section LE 2:</p> <p>“(13) <b>Section &lt;MZ 14&gt;&lt;MZ 17&gt;</b> (Credits for non-resident investors) modifies subsections (2), (9) and (10).”</p> <p>(3) <b>Subsection (1)</b> applies for the 2008–09 and later income years.</p> | <p>15</p> |
|---|-----------|

**99 Special rules for holding companies**

<p>In section LE 3(6), in item T, “income year” is replaced by “income year (<b>section &lt;MZ 14&gt;&lt;MZ 17&gt;</b> (Credits for non-resident investors) modifies this item”.</p>	<p>20</p>
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**Struck out (majority)**

**100 New subpart LH inserted**

- |   |           |
|---|-----------|
| <p>(1) After subpart LG, the following is inserted:</p> | <p>25</p> |
|---|-----------|

Struck out (majority)

“Subpart LH—Business expenditure tax credits

“LH 1 Tax credit relating to expenditure for research and  
development

“*Tax credit*

- “(1) A person has a tax credit for a tax year under this section if the 5  
person is eligible under **section LH 2(1)** and meets the require-  
ments of **section LH 2(2)** for the corresponding income year.

“*Amount of tax credit*

- “(2) The amount of the tax credit is given by **section LH 3**.

“*Depreciation loss* 10

- “(3) **Section LH 10** provides special rules for determining the depre-  
ciation loss some persons have for the purposes of this  
subpart.

“*Administration requirements*

- “(4) Despite **subsection (1)**, a person does not have a tax credit for a 15  
tax year under this section unless they have complied with  
**section 68D or 68E** of the Tax Administration Act 1994.

“*Treatment of tax credit in core provisions: tax paid or tax  
withheld*

- “(5) For the purposes of sections BC 9 and BC 10, the person’s tax 20  
credit under this section is treated as a credit for tax paid or tax  
withheld.

“*Dealing with surplus credits*

- “(6) For the purposes of sections BC 10(2)(a) and (b), if the person 25  
has surplus credits from a tax credit under this section for the  
tax year, the Commissioner must—

- “(a) first, use the tax credit to satisfy the person’s income tax  
liability for a tax year that is before the tax year: 25  
“(b) second, use the tax credit to satisfy the person’s income  
tax liability for a tax year that is after the tax year, 30  
applying this paragraph to tax years in numerical order:

**Struck out (majority)**

“(c) third, to pay the person’s provisional tax for a tax year that is after the tax year, applying this paragraph to tax years in numerical order:	
“(d) fourth, pay an amount that is payable by the person under an Inland Revenue Act:	5
“(e) fifth, treat the tax credit as tax paid in excess, and refundable or transferable to the extent to which section MD 1 and Part 10B of the Tax Administration Act 1994 apply.	
“Defined in this Act: corresponding income year, depreciation loss, income tax liability, surplus credit, tax, tax year	10
<b>“LH 2 Expenditure by person for purposes of research and development</b>	
<i>“Eligible person</i>	
“(1) A person is eligible for a tax credit at a time in an income year if, at the time,—	15
“(a) the person—	
“(i) carries on a business in New Zealand through a fixed establishment in New Zealand:	
“(ii) is an industry research co-operative; and	20
“(b) the person is not—	
“(i) a Crown Research Institute, a tertiary institution, or a district health board:	
“(ii) controlled by entities referred to in <b>subparagraph (i)</b> :	
“(iii) an associate under section OD 8(3) of an entity referred to in <b>subparagraph (i)</b> .	25
<i>“Requirements for tax credit</i>	
“(2) A person has a tax credit for a tax year if—	
“(a) the person carries on research and development activities related to—	30
“(i) the person’s business, if <b>subparagraph (ii)</b> does not apply:	
“(ii) the businesses of persons who are industry members under <b>section LH 8</b> , if the person is an industry research co-operative; and	35

**Struck out (majority)**

- |  |  |
|--|--|
| <p>“(b) the person—</p> <p style="padding-left: 20px;">“(i) controls the research and development activities;<br/>and</p> <p style="padding-left: 20px;">“(ii) bears the financial and technical risk of the<br/>research and development activities; and</p> <p style="padding-left: 20px;">“(iii) owns the results of the research and development<br/>activities, if any; and</p> <p>“(c) in a period in the corresponding income year, the person<br/>is eligible for a tax credit and has—</p> <p style="padding-left: 20px;">“(i) expenditure on the research and development<br/>activities:</p> <p style="padding-left: 20px;">“(ii) an amount of depreciation loss for depreciable<br/>property used in the research and development<br/>activities; and</p> <p>“(d) the expenditure or the amount of depreciation loss—</p> <p style="padding-left: 20px;">“(i) is of a kind listed in <b>section LH 6(1)</b>; and</p> <p style="padding-left: 20px;">“(ii) is not of a kind listed in <b>section LH 6(2)</b>; and</p> <p>“(e) the expenditure or the amount of depreciation loss—</p> <p style="padding-left: 20px;">“(i) is a deduction of the person allocated to the<br/>corresponding income year:</p> <p style="padding-left: 20px;">“(ii) would be a deduction of the person allocated to<br/>the corresponding income year if the person<br/>derived income other than exempt income:</p> <p style="padding-left: 20px;">“(iii) is expenditure subject to the capital limitation<br/>that is incurred by the person in developing<br/>depreciable property and would be a deduction of<br/>the person allocated to the corresponding income<br/>year if section DB 26(1) (Research or develop-<br/>ment) applied; and</p> <p>“(f) the amount of the expenditure or depreciation loss that<br/>under <b>subsection (3)</b> may contribute to the person’s tax<br/>credit meets the requirements of <b>subsection (4)</b>.</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> |
|--|--|

**Struck out (majority)**

- “Amount of expenditure or depreciation loss contributing to tax credit*
- “(3) The amount of expenditure or depreciation loss that may contribute to the person’s tax credit for the tax year is determined by the amount (the **eligible amount**) of the expenditure or depreciation loss that— 5
- “(a) meets the requirements of **subsection (2)(d) and (e)**; and
- “(b) affects the person’s net income or net loss for the tax year after allowing for adjustments under subpart CH (Adjustments) other than adjustments under section CH 1 (Adjustment for closing values of trading stock, live-stock, and excepted financial arrangements) if the expenditure or amount of depreciation loss is incurred on an item and the item is processed or transformed into products in the research and development activities; and 10
- “(c) meets the requirements of **section LH 9**, if the expenditure or amount of depreciation loss relates to internal software development. 15
- “Minimum amount of eligible amounts*
- “(4) For the person to have a tax credit for the tax year for an eligible amount, the eligible amount must be— 20
- “(a) a payment to a listed research provider not associated with the person:
- “(b) part of a total amount of eligible amounts for the corresponding income year equal to or more than the amount calculated using the formula— 25
- $$\$20,000 \times \frac{\text{days}}{\text{year days}}.$$
- “Definition of items in formula* 30
- “(5) In the formula,—
- “(a) **days** is the number of days in the corresponding income year for which the person is eligible for a tax credit:
- “(b) **year days** is the number of days in the corresponding income year. 35

**Struck out (majority)**

*“Partnership carrying on research and development activities*

- “(6) If persons carry on research and development activities as partners in a partnership, the partnership is treated for the purposes of **subsections (1), (2)(a)(i), and (4)** as an entity carrying on the research and development activities. 5

“Defined in this Act: associated person, business, corresponding income year, Crown Research Institute, deduction, depreciable property, depreciation loss, district health board, exempt income, industry research co-operative, listed research provider, research and development activities, tax year, tertiary institution 10

**“LH 3 Amount of tax credit**

*“Formula*

- “(1) The amount of the tax credit under **section LH 1** corresponding to an amount of expenditure or depreciation loss for research and development activities of a person is calculated for a tax year using the following formula: 15

$$0.15 \times \text{eligible amount.}$$

*“Eligible amount*

- “(2) **Eligible amount** is the eligible amount under **section LH 2** of the expenditure or depreciation loss for the tax year. 20

“Defined in this Act: depreciation loss, research and development activities, tax year

**“LH 4 Research and development activities and related terms**

*“Research and development activities 25*

- “(1) **Research and development activities** of a person are—
- “(a) systematic, investigative, and experimental activities that seek to resolve scientific or technological uncertainty or that involve an appreciable element of novelty and that are carried on for the purposes of— 30
- “(i) acquiring new knowledge:
- “(ii) creating new or improved materials, products, devices, processes, or services:

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- “(b) other activities that are commensurate with, required for, and integral to, the carrying on of the activities referred to in **paragraph (a)**.
- “*Systematic, investigative, and experimental activities*
- “(2) **Systematic, investigative, and experimental activities** of a person are activities that are— 5
- “(a) planned activities directed towards a particular purpose and following a logical progression of work involving hypothesis, experiment, observation, and evaluation; and 10
- “(b) not excluded by **section LH 5**.
- “*Scientific or technological uncertainty*
- “(3) **Scientific or technological uncertainty** means uncertainty concerning the scientific or technological possibility of a thing, or the achievement of the thing in practice, created by an absence of relevant knowledge from the knowledge that is publicly available or deducible by a competent professional working in the field. 15
- “*Novelty*
- “(4) In this subpart, **novelty** means a development of technology or a new use of existing technology, by comparison with the knowledge of the technology that is publicly available on a reasonably accessible worldwide basis. 20
- “*Technology*
- “(5) In this subpart, **technology** is the practical application of scientific principles and knowledge. 25
- “Defined in this Act: novelty, research and development activities, scientific or technological uncertainty, systematic, investigative, and experimental activities, technology
- “**LH 5 Activities excluded from being systematic, investigative, and experimental activities** 30
- The following activities are not systematic, investigative, and experimental activities:



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| “(a) prospecting for, exploring for, drilling for, or producing, minerals, petroleum, natural gas, or geothermal energy:  | 5  |
| “(b) research in social sciences, arts, or humanities:  | 5  |
| “(c) market research, market testing, market development, or sales promotion (including consumer surveys):  | 5  |
| “(d) quality control or routine testing of materials, products, devices, processes, or services:  | 10 |
| “(e) making cosmetic or stylistic changes to materials, products, devices, processes, or services:  | 10 |
| “(f) routine collection of information:   | 15 |
| “(g) commercial, legal, and administrative aspects of patenting, licensing, or other activities:  | 15 |
| “(h) activities involved in complying with statutory requirements or standards:   | 15 |
| “(i) management studies or efficiency surveys:  | 20 |
| “(j) the reproduction of a commercial product or process by a physical examination of an existing system or from plans, blueprints, detailed specifications, or publicly available information: | 20 |
| “(k) pre-production activities, such as demonstration of commercial viability, tooling-up, and trial runs.  | 20 |

**“LH 6 Eligibility of types of expenditure and depreciation loss**

*“Eligible types of expenditure and depreciation loss*

- |  |    |
|--|----|
| “(1) In order to give rise to a tax credit under <b>section LH 1</b> for a person for research and development activities of the person, expenditure or depreciation loss must be 1 or more of the following:    | 25 |
| “(a) salary, wages, allowances, bonuses, commissions, extra salary, overtime, holiday pay, and long service pay of an employee, for time in which the employee conducts the research and development activities: | 30 |
| “(b) depreciation losses for property, to the extent to which the property is used or available for use in conducting the research and development activities, that is—  | 35 |

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| <p>“(i) used wholly or mainly in conducting the research and development activities; and</p> <p>“(ii) not in a pool with other depreciable property, or in a pool of depreciable property used wholly in conducting research and development activities:</p> <p>“(c) expenditure on employee training, recruitment, relocation, and travel, to the extent to which it is incurred directly for the research and development activities:</p> <p>“(d) expenditure on materials incorporated into a trial model or preliminary version of a product or plant in the research and development activities:</p> <p>“(e) expenditure relating to administration, personnel, repairs and maintenance, cleaning and security, rates, utilities, insurance and leasing of buildings, plant, or equipment, to the extent to which the expenditure is incurred for the research and development activities:</p> <p>“(f) expenditure on items consumed in the research and development activities:</p> <p>“(g) the amount by which expenditure on items processed or transformed into products in the research and development activities exceeds the amount of—</p> <p style="padding-left: 20px;">“(i) the sale proceeds of the products sold other than to an associated person:</p> <p style="padding-left: 20px;">“(ii) the market value of the products not sold or sold to an associated person:</p> <p>“(h) payments to another person for conducting the research and development activities performed on behalf of the person.</p> <p style="padding-top: 20px;"><i>“Excluded types of expenditure and depreciation loss</i></p> <p>“(2) The following expenditure and depreciation losses do not give rise to a tax credit under <b>section LH 1</b> for a tax year for a person for research and development activities of the person:</p> <p style="padding-left: 20px;">“(a) expenditure under a financial arrangement:</p> <p style="padding-left: 20px;">“(b) an amount of depreciation loss under section EE 11(3) to (5) (Calculation rule: income year in which item disposed of) or section EE 32 (Items no longer used):</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> |
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| <p>“(c) expenditure on property or services, other than a right to use property, purchased directly or indirectly by the person (the <b>purchaser</b>) from an associated person (an <b>associate</b>), to the extent to which the amount exceeds the amount of expenditure or depreciation loss—</p> <p style="padding-left: 20px;">“(i) meeting the requirements of <b>section LH 2(2)(d) and (e)</b>; and</p> <p style="padding-left: 20px;">“(ii) incurred by an associate in obtaining the goods or services from a person who is not associated with the associate or the purchaser and does not obtain the property or services from a person associated with the associate or the purchaser:</p> | <p>5</p> <p>10</p> |
| <p>“(d) expenditure on a right to use property of an associated person, to the extent to which the amount exceeds the market value of the right:</p>   | <p>15</p>          |
| <p>“(e) an amount of depreciation loss for depreciable property created by the research and development activities:</p>  |                    |
| <p>“(f) an amount of depreciation loss for depreciable property purchased by the person from an associated person, to the extent to which the depreciation loss arises from an excess of the purchase price over the adjusted tax value of the property for the associated person at the time:</p>   | <p>20</p>          |
| <p>“(g) expenditure or an amount of depreciation loss incurred in purchasing, leasing, or obtaining a right to use core technology:</p>  | <p>25</p>          |
| <p>“(h) expenditure or an amount of depreciation loss incurred in internal software development to the extent to which it exceeds the eligible amount for the person under <b>section LH 9</b>:</p>  |                    |
| <p>“(i) expenditure or an amount of depreciation loss incurred in research and development activities performed outside New Zealand other than as part of a research and development project:</p>  | <p>30</p>          |
| <p>“(j) expenditure or an amount of depreciation loss, allocated to the corresponding income year, incurred in research and development activities conducted outside New Zealand as part of a research and development project, to the extent to which the expenditure or depreciation</p>   | <p>35</p>          |

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- loss exceeds one-tenth of the eligible amount under **section LH 2** of the expenditure or depreciation loss for the tax year, allocated to the corresponding income year, incurred on research and development activities conducted in New Zealand as part of the research and development project: 5
- “(k) expenditure or an amount of depreciation loss in relation to which a grant is provided to the person by a public authority or local authority: 5
- “(l) expenditure or an amount of depreciation loss met from funds that, as a condition of a grant to the person by a public authority or local authority, are required to be provided or paid to the person or contributed by the person: 10
- “(m) donations: 15
- “(n) professional fees incurred in determining whether activities are research and development activities or whether the person or expenditure is eligible: 15
- “(o) expenditure or an amount of depreciation loss incurred in purchasing, leasing, or obtaining a right to use intangible property: 20
- “(p) expenditure or an amount of depreciation loss of an industry research co-operative that is funded by a person who is not eligible under **section LH 2(1)(a)(i) or (b)** for a tax credit. 25
- “*Meaning of core technology*
- “(3) For research and development activities of a person, **core technology** is knowledge or anything produced by the application of knowledge that is—
- “(a) a product of activities of which the research and development activities are an extension, continuation, development, or completion: 30
- “(b) the basis for new knowledge that is to be obtained as a purpose of the research and development activities: 30
- “(c) the basis for new or improved materials, products, devices, processes, or services, that are to be created as a purpose of the research and development activities. 35

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*“Meaning of research and development project*

- “(4) For a person, **research and development project** means a process—
- “(a) consisting of co-ordinated research and development activities controlled by the person; and 5
  - “(b) having start and finish dates; and
  - “(c) undertaken collectively to achieve a specified objective within constraints of time, cost, and other resources; and
  - “(d) of which the person bears the financial and technical risk and owns the results, if any; and 10
  - “(e) for which the person incurs on research and development activities conducted in New Zealand more than half of the total amount of expenditure and depreciation loss that would be an eligible amount under **section LH 2B** 15  
in the absence of **subsection (2)(j)**.
- “Defined in this Act: associated person, core technology, corresponding income year, depreciable property, depreciation loss, employee, interest, local authority, pool, public authority, research and development activities, research and development project, tax year 20

**“LH 7 Listed research providers**

*“Application to be listed research provider*

- “(1) A person (the **applicant**) may apply to be a listed research provider by giving notice to the Commissioner that the applicant— 25
- “(a) is capable of carrying out research and development activities on behalf of other persons; and
  - “(b) has in New Zealand the facilities needed to carry out the research and development activities; and
  - “(c) will charge market prices for carrying out the research and development activities; and 30
  - “(d) will be available to carry out research and development activities on behalf of persons not associated with the applicant; and
  - “(e) will keep records sufficient to show— 35
    - “(i) whether the applicant is complying with the requirements of **paragraphs (a) to (d)**; and

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“(ii) the amounts derived and incurred by the applicant in carrying out research and development activities on behalf of other persons.

*“Listing of applicant*

“(2) The Commissioner may list an applicant as a listed research provider if the Commissioner is satisfied that the applicant meets the requirements of **subsection (1)(a) and (b)**. 5

*“Period of listing*

“(3) A person listed under **subsection (2)** continues to be a listed research provider until the person is removed from the list— 10

“(a) under **subsection (4)**, following a request by the person:

“(b) under **subsection (5)**, by a notice of the Commissioner.

*“Application by listed research provider to be removed from list*

“(4) If a listed research provider gives notice to the Commissioner that the person wishes to be removed from the list of listed research providers, the person is removed from the list from the later of the following: 15

“(a) the date specified in the notice:

“(b) the date on which the Commissioner receives the notice. 20

*“Commissioner may remove person from list of listed research providers*

“(5) If the Commissioner is satisfied that a person is not meeting the requirements of **subsection (1)(a) to (e)**, the Commissioner may give the person a notice that the person is not a listed research provider and the person is removed from the list from the later of the following: 25

“(a) the date specified in the Commissioner’s notice:

“(b) the date 1 month after the date of the notice. 30

“Defined in this Act: associated person, Commissioner, listed research provider, notice, research and development activities

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**“LH 8 Industry research co-operatives**

An **industry research co-operative** is a person who carries on research and development activities mainly on behalf of other persons (the **industry members**), each of whom—

- “(a) carries on a business activity in New Zealand through a fixed establishment in New Zealand; and 5
- “(b) would be eligible for a tax credit under **section LH 1** if—
  - “(i) the person carried on the research and development activities; and
  - “(ii) **section LH 2(4)** did not apply; and 10
- “(c) contributes to the financing of the research and development activities by payments made—
  - “(i) to the industry research co-operative:
  - “(ii) as a levy imposed under section 4 of the Commodity Levies Act 1990. 15

“Defined in this Act: business, industry research co-operative, research and development activities

**“LH 9 Limits on eligible amount for internal software development**

*“When this section applies 20*

- “(1) This section applies for a person (the **developer**) and an income year of the person (the **developer’s year**) if, in the absence of this section, the person would have under **section LH 2** for the income year an eligible amount of expenditure or depreciation loss relating to internal software development. 25

*“Eligible amount for developer’s year*

- “(2) A developer has for the developer’s year an eligible amount under **section LH 2** equal to—
  - “(a) the amount given by **subsection (3)** for the developer’s year, if the developer has no associated internal software developer in the developer’s year; or 30
  - “(b) the amount given by **subsection (6)** for the developer’s year, if—

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- “(i) the developer has throughout the developer’s year an associated internal software developer with the same income year as the developer; and
- “(ii) **paragraph (c)** does not apply; or
- “(c) the amount given by **subsection (12) or (13)** for the developer’s year, if the developer has throughout the developer’s year an associated internal software developer with an income year that is different from the developer’s income year; or
- “(d) the total of amounts given by **subsection (3), (6), (12), or (13)** for each of the periods making up the developer’s year, if **paragraphs (a) to (c)** do not apply.
- 5
- 10
- “Developer having no associated internal software developer for period*
- “(3) If a developer has no associated internal software developer in a period that is part or all of the developer’s year, the developer has for the period an eligible amount under **section LH 2** equal to the smaller of—
- “(a) the eligible amount that the person would have for the period in the absence of this section:
- “(b) the amount for the period calculated using the formula—
- 15
- 20
- $$\text{limit} \times \frac{\text{days}}{\text{year days.}}$$
- 25
- “Definition of items in formula*
- “(4) In the formula in **subsection (3)(b)**,—
- “(a) **limit** is an amount equal to—
- “(i) \$2,000,000, if **subparagraph (ii)** does not apply; or
- “(ii) a greater amount determined by the Minister under **subsection (15)**:
- 30
- “(b) **days** is the number of days in the period:
- “(c) **year days** is the number of days in the tax year corresponding to the developer’s year.



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*“Developer having associated internal software developer  
with same income year for period*

- “(5) **Subsection (6)** applies to a developer if, throughout a period that is part or all of the developer’s year, the developer has an associated internal software developer with the same income year as the developer and has no associated internal software developer with a different income year. 5

*“Eligible amount*

- “(6) The developer has an eligible amount under **section LH 2** for the period equal to the smallest of— 10
- “(a) the eligible amount under **section LH 2** that the developer would have for the period in the absence of this section:
  - “(b) the amount calculated in **subsection (7)** for the developer for the period:
  - “(c) the part, allocated by the internal software development group to the developer, of the amount given by **subsection (9)** as being available for allocation by the internal software development group for the tax year. 15

*“Maximum amount for developer for period*

- “(7) The amount referred to in **subsection (6)(b)** as the amount for the developer for the period is the amount calculated using the formula— 20

$$\text{limit} \times \frac{\text{days}}{\text{year days}}. \quad 25$$

*“Definition of items in formula*

- “(8) In the formula in **subsection (7)**,—
- “(a) **limit** is an amount equal to— 30
    - “(i) \$2,000,000, if **subparagraph (ii)** does not apply; or
    - “(ii) a greater amount determined by the Minister under **subsection (15)**:
  - “(b) **days** is the number of days in the period:
  - “(c) **year days** is the number of days in the tax year corresponding to the developer’s year.

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- “Amount available for allocation by internal software development group*
- “(9) The amount referred to in **subsection (6)(c)** that may be allocated by the internal software development group to members of the group for the tax year corresponding to the developer’s year is the lesser of— 5
- “(a) the total of the eligible amounts that the members of the group would have in the absence of this section for income years corresponding to the tax year:
- “(b) the amount for the tax year calculated using the formula— 10
- $$\text{group limit} \times \frac{\text{days}}{\text{year days.}}$$
- 15
- “Definition of items in formula*
- “(10) In the formula in **subsection (9)(b)**,—
- “(a) **group limit** is an amount equal to—
- “(i) \$2,000,000, if **subparagraph (ii)** does not apply; or
- “(ii) a greater amount determined by the Minister under **subsection (15)**: 20
- “(b) **days** is the number of days in the tax year corresponding to the developer’s year for which there are 2 or more members of the internal software development group:
- “(c) **year days** is the number of days in the tax year corresponding to the developer’s year. 25
- “Developer having associated internal software developer with different income year*
- “(11) **Subsection (12) or (13)** applies to a developer if, throughout a period that is part or all of the developer’s year, a developer has an associated internal software developer with a different income year from the developer. 30
- “Eligible amount for period less than year*
- “(12) If the period is less than the developer’s year, the developer has an eligible amount under **section LH 2** equal to zero.

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*“Eligible amount for period of developer’s year*

- “(13) If the period is the developer’s year, the developer has an eligible amount under **section LH 2** for the corresponding tax year equal to the lesser of—
- “(a) the eligible amount under **section LH 2** that the developer would have for the period in the absence of this section: 5
  - “(b) the part, allocated by the internal software development group to the developer, of the amount given by **subsection (14)** as being available for allocation by the internal software development group for the tax year. 10

*“Amount available for allocation by internal software development group*

- “(14) The amount referred to in **subsection (13)(b)** that may be allocated by the internal software development group to members of the group for the tax year corresponding to the developer’s year is the lesser of— 15
- “(a) the total of the eligible amounts that the members of the group would have in the absence of this section for income years corresponding to the tax year:
  - “(b) an amount equal to— 20
    - “(i) \$2,000,000, if **subparagraph (ii)** does not apply; or
    - “(ii) a greater amount determined by the Minister under **subsection (15)**.

*“Minister may determine amount of limit*

- “(15) The Minister may, by notice published in the *Gazette*, determine an amount of more than \$2,000,000 to be appropriate for the purposes of **subsections (4)(a)(ii), (8)(a)(ii), (10)(a)(ii) and (14)(b)(ii)** for a person or internal software development group, who need not be named in the notice, and an income year or period, if the Minister is satisfied that— 25 30
- “(a) the internal software development will be exploited mainly for the benefit of the New Zealand economy; and
  - “(b) New Zealand will derive a substantial net benefit from the internal software development; and 35

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“(c) the person or the internal software development controller of the group has a commitment to retain the value of their business in New Zealand.

“Defined in this Act: associated internal software developer, depreciation loss, income year, internal software development, internal software development controller, internal software development group, Minister

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**“LH 10 Depreciation loss for depreciable property: some special rules for tax credit**

*“When this section applies*

“(1) This section applies to a person who owns an item of depreciable property for which there has never been a deduction allowed for depreciation loss under section DA 1 (General permission), because the person derives exempt income. 10

*“Depreciation loss for tax credit*

“(2) For the purposes of calculating the amount of depreciation loss the person has for the item under section EE 1(2) (What this subpart does), the person is treated as: 15

“(a) acquiring the item on the later of the 2 following days:

“(i) the first day of the 2008–09 income year:

“(ii) the day on which they acquire the item; and 20

“(b) allowed a deduction for depreciation loss for the item, for the income years ending after the relevant day on which the person is treated as acquiring it under this section.

*“Market value and 20% loading*

25

“(3) An item treated as acquired by a person under **subsection (2)(a)(i)** is treated as—

“(a) acquired for its market value; and

“(b) meeting the requirements in section EE 26(2)(b)(i) to (iv) (Annual rate for item acquired in person’s 1995–96 or later income year) for using the 1.2 factor, unless the item— 30

“(i) did not meet those requirements when, but for **subsection (2)(a)(i)**, the person acquired the item; or

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“(ii) was acquired by the person, but for **subsection (2)(a)(i)**, before the first day of the 1995–96 income year.

*“No allowable deduction: general permission*

“(4) Nothing in this section allows a deduction under section DA 1. 5

“Defined in this Act: acquire, deduction, depreciable property, depreciation loss, exempt income, income year, own

**“LH 11 Definitions**

In this subpart— 10

“**associated internal software developer**, for a person who is carrying on internal software development at a time, means another person—

“(a) who is carrying on internal software development at the time; and 15

“(b) for whom the internal software development controller is the same as the internal software development controller of the person

“**internal software development** means the activity of developing software, being an action to which **paragraph (a)** of the definition in **section LH 4(1)** of **research and development activities** applies, other than with the main purpose of sale, rent, license, hire, or lease to 2 or more persons who are— 20

“(a) not associated with the person under section OD 8(3) (Further definitions of associated persons); and 25

“(b) not associated with each other under section OD 8(3)

“**internal software development controller**, for a person who is carrying on internal software development, means a group of 1 or more persons—

“(a) having the power to govern, directly or indirectly, the financial and operating policies of the person to obtain benefits from the person’s activities; and 30

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- “(b) having no other person or persons with the power to govern, directly or indirectly, the financial and operating policies of the group to obtain benefits from the group’s activities
- “**internal software development group**, for an internal software development controller (the **controller**) and a tax year, means a group of entities of which each entity is a member at a time, in the entity’s income year corresponding to the tax year, when— 5
- “(a) the controller is the internal software development controller of the entity; and 10
- “(b) the entity is carrying on internal software development; and
- “(c) the entity has an associated internal software developer.
- “Defined in this Act: associated person, deduction, income year, internal software development, internal software development controller, internal software development group, research and development activities, tax year”. 15
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

**New (majority)**

- 100 New subpart LH inserted**
- (1) After subpart LG, the following is inserted: 20
- “Subpart LH—Business expenditure tax credits
- “LH 1 Tax credit relating to expenditure for research and development**
- “*Tax credit*
- “(1) A person has a tax credit for a tax year (the **credit tax year**) under this section if, for a period in the corresponding income year, the person— 25
- “(a) is eligible under **section LH 2(1)**; and
- “(b) performs research and development activities not on another’s behalf or has research and development activities performed on the person’s behalf; and 30
- “(c) meets the requirements of **section LH 2(2)**; and

**New (majority)**

- |   |  |
|---|--|
| <p>“(d) has an eligible amount under <b>section LH 3</b> of expenditure or depreciation loss that may contribute to the person’s tax credit for the credit tax year.</p> <p style="padding-left: 40px;"><i>“Amount of tax credit</i></p> <p>“(2) The amount of the tax credit is given by <b>section LH 4</b>.</p> <p style="padding-left: 40px;"><i>“Eligible amount of expenditure or depreciation loss</i></p> <p>“(3) The amount of expenditure or depreciation loss that may contribute to the person’s tax credit for the credit tax year is found under <b>section LH 3</b> by reference to <b>sections LH 5 to LH 12</b>.</p> <p style="padding-left: 40px;"><i>“Depreciation loss</i></p> <p>“(4) <b>Section LH 11</b> provides special rules for determining the depreciation loss some persons have for the purposes of this subpart.</p> <p style="padding-left: 40px;"><i>“Administration requirements</i></p> <p>“(5) Despite <b>subsection (1)</b>, a person does not have a tax credit for a tax year under this section unless they have complied with <b>section 68D or 68E</b> of the Tax Administration Act 1994.</p> <p style="padding-left: 40px;"><i>“Treatment of tax credit in core provisions: tax paid or tax withheld</i></p> <p>“(6) For the purposes of sections BC 9 (Satisfaction of income tax liability) and BC 10 (Surplus credits), the person’s tax credit under this section is treated as a credit for tax paid or tax withheld.</p> <p style="padding-left: 40px;"><i>“Dealing with surplus credits</i></p> <p>“(7) For the purposes of section BC 10(2)(a) and (b), if the person has surplus credits from a tax credit under this section for the credit tax year, the Commissioner must—</p> <p style="padding-left: 40px;">“(a) first, use the tax credit to satisfy the person’s income tax liability for a tax year that is before the credit tax year:</p> | <p></p> <p></p> <p>5</p> <p></p> <p></p> <p>10</p> <p></p> <p>15</p> <p></p> <p>20</p> <p></p> <p>25</p> |
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**New (majority)**

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| <p>“(b) second, use the tax credit to satisfy the person’s income tax liability for a tax year that is after the credit tax year, applying this paragraph to tax years in numerical order:</p> <p>“(c) third, use the tax credit to pay the person’s provisional tax that is due for a tax year after the credit tax year, applying this paragraph to tax years in numerical order:</p> <p>“(d) fourth, use the tax credit to pay an amount that is due and payable by the person under an Inland Revenue Act:</p> <p>“(e) fifth, treat the tax credit as tax paid in excess, and refundable or transferable to the extent to which section MD 1 (Refund of excess tax) and Part 10B of the Tax Administration Act 1994 apply.</p> <p>“Defined in this Act: corresponding income year, depreciation loss, income tax liability, research and development activities, surplus credit, tax, tax year</p> | <p>5</p> <p>10</p> <p>15</p> |
|--|------------------------------|

**“LH 2 Expenditure by person for purposes of research and development**

*“Eligible person*

- |  |                               |
|--|-------------------------------|
| <p>“(1) A person is eligible for a tax credit at a time in an income year if, at the time,—</p> <p>“(a) the person—</p> <p style="padding-left: 20px;">“(i) carries on a business in New Zealand as a resident or through a fixed establishment in New Zealand:</p> <p style="padding-left: 20px;">“(ii) is an industry research co-operative; and</p> <p>“(b) the person is not—</p> <p style="padding-left: 20px;">“(i) a Crown Research Institute, a tertiary institution, or a district health board:</p> <p style="padding-left: 20px;">“(ii) controlled by 1 or more entities referred to in <b>subparagraph (i):</b></p> <p style="padding-left: 20px;">“(iii) an associated person, under section OD 8(3) (Further definitions of associated persons) other than paragraph (c), of an entity referred to in <b>subparagraph (i).</b></p> | <p>20</p> <p>25</p> <p>30</p> |
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**New (majority)**

*“Requirements for tax credit*

- “(2) A person has a tax credit for a tax year if, for a period in the corresponding income year,—
- “(a) the person is eligible for a tax credit; and
  - “(b) the person performs or has another person perform research and development activities related to—
    - “(i) the business referred to in **subsection (1)(a)(i)** or an intended business of the person, if **subparagraph (ii)** does not apply:
    - “(ii) the businesses of persons who are industry members under **section LH 9**, if the person is an industry research co-operative; and
  - “(c) the person—
    - “(i) controls the research and development activities; and
    - “(ii) bears the financial risk of the research and development activities; and
    - “(iii) effectively owns the results of the research and development activities, if any; and
  - “(d) the person is not performing, or having another person perform, the research and development activities as a person in partnership with an entity referred to in **subsection (1)(b)**:
  - “(e) the person has an amount meeting the requirements in **section LH 3** of—
    - “(i) expenditure on the research and development activities:
    - “(ii) an amount of depreciation loss for depreciable property used in the research and development activities.

*“Partnership performing research and development activities*

- “(3) If persons perform research and development activities in a partnership, a partner is treated as meeting a requirement under—

**New (majority)**

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| <p>“(a) <b>subsection (1)(a)(i) or (2)(b)(i) or section LH 3(4)</b> if the partnership, treated as an entity performing the research and development activities, would meet the requirement:</p> <p>“(b) <b>subsection (2)(c) or section LH 7(4)(a) or (d)</b> if—</p> <p style="padding-left: 20px;">“(i) the partnership, treated as an entity performing the research and development activities, would meet the requirement; and</p> <p style="padding-left: 20px;">“(ii) each partner is eligible for a tax credit under <b>subsection (1)</b>.</p> <p style="padding-left: 40px;"><i>“Joint venture performing research and development activities</i></p> <p>“(4) If persons perform research and development activities as partners in a joint venture, a partner is treated as meeting a requirement under <b>subsection (2)(c) or section LH 7(4)(a) or (d)</b> if the joint venture, treated as an entity performing the research and development activities, would meet the requirement.</p> <p style="padding-left: 40px;">“Defined in this Act: associated person, business, corresponding income year, Crown Research Institute, depreciable property, depreciation loss, district health board, industry research co-operative, research and development activities, tax year, tertiary institution</p> | <p></p> <p>5</p> <p>10</p> <p>15</p> <p>20</p> |
| <p><b>“LH 3 Amount contributing to tax credit</b></p> <p style="padding-left: 20px;"><i>“Amount of expenditure or depreciation loss contributing to tax credit</i></p> <p>“(1) The amount of expenditure or depreciation loss that may contribute to the person’s tax credit for the tax year is determined by the amount (the <b>eligible amount</b>) that—</p> <p style="padding-left: 20px;">“(a) is listed in <b>section LH 7(1)</b> and not listed in <b>section LH 7(2)</b>; and</p> <p style="padding-left: 20px;">“(b) if allocated as described by <b>subsection (2)</b>, would be a deduction affecting the person’s net income or net loss, or the net income or net loss that the person would have if the person derived income other than exempt income, for—</p> <p style="padding-left: 40px;">“(i) the tax year:</p>   |  |

**New (majority)**

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| <p>“(ii) an earlier tax year, if the amount was listed in <b>section LH 7(2)(k)</b> for the income year corresponding to the earlier tax year and for each later income year before the corresponding income year; and</p> <p>“(c) meets the requirements of <b>subsection (4)</b>; and</p> <p>“(d) meets the requirements of <b>section LH 10</b>, if the expenditure or amount of depreciation loss relates to internal software development.</p> <p>“<i>Allocations and adjustments for purposes of subsection (1)(b)</i></p> <p>“(2) For the purposes of <b>subsection (1)(b)</b>, the allocation and effect of an amount is determined as if—</p> <p>“(a) allocations under section EJ 21 (Allocation of deductions for research, development, and resulting market development) were not allowed; and</p> <p>“(b) adjustments required by subpart CH (Adjustments) affecting the corresponding income year were applied, other than adjustments referred to in <b>paragraph (c)</b>; and</p> <p>“(c) adjustments under section CH 1 (Adjustment for closing values of trading stock, livestock, and excepted financial arrangements) were not applied for expenditure or an amount of depreciation loss incurred in acquiring or producing items that have a market value after being subjected to a process or transformation as part of research and development activities.</p> <p>“<i>Exception for certain expenditure subject to the capital limitation</i></p> <p>“(3) The requirements in <b>subsection (1)(b)</b> do not apply to an amount of expenditure subject to the capital limitation if the expenditure—</p> <p>“(a) is incurred in the corresponding income year; and</p> <p>“(b) is not, or would not be if the person derived income other than exempt income, a deduction of the person under section DB 26 (Research or development); and</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> |
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**New (majority)**

“(c) is incurred in the intended development of depreciable property that is—	
“(i) intangible property:	
“(ii) tangible property not intended for use other than in the research and development activities.	5
<i>“Minimum amount of eligible amounts</i>	
“(4) For the person to have a tax credit for the tax year for an eligible amount, the eligible amount must be—	
“(a) a payment under an agreement entered by the person with an entity when the entity was a listed research provider not associated with the person:	10
“(b) part of a total amount of eligible amounts for the corresponding income year equal to or more than the amount calculated using the formula—	
$\$20,000 \times \frac{\text{days}}{\text{year days}}.$	15
<i>“Definition of items in formula</i>	
“(5) In the formula,—	
“(a) <b>days</b> is the number of days in the corresponding income year for which the person is eligible for a tax credit:	20
“(b) <b>year days</b> is the number of days in the corresponding income year.	
“Defined in this Act: associated person, capital limitation, corresponding income year, deduction, depreciable property, depreciation loss, exempt income, income year, industry research co-operative, listed research provider, net income, net loss, research and development activities, tax year	25
<b>“LH 4 Amount of tax credit</b>	
<i>“Formula</i>	
“(1) The amount of the tax credit under <b>section LH 1</b> corresponding to an amount of expenditure or depreciation loss for research and development activities of a person is calculated for a tax year using the following formula:	30
$0.15 \times \text{eligible amount}.$	

**New (majority)**

*“Definition of item in formula*

- “(2) **Eligible amount** is the eligible amount under **section LH 3** of the expenditure or depreciation loss for the corresponding income year.

“Defined in this Act: depreciation loss, research and development activities, tax year

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**“LH 5 Research and development activities and related terms**

*“Research and development activities*

- “(1) **Research and development activities** of a person are—

“(a) systematic, investigative, and experimental activities that are performed for the purposes of acquiring new knowledge or creating new or improved materials, products, devices, processes, or services and that—

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“(i) are intended to achieve an advance in science or technology by resolving scientific or technological uncertainty:

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“(ii) involve an appreciable element of novelty:

“(b) other activities that are wholly or mainly for the purpose of, required for, and integral to, the performing of activities referred to in **paragraph (a)**.

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*“Systematic, investigative, and experimental activities*

- “(2) **Systematic, investigative, and experimental activities** of a person are activities that are—

“(a) planned activities directed towards a particular purpose and following a logical progression of work involving hypothesis, experiment, observation, and evaluation; and

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“(b) not excluded by **section LH 6**.

*“Scientific or technological uncertainty*

- “(3) **Scientific or technological uncertainty** means uncertainty concerning the scientific or technological possibility of a thing, or the achievement of the thing in practice, created by an absence of relevant knowledge from the knowledge that is

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**New (majority)**

publicly available or deductible by a competent professional working in the field.	
<i>“Novelty</i>	
“(4) In this subpart, <b>novelty</b> means a development of technology or a new use of existing technology, by comparison with the knowledge of the technology that is publicly available on a reasonably accessible worldwide basis.	5
<i>“Technology</i>	
“(5) In this subpart, <b>technology</b> is the practical application of scientific principles and knowledge.	10
<small>“Defined in this Act: novelty, research and development activities, scientific or technological uncertainty, systematic, investigative, and experimental activities, technology</small>	
“ <b>LH 6 Activities excluded from being systematic, investigative, and experimental activities</b>	15
The following activities are not systematic, investigative, and experimental activities:	
“(a) prospecting for, exploring for, or drilling for, minerals, petroleum, natural gas, or geothermal energy:	
“(b) research in social sciences, arts, or humanities:	20
“(c) market research, market testing, market development, or sales promotion (including consumer surveys):	
“(d) quality control or routine testing of materials, products, devices, processes, or services:	
“(e) making cosmetic or stylistic changes to materials, products, devices, processes, or services:	25
“(f) routine collection of information:	
“(g) commercial, legal, and administrative aspects of patenting, licensing, or other activities:	
“(h) activities involved in complying with statutory requirements or standards:	30
“(i) management studies or efficiency surveys:	
“(j) the reproduction of a commercial product or process by a physical examination of an existing system or from	

**New (majority)**

plans, blueprints, detailed specifications, or publicly available information:	
“(k) pre-production activities, such as demonstration of commercial viability, tooling-up, and trial runs.	
<b>“LH 7 Eligibility of expenditure and depreciation loss</b>	<b>5</b>
<i>“Eligible expenditure and depreciation loss</i>	
“(1) In order to give rise to a tax credit under <b>section LH 1</b> for a person for research and development activities of the person, expenditure or depreciation loss must be 1 or more of the following:	10
“(a) expenditure in relation to an employee that is—	
“(i) for a period during which the employee performs the research and development activities; and	
“(ii) salary, wages, an allowance, a bonus, a commission, extra salary, overtime, holiday pay, long service pay, a fringe benefit, fringe benefit tax, a superannuation contribution, specified superannuation contribution tax, or an insurance premium paid on behalf of the employee that is not a fringe benefit:	15
“(b) an amount of depreciation loss incurred in an income year for property used in performing research and development activities, if—	20
“(i) the property is not in a pool with other depreciable property, or is in a pool of depreciable property used wholly in performing research and development activities; and	25
“(ii) for property produced by the research and development activities, the property is produced for a purpose other than use in the research and development activities; and	30
“(iii) development costs of the property are not eligible amounts under <b>section LH 3</b> :	
“(c) expenditure on employee training, recruitment, relocation, and travel, to the extent to which it is incurred directly for the research and development activities:	35

**New (majority)**

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| <p>“(d) expenditure on materials incorporated into a trial model or preliminary version of a product or plant in the research and development activities:</p> <p>“(e) expenditure on administration of internal business activities, administration of employment-related matters, repairs and maintenance, cleaning, and security—</p> <p style="padding-left: 20px;">“(i) listed in <b>paragraphs (a), (g), and (i)</b>; and</p> <p style="padding-left: 20px;">“(ii) to the extent to which the expenditure is incurred directly for the research and development activities; and</p> <p style="padding-left: 20px;">“(iii) not excluded by Order in Council under <b>subsection (5)</b> from the application of this paragraph:</p> <p>“(f) expenditure on rates, utilities, insurance of buildings, plant, and equipment, or leasing of buildings, plant, and equipment—</p> <p style="padding-left: 20px;">“(i) to the extent to which the expenditure is incurred directly for the research and development activities; and</p> <p style="padding-left: 20px;">“(ii) not excluded by Order in Council under <b>subsection (5)</b> from the application of this paragraph:</p> <p>“(g) expenditure on items consumed in the research and development activities:</p> <p>“(h) expenditure or an amount of depreciation loss incurred in acquiring or producing items that have a market value after being subjected to a process or transformation as part of research and development activities, to the extent that the expenditure exceeds the amount of—</p> <p style="padding-left: 20px;">“(i) the sale proceeds of the items sold other than to an associated person:</p> <p style="padding-left: 20px;">“(ii) the market value of the items not sold or sold to an associated person:</p> <p>“(i) payments for research and development activities performed by another on behalf of the person.</p> <p style="padding-left: 40px;"><i>“Excluded expenditure and depreciation loss</i></p> <p>“(2) The following expenditure and depreciation losses do not give rise to a tax credit under <b>section LH 1</b> for a tax year for a person for research and development activities of the person:</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> |
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**New (majority)**

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| “(a) expenditure under a financial arrangement:   |    |
| “(b) an amount of depreciation loss under section EE 11(3) to (5) (Calculation rule: income year in which item disposed of) or EE 32 (Items no longer used) for property, except if the property is—  | 5  |
| “(i) produced by the research and development activities for a purpose other than use in the research and development activities; and   |    |
| “(ii) used wholly or mainly in the research and development activities; and   | 10 |
| “(iii) not used after the research and development activities end:  |    |
| “(c) expenditure on property or services, other than a right to use property, purchased directly or indirectly by the person (the <b>purchaser</b> ) from an associated person (the <b>associate</b> ) who obtains the goods or services from a person described in <b>subparagraph (i)</b> , to the extent to which the amount exceeds the amount of expenditure or depreciation loss— | 15 |
| “(i) incurred by the associate in obtaining the goods or services from a person who is not associated with the associate or the purchaser and who does not obtain the property or services from a person associated with the associate or the purchaser; and  | 20 |
| “(ii) meeting the requirements of <b>section LH 3(1)(a) and (b)</b> for the associate:  | 25 |
| “(d) expenditure on a right to use property of an associated person, to the extent to which the amount exceeds the market value of the right:   | 30 |
| “(e) an amount of depreciation loss for property, to the extent that the amount exceeds the fractional part of the total depreciation losses for the property for the income year corresponding to the fractional part of the time in the income year for which the property is used that is time for which the property is used in performing the research and development activities: | 35 |
| “(f) an amount of depreciation loss—  |    |

## New (majority)

“(i) for depreciable property purchased by the person from an associated person who has used the depreciable property in research and development activities; and	
“(ii) to the extent to which the depreciation loss arises from an excess of the purchase price over the adjusted tax value of the property for the associated person at the time of the purchase:	5
“(g) the part of expenditure or an amount of depreciation loss, incurred in acquiring or producing items having a market value after being subjected to a process or transformation as part of research and development activities, that does not exceed the amount of—	10
“(i) the sale proceeds of the products sold other than to an associated person:	15
“(ii) the market value of the products not sold or sold to an associated person:	
“(h) expenditure or an amount of depreciation loss incurred in purchasing, leasing, or obtaining a right to use core technology:	20
“(i) expenditure or an amount of depreciation loss incurred in internal software development to the extent to which it exceeds the eligible amount for the person under <b>section LH 10</b> :	
“(j) expenditure or an amount of depreciation loss incurred in research and development activities performed outside New Zealand other than as part of a research and development project:	25
“(k) the amount of expenditure and depreciation loss incurred in research and development activities performed outside New Zealand as part of a research and development project—	30
“(i) that in the absence of this paragraph would be an eligible amount under <b>section LH 3</b> for the corresponding income year or an earlier income year; and	35
“(ii) to the extent to which the total amount meeting the requirements of <b>subparagraph (i)</b> exceeds one-	

**New (majority)**

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| <p style="margin-left: 40px;">tenth of the total of eligible amounts under <b>section LH 3</b> of the expenditure or depreciation loss incurred in or before the corresponding income year in research and development activities performed in New Zealand as part of the research and development project:</p> <p>“(l) expenditure or an amount of depreciation loss in relation to which a grant is provided to the person by a public authority or local authority:</p> <p>“(m) expenditure or an amount of depreciation loss met from funds that, as a condition of a grant to the person by a public authority or local authority, are required to be provided or paid to the person or contributed by the person:</p> <p>“(n) expenditure or an amount of depreciation loss incurred as a condition of a grant to another person by a public authority or local authority:</p> <p>“(o) donations:</p> <p>“(p) professional fees incurred in determining whether activities are research and development activities or whether the person or expenditure is eligible:</p> <p>“(q) expenditure or an amount of depreciation loss incurred in purchasing, leasing, or obtaining a right to use intangible property:</p> <p>“(r) expenditure or an amount of depreciation loss of an industry research co-operative that is funded by a person who is not eligible under <b>section LH 2(1)(a)(i) or (b)</b> for a tax credit.</p> <p style="margin-left: 40px;"><i>“Meaning of core technology</i></p> <p>“(3) For research and development activities of a person, <b>core technology</b> is knowledge or anything produced by the application of knowledge that is—</p> <p style="margin-left: 40px;">“(a) a product of activities of which the research and development activities are an extension, continuation, development, or completion:</p> <p style="margin-left: 40px;">“(b) the basis for new knowledge that is to be obtained as a purpose of the research and development activities:</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> |
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**New (majority)**

- “(c) the basis for new or improved materials, products, devices, processes, or services, that are to be created as a purpose of the research and development activities.
- “*Meaning of research and development project*
- “(4) For a person, **research and development project** means a 5  
process—
- “(a) consisting of co-ordinated research and development activities controlled by the person; and
- “(b) having start and finish dates; and
- “(c) undertaken to achieve a specified objective within constraints of time, cost, and other resources; and 10
- “(d) of which the person bears the financial risk and effectively owns the results, if any; and
- “(e) for which the person incurs on research and development activities performed in New Zealand more than 15  
half of the total amount of expenditure and depreciation loss that would be an eligible amount under **section LH 3** in the absence of **subsection (2)(j) and (k)**.
- “*Order in Council for purpose of subsection (1)(e) and (f)*
- “(5) The Governor-General may make an Order in Council— 20
- “(a) providing that a kind of expenditure, included in the kinds of expenditure referred to in **subsection (1)(e) and (f)**, does not give rise to a tax credit under **section LH 1** for research and development activities of a person:
- “(b) giving the date from which the exclusion applies. 25
- “Defined in this Act: associated person, capital limitation, core technology, corresponding income year, depreciable property, depreciation loss, employee, goods, interest, local authority, pool, public authority, research and development activities, research and development project, services, tax year
- “**LH 8 Listed research providers** 30
- “*Requirements for listed research provider and applicant to be listed research provider*
- “(1) A listed research provider and a person applying to be a listed research provider must—

**New (majority)**

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| <p>“(a) be capable of carrying out research and development activities on behalf of other persons; and</p> <p>“(b) have in New Zealand the facilities needed to carry out the research and development activities.</p>  | 5  |
| <p>“<i>Further requirements for listed research provider</i></p>  |    |
| <p>“(2) A listed research provider must—</p> <p>“(a) charge market prices for carrying out the research and development activities; and</p> <p>“(b) be available to carry out research and development activities on behalf of persons not associated with the applicant; and</p> <p>“(c) keep records sufficient to show—</p> <p style="padding-left: 20px;">“(i) whether the applicant is complying with the requirements of <b>subsection (1) and paragraphs (a) and (b)</b>; and</p> <p style="padding-left: 20px;">“(ii) the amounts derived and incurred by the applicant in carrying out research and development activities on behalf of other persons.</p> | 10 |
| <p>“<i>Application to be listed research provider</i></p>   |    |
| <p>“(3) A person (the <b>applicant</b>) may apply to be a listed research provider by giving notice to the Commissioner that the applicant—</p> <p>“(a) meets the requirements of <b>subsection (1)</b>; and</p> <p>“(b) will meet the requirements of <b>subsection (2)</b>.</p>   | 20 |
| <p>“<i>Listing of applicant</i></p>   |    |
| <p>“(4) The Commissioner may list an applicant as a listed research provider if the Commissioner is satisfied that the applicant—</p> <p>“(a) meets the requirements of <b>subsection (1)</b>; and</p> <p>“(b) will meet the requirements of <b>subsection (2)</b>, if the applicant has previously been listed and failed to meet the requirements of <b>subsection (2)</b>.</p>   | 30 |

**New (majority)**

<i>“Period of listing</i>	
“(5) A person listed under <b>subsection (2)</b> continues to be a listed research provider until the person is removed from the list—	
“(a) under <b>subsection (6)</b> , following a request by the person:	
“(b) under <b>subsection (7)</b> , by a notice of the Commissioner.	5
<i>“Application by listed research provider to be removed from list</i>	
“(6) If a listed research provider gives notice to the Commissioner that the person wishes to be removed from the list of listed research providers, the person is removed from the list from the later of the following:	10
“(a) the date specified in the notice:	
“(b) the date on which the Commissioner receives the notice.	
<i>“Commissioner may remove person from list of listed research providers</i>	15
“(7) If the Commissioner is satisfied that a person is not meeting a requirement of <b>subsections (1) and (2)</b> , the Commissioner may give the person a notice—	
“(a) that the person is not a listed research provider; and	20
“(b) the reasons for the Commissioner’s decision to remove the person from the list.	
<i>“Date of removal</i>	
“(8) The person is removed from the list from the later of the following:	25
“(a) the date specified in the Commissioner’s notice:	
“(b) the date 1 month after the date of the notice.	
<i>“No challenge</i>	
“(9) A decision made by the Commissioner under <b>subsection (7)</b> may not be challenged.	30

**New (majority)**

*“Commissioner must publish names*

“(10) The Commissioner must publish the names of the listed research providers by means that the Commissioner considers appropriate.

“Defined in this Act: associated person, Commissioner, listed research provider, notice, research and development activities

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**“LH 9 Industry research co-operatives**

An **industry research co-operative** is a person who performs research and development activities mainly on behalf of other persons (the **industry members**), each of whom—

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“(a) carries on a business activity in New Zealand—

“(i) as a resident:

“(ii) through a fixed establishment in New Zealand; and

“(b) would be eligible for a tax credit under **section LH 1** if—

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“(i) the person performed the research and development activities; and

“(ii) **section LH 3(4)** did not apply; and

“(c) contributes to the financing of the research and development activities by payments made—

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“(i) to the industry research co-operative:

“(ii) as a levy imposed under section 4 of the Commodity Levies Act 1990:

“(iii) as a levy imposed under section 5 of the Building Research Levy Act 1969.

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“Defined in this Act: business, industry research co-operative, research and development activities

**“LH 10 Limits on eligible amount for internal software development**

*“When this section applies*

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“(1) This section applies for a person (the **developer**) and an income year of the person (the **developer’s year**) if, in the absence of this section, the person would have under **section LH 3** for a period in the income year an eligible amount (the

**New (majority)**

<b>development amount</b> ) of expenditure or depreciation loss relating to internal software development.	
<i>“Eligible amount for developer’s year</i>	
“(2) A developer has for the developer’s year an eligible amount under <b>section LH 3</b> of expenditure or depreciation loss relating to internal software development equal to—	5
“(a) the amount given by <b>subsection (3)</b> for the developer’s year, if the developer has no associated internal software developer in the developer’s year; or	
“(b) the amount given by <b>subsection (6)</b> for the developer’s year, if—	10
“(i) the developer has throughout the developer’s year an associated internal software developer with the same income year as the developer; and	
“(ii) <b>paragraph (c)</b> does not apply; or	15
“(c) the amount given by <b>subsection (12) or (13)</b> for the developer’s year, if the developer has throughout the developer’s year an associated internal software developer with an income year that is different from the developer’s income year; or	20
“(d) the total of amounts given by <b>subsection (3), (6), (12), or (13)</b> for each of the periods making up the developer’s year, if <b>paragraphs (a) to (c)</b> do not apply.	
<i>“Developer having no associated internal software developer for period</i>	
“(3) If a developer has no associated internal software developer in a period that is part or all of the developer’s year, the developer has for the period an eligible amount under <b>section LH 3</b> equal to the smaller of—	25
“(a) the development amount for the period:	30
“(b) the amount for the period calculated using the formula—	
$\text{limit} \times \frac{\text{days}}{\text{year days.}}$	35



New (majority)

*“Definition of items in formula*

- “(4) In the formula in **subsection (3)(b)**,—
- “(a) **limit** is an amount equal to—
- “(i) \$3,000,000, if **subparagraph (ii)** does not apply; or
- “(ii) a greater amount determined by the Minister 5  
under **subsection (15)**:
- “(b) **days** is the number of days in the period:
- “(c) **year days** is the number of days in the tax year corresponding to the developer’s year.

*“Developer having associated internal software developer with same income year for period 10*

- “(5) **Subsection (6)** applies to a developer if, throughout a period that is part or all of the developer’s year, the developer has an associated internal software developer with the same income year as the developer and has no associated internal software developer with a different income year. 15

*“Eligible amount*

- “(6) The developer has an eligible amount under **section LH 3** for the period equal to the smallest of—
- “(a) the development amount for the period: 20
- “(b) the amount calculated in **subsection (7)** for the developer for the period:
- “(c) the part, allocated by the internal software development group to the developer, of the amount given by **subsection (9)** as being available for allocation by the internal software development group for the tax year. 25

*“Maximum amount for developer for period*

- “(7) The amount referred to in **subsection (6)(b)** as the amount for the developer for the period is the amount calculated using the formula— 30

$$\text{limit} \times \frac{\text{days}}{\text{year days.}}$$

**New (majority)**

- “Definition of items in formula*
- “(8) In the formula in **subsection (7)**,—
- “(a) **limit** is an amount equal to—
- “(i) \$3,000,000, if **subparagraph (ii)** does not apply; or
- “(ii) a greater amount determined by the Minister under **subsection (15)**: 5
- “(b) **days** is the number of days in the period:
- “(c) **year days** is the number of days in the tax year corresponding to the developer’s year.
- “Amount available for allocation by internal software development group* 10
- “(9) The amount referred to in **subsection (6)(c)** that may be allocated by the internal software development group to members of the group for the tax year corresponding to the developer’s year is the lesser of— 15
- “(a) the total of the members’ development amounts for income years corresponding to the tax year:
- “(b) the amount for the tax year calculated using the formula— 20
- $$\text{group limit} \times \frac{\text{days}}{\text{year days.}}$$
- “Definition of items in formula*
- “(10) In the formula in **subsection (9)(b)**,—
- “(a) **group limit** is an amount equal to— 25
- “(i) \$3,000,000, if **subparagraph (ii)** does not apply; or
- “(ii) a greater amount determined by the Minister under **subsection (15)**:
- “(b) **days** is the number of days in the tax year corresponding to the developer’s year for which there are 2 or more members of the internal software development group: 30
- “(c) **year days** is the number of days in the tax year corresponding to the developer’s year.

**New (majority)**

*“Developer having associated internal software developer  
with different income year*

- “(11) **Subsection (12) or (13)** applies to a developer if, throughout a period that is part or all of the developer’s year, a developer has an associated internal software developer with a different income year from the developer. 5

*“Eligible amount for period less than year*

- “(12) If the period is less than the developer’s year, the developer has an eligible amount under **section LH 3** equal to zero.

*“Eligible amount for period of developer’s year 10*

- “(13) If the period is the developer’s year, the developer has an eligible amount under **section LH 3** for the corresponding tax year equal to the lesser of—

- “(a) the development amount for the period:  
“(b) the part, allocated by the internal software development group to the developer, of the amount given by **subsection (14)** as being available for allocation by the internal software development group for the tax year. 15

*“Amount available for allocation by internal software development group 20*

- “(14) The amount referred to in **subsection (13)(b)** that may be allocated by the internal software development group to members of the group for the tax year corresponding to the developer’s year is the lesser of—

- “(a) the total of the members’ development amounts for income years corresponding to the tax year: 25

- “(b) an amount equal to—  
“(i) \$3,000,000, if **subparagraph (ii)** does not apply; or  
“(ii) a greater amount determined by the Minister under **subsection (15)**. 30

*“Minister may determine amount of limit*

- “(15) The Minister may, by notice published in the *Gazette*, determine an amount of more than \$3,000,000 to be appropriate for

**New (majority)**

the purposes of <b>subsections (4)(a)(ii), (8)(a)(ii), (10)(a)(ii), and (14)(b)(ii)</b> for a person or internal software development group, who need not be named in the notice, and an income year or period, if the Minister is satisfied that—	
“(a) the internal software development is intended to be exploited mainly for the benefit of the New Zealand economy; and	5
“(b) New Zealand will derive a substantial net benefit from the intended completion of the internal software development; and	10
“(c) the person or the internal software development controller of the group has a commitment to retain the value of their business in New Zealand.	
<i>“Minister may impose conditions in determination</i>	
“(16) A determination under <b>subsection (15)</b> —	15
“(a) may include requirements that the Minister thinks are appropriate for the application of the determination; and	
“(b) does not apply to a person who does not meet a requirement of the determination.	
“Defined in this Act: associated internal software developer, depreciation loss, income year, internal software development, internal software development controller, internal software development group, Minister	20
<b>“LH 11 Depreciation loss for depreciable property: some special rules for tax credit</b>	
<i>“When this section applies</i>	25
“(1) This section applies when a person owns an item of depreciable property for which there has never been a deduction allowed for depreciation loss under section DA 1 (General permission), because the person derives exempt income.	
<i>“Depreciation loss for tax credit</i>	30
“(2) For the purposes of calculating the amount of depreciation loss the person has for the item under section EE 1(2) (What this subpart does), the person is treated as:	
“(a) acquiring the item on the later of the 2 following days:	

**New (majority)**

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|---|----|
| <p style="margin-left: 40px;">“(i) the first day of the 2008–09 income year;</p> <p style="margin-left: 40px;">“(ii) the day on which they acquire the item; and</p> <p>“(b) allowed a deduction for depreciation loss for the item, for the income years ending after the relevant day on which the person is treated as acquiring it under this section.</p>  | 5  |
| <p style="margin-left: 40px;"><i>“Market value and 20% loading</i></p>  |    |
| <p>“(3) An item treated as acquired by a person under <b>subsection (2)(a)(i)</b> is treated as—</p> <p style="margin-left: 40px;">“(a) acquired for its market value; and</p> <p style="margin-left: 40px;">“(b) meeting the requirements in section EE 26(2)(b)(i) to (iv) (Annual rate for item acquired in person’s 1995–96 or later income year) for using the 1.2 factor, unless the item—</p> <p style="margin-left: 80px;">“(i) did not meet those requirements when, but for <b>subsection (2)(a)(i)</b>, the person acquired the item; or</p> <p style="margin-left: 80px;">“(ii) was acquired by the person, but for <b>subsection (2)(a)(i)</b>, before the first day of the 1995–96 income year.</p> | 10 |
| <p style="margin-left: 40px;"><i>“No allowable deduction: general permission</i></p>  |    |
| <p>“(4) Nothing in this section allows a deduction under section DA 1.</p>  | 20 |
| <p style="margin-left: 40px;">“Defined in this Act: acquire, deduction, depreciable property, depreciation loss, exempt income, income year, own</p>  |    |
| <p><b>“LH 12 Definitions</b></p> <p style="margin-left: 20px;">In this subpart,—</p> <p style="margin-left: 20px;"><b>“associated internal software developer</b>, for a person who is performing internal software development at a time, means another person—</p> <p style="margin-left: 40px;">“(a) who is performing internal software development at the time; and</p> <p style="margin-left: 40px;">“(b) for whom the internal software development controller is the same as the internal software development controller of the person</p>   | 25 |
| <p style="margin-left: 40px;">30</p>  |    |

**New (majority)**

- “internal software development**, for a person, means a research and development activity of developing software with—
- “(a) a purpose of having the software used in—
    - “(i) the internal administration of business activities of the person or of another person associated with the person under section OD 8(3) (Further definitions of associated persons): 5
    - “(ii) providing services to customers, of the person or of another person associated with the person under section OD 8(3), whose main reason for using the services is to obtain a service other than the use of the person’s computer technology or software: 10
  - “(b) the main purpose that is neither of— 15
    - “(i) selling, renting, licensing, hiring, or leasing the software by the person to customers of which 2 or more are not associated with the person under section OD 8(3) and not associated with each other under section OD 8(3): 20
    - “(ii) including the software as an integral part of an electrical or mechanical device for which the software is developed and that has for the person the main purpose of being sold, rented, licensed, hired, or leased to customers as part of the person’s business 25
- “internal software development controller**, for a person who is performing internal software development, means a group of 1 or more persons—
- “(a) having the power to govern, directly or indirectly, the financial and operating policies of the person to obtain benefits from the person’s activities; and 30
  - “(b) having no other person or persons with the power to govern, directly or indirectly, the financial and operating policies of the group to obtain benefits from the group’s activities 35

**New (majority)**

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| <p>“<b>internal software development group</b>, for an internal software development controller (the <b>controller</b>) and a tax year, means a group of entities of which each entity is a member at a time, in the entity’s income year corresponding to the tax year, when—</p> <p>“(a) the controller is the internal software development controller of the entity; and</p> <p>“(b) the entity is performing internal software development; and</p> <p>“(c) the entity has an associated internal software developer.</p> <p>“Defined in this Act: associated person, deduction, income year, internal software development, internal software development controller, internal software development group, research and development activities, tax year”.</p> <p>(2) <b>Subsection (1)</b> applies for the 2008–09 and later income years.</p> | <p>5</p> <p>10</p>            |
|   |                               |
| <p><b>101 Estimation method</b></p> <p>(1) Section MB 6(5), except the heading, is replaced by the following:</p> <p>“(5) If, under section MB 17(5), a taxpayer changes the way they determine the amount of provisional tax after the date of an instalment, they must estimate their residual income tax for their corresponding income year, and must pay provisional tax on whichever of the following relevant instalment dates for the income year occur after 30 days from their last ratio instalment date—</p> <p>“(a) C and F for changes to a 6-monthly GST taxable period:</p> <p>“(b) B, D, and F for other changes.”</p> <p>(2) <b>Subsection (1)</b> applies for provisional tax payments for the 2008–09 and later tax years.</p>  | <p>15</p> <p>20</p> <p>25</p> |

**Struck out (majority)**

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| <p><b>102 GST ratio method</b></p> <p>(1) After section MB 7(3), the following is inserted:</p> | <p>30</p> |
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**Struck out (majority)**

- “When amounts based on tax year immediately before  
preceding year*
- “(3B) If subsection (3) does not apply because there is no assess-  
ment for the year before the preceding year referred to in that  
subsection, and the absence of assessment is due to an exten- 5  
sion of time to file the return for that year before the preceding  
year, the GST ratio is the percentage based on the assessments  
for the most recent tax year and corresponding income year  
for which there is an assessment.”
- (2) Subsection (1) applies for provisional tax payments for the 10  
2008–09 and later income years.

**New (majority)**

**102 GST ratio method**

- (1) After section MB 7(3), the following is inserted:
- “When subsection (3C) applies instead of subsection (3)*
- “(3B) **Subsection (3C)** applies instead of subsection (3) if,— 15
- “(a) for the year before the preceding year referred to in  
subsection (3),—
- “(i) an assessment of a base amount has not been  
made and the absence of assessment is due to an 20  
extension of time to file the return for that year or  
a period in that year:
- “(ii) an assessment of a base amount is the subject of a  
dispute or challenge under the Tax Administra-  
tion Act 1994:
- “(iii) the year is a transitional year; and 25
- “(b) for the year that is 2 years before the preceding year  
referred to in subsection (3),—
- “(i) the base amounts have been assessed; and
- “(ii) no assessment of a base amount is the subject of a 30  
dispute or challenge under the Tax Administra-  
tion Act 1994; and
- “(iii) the year is not a transitional year.



**New (majority)**

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| <p style="margin: 0;"><i>“Amounts based on tax year 2 years before preceding tax year</i></p> <p style="margin: 0;">“(3C) The GST ratio under this subsection is the percentage based on the assessments of the base amounts for the year that is 2 years before the preceding year referred to in subsection (3).”</p> <p style="margin: 0;">(1B) After section MB 7(7), the following is inserted:</p> <p style="margin: 0;"><i>“When subsection (7C) applies instead of subsection (7)</i></p> <p style="margin: 0;">“(7B) <b>Subsection (7C)</b> applies instead of subsection (7) if,—</p> <p style="margin: 0; padding-left: 20px;">“(a) for the year before the transitional year referred to in subsection (7),—</p> <p style="margin: 0; padding-left: 40px;">“(i) an assessment of a base amount has not been made and the absence of assessment is due to an extension of time to file the return for that year or a period in that year:</p> <p style="margin: 0; padding-left: 40px;">“(ii) an assessment of a base amount is the subject of a dispute or challenge under the Tax Administration Act 1994:</p> <p style="margin: 0; padding-left: 40px;">“(iii) the year is a transitional year; and</p> <p style="margin: 0; padding-left: 20px;">“(b) for the year that is 2 years before the transitional year referred to in subsection (7),—</p> <p style="margin: 0; padding-left: 40px;">“(i) the base amounts have been assessed; and</p> <p style="margin: 0; padding-left: 40px;">“(ii) no assessment of a base amount is the subject of a dispute or challenge under the Tax Administration Act 1994; and</p> <p style="margin: 0; padding-left: 40px;">“(iii) the year is not a transitional year.</p> <p style="margin: 0;"><i>“GST ratio based on tax year 2 years before transitional tax year</i></p> <p style="margin: 0;">“(7C) The GST ratio under this subsection is the percentage based on the assessments of the base amounts for the year that is 2 years before the transitional year referred to in subsection (7).”</p> <p style="margin: 0;">(2) <b>Subsections (1) and (1B)</b> apply for provisional tax payments for the 2008–09 and later income years.</p> | <p style="margin: 0;">5</p> <p style="margin: 0;">10</p> <p style="margin: 0;">15</p> <p style="margin: 0;">20</p> <p style="margin: 0;">25</p> <p style="margin: 0;">30</p> |
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**Struck out (majority)**

**103 Provisional tax payable in instalments**

- (1) In section MB 8(6), “section MB 6 or MB 9, as applicable” is replaced by “section MB 9”.
- (2) **Subsection (1)** applies for provisional tax payments for the 2008–09 and later income years.

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**New (majority)**

**103 Provisional tax payable in instalments**

- (1) In section MB 8(6), “section MB 6 or MB 9, as applicable” is replaced by “section MB 9”.
- (2) In section MB 8(8), the words before paragraph (a) are replaced by the following:
 

“(8) A new provisional taxpayer who starts a taxable activity in a tax year is liable to pay interest calculated under section 120KC of the Tax Administration Act 1994 as if the person were liable to pay provisional tax for the tax year—”.
- (3) Section MB 8(8)(b)(ii), is replaced by the following:
 

“(ii) if they pay GST on a 6-monthly basis and start a taxable activity at some time in the period that starts at the beginning of the corresponding income year and ends 30 days before the date of instalment C:”.
- (4) **Subsections (1), (2), and (3)** apply for provisional tax payments for the 2008–09 and later income years.

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**103B Calculating amount of instalment under standard and estimation methods**

- (1) In section MB 9(1)(b), “MB 8(2) and (4)” is replaced by “MB 8(2), (4), (6), and (7)”.
- (2) **Subsection (1)** applies for provisional tax payments for the 2008–09 and later income years.

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**Struck out (majority)**

**104 Who may use GST ratio?**

- (1) In section MB 15(2),—
  - (a) in the words before the paragraphs, “preceding tax year” is replaced by “preceding tax year and corresponding income year”: 5
  - (b) in paragraph (b), “whole tax year” is replaced by “whole income year”.
- (2) In section MB 15(8)(a), “in writing” is replaced by “in writing or by telephone”.
- (3) **Subsections (1) and (2)** apply for provisional tax payments for the 2008–09 and later income years. 10

**New (majority)**

**104 Who may use GST ratio?**

- (1) In section MB 15(2),—
  - (a) in the words before the paragraphs, “preceding tax year” is replaced by “preceding tax year and corresponding income year”: 15
  - (b) in paragraph (b), “whole tax year” is replaced by “whole income year”.
- (2) In section MB 15(8)(a), “in writing” is replaced by “in writing or by telephone”. 20
- (3) In section MB 15(11), “the tax year immediately before” is replaced by “a tax year earlier than”.
- (4) **Subsections (1), (2), and (3)** apply for provisional tax payments for the 2008–09 and later income years.

**105 Changing determination method**

- (1) In section MB 17(2), “Subsection (3) or (4)” is replaced by “Subsection (4) or (5)”. 25
- (2) In section MB 17(4), “(5)<,> as if the election to use the GST ratio had not been made” is replaced by “(5). They are treated as never electing to use the GST ratio method and, for the purposes of section 120KE(5) of the Tax Administration Act 30

1994, as never changing the way they determine an amount of provisional tax under this section”.

- (3) **Subsections (1) and (2)** apply for provisional tax payments for the 2008–09 and later income years.

## **106 Disposal of assets** 5

- (1) In section MB 18(2),—
- (a) the words “income year. The adjustment must be made to both” are replaced by “income year by subtracting the value, including GST, of the relevant asset from”; and 10
  - (b) paragraphs (a) and (b) are replaced by the following:

### **Struck out (majority)**

- “(a) the total taxable supplies for a taxable period, in proportion to the output tax which is attributed under section 20(4) of that Act to that taxable period for the supply of the asset: 15

### **New (majority)**

- “(a) the total taxable supplies for a taxable period for the purposes of the formula in section MB 10(1), in proportion to the output tax which is attributed under section 20(4) of that Act to that taxable period for the supply of the asset: 20

- “(b) the base amount of total taxable supplies for the corresponding income year under section MB 7(2), in proportion to the output tax which is attributed under section 20(4) of that Act to a taxable period in that income year for the supply of the asset.” 25

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

**New (majority)**

**106B Paying provisional tax in transitional years**

- (1) In section MB 20,—
  - (a) subsection (2)(a) and (b) are replaced by the following:
    - “(a) the 28th day of the months given by schedule 13, part B, if **paragraphs (b) and (c)** do not apply: 5
    - “(b) the 15th day of January, when the month given by schedule 13, part B is December and the year is a transitional year:
    - “(c) the 7th day of May, when the month given by schedule 13, part B is April and the year is a transitional year.” 10
  - (b) in subsection (3)(b), “month.” is replaced by “month; or” and the following is added:
    - “(c) the 7th day of May, when March is the final month and the year is a transitional year.”
- (2) **Subsection (1)** applies for provisional tax payments for the 2008–09 and later income years. 15

**106C Consequences of change in balance date**

- (1) Section MB 24(5) is replaced by the following:
 

*“Adjustment to liability*
- “(5) The taxpayer must— 20
  - “(a) adjust their provisional tax liability for the part period of 1 month before the start of the new income year; and
  - “(b) pay the instalment of provisional tax for the part period, as their final taxable period, by—
    - “(i) the day that is 28 days after the end of the part period, if **subparagraphs (ii) and (iii)** do not apply; or 25
    - “(ii) 15 January, if the part period is November; or
    - “(iii) 7 May, if the part period is March.”
- (2) **Subsection (1)** applies for provisional tax payments for the 2008–09 and later income years. 30

**106D Registering for GST or cancelling registration**

- (1) Section MB 25(5) is replaced by the following:

**New (majority)**

- “Date of cancellation*
- “(5) For the purposes of subsection (4) and the provisional tax rules, the date of the cancellation is the later of—
- “(a) the date on which the cancellation of GST registration is notified: 5
- “(b) the date on which the taxpayer ceases under section 52 of the Goods and Services Act 1985 to be liable to be registered.”
- (2) **Subsection (1)** applies for provisional tax payments for the 2008–09 and later income years. 10

**107 Refund of excess tax**

- (1) In section MD 1(4)(a), “family support and family plus” is replaced by “tax credits for families”.
- (2) **Subsection (1)** applies for the 2007–08 and later income years.

**New (majority)**

- 107B Companies required to maintain imputation credit account** 15
- In section ME 1(2)(i), “section 24” is replaced by “section 266”.
- 107C Companies electing to maintain imputation credit account** 20
- (1) Section ME 1A(1) is replaced by the following:
- “(1) A company that is not required under section ME 1 to establish and maintain an imputation credit account is eligible under this section to have an imputation credit account if the company is— 25
- “(a) resident in Australia; and
- “(b) not a company referred to in section ME 1(2)(c) to (k); and
- “(c) not treated as being resident in a country other than Australia under and for the purposes of an agreement that— 30

**New (majority)**

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|     | <p>“(i) is between Australia and the other country; and</p> <p>“(ii) would be a double tax agreement if negotiated between New Zealand and the other country.”</p> |  |
| (2) | <b>Subsection (1)</b> applies for the 2005–06 and later income years.  |  |

**Struck out (majority)**

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|     | <b>108 Credits arising to imputation credit account</b>  | 5  |
| (1) | In section ME 4(1)(ab), “49.25%” is replaced by “42.86%”.  |    |
| (2) | After section ME 4(1)(ad), the following is added:   |    |
|     | “(ae) the amount of any qualifying company election tax paid by the company for the imputation year:”.   |    |
| (3) | After section ME 4(1)(i), the following is inserted:   | 10 |
|     | “(ib) the amount of any tax credit under <b>section LH 1</b> to which the company is entitled for the imputation year:”.   |    |
| (4) | After section ME 4(2)(ad), the following is inserted:  |    |
|     | “(ae) in the case of a credit referred to in <b>subsection (1)(ae)</b> , on the date the qualifying company election tax is paid:”.  | 15 |
| (5) | After section ME 4(2)(g), the following is inserted:   |    |
|     | “(gb) in the case of a credit referred to in <b>subsection (1)(ib)</b> , on the date that the Commissioner receives the return of income for the imputation year for which the company claims the tax credit under <b>section LH 1</b> :”. | 20 |
| (6) | <b>Subsections (1), (3) and (5)</b> apply for the 2008–09 and later income years.  |    |

**New (majority)**

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|      | <b>108 Credits arising to imputation credit account</b>                    |    |
| (1A) | After section ME 4(1)(a)(x), the following is added:                       |    |
|      | “(xi) income tax paid by way of a tax credit under <b>section LH 1</b> :”. | 25 |
| (1)  | In section ME 4(1)(ab),—   |    |
|      | (a) “49.25%” is replaced by “42.86%”:                                      |    |

**New (majority)**

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| <p>(b) “qualifying company” is replaced by “qualifying company or attribution company”.</p> <p>(2) After section ME 4(1)(ad), the following is added:</p> <p style="padding-left: 40px;">“(ae) the amount of any qualifying company election tax paid by the company for the imputation year:”.</p> <p>(3) After section ME 4(1)(i), the following is inserted:</p> <p style="padding-left: 40px;">“(ib) the amount of any tax credit under <b>section LH 1</b> to which the company is entitled for the tax year:”.</p> <p>(4) After section ME 4(2)(ad), the following is inserted:</p> <p style="padding-left: 40px;">“(ae) in the case of a credit referred to in <b>subsection (1)(ae)</b>, on the date the qualifying company election tax is paid:”.</p> <p>(5) After section ME 4(2)(g), the following is inserted:</p> <p style="padding-left: 40px;">“(gb) in the case of a credit referred to in <b>subsection (1)(ib)</b>, on the date that the company furnishes the return for the tax year for which the company claims the tax credit under <b>section LH 1</b>:”.</p> <p>(6) <b>Subsections (1A), (1), (3), and (5)</b> apply for the 2008–09 and later income years.</p> | <p>5</p> <p>10</p> <p>15</p> |
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**109 Debits arising to imputation credit account**

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| <p>(1) In section ME 5(1)(c), item <b>b</b> is replaced by the following:</p> <p style="padding-left: 40px;">“<b>b</b> is the basic rate of income tax, expressed as a percentage, stated in schedule 1, part A, clause 5 and applying at the time the acquisition occurs:”.</p> <p>(2) <b>Subsection (1)</b> applies for the 2008–09 and later income years.</p> | <p>20</p> |
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**Struck out (majority)**

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| <p><b>110 Allocation rules for imputation credits</b></p> <p>The following is added to section ME 8:</p> <p>“(6) <b>Sections MZ 10</b> (Allocation of imputation credits and dividend withholding payment credits: modifying maximum credit ratio) <b>and MZ 11</b> (Benchmark dividends: credit ratio change) modify this section.”</p> | <p>25</p> <p>30</p> |
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**New (majority)**

**110 Allocation rules for imputation credits**

- (1) In section ME 8(1), item a, “that is concurrent with the imputation year” is omitted.
- (2) After section ME 8(6), the following is added:
- “(7) **Sections MZ 13 and MZ 14** modify this section.”

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**110B Further tax payable where end of year debit balance or when company ceases to be imputation credit account company**

Section ME 9(4) is replaced by the following:

- “(4) A company must pay any further income tax to which it is liable under subsection (3)—
  - “(a) not later than the last day on which the company is still an imputation credit account company, if **paragraph (b)** does not apply; or
  - “(b) by the end of the imputation year in which the company ceases to be an imputation credit account company, if the company ceases to be an imputation credit account company because it becomes a portfolio investment entity.”

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**Struck out (majority)**

**111 Credits arising to imputation credit account of group**

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- (1) After section ME 11(1)(i), the following is inserted:
  - “(ib) the amount of any tax credit under **section LH 1** to which a member of the consolidated imputation group is entitled for the imputation year.”
- (2) After section ME 11(2)(d), the following is inserted:
  - “(db) in the case of a credit referred to in **subsection (1)(ib)**, on the date that the Commissioner receives the return of income for the imputation year for which the company claims the tax credit under **section LH 1**.”
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years.

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**New (majority)**

**111 Credits arising to imputation credit account of group**

(1A) In section ME 11(1)(a)(i), “and (x)” is replaced by “, (x), and (xi)”.

(1) After section ME 11(1)(i), the following is inserted:

“(ib) the amount of any tax credit under **section LH 1** to which a member of the consolidated imputation group is entitled for the tax year:”.

(2) After section ME 11(2)(d), the following is inserted:

“(db) in the case of a credit referred to in **subsection (1)(ib)**, on the date that the company furnishes the return for the tax year for which the company claims the tax credit under **section LH 1**:”.

(3) **Subsections (1A), (1), and (2)** apply for the 2008–09 and later income years.

**Struck out (majority)**

**112 Amount of imputation credit to be attached to cash distribution**

The following is added to section ME 31:

“(3) **Section MZ 17** (Attaching imputation credits and notional distributions: modifying amounts) modifies subsection (1).”

**113 Notional distribution deemed to be dividend**

The following is added to section ME 33:

“(4) **Section MZ 17** (Attaching imputation credits and notional distributions: modifying amounts) modifies subsection (1).”

**114 Amount of imputation credit to be attached to cash distribution**

The following is added to section ME 36:

“(3) **Section MZ 17** (Attaching imputation credits and notional distributions: modifying amounts) modifies subsection (1).”

**Struck out (majority)**

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| <b>115</b> | <b>Notional distribution deemed to be dividend or taxable Maori authority distribution</b><br>The following is added to section ME 38:<br>“(3) <b>Section MZ 17</b> (Attaching imputation credits and notional distributions: modifying amounts) modifies subsection (1).”  | 5                                |
| <b>116</b> | <b>Branch equivalent tax account of company</b><br>The following is added to section MF 3:<br>“(3) <b>Section MZ 18</b> (BETA reductions) modifies this section.”   |                                  |
| <b>117</b> | <b>Credits and debits arising to branch equivalent tax account of company</b><br>(1) In section MF 4(3)(a) “controlled foreign company” is replaced by “CFC that is not an unqualified grey list CFC under section EX 22”.<br>(2) The following is added to section MF 4:<br>“(7) <b>Section MZ 18</b> (BETA reductions) modifies the amounts of credits, debits, and balances arising under this section.” | 10<br><br><br><br><br><br><br>15 |

**New (majority)**

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| <b>112</b> | <b>Amount of imputation credit to be attached to cash distribution</b><br>The following is added to section ME 31:<br>“(3) <b>Section MZ 20</b> modifies subsection (1).” | 20 |
| <b>113</b> | <b>Notional distribution deemed to be dividend</b><br>The following is added to section ME 33:<br>“(4) <b>Section MZ 20</b> modifies subsection (1).”                     |    |
| <b>114</b> | <b>Amount of imputation credit to be attached to cash distribution</b><br>The following is added to section ME 36:<br>“(3) <b>Section MZ 20</b> modifies subsection (1).” | 25 |

115	<b>Notional distribution deemed to be dividend or taxable Maori authority distribution</b>	
	The following is added to section ME 38:	
(3)	<b>Section MZ 20</b> modifies subsection (1)."	
116	<b>Branch equivalent tax account of company</b>	5
	The following is added to section MF 3:	
(3)	<b>Section MZ 21</b> modifies this section."	
117	<b>Credits and debits arising to branch equivalent tax account of company</b>	
	The following is added to section MF 4:	10
(7)	<b>Section MZ 21</b> modifies the amounts of credits, debits, and balances arising under this section."	
<hr/>		
118	<b>Use of credit to reduce dividend withholding payment, or use of debit to satisfy income tax liability</b>	
(1)	After section MF 5(5), the following is inserted:	15
"(5B)"	An election made for a company (the <b>first company</b> ) by the first company or any other company under section MF 5(4) for an income year is invalid to the extent to which the total of all those elections and any other elections for the first company under section MF 10(4) for the year is greater than an amount calculated for the first company for the year using the formula in section MF 4(1)(a) (but treating item e as zero).	20
"(5C)"	An amount of election that is invalid under <b>subsection (5B)—</b>	
	"(a) is not recorded as a credit in the branch equivalent tax account of the company that makes the election:"	25
	"(b) is not an amount of debit balance for which the election is made:	
	"(c) does not relate to the election."	
(2)	<b>Subsection (1)</b> applies for a person for the 2005–06 and later income years, unless the person has, for the relevant income year, taken a tax position in a return of income furnished to the Commissioner before <b>17 May 2007</b> that ignores the existence of <b>subsection (1)</b> .	30

- (3) If **subsection (1)** does not apply to a person for an income year because of **subsection (2)**, the person may treat **subsection (1)** as not existing.

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| <b>119 Debits and credits arising to group branch equivalent tax account</b>   | 5  |
| (1) In section MF 8(4)(a) “controlled foreign company” is replaced by “CFC that is not an unqualified grey list CFC under section EX 22 (Unqualified grey list CFCs)”. |    |
| (2) The following is added to section MF 8:  |    |
| “(7) <b>Section MZ 18</b> (BETA reductions) modifies this section.”  | 10 |

**New (majority)**

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| <b>119 Debits and credits arising to group branch equivalent tax account</b>  |          |
| The following is added to section MF 8:   |          |
| “(7) <b>Section MZ 21</b> modifies this section.”   |          |
| <br><b>120 Use of consolidated group credit to reduce dividend withholding payment, or use of group or individual debit to satisfy income tax liability</b>   |          |
| (1) After section MF 10(4), the following is inserted:  | 15       |
| “(4B) An election made for a consolidated group under section MF 10(3) by any company described in section MF 10(3)(a) to (c) for an income year is invalid to the extent to which the total of all those elections is greater than an amount calculated for the consolidated group for the year using the formula in section MF 8(2)(a) (but treating item e as zero).   | 20       |
| “(4C) An election made for a company (the <b>first company</b> ) by any consolidated group under section MF 10(4) for an income year is invalid to the extent to which the total of all those elections and any other elections for the first company under section MF 5(4) for the year is greater than an amount calculated for the first company for the year using the formula in section MF 4(1)(a) (but treating item e as zero). | 25<br>30 |

- “(4D) An amount of election that is invalid under **subsections (4B) or (4C)**—
- “(a) is not recorded as a credit in the branch equivalent tax account of the company or consolidated group, as the case may be, that makes the election: 5
- “(b) is not an amount of debit balance for which the election is made:
- “(c) does not relate to the election.”
- (2) **Subsection (1)** applies for a person for the 2005–06 and later income years, unless the person has, for the relevant income year, taken a tax position in a return of income furnished to the Commissioner before **17 May 2007** that ignores the existence of **subsection (1)**. 10
- (3) If **subsection (1)** does not apply to a person for an income year because of **subsection (2)**, the person may treat **subsection (1)** as not existing. 15

**Struck out (majority)**

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- 121 Allocation rules for dividend withholding payment credits**
- The following is inserted after section MG 8(4):
- “(5) **Sections MZ 10** (Allocation of imputation credits and dividend withholding payment credits: modifying maximum credit ratio) **and MZ 11** (Benchmark dividends: credit ratio change) modify this section.” 20
- 122 Dividend with both imputation credit and dividend withholding payment credit attached** 25
- The following is added to section MG 10:
- “(3) **Sections MZ 10** (Allocation of imputation credits and dividend withholding payment credits: modifying maximum credit ratio) modifies this section.”
- 123 Conduit tax relief account** 30
- The following is added to section MI 3:
- “(3) **Section MZ 19** (Conduit tax relief account reductions) modifies this section.”
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**Struck out (majority)**

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| <b>124</b> | <b>Credits arising to conduit tax relief account</b><br>The following is added to section MI 4:<br>“(3) <b>Section MZ 19</b> (Conduit tax relief account reductions) modifies this section.”        |    |
| <b>125</b> | <b>Debits arising to conduit tax relief account</b><br>The following is added to section MI 5:<br>“(8) <b>Section MZ 19</b> (Conduit tax relief account reductions) modifies this section.”         | 5  |
| <b>126</b> | <b>Consolidated group conduit tax relief account</b><br>The following is added to section MI 15:<br>“(2) <b>Section MZ 19</b> (Conduit tax relief account reductions) modifies this section.”       | 10 |
| <b>127</b> | <b>Credits arising to group conduit tax relief account</b><br>The following is added to section MI 17:<br>“(3) <b>Section MZ 19</b> (Conduit tax relief account reductions) modifies this section.” | 15 |
| <b>128</b> | <b>Debits arising to group conduit tax relief account</b><br>The following is added to section MI 18:<br>“(5) <b>Section MZ 19</b> (Conduit tax relief account reductions) modifies this section.”  | 20 |

**New (majority)**

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| <b>121</b> | <b>Allocation rules for dividend withholding payment credits</b><br>(1) In section MG 8(1), item a, “that is concurrent with the imputation year” is omitted.<br>(2) After section MG 8(8), the following is added:<br>“(9) <b>Sections MZ 13 and MZ 14</b> modify this section.” | 25 |
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**New (majority)**

<b>122 Dividend with both imputation credit and dividend withholding payment credit attached</b>	
(1) In section MG 10(1), item a, “that is concurrent with the imputation year” is omitted.	
(2) After section MG 10(2), the following is added:	5
“(3) <b>Section MZ 13</b> modifies this section.”	
<b>123 Conduit tax relief account</b>	
The following is added to section MI 3:	
“(3) <b>Section MZ 22</b> modifies this section.”	
<b>124 Credits arising to conduit tax relief account</b>	10
The following is added to section MI 4:	
“(3) <b>Section MZ 22</b> modifies this section.”	
<b>125 Debits arising to conduit tax relief account</b>	
The following is added to section MI 5:	
“(8) <b>Section MZ 22</b> modifies this section.”	15
<b>126 Consolidated group conduit tax relief account</b>	
The following is added to section MI 15:	
“(2) <b>Section MZ 22</b> modifies this section.”	
<b>127 Credits arising to group conduit tax relief account</b>	
The following is added to section MI 17:	20
“(3) <b>Section MZ 22</b> modifies this section.”	
<b>128 Debits arising to group conduit tax relief account</b>	
The following is added to section MI 18:	
“(5) <b>Section MZ 22</b> modifies this section.”	



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**129 Credits arising to Maori authority credit account**

- (1) After section MK 4(1)(g), the following is inserted:  
     “(gb) the amount of any tax credit under **section LH 1** to which  
     the Maori authority is entitled for the imputation year:”.
- (2) After section MK 4(2)(d), the following is inserted: 5  
     “(db) in the case of a credit referred to in **subsection (1)(gb)**, on  
     the date that the Commissioner receives the return of  
     income for the imputation year for which the Maori  
     authority claims the tax credit under **section LH 1**:”.
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income 10  
     years.

**New (majority)**

**129 Credits arising to Maori authority credit account**

- (1A) After section MK 4(1)(a)(iv), the following is added:  
     “(v) income tax paid by way of a tax credit under  
     **section LH 1**:”.
- (1) After section MK 4(1)(g), the following is inserted: 15  
     “(gb) the amount of any tax credit under **section LH 1** to which  
     the Maori authority is entitled for the tax year:”.
- (2) After section MK 4(2)(d), the following is inserted:  
     “(db) in the case of a credit referred to in **subsection (1)(gb)**, on 20  
     the date that the company furnishes the return for the  
     tax year for which the Maori authority claims the tax  
     credit under **section LH 1**:”.
- (3) **Subsections (1A), (1), and (2)** apply for the 2008–09 and later 25  
     income years.

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**130 New sections MZ 10 to MZ 19 added**

- (1) The following is added to subpart MZ:

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<b>“MZ 10 Allocation of imputation credits and dividend withholding payment credits: modifying maximum credit ratio</b>	
“(1) This section applies—	
“(a) for a company paying a dividend in the period—	5
“(i) beginning the first day of the company’s 2008–09 income year; and	
“(ii) finishing on 31 March 2010; and	
“(b) to the company’s imputation credits and dividend withholding payment credits, to the extent of the credit balances for its imputation credit account and dividend withholding payment account which arise from income, expenditure, memorandum account debits, credits, and balances, refunds, tax, tax credits, transfers, withholdings, or other items dealt with, arising, or calculated using an old company tax rate.	10
“(2) Where the amount of the imputation credits or dividend withholding payment credits that may be attached to the dividend is limited by a ratio calculated in accordance with a formula stated in section ME 8(1), MG 8(1), or MG 10(1),—	15
“(a) the company may choose to treat item a of section ME 8(1) as 33%, and in that item the words “that is concurrent with the imputation year” are treated as omitted:	20
“(b) the company may choose to treat item a of section MG 8(1) as 33%, and in that item the words “that is concurrent with the imputation year” are treated as omitted:	25
“(c) the company may choose to treat item a of section MG 10(1) as 33%, and in that item the words “that is concurrent with the imputation year” are treated as omitted.	
<b>“MZ 11 Benchmark dividends: credit ratio change</b>	30
“(1) This section applies—	
“(a) for a company paying a dividend in the period—	
“(i) beginning the first day of the company’s 2008–09 income year; and	
“(ii) finishing on 31 March 2010; and	35

**Struck out (majority)**

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| <p>“(b) in relation to a dividend that is a subsequent dividend for the purposes of sections ME 8(2) to (4), or MG 8(2) to (4).</p> <p>“(c) in relation to a benchmark dividend that—</p> <p style="padding-left: 20px;">“(i) was one to which <b>section MZ 10</b> applied; or</p> <p style="padding-left: 20px;">“(ii) has a relevant ratio of 33/67, due to reasons other than the application of <b>section MZ 10</b>.</p> <p>“(2) The imputation ratio or dividend withholding payment ratio of the subsequent dividend is treated as the same as the relevant ratio for the relevant benchmark dividend, if, but for this section, the ratio of the subsequent dividend is less than the ratio of the benchmark dividend because,—</p> <p style="padding-left: 20px;">“(a) in the case of a benchmark dividend described in <b>sub-section (1)(c)(i)</b>, <b>section MZ 10</b> does not apply to the subsequent dividend, due to the absence of a relevant credit balance described in <b>section MZ 10 (1)(b)</b>;</p> <p style="padding-left: 20px;">“(b) in the case of a benchmark dividend described in <b>sub-section (1)(c)(ii)</b>, the subsequent dividend has a ratio of 30/70.</p> | <p>5</p> <p>10</p> <p>15</p>            |
| <p><b>“MZ 12 Determination of credit: modifying maximum ratios</b></p> <p>“(1) This section applies—</p> <p style="padding-left: 20px;">“(a) for a person deriving a dividend in the period—</p> <p style="padding-left: 40px;">“(i) beginning on the first day of the person’s 2008–09 income year; and</p> <p style="padding-left: 40px;">“(ii) finishing on 31 March 2010; and</p> <p style="padding-left: 20px;">“(b) to the dividend, and to imputation credits and dividend withholding payment credits attached to the dividend, for which—</p> <p style="padding-left: 40px;">“(i) the imputation ratio is greater than 30/70 and less than or equal to 33/67; or</p> <p style="padding-left: 40px;">“(ii) the dividend withholding payment ratio is greater than 30/70 and less than or equal to 33/67; or</p> <p style="padding-left: 40px;">“(iii) the combined imputation and dividend withholding payment ratio is greater than 30/70 and less than or equal to 33/67.</p>   | <p>20</p> <p>25</p> <p>30</p> <p>35</p> |

**Struck out (majority)**

- “(2) For the purposes of section LB 1, where the amount of the imputation credits or dividend withholding payment credits is limited by a ratio calculated in accordance with a formula stated in section ME 8(1), MG 8(1), or MG 10(1), the relevant ratio is treated as 33/67. 5
- “MZ 13 Credit of tax for imputation credits and dividend withholding payment credits: modifying amount**
- “(1) This section applies—
- “(a) for a person deriving a dividend in the period—
- “(i) beginning on the first day of the person’s 2008–09 income year; and 10
- “(ii) finishing on 31 March 2010; and
- “(b) to the dividend, and to imputation credits and dividend withholding payment credits attached to the dividend, for which— 15
- “(i) the imputation ratio is greater than 30/70 and less than or equal to 33/67; or
- “(ii) the dividend withholding payment ratio is greater than 30/70 and less than or equal to 33/67; or
- “(iii) the combined imputation and dividend withhold- 20  
ing payment ratio is greater than 30/70 and less than or equal to 33/67; and
- “(c) if the person is a new tax rate person in the period for the dividend.
- “(2) For imputation credits or dividend withholding payment credits attached to the dividend, described in **subsection (1)(b)(i) or (ii)**, the amount of the tax credit that the person is entitled to under whichever of section LB 2(2) or LD 8(2) is relevant is calculated using the following formula: 25
- dividend and credits  $\times$  0.30. 30
- “(3) In the formula in **subsection (2), dividend and credits** means whichever is relevant of the imputation credits or the dividend withholding credits included in the person’s assessable income for the purposes of sections LB 2(1) or LD 8(1), together with the dividend to which the relevant credits are 35  
attached.

**Struck out (majority)**

- “(4) For imputation credits and dividend withholding payment credits attached to the dividend, described in **subsection (1)(b)(iii)**, the total amount of the tax credits (the **tax credit total**) that the person is entitled to under sections LB 2(2) and LD 8(2) is calculated using the following formula: 5
- dividend and credits  $\times$  0.30.
- “(5) In the formula in **subsection (4)**, **dividend and credits** means the imputation credits and the dividend withholding credits included in the person’s assessable income for the purposes of sections LB 2(1) and LD 8(1), together with the dividend to which the credits are attached. 10
- “(6) For the purposes of the person’s entitlement to a tax credit under whichever of section LB 2(2) or LD 8(2) is relevant, the imputation credits and dividend withholding payment credits are reduced to the tax credit total by reducing imputation credits before dividend withholding payment credits. 15
- “MZ 14 Credits for non-resident investors**
- “(1) This section applies—
- “(a) for a company paying or deriving a dividend with imputation credits attached in the period— 20
- “(i) beginning on the first day of the company’s 2008–09 income year; and
- “(ii) finishing on 31 March 2010; and
- “(b) to a dividend and imputation credits, to the extent to which, in the absence of subpart LE,— 25
- “(i) the combined imputation and dividend withholding payment ratio imputation ratio is greater than 30/70 and less than or equal to 33/67; or
- “(ii) the imputation ratio is greater than 30/70 and less than or equal to 33/67; and 30
- “(c) section LE 2(1) or LE 3(2) apply to the company.
- “(2) If the dividend and imputation credits have a ratio, described in **subsection (1)(b)(i) or (ii)** that is equal to 33/67, then any tax credit that the company is entitled to is calculated using the formula in LE 2(2), treating 7/10 as 67/120. 35

**Struck out (majority)**

- “(3) If the dividend and imputation credits have a ratio, described in **subsection (1)(b)(i) or (ii)** that is less than 33/67, then, to the extent to which a part of the dividend and imputation credits has a ratio of 33/67 due to the application of **section MZ 10**, any tax credit that the company is entitled to is calculated using the formula in LE 2(2), treating 7/10 as 67/120. 5
- “(4) To the extent to which **subsection (2) or (3)** apply, for the purposes of applying relevant provisions in sections ME 8, MG 8, and GC 22 under section LE 2(9) and (10), those provisions apply using the ratio 33/67 and the old company tax rates. 10
- “(5) If the company derives a dividend to which this section applies, item **T** in section LE 3(6) is treated as 33%, to the extent to which a part of the supplementary dividend for the dividend was calculated using the formula in section LE 2, treating 7/10 as 67/120. 15

**“MZ 15 Fully credited: modifying the actual ratio**

- “(1) This section applies—
- “(a) for a person in the period—
- “(i) beginning on the first day of the person’s 2008–09 income year; and 20
- “(ii) finishing on 31 March 2010; and
- “(b) to a dividend for which, in the absence of this section, the actual ratio under section CD 32(26)(b) is greater than 30/70 and less than or equal to 33/67.
- “(2) For the purposes of calculating, under section CD 32(26), the part of the dividend that is fully credited, the actual ratio under section CD 32(26)(b) is treated as 30/70. 25

**“MZ 16 Dividends from qualifying companies: modifying for tax rate change**

- “(1) This section applies— 30
- “(a) for a qualifying company paying a dividend in the period—
- “(i) beginning the first day of the company’s 2008–09 income year; and
- “(ii) finishing on 31 March 2010; and 35

**Struck out (majority)**

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| <p>“(b) to the extent to which <b>section MZ 10</b> applies for the dividend.</p> <p>“(2) For the purposes of calculating, under section HG 13(1)(a), the extent to which the dividend is exempt income of the shareholder, item <b>c</b> of section HG 13(1)(a)(i) is treated as 0.33.</p> <p>“(3) For the purposes of determining, under section HG 13(3)(a), the maximum imputation credit which may be attached to the dividend by virtue of section ME 8(1), section ME 8(1) is modified by <b>section MZ 10</b>.</p> <p>“(4) For the purposes of determining, under section HG 13(4)(a), the maximum dividend withholding payment credit which may be attached to the dividend by virtue of sections MG 8(1) and MG 10(1), those sections are modified by <b>section MZ 10</b>.</p> <p>“<b>MZ 17 Attaching imputation credits and notional distributions: modifying amounts</b></p> <p>“(1) This section applies—</p> <p style="padding-left: 20px;">“(a) for a statutory producer board or a co-operative company that determines to pay a cash distribution or make a notional distribution in the period—</p> <p style="padding-left: 40px;">“(i) beginning the first day of the board’s or company’s 2008–09 income year; and</p> <p style="padding-left: 40px;">“(ii) finishing on 31 March 2010; and</p> <p style="padding-left: 20px;">“(b) to the board’s or company’s imputation credits, to the extent of the credit balance for the relevant imputation credit account that arises from income, expenditure, memorandum account debits, credits, and balances, refunds, tax, tax credits, transfers, withholdings, or other items dealt with, arising, or calculated using an old company tax rate.</p> <p>“(2) For the purposes of a statutory producer board calculating, under section ME 31(1), the aggregate imputation credits attaching to a cash distribution, the statutory producer board may choose to treat item b of section ME 31(1) as 33%.</p> | <p></p> <p>5</p> <p>10</p> <p></p> <p>15</p> <p></p> <p>20</p> <p></p> <p>25</p> <p>30</p> |
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**Struck out (majority)**

- “(3) For the purposes of a statutory producer board calculating, under section ME 33(1), the amount of the notional distribution deemed a dividend, the statutory producer board may choose to treat item b of section ME 33(1) as 33%.
- “(4) For the purposes of a co-operative company calculating, under section ME 36(1), the aggregate imputation credits attaching to the cash distribution, the co-operative company may choose to treat item b of section ME 36(1) as 33%, if it is not a Maori authority. 5
- “(5) For the purposes of a co-operative company calculating, under section ME 38(1), the amount of the notional distribution deemed a dividend, the co-operative company may choose to treat item b of section ME 38(1) as 33%, if it is not a Maori authority. 10
- “MZ 18 BETA reductions 15**
- “(1) This section applies to—
- “(a) credits and debits that are in the branch equivalent tax account of a company or a consolidated group before the first day of their 2008–09 income year:
- “(b) credits and debits which arise to the branch equivalent tax account of a company or a consolidated group on or after the first day of their 2008–09 income year, if the credits and debits relate to their 2007–08 or earlier income years. 20
- “(2) The credits and debits are reduced by multiplying them by 30/33. 25
- “MZ 19 Conduit tax relief account reductions**
- “(1) This section applies to—
- “(a) credits and debits that are in the conduit tax relief account of a company or a consolidated group before the first day of their 2008–09 income year: 30
- “(b) credits and debits which arise to the conduit tax relief account of a company or a consolidated group on or after the first day of their 2008–09 income year, if the



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credits and debits relate to their 2007–08 or earlier  
income years.

“(2) The credits and debits are reduced by multiplying them by  
30/33.”

(2) **Subsection (1)** applies for the 2008–09 and later income years. 5

**New (majority)**

**130 New sections MZ 13 to MZ 22 added**

(1) The following is added to subpart MZ:

**“MZ 13 Allocation of imputation credits and dividend  
withholding payment credits: modifying maximum  
credit ratio 10**

“(1) This section applies—

“(a) for a company paying a dividend in the period—

“(i) beginning on the first day of the company’s  
2008–09 income year; and

“(ii) finishing on 31 March 2010; and 15

“(b) to the company’s imputation credits and dividend with-  
holding payment credits, to the extent of the credit  
balances for its imputation credit account and dividend  
withholding payment account which arise from memo-  
randum account debits, credits, and balances, refunds, 20  
tax, tax credits, transfers, withholdings, or other items  
dealt with, arising, or calculated using an old company  
tax rate.

“(2) Where the amount of the imputation credits or dividend with-  
holding payment credits that may be attached to the dividend 25  
is limited by a ratio calculated in accordance with a formula  
stated in section ME 8(1), MG 8(1), or MG 10(1),—

“(a) the company may choose to treat item a of section ME  
8(1) as 33%:

“(b) the company may choose to treat item a of section MG 30  
8(1) as 33%:

“(c) the company may choose to treat item a of section MG  
10(1) as 33%.

**New (majority)**

**“MZ 14 Benchmark dividends: credit ratio change**

- “(1) This section applies—
- “(a) for a company paying a dividend in the period—
    - “(i) beginning on the first day of the company’s 2008–09 income year; and 5
    - “(ii) finishing on 31 March 2010; and
  - “(b) in relation to a dividend that is a subsequent dividend for the purposes of section ME 8(2) to (4) or MG 8(2) to (4); and
  - “(c) in relation to a benchmark dividend that— 10
    - “(i) was one to which **section MZ 13** applied; or
    - “(ii) has a relevant ratio of 33/67, due to reasons other than the application of **section MZ 13**.
- “(2) The imputation ratio or dividend withholding payment ratio of the subsequent dividend is treated as the same as the relevant ratio for the relevant benchmark dividend, if, but for this section, the ratio of the subsequent dividend is less than the ratio of the benchmark dividend because,— 15
- “(a) in the case of a benchmark dividend described in **sub-section (1)(c)(i)**, **section MZ 13** does not apply to the subsequent dividend, due to the absence of a relevant credit balance described in **section MZ 13(1)(b)**: 20
  - “(b) in the case of a benchmark dividend described in **sub-section (1)(c)(ii)**, the subsequent dividend has a ratio of 30/70. 25

**“MZ 15 Determination of credit: modifying maximum ratios**

- “(1) This section applies—
- “(a) for a person deriving a dividend in the period—
    - “(i) beginning on 1 October 2007; and
    - “(ii) finishing on 31 March 2010; and 30
  - “(b) to the dividend, and to imputation credits and dividend withholding payment credits attached to the dividend, for which—
    - “(i) the imputation ratio is greater than 30/70 and less than or equal to 33/67; or 35

**New (majority)**

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| <p style="margin-left: 40px;">“(ii) the dividend withholding payment ratio is greater than 30/70 and less than or equal to 33/67; or</p> <p style="margin-left: 40px;">“(iii) the combined imputation and dividend withholding payment ratio is greater than 30/70 and less than or equal to 33/67.</p> <p>“(2) For the purposes of section LB 1, where the amount of the imputation credits or dividend withholding payment credits is limited by a ratio calculated in accordance with a formula stated in section ME 8(1), MG 8(1), or MG 10(1), the relevant ratio is treated as 33/67.</p>  | <p>5</p> <p>10</p>                                |
| <p><b>“MZ 16 Credit of tax for imputation credits and dividend withholding payment credits: modifying amount</b></p>   |   |
| <p>“(1) This section applies—</p> <p style="margin-left: 20px;">“(a) for a person deriving a dividend in the period—</p> <p style="margin-left: 40px;">“(i) beginning on the first day of the person’s 2008–09 income year; and</p> <p style="margin-left: 40px;">“(ii) finishing on 31 March 2010; and</p> <p style="margin-left: 20px;">“(b) to the dividend, and to imputation credits and dividend withholding payment credits attached to the dividend, for which—</p> <p style="margin-left: 40px;">“(i) the imputation ratio is greater than 30/70 and less than or equal to 33/67; or</p> <p style="margin-left: 40px;">“(ii) the dividend withholding payment ratio is greater than 30/70 and less than or equal to 33/67; or</p> <p style="margin-left: 40px;">“(iii) the combined imputation and dividend withholding payment ratio is greater than 30/70 and less than or equal to 33/67; and</p> <p style="margin-left: 20px;">“(c) if the person is a new tax rate person in the period for the dividend.</p> <p>“(2) For imputation credits or dividend withholding payment credits attached to the dividend, described in <b>subsection (1)(b)(i) or (ii)</b>, the amount of the tax credit that the person is entitled to under whichever of section LB 2(2) or LD 8(2) is relevant is calculated using the following formula:</p> <p style="margin-left: 40px;">dividend and credits × 0.30.</p> | <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> |

**New (majority)**

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| <p>“(3) In the formula in <b>subsection (2), dividend and credits</b> means whichever is relevant of the imputation credits or the dividend withholding credits included in the person’s assessable income for the purposes of sections LB 2(1) or LD 8(1), together with the dividend to which the relevant credits are attached.</p>                            | 5  |
| <p>“(4) For imputation credits and dividend withholding payment credits attached to the dividend, described in <b>subsection (1)(b)(iii)</b>, the total amount of the tax credits (the <b>tax credit total</b>) that the person is entitled to under sections LB 2(2) and LD 8(2) is calculated using the following formula:<br/>dividend and credits × 0.30.</p> | 10 |
| <p>“(5) In the formula in <b>subsection (4), dividend and credits</b> means the imputation credits and the dividend withholding credits included in the person’s assessable income for the purposes of sections LB 2(1) and LD 8(1), together with the dividend to which the credits are attached.</p>  | 15 |
| <p>“(6) For the purposes of the person’s entitlement to a tax credit under whichever of section LB 2(2) or LD 8(2) is relevant, the imputation credits and dividend withholding payment credits are reduced to the tax credit total by reducing imputation credits before dividend withholding payment credits.</p>   | 20 |
| <p><b>“MZ 17 Credits for non-resident investors</b></p>   |    |
| <p>“(1) This section applies—</p>   |    |
| <p>    “(a) for a company paying or deriving a dividend with imputation credits attached in the period—</p>   | 25 |
| <p>        “(i) beginning on the first day of the company’s 2008–09 income year; and</p>  |    |
| <p>        “(ii) finishing on 31 March 2010; and</p>  |    |
| <p>    “(b) to a dividend and imputation credits, to the extent to which, in the absence of subpart LE,—</p>  | 30 |
| <p>        “(i) the combined imputation and dividend withholding payment ratio imputation ratio is greater than 30/70 and less than or equal to 33/67; or</p>   |    |
| <p>        “(ii) the imputation ratio is greater than 30/70 and less than or equal to 33/67; and</p>  | 35 |

**New (majority)**

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| <p>“(c) if section LE 2(1) or LE 3(2) apply to the company.</p> <p>“(2) If the dividend and imputation credits have a ratio, described in <b>subsection (1)(b)(i) or (ii)</b> that is equal to 33/67, then any tax credit that the company is entitled to is calculated using the formula in section LE 2(2), treating 7/10 as 67/120.</p> <p>“(3) If the dividend and imputation credits have a ratio, described in <b>subsection (1)(b)(i) or (ii)</b> that is less than 33/67, then, to the extent to which a part of the dividend and imputation credits has a ratio of 33/67 due to the application of <b>section MZ 13</b>, any tax credit that the company is entitled to is calculated using the formula in section LE 2(2), treating 7/10 as 67/120.</p> <p>“(4) To the extent to which <b>subsection (2) or (3)</b> apply, for the purposes of applying relevant provisions in sections ME 8, MG 8, and GC 22 under section LE 2(9) and (10), those provisions apply using the ratio 33/67 and the old company tax rates.</p> <p>“(5) If the company derives a dividend to which this section applies, item <b>T</b> in section LE 3(6) is treated as 33%, to the extent to which a part of the supplementary dividend for the dividend was calculated using the formula in section LE 2, treating 7/10 as 67/120.</p> | <p></p> <p>5</p> <p>10</p> <p>15</p> <p>20</p> |
| <p><b>“MZ 18 Fully credited: modifying actual ratio</b></p> <p>“(1) This section applies—</p> <p style="padding-left: 20px;">“(a) for a person in the period—</p> <p style="padding-left: 40px;">“(i) beginning on the first day of the person’s 2008–09 income year; and</p> <p style="padding-left: 40px;">“(ii) finishing on 31 March 2010; and</p> <p style="padding-left: 20px;">“(b) to a dividend for which, in the absence of this section, the actual ratio under section CD 32(26)(b) is greater than 30/70 and less than or equal to 33/67.</p> <p>“(2) For the purposes of calculating, under section CD 32(26), the part of the dividend that is fully credited, the actual ratio under section CD 32(26)(b) is treated as 30/70.</p>   |  |

**New (majority)**

<b>“MZ 19 Dividends from qualifying companies: modifying for tax rate change</b>	
“(1) This section applies—	
“(a) for a qualifying company paying a dividend in the period—	5
“(i) beginning on the first day of the company’s 2008–09 income year; and	
“(ii) finishing on 31 March 2010; and	
“(b) to the extent to which <b>section MZ 13</b> applies for the dividend.	10
“(2) For the purposes of calculating, under section HG 13(1)(a), the extent to which the dividend is exempt income of the shareholder, item <b>c</b> of section HG 13(1)(a)(i) is treated as 0.33.	
“(3) For the purposes of determining, under section HG 13(3)(a), the maximum imputation credit which may be attached to the dividend by virtue of section ME 8(1), section ME 8(1) is modified by <b>section MZ 13</b> .	15
“(4) For the purposes of determining, under section HG 13(4)(a), the maximum dividend withholding payment credit which may be attached to the dividend by virtue of sections MG 8(1) and MG 10(1), those sections are modified by <b>section MZ 13</b> .	20
<b>“MZ 20 Attaching imputation credits and notional distributions: modifying amounts</b>	
“(1) This section applies—	25
“(a) for a statutory producer board or a co-operative company that determines to pay a cash distribution or make a notional distribution in the period—	
“(i) beginning on the first day of the board’s or company’s 2008–09 income year; and	30
“(ii) finishing on 31 March 2010; and	
“(b) to the board’s or company’s imputation credits, to the extent of the credit balance for the relevant imputation credit account that arises from income, expenditure, memorandum account debits, credits, and balances, refunds, tax, tax credits, transfers, withholdings, or	35

**New (majority)**

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| <p style="margin-left: 40px;">other items dealt with, arising, or calculated using an old company tax rate.</p>  |    |
| <p>“(2) For the purposes of a statutory producer board calculating, under section ME 31(1), the aggregate imputation credits attaching to a cash distribution, the statutory producer board may choose to treat item b of section ME 31(1) as 33%.</p>                           | 5  |
| <p>“(3) For the purposes of a statutory producer board calculating, under section ME 33(1), the amount of the notional distribution deemed a dividend, the statutory producer board may choose to treat item b of section ME 33(1) as 33%.</p>                                   | 10 |
| <p>“(4) For the purposes of a co-operative company calculating, under section ME 36(1), the aggregate imputation credits attaching to the cash distribution, the co-operative company may choose to treat item b of section ME 36(1) as 33%, if it is not a Maori authority.</p> | 15 |
| <p>“(5) For the purposes of a co-operative company calculating, under section ME 38(1), the amount of the notional distribution deemed a dividend, the co-operative company may choose to treat item b of section ME 38(1) as 33%, if it is not a Maori authority.</p>           | 20 |
| <p><b>“MZ 21 BETA reductions</b></p>   |    |
| <p>“(1) This section applies to—</p>   |    |
| <p>“(a) credits and debits that are in the branch equivalent tax account of a company or a consolidated group before the first day of their 2008–09 income year:</p>   | 25 |
| <p>“(b) credits and debits which arise to the branch equivalent tax account of a company or a consolidated group on or after the first day of their 2008–09 income year, if the credits and debits relate to their 2007–08 or earlier income years.</p>                          | 30 |
| <p>“(2) The credits and debits are reduced by multiplying them by 30/33.</p>   |    |

**New (majority)**

**“MZ 22 Conduit tax relief account reductions**

- “(1) This section applies to—
- “(a) credits and debits that are in the conduit tax relief account of a company or a consolidated group before the first day of their 2008–09 income year: 5
  - “(b) credits and debits which arise to the conduit tax relief account of a company or a consolidated group on or after the first day of their 2008–09 income year, if the credits and debits relate to their 2007–08 or earlier income years. 10
- “(2) The credits and debits are reduced by multiplying them by 30/33.”
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

**131 Private use of motor vehicle: when schedular value not used 15**

- (1) In section ND 1U(1), “clause 6” is replaced by “clause 5”.
- (2) In section ND 1U(2), in the words before paragraph (a), “clause 2” is replaced by “clause 4”.
- (3) In section ND 1U(3), “clause 2” is replaced by “clause 4”.
- (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. 20

**132 Private use of motor vehicle: when schedular value used**

- (1) In section ND 1V(1), “clause 6” is replaced by “clause 5”.
- (2) **Subsection (1)** applies for a person’s liability for fringe benefit tax for a period beginning on or after 1 April 2006. 25



**133 New subpart NEB inserted**

After subpart NEA, the following is inserted:

“Subpart NEB—Retirement scheme contribution  
withholding tax

**Struck out (majority)**

<b>“NEB 1 Retirement scheme contribution withholding tax imposed</b>	<b>5</b>
<i>“Retirement scheme contribution subject to withholding tax</i>	
“(1) A retirement scheme contribution made to a retirement savings scheme is subject to retirement scheme contribution withholding tax at the rate stated in schedule 1 part A, <b>clause 11</b> (Basic rates of income tax, specified superannuation contribution withholding tax, and retirement scheme contribution withholding tax).	<b>10</b>
<i>“Amount of retirement scheme contribution</i>	
“(2) For the purposes of the RSCWT rules, unless the context otherwise requires, the amount of a retirement scheme contribution is the total of—	<b>15</b>
“(a) the amount received as the retirement scheme contribution by the retirement savings scheme and not deducted under <b>section NEB 2</b> on behalf of the retirement scheme contributor; and	<b>20</b>
“(b) the amount of retirement scheme contribution withholding tax payable under the RSCWT rules on the retirement scheme contribution.	
“Defined in this Act: retirement savings scheme, retirement scheme contribution, retirement scheme contribution withholding tax, retirement scheme prescribed rate, RSCWT rules	<b>25</b>

**New (majority)**

**“NEB 1 Retirement scheme contribution withholding tax imposed**

*“Retirement scheme contribution subject to withholding tax*

- “(1) A retirement scheme contribution made for a person to a retirement savings scheme is subject to retirement scheme contribution withholding tax at the retirement scheme withholding rate for the person. 5

*“Amount of retirement scheme contribution*

- “(2) For the purposes of the RSCWT rules, unless the context otherwise requires, the amount of a retirement scheme contribution is the total of— 10

“(a) the amount received as the retirement scheme contribution by the retirement savings scheme and not deducted under **section NEB 2** on behalf of the retirement scheme contributor; and 15

“(b) the amount of retirement scheme contribution withholding tax payable under the RSCWT rules on the retirement scheme contribution.

“Defined in this Act: retirement savings scheme, retirement scheme contribution, retirement scheme contribution withholding tax, retirement scheme withholding rate, RSCWT rules 20

**“NEB 2 Retirement scheme contribution withholding tax to be deducted**

*“Responsibility of retirement scheme contributor to deduct*

- “(1) A retirement scheme contributor who pays to a retirement savings scheme an amount that represents a retirement scheme contribution for a person must, at the time of the payment, deduct from the amount an amount of retirement scheme contribution withholding tax determined under **section NEB 1**. 25 30

*“Appointment of retirement savings scheme as agent*

- “(2) A retirement scheme contributor who pays a retirement scheme contribution to a retirement savings scheme may

appoint the retirement savings scheme as agent to make the deduction required by **subsection (1)**.

“Defined in this Act: retirement savings scheme, retirement scheme contribution, retirement scheme contribution withholding tax, retirement scheme contributor

- “NEB 3 Payment and notice of deductions** 5
- “Payment and notice*
- “(1) A retirement scheme contributor or retirement savings scheme who deducts retirement scheme contribution withholding tax from a retirement scheme contribution must, not later than the 20th of the month following the month in which the deduction is made,— 10
- “(a) pay the amount of the deduction to the Commissioner; and
- “(b) give to the Commissioner, in a notice in a form acceptable to the Commissioner, a figure for the amount of retirement scheme contribution withholding tax being paid for the month of the deduction other than by the use of imputation credits and Maori authority credits. 15
- “Amalgamating company*
- “(2) If an amalgamating company ceases to exist on an amalgamation, **subsection (1)** applies from the time of the amalgamation as if retirement scheme contribution withholding tax deductions payable by the amalgamating company in the year preceding the year in which the amalgamation takes place were payable by the amalgamated company. 20  
25
- “Defined in this Act: Commissioner, imputation credit, Maori authority credit, notice, retirement savings scheme, retirement scheme contribution, retirement scheme contribution withholding tax, retirement scheme contributor, tax file number
- “NEB 4 Failure to deduct** 30
- “Debt owing to Commissioner*
- “(1) If a retirement scheme contributor or retirement savings scheme fails to deduct retirement scheme contribution withholding tax from a retirement scheme contribution for a person as required by **section NEB 1**, an amount calculated using the formula in **subsection (2)** is a debt— 35

- “(a) payable to the Commissioner by the retirement scheme contributor; and
- “(b) becoming due and payable on the 20th of the month following the month in which the retirement scheme contribution was made. 5

*“Formula for amount of debt*

- “(2) The amount of the debt is calculated using the formula—
- $$\frac{\text{tax rate}}{1 - \text{tax rate}} \times \text{contribution to scheme} - \text{tax already paid.} \quad 10$$

*“Definition of items in formula*

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

*“Tax rate*

**Struck out (majority)**

- “(4) **Tax rate** is the rate of retirement scheme contribution withholding tax for the person stated in schedule 1 part A, **clause 11** (Basic rates of income tax, specified superannuation contribution withholding tax, and retirement scheme contribution withholding tax). 15

**New (majority)**

- “(4) **Tax rate** is the retirement scheme withholding rate for the person. 20

*“Contribution to scheme*

- “(5) **Contribution to scheme** is the amount of the retirement scheme contribution received by the retirement savings scheme, excluding the amount of retirement scheme contribution withholding tax. 25

*“Tax already paid*

- “(6) **Tax already paid** is any amount of retirement scheme contribution withholding tax for the contribution that has already been paid.

**Struck out (majority)**

“Defined in this Act: Commissioner, retirement savings scheme, retirement scheme contribution, retirement scheme contribution withholding tax, retirement scheme contributor

**New (majority)**

“Defined in this Act: Commissioner, retirement savings scheme, retirement scheme contribution, retirement scheme contribution withholding tax, retirement scheme contributor, retirement scheme withholding rate

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**“NEB 5 Retirement savings schemes**

*“Eligibility to be retirement savings scheme*

“(1) An entity is eligible to be a retirement savings scheme for a person if—

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- “(a) the entity is a portfolio investment entity; and
- “(b) under the rules (the **distribution rules**) governing the distribution by the entity of funds in which the person has an interest, the availability of distributions to the person is restricted before the person reaches an age of retirement specified in the rules; and

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**Struck out (majority)**

“(c) under the distribution rules, the person is not permitted to make a withdrawal before the age of retirement other than a withdrawal—

“(i) for the repayment by the person of a student loan as defined in the Students Loan Scheme Act 1992:

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“(ii) that the person would be permitted to make if the scheme were a KiwiSaver scheme under the KiwiSaver Act 2006; and

25

“(d) the Commissioner approves the distribution rules as being fair and reasonable.

**New (majority)**

“(c) under the distribution rules, the person is not permitted to make a withdrawal before the age of retirement other than a withdrawal—	
“(i) for the repayment of a student loan as defined in the Students Loan Scheme Act 1992:	5
“(ii) for the payment of fees and expenses relating to tertiary education:	
“(iii) for the purchase of housing, if the person does not own a home:	
“(iv) that the person would be permitted to make if the scheme were a KiwiSaver scheme under the KiwiSaver Act 2006:	10
“(v) in circumstances specified in the rules as approved under <b>paragraph (e)</b> ; and	
“(d) under the distribution rules, the entity may require the person to provide information for the purpose of ensuring that the requirements relating to a withdrawal are met; and	15
“(e) the Commissioner approves the distribution rules as being fair and reasonable.	20

*“Retirement savings scheme for person*

“(2) An entity is a retirement savings scheme for a person for an income year if, in the income year,—	
“(a) the entity is eligible to be a retirement savings scheme for the person under <b>subsection (1)</b> ; and	25
“(b) the entity holds funds from a retirement scheme contribution for the person.	
“Defined in this Act: Commissioner, income year, portfolio investment entity, retirement savings scheme, retirement scheme contribution, retirement scheme contributor	30

**“NEB 6 Retirement scheme contributors**

*“Eligibility to be retirement scheme contributor*

“(1) An entity is eligible to be a retirement scheme contributor for a person if—	
“(a) the entity is—	35

- 
- “(i) the trustee of a widely-held trust that is a unit trust:
- “(ii) a company other than a close company:
- “(iii) a Maori authority; and
- “(b) the person is a unit holder, shareholder, or member, of the entity. 5
- “Retirement scheme contributor for person*
- “(2) An entity is a retirement scheme contributor for a person for an income year if,—
- “(a) in the income year, the entity is eligible to be a retirement scheme contributor under **subsection (1)**; and 10
- “(b) in or before the income year, the entity makes a payment intended to be a retirement scheme contribution for the person.
- “Defined in this Act: close company, company, income year, Maori authority, retirement savings scheme, retirement scheme contribution, retirement scheme contributor, shareholder, trustee, unit holder, unit trust, widely-held trust 15
- “NEB 7 Application of other provisions to retirement scheme contribution withholding tax**
- “Section GC 20 and sections 170(2), 171, and 172 of the Tax Administration Act 1994* 20
- “(1) For the purposes of the RSCWT rules, section GC 20 (Agreements not to make resident withholding tax deductions to be void) and sections 170(2), 171, and 172 of the Tax Administration Act 1994, as far as they are applicable and with any necessary modifications, apply as if— 25
- “(a) a reference to a resident withholding tax deduction were a reference to a deduction of retirement scheme contribution withholding tax:
- “(b) a reference to the RWT rules were a reference to the RSCWT rules. 30
- “Other provisions, except for RSCWT rules*
- “(2) The provisions of this Act and of the Tax Administration Act 1994 other than the provisions affected by **subsection (1)**, as far as they are applicable and with any necessary modifications, apply as if retirement scheme contribution withholding tax 35

were income tax levied under section BB 1 (Imposition of income tax).

*“Relationship with other RSCWT rules*

“(3) **Subsections (1) and (2)** are subject to the other RSCWT rules.

“Defined in this Act: income tax, resident withholding tax deduction, retirement scheme contribution withholding tax, RSCWT rules, RWT rules”.

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**New (majority)**

**133B Application of RWT rules**

(1) After section NF 1(2)(b)(x), the following is added:

“(xi) dividends that are excluded income by virtue of the application of **section CX 42B** or would be excluded income under that section in the absence of **section CX 42B(2)(a) and (b)**:”.

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(2) After section NF 1(2)(b)(xi), the following is added:

“(xii) dividends that are not non-cash dividends and that—

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“(A) have an imputation ratio, dividend withholding payment ratio, or combined imputation and dividend ratio, of 30/70 or greater; and

“(B) are paid by a unit trust or a group investment fund, and the unit trust, the group investment fund, or an RWT proxy for them, has not deducted resident withholding tax from any previous dividend.”

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(3) Section NF 1(2)(c) is replaced by the following:

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“(c) taxable Maori authority distributions not being retirement scheme contributions:”.



**134 Resident withholding tax deductions from dividends  
deemed to be dividend withholding payment credits**

**Struck out (majority)**

- (1) In section NF 8(1), “LD 9” is replaced by “LD 9, excluding sections LB 1(1)(d) and (e)”.

**New (majority)**

- (1) In section NF 8(1), “LB 1” is replaced by “LB 1, excluding subsection (1)(d) and (e),”.
- (2) **Subsection (1)** applies—
- (a) for the 2008–09 and later income years, unless **paragraph (b)** applies:
  - (b) on and after 1 April 2008 for a portfolio tax rate entity that does not choose to be subject to section HL 22.

**New (majority)**

**134B New section NG 16B inserted**

After section NG 16A, the following is inserted:

- “NG 16B Person withholding amount as retirement scheme contribution withholding tax when liable for non-resident withholding tax**
- “(1) This section applies for a retirement scheme contributor who—
- “(a) makes a retirement scheme contribution for a non-resident; and
  - “(b) pays to the Commissioner an amount as retirement scheme contribution withholding tax relating to the retirement scheme contribution.
- “(2) The retirement scheme contributor is treated as having withheld from the retirement scheme contribution and paid to the Commissioner an amount of non-resident withholding tax equal to the lesser of—

**New (majority)**

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| <p>“(i) the amount paid as retirement scheme contribution withholding tax in relation to the retirement scheme contribution:</p> <p>“(ii) the non-resident withholding tax payable in relation to the retirement scheme contribution.</p> <p>“(3) <b>Section LD 12</b> applies to any balance of the amount paid as retirement scheme contribution withholding tax.”</p> | 5 |
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**Struck out (majority)**

**135 Definitions**

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| <p>(1) This section amends section OB 1.</p> <p>(2) In the definition of <b>applicable basic tax rate</b>,—</p> <p style="padding-left: 20px;">(a) in paragraph (a), “(Basic rates of income tax and specified superannuation contribution withholding tax)” is replaced by “(Basic rates of income tax, specified superannuation contribution withholding tax, and retirement scheme contribution withholding tax)”:</p> <p style="padding-left: 20px;">(b) in paragraph (b), “(Basic rates of income tax and specified superannuation contribution withholding tax)” is omitted.</p> <p>(3) After the definition of <b>at all relevant times</b>, the following is inserted:</p> <p style="padding-left: 20px;"><b>“attendant care</b> is defined in schedule 1, clause 12 of the Injury Prevention, Rehabilitation, and Compensation Act 2001”.</p> <p>(4) In the definition of <b>basic rates</b>, “(Basic rates of income tax and specified superannuation contribution withholding tax)” is replaced by “(Basic rates of income tax, specified superannuation contribution withholding tax, and retirement scheme contribution withholding tax)”.</p> <p>(5) In the definition of <b>child</b>, paragraph (b), “Tax credits for family support and family plus” is replaced by “Tax credits for families”.</p> <p>(6) In the definition of <b>child</b>, paragraph (b)(iii), “family tax credit” is replaced by “minimum family tax credit”.</p> | <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> |
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| (7) In the definition of <b>civil union partner</b> , “Tax credits for family support and family plus” is replaced by “Tax credits for families”.   |    |
| (8) After the definition of <b>core acquisition price</b> , the following is inserted:  | 5  |
| “ <b>core technology</b> is defined in <b>section LH 6(3)</b> (Eligibility of types of expenditure and depreciation loss)”.   |    |
| (9) After the definition of <b>District Committee</b> , the following is inserted:  |    |
| “ <b>district health board</b> means a district health board established by or under section 19 of the New Zealand Public Health and Disability Act 2000”.  | 10 |
| (10) In the definition of <b>elected period</b> , “Tax credits for family support and family plus” is replaced by “Tax credits for families”.   | 15 |
| (11) In the definition of <b>eligible period</b> , paragraph (f), “ring-fenced family support recipient” is replaced by “ring-fenced family tax credit recipient”.  |    |
| (12) In the definition of <b>employer’s contributions to superannuation savings</b> , paragraph (a)(ii), “(Basic rates of income tax and specified superannuation contribution withholding tax)” is replaced by “(Basic rates of income tax, specified superannuation contribution withholding tax, and retirement scheme contribution withholding tax)”. | 20 |
| (13) In the definition of <b>employment</b> , paragraph (d), “Tax credits for family support and family plus” is replaced by “Tax credits for families”.  | 25 |
| (14) In the definition of <b>employment</b> , paragraph (e), “family tax credit” is replaced by “minimum family tax credit”.  |    |
| (15) After the definition of <b>fair dividend rate method</b> , the following is inserted:  | 30 |
| “ <b>fair value method</b> is defined in <b>section EW 15C(6)</b> (IFRS method: requirements) for the purposes of that section”.  |    |
| (16) The definition of <b>family plus</b> is repealed.  |    |

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| (17) In the definition of <b>family support credit</b> , “family support credit” is replaced by “family tax credit”.  |    |
| (18) The definition of <b>family tax credit</b> existing before this Act is repealed.   |    |
| (19) The definition of <b>Financial Reporting Standard No 13 1995 (Accounting for Research and Development Activities)</b> is repealed.   | 5  |
| (20) In the definition of <b>fully conduit tax relief credited</b> , item <b>T</b> , “(Basic rates of income tax and specified superannuation contribution withholding tax)” is replaced by “(Basic rates of income tax, specified superannuation contribution withholding tax, and retirement scheme contribution withholding tax)”. | 10 |
| (21) After the definition of <b>identical share</b> , the following is inserted:  | 15 |
| “ <b>IFRS</b> means a New Zealand Equivalent to International Financial Reporting Standard, approved by the Accounting Standards Review Board, and as amended from time to time or an equivalent standard issued in its place   |    |
| “ <b>impaired credit adjustment</b> is defined in <b>section EW 15C(6)</b> (IFRS method: requirements) for the purposes of that section”.   | 20 |
| (22) After the definition of <b>indirect income interest</b> , the following is inserted:   |    |
| “ <b>industry research co-operative</b> means a person who is an industry research co-operative under <b>section LH 8</b> (Industry research co-operatives)”.   | 25 |
| (23) After the definition of <b>intermediary</b> , the following is inserted:   |    |
| “ <b>internal software development</b> is defined in <b>section LH 11</b> (Definitions) for the purposes of <b>subpart LH</b> (Business expenditure tax credits)  | 30 |
| “ <b>internal software development controller</b> is defined in <b>section LH 11</b> (Definitions) for the purposes of <b>subpart LH</b> (Business expenditure tax credits)   | 35 |

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- “**internal software development group** is defined in **section LH 11** (Definitions) for the purposes of **subpart LH** (Business expenditure tax credits)”.
- (24) In the definition of **investor**, paragraph (c), “in the company” is replaced by “in the company:”, and the following is added: 5
- “(d) for a portfolio investment entity that is a portfolio investment-linked life fund, a person whose benefits under the relevant life insurance policy are directly linked to the value of investments held in a portfolio investment-linked life fund”. 10
- (25) The definition of **in-work payment** is replaced by the following:
- “**in-work tax credit** means the component of the subpart KD credit given by section KD 2AAA (In-work tax credit)”.
- (26) After the definition of **listed PAYE intermediary claim form**, the following is inserted: 15
- “**listed research provider** means a person who is listed as a listed research provider under **section LH 7** (Listed research providers)”.
- (27) In the definition of **Maori authority rules**, paragraph (a)(vi), “(Basic rates of income tax and specified superannuation contribution withholding tax)” is replaced by “(Basic rates of income tax, specified superannuation contribution withholding tax, and retirement scheme contribution withholding tax)”. 20 25
- (28) After the definition of **minibus**, the following is inserted:
- “**minimum family tax credit** means a credit allowed by section KD 3 (Calculation of minimum family tax credit)”.
- (29) The definition of **net specified income** is replaced by the following: 30
- “**net specified income**, for subpart KD, a person, and a specified period, means an amount calculated using the following formula:
- $$\text{modified income} \times \frac{52}{\text{weeks}} - \text{modified liability} + \text{received} - \text{paid}$$
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- “ where—
- “(a) **mod income** is an amount of net income under section KD 1, calculated ignoring sections KD 1(1)(a) and (b), for the tax year that contains the specified period to the extent to which the amount is attributable to the weeks for which the person is a full-time earner in the specified period: 5
- “(b) **weeks** is the number of weeks for which the person is a full-time earner in the specified period:
- “(c) **mod liability** is the person’s unadjusted income tax liability for the year, calculated using their modified net income as their net income and subtracting only their rebate under section KC 1 (Low income rebate): 10
- “(d) **received** is the amount of income in section KD 1(1)(a) for the year: 15
- “(e) **paid** is the amount of deduction allowed in section KD 1(1)(b) for the year”.
- (30) After the definition of **new start grant**, the following is inserted:
- “**new tax rate person**,— 20
- “(a) means a person who uses a 30% basic rate that applies for the 2008–09 and later income years:
- “(b) includes a portfolio tax rate entity”.
- (31) After the definition of **nil period**, the following is inserted:
- “**Niue International Trust Fund** means the trust governed by the Deed concerning the Niue International Trust Fund dated 25 October 2006 and signed by Her Majesty the Queen in right of New Zealand and the Governments of Niue and Australia”. 25
- (32) After the definition of **non-filing taxpayer**, the following is inserted: 30
- “**non-integral fee** means a fee that, for the purposes of financial reporting, is not an integral part of the effective interest rate of a financial arrangement”.
- (33) After the definition of **notional offshore investment amount**, the following is inserted: 35

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- “**novelty** is defined in **section LH 4(4)** (Research and development activities and related terms) for the purposes of that subpart”.
- (34) After the definition of **NRWT rules**, the following is inserted:
- “**NZIAS 2** means New Zealand Equivalent to International Accounting Standard 2, approved by the Accounting Standards Review Board and as amended from time to time, or an equivalent standard issued in its place 5
- “**NZIAS 8** means New Zealand Equivalent to International Accounting Standard 8, approved by the Accounting Standards Review Board and as amended from time to time, or an equivalent standard issued in its place 10
- “**NZIAS 39** means New Zealand Equivalent to International Accounting Standard 39, approved by the Accounting Standards Review Board and as amended from time to time, or an equivalent standard issued in its place 15
- “**NZIAS 41** is defined in **section EB 6(3)** (Cost) for the purposes of that section”.
- (35) After the definition of **offshore permit area**, the following is inserted: 20
- “**old company tax rate** means a 33% basic rate that applied before the 2008–09 income year”.
- (36) The definition of **petroleum mining operations** is replaced by the following:
- “**petroleum mining operations** is defined in **section CT 6B** (Meaning of petroleum mining operations)” 25
- (37) In the definition of **portfolio investment entity**, paragraph (c), “fund” is replaced by “fund:”, and the following is added:
- “(d) portfolio investment-linked life fund” 30
- (38) After the definition of **portfolio investment entity**, the following is inserted:
- “**portfolio investment-linked life fund** means a fund in which—

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| <p>“(a) investments are held subject to a life insurance policy, under which benefits are directly linked to the value of the investments held in the fund; and</p> <p>“(b) has become a portfolio investment entity under section HL 12 (Becoming portfolio investment entity); and</p> <p>“(c) has not ceased to be a portfolio investment entity under section HL 14 (Ceasing to be portfolio investment entity)”.</p> <p>(39) In the definition of <b>portfolio listed company</b>, paragraph (d), “entity)” is replaced by “entity); and”, and the following is added:</p> <p>“(e) is not a portfolio investment-linked life fund”.</p> <p>(40) In the definition of <b>portfolio tax rate entity</b>, paragraph (d), “fund” is replaced by “fund; and”, and the following is added:</p> <p>“(e) is not a portfolio investment-linked life fund”.</p> <p>(41) In the definition of <b>qualifying person</b>, paragraphs (a)(iii) and (c), “family tax credit” is replaced by “minimum family tax credit” in each place where it appears.</p> <p>(42) In the definition of <b>refundable credit</b>, paragraph (d), “election)” is replaced by “election); or” and the following is added:</p> <p>“(e) for a tax credit under <b>section LH 1</b> (Tax credit relating to expenditure for research and development)”.</p> <p>(43) In the definition of <b>refundable rebate</b>, “Tax credits for family support and family plus” is replaced by “Tax credits for families”.</p> <p>(44) After the definition of <b>research</b>, the following is inserted:</p> <p>“<b>research and development activities</b> is defined in <b>section LH 4(1)</b> (Research and development activities and related terms)</p> <p>“<b>research and development project</b> is defined in <b>section LH 6(4)</b> (Eligibility of types of expenditure and depreciation loss)”.</p> <p>(45) In the definition of <b>resident</b>, “Tax credits for family support and family plus” is replaced by “Tax credits for families”.</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> |
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- (46) In the definition of **residual income tax**,—
- (a) in the words before paragraph (a), “Tax credits for family support and family plus” is replaced by “Tax credits for families”:
  - (b) after paragraph (j), the following is inserted: 5
    - “(jb) the amount of any tax credit under **section LH 1** (Tax credit relating to expenditure for research and development) credited against the income tax:”.
- (47) After the definition of **retained earnings**, the following is inserted: 10
- “**retirement savings scheme** for a person means an entity satisfying the requirements of **section NEB 5** (Retirement savings schemes)
- “**retirement scheme contribution** for a person means a contribution that is made— 15
- “(a) as an amount of—
    - “(i) money:
    - “(ii) imputation credits:
    - “(iii) Maori authority credits; and
  - “(b) to an entity that is eligible to be a retirement savings scheme; and 20
  - “(c) by an entity that is eligible to be a retirement scheme contributor; and
  - “(d) for the benefit of the person; and
  - “(e) because the person is a member of, or has an ownership interest in, the entity that is eligible to be a retirement scheme contributor 25
- “**retirement scheme contribution withholding tax** means retirement scheme contribution withholding tax payable under the RSCWT rules 30
- “**retirement scheme contributor** means an entity satisfying the requirements of **section NEB 6** (Retirement scheme contributors)
- “**retirement scheme prescribed rate**, for a person and a retirement scheme contribution made for the person at a time in an income year (the **contribution year**), means— 35

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| <p>“(a) if the person is not a resident at the time, a rate of 39%;<br/>or<br/>“(b) if the person is a resident at the time, a rate of—<br/>    “(i) 19.5% if the person had, in the income year ending before the contribution year, taxable income of \$38,000 or less; or<br/>    “(ii) 33% if the person had, in the income year ending before the contribution year, taxable income of more than \$38,000 and less than or equal to \$60,000; or<br/>    “(iii) 39%, if the person had, in the income year ending before the contribution year, taxable income of more than \$60,000”.</p> <p>(48) After the definition of <b>royalty</b>, the following is inserted:<br/>    “<b>RSCWT rules</b> means—<br/>    “(a) the following provisions:<br/>        “(i) <b>section CX 42B</b> (Contributions to retirement savings scheme);<br/>        “(ii) <b>subpart NEB</b> (Retirement scheme contribution withholding tax);<br/>    “(b) <b>section 48B</b> and Part 9 of the Tax Administration Act 1994”.</p> <p>(49) After the definition of <b>schedular taxable income</b>, the following is inserted:<br/>    “<b>scientific or technological uncertainty</b> is defined in <b>section LH 4(3)</b> (Research and development activities and related terms)”.</p> <p>(50) In the definition of <b>separated person</b>, paragraph (b), “Tax credits for family support and family plus” is replaced by “Tax credits for families”.</p> <p>(51) After the definition of <b>social assistance suspensory loan</b>, the following is inserted:<br/>    “<b>sound commercial reason</b> is defined in <b>section EW 26(7)</b> (Change of spreading method) for the purposes of that section”.</p> | <p>5<br/>10<br/>15<br/>20<br/>25<br/>30<br/>35</p> |
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- (52) In the definition of **specified period**, paragraph (a), “Tax credits for family support and family plus” is replaced by “Tax credits for families”.
- (53) In the definition of **spouse**, “Tax credits for family support and family plus” is replaced by “Tax credits for families”. 5
- (54) After the definition of **surplus refundable credits**, the following is inserted:  
“**systematic, investigative, and experimental activities** is defined in **section LH 4(2)** (Research and development activities and related terms)”. 10
- (55) After the definition of **taxpayer**, the following is inserted:  
“**technology** is defined in **section LH 4(5)** (Research and development activities and related terms) for the purposes of that subpart”.
- (56) After the definition of **terminating share**, the following is inserted: 15  
“**tertiary institution** means a body established under section 162 of the Education Act 1989”.
- (57) After the definition of **time of the sale**, the following is inserted: 20  
“**Tokelau International Trust Fund** means the trust governed by the Deed concerning the Tokelau International Trust Fund dated 10 November 2004 and signed by Her Majesty the Queen in right of New Zealand and the Government of Tokelau”. 25
- (58) **Subsections (15), (19), (21), (32), (34) and (51)** apply for—  
(a) the 2007–08 and later income years, unless **paragraph (b)** applies; or  
(b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year. 30
- (59) **Subsections (5), (6), (7), (10), (11), (13), (14), (16), (17), (18), (25), (28), (41), (43), (45), (46)(a), (50), (52), (53)**, apply for the 2007–08 and later income years. 35

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- (60) **Subsections (8), (9), (22), (23), (26), (29), (30), (33), (42), (44), (46)(b), (49), (50), (54), (55), and (56)** apply for the 2008–09 and later income years.

**New (majority)**

**135 Definitions**

- (1) This section amends section OB 1. 5
- (2) In the definition of **allowable rebates**, paragraph (a) is replaced by the following:
  - “(a) means the total of the rebates and credits of tax that a person is allowed in a tax year under Part K (Rebates), excluding rebates or credits allowed under— 10
    - “(i) section KC 4 (Rebate in certain cases for housekeeper):
    - “(ii) section KC 5 (Rebate in respect of gifts of money):
    - “(iii) subpart KI (Rebates for portfolio tax rate entities): 15
    - “(iv) subpart KJ (KiwiSaver scheme and complying superannuation fund tax credits); and”.
- (3) In the definition of **applicable basic tax rate**, in paragraph (b), “(Basic rates of income tax and specified superannuation contribution withholding tax)” is omitted. 20
- (4) After the definition of **attributing interest**, the following is inserted:
 

“**attribution company** means a company described as an attribution company in **section GC 14EB(1)** (Treatment of dividends as if from qualifying company)”.

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- (5) In the definition of **child**, in paragraph (b), “Tax credits for family support and family plus” is replaced by “Tax credits for families”.
- (6) In the definition of **child**, in paragraph (b)(iii), “family tax credit” is replaced by “minimum family tax credit”. 30

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| (7)  | In the definition of <b>civil union partner</b> , “Tax credits for family support and family plus” is replaced by “Tax credits for families”.                                 |    |
| (8)  | After the definition of <b>core acquisition price</b> , the following is inserted:  | 5  |
|      | “ <b>core technology</b> is defined in <b>section LH 7(3)</b> (Eligibility of expenditure and depreciation loss)”.  |    |
| (9)  | After the definition of <b>District Committee</b> , the following is inserted:  |    |
|      | “ <b>district health board</b> means a district health board established by or under section 19 of the New Zealand Public Health and Disability Act 2000”.                    | 10 |
| (10) | In the definition of <b>elected period</b> , “Tax credits for family support and family plus” is replaced by “Tax credits for families”.                                      | 15 |
| (11) | In the definition of <b>eligible period</b> , in paragraph (f), “ring-fenced family support recipient” is replaced by “ring-fenced family tax credit recipient”.              |    |
| (12) | In the definition of <b>employment</b> , in paragraph (d), “Tax credits for family support and family plus” is replaced by “Tax credits for families”.                        | 20 |
| (13) | In the definition of <b>employment</b> , in paragraph (e), “family tax credit” is replaced by “minimum family tax credit” in both places that it occurs.                      |    |
| (14) | After the definition of <b>environmental restoration account</b> , the following is inserted:   | 25 |
|      | “ <b>equity instrument</b> is defined in <b>section EW 15B</b> (IFRS taxpayer method) for the purposes of that section”.  |    |
| (15) | After the definition of <b>fair dividend rate method</b> , the following is inserted:   | 30 |
|      | “ <b>fair value method</b> means a method of calculating income or expenditure for an income year that takes into account movements in fair value as determined under IFRSs”. |    |
| (16) | The definition of <b>family plus</b> is repealed.   |    |

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| (17) | In the definition of <b>family support credit</b> , “family support credit” is replaced by “family tax credit”.  |              |
| (18) | The definition of <b>family tax credit</b> existing before this Act is repealed.   |              |
| (19) | The definition of <b>Financial Reporting Standard No 13 1995 (Accounting for Research and Development Activities)</b> is repealed.   | 5            |
| (20) | In the definition of <b>financial statements</b> , “livestock)),” is replaced by “livestock)), subpart EW (Financial arrangements rules),”   | 10           |
| (21) | After the definition of <b>gift</b> , the following is inserted:<br>“ <b>gifting settlor</b> is defined in <b>section EX 40(10)</b> (Limits on choice of calculation methods)”.  |              |
| (22) | In the definition of <b>group of companies</b> , “section IG 1(2)” is replaced by “section IG 1(2) and <b>(2B)</b> ”.  | 15           |
| (23) | After the definition of <b>identical share</b> , the following is inserted:<br>“ <b>IFRS</b> means a New Zealand Equivalent to International Financial Reporting Standard, approved by the Accounting Standards Review Board, and as amended from time to time or an equivalent standard issued in its place<br>“ <b>IFRS taxpayer method</b> means the methods described in <b>sections EW 15B to EW 15E</b> (which relate to the IFRS method and alternative methods)<br>“ <b>impaired credit adjustment</b> is defined in <b>section EW 15C(4)</b> (IFRS method) for the purposes of that section”. | 20<br><br>25 |
| (24) | After the definition of <b>indirect income interest</b> , the following is inserted:<br>“ <b>industry research co-operative</b> means a person who is an industry research co-operative under <b>section LH 9</b> (Industry research co-operatives)”.  | 30           |
| (25) | After the definition of <b>intermediary</b> , the following is inserted:   |              |

New (majority)

- “**internal software development** is defined in **section LH 12** (Definitions) for the purposes of **subpart LH** (Business expenditure tax credits)
- “**internal software development controller** is defined in **section LH 12** (Definitions) for the purposes of **subpart LH** (Business expenditure tax credits) 5
- “**internal software development group** is defined in **section LH 12** (Definitions) for the purposes of **subpart LH** (Business expenditure tax credits)”.
- (26) In the definition of **investor**, paragraphs (b) and (c) are replaced by the following: 10
- “**(b)** for a portfolio investment entity is defined in **section HL 5B** (Meaning of investor and portfolio investor class)”.
- (27) The definition of **in-work payment** is replaced by the following: 15
- “**in-work tax credit** means the component of the subpart KD credit given by section KD 2AAA (In-work tax credit)”.
- (28) In the definition of **land**, paragraph (a)(i) is repealed.
- (29) After the definition of **listed PAYE intermediary claim form**, the following is inserted: 20
- “**listed research provider** means a person who is listed as a listed research provider under **section LH 8** (Listed research providers)”.
- (30) After the definition of **minibus**, the following is inserted: 25
- “**minimum family tax credit** means a credit allowed by section KD 3 (Calculation of minimum family tax credit)”.
- (31) The definition of **net specified income** is replaced by the following: 30
- “**net specified income**, for subpart KD, a person, and a specified period, means an amount calculated using the following formula: 35
- $$\text{modified income} \times \frac{52}{\text{weeks}} - \text{modified liability} + \text{received} - \text{paid}$$
- “ where—

**New (majority)**

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| <p>“(a) <b>modified income</b> is an amount of net income under section KD 1, calculated ignoring sections KD 1(1)(a) and (b), for the tax year that contains the specified period to the extent to which the amount is attributable to the weeks for which the person is a full-time earner in the specified period:</p> <p>“(b) <b>weeks</b> is the number of weeks for which the person is a full-time earner in the specified period:</p> <p>“(c) <b>modified liability</b> is the person’s unadjusted income tax liability for the year, calculated using their modified net income as their net income and subtracting only their rebate under section KC 1 (Low income rebate):</p> <p>“(d) <b>received</b> is the amount of income in section KD 1(1)(a) for the year:</p> <p>“(e) <b>paid</b> is the amount of deduction allowed in section KD 1(1)(b) for the year”.</p> <p>(33) After the definition of <b>nil period</b>, the following is inserted:</p> <p>“<b>Niue International Trust Fund</b> means the trust governed by the Deed concerning the Niue International Trust Fund dated 25 October 2006 and signed by Her Majesty the Queen in right of New Zealand and the Governments of Niue and Australia”.</p> <p>(34) After the definition of <b>non-filing taxpayer</b>, the following is inserted:</p> <p>“<b>non-integral fee</b> means a fee or transaction cost that, for the purposes of financial reporting under IFRSs, is not an integral part of the effective interest rate of a financial arrangement”.</p> <p>(35) After the definition of <b>notional offshore investment amount</b>, the following is inserted:</p> <p>“<b>novelty</b> is defined in <b>section LH 5(4)</b> (Research and development activities and related terms) for the purposes of that subpart”.</p> <p>(36) After the definition of <b>NRWT rules</b>, the following is inserted:</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> |
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**New (majority)**

- “**NZIAS 2** means New Zealand Equivalent to International Accounting Standard 2, approved by the Accounting Standards Review Board and as amended from time to time, or an equivalent standard issued in its place
- “**NZIAS 8** means New Zealand Equivalent to International Accounting Standard 8, approved by the Accounting Standards Review Board and as amended from time to time, or an equivalent standard issued in its place 5
- “**NZIAS 17** means New Zealand Equivalent to International Accounting Standard 17, approved by the Accounting Standards Review Board and as amended from time to time, or an equivalent standard issued in its place 10
- “**NZIAS 32** means New Zealand Equivalent to International Accounting Standard 32, approved by the Accounting Standards Review Board and as amended from time to time, or an equivalent standard issued in its place 15
- “**NZIAS 39** means New Zealand Equivalent to International Accounting Standard 39, approved by the Accounting Standards Review Board and as amended from time to time, or an equivalent standard issued in its place 20
- “**NZIAS 41** is defined in **section EB 6(3)** (Cost) for the purposes of that section”.
- (37) After the definition of **offshore permit area**, the following is inserted:
- “**old company tax rate** means a 33% basic rate that applied before the 2008–09 income year”. 25
- (38) After the definition of **personal property lease payment**, the following is inserted:
- “**personal service rehabilitation payment**, for a person, means an amount paid for the benefit of the person— 30
- “(a) under section 81(3) of the Injury Prevention, Rehabilitation, and Compensation Act 2001; and
- “(b) by the Accident Compensation Corporation or an employer that is an accredited employer as defined in section 181 of that Act; and 35

**New (majority)**

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| <p>“(c) in providing to the person a key aspect of social rehabilitation referred to in—</p> <p style="padding-left: 40px;">“(i) section 81(1)(b), (c), (e), or (g) (relating to attendant care, child care, home help, and training for independence) of that Act:</p> <p style="padding-left: 40px;">“(ii) section 81(1)(h) (relating to transport for independence) of that Act to the extent given by paragraph (a)(i) of the definition of <b>transport for independence</b> in schedule 1, clause 12 of that Act”.</p> <p>(39) The definition of <b>petroleum mining operations</b> is replaced by the following:</p> <p style="padding-left: 40px;">“<b>petroleum mining operations</b> is defined in <b>section CT 6B</b> (Meaning of petroleum mining operations)”.</p> <p>(40) In the definition of <b>portfolio entity investment</b>, “a portfolio investment entity” is replaced by “an entity”.</p> <p>(41) In the definition of <b>portfolio investment entity</b>, in paragraph (c), “fund” is replaced by “fund:”, and the following is added:</p> <p style="padding-left: 40px;">“(d) portfolio investment-linked life fund”.</p> <p>(42) After the definition of <b>portfolio investment entity</b>, the following is inserted:</p> <p style="padding-left: 40px;">“<b>portfolio investment-linked life fund</b> means a separate identifiable fund, forming part of a life insurer, that—</p> <p style="padding-left: 80px;">“(a) holds investments subject to life insurance policies under which benefits are directly linked to the value of the investments held in the fund; and</p> <p style="padding-left: 80px;">“(b) has become a portfolio investment entity under section HL 12 (Becoming portfolio investment entity); and</p> <p style="padding-left: 80px;">“(c) has not ceased to be a portfolio investment entity under section HL 14 (Ceasing to be portfolio investment entity)”.</p> <p>(43) The definition of <b>portfolio investor class</b> is replaced by the following:</p> <p style="padding-left: 40px;">“<b>portfolio investor class</b> is defined in <b>section HL 5B</b> (Meaning of investor and portfolio investor class)”.</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> |
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**New (majority)**

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| (44) | In the definition of <b>portfolio investor exit period</b> , paragraph (b)(ii) is replaced by the following:   |    |
|      | “(ii) ending on a day in the tax year on which the amount of the entity’s portfolio tax liability under section HL 20, reduced by any tax credits allocated to the investor, for the investor for the period equals or exceeds the value of the investor’s portfolio investor interest”. | 5  |
| (45) | The definition of <b>portfolio investor rate</b> is replaced by the following:   | 10 |
|      | “ <b>portfolio investor rate</b> , at a time for an investor in a portfolio tax rate entity and for a portfolio allocation period, means—  |    |
|      | “(a) 30%, if <b>paragraphs (b) and (c)</b> do not apply; or  |    |
|      | “(b) the rate, if <b>paragraph (c)</b> does not apply, that the investor notifies—   | 15 |
|      | “(i) to the entity as the prescribed investor rate for the investor and the period; and  |    |
|      | “(ii) in the latest notice before the time; or   |    |
|      | “(c) 0%, if—   | 20 |
|      | “(i) the entity makes payments of tax under section HL 21 (Payments of tax by portfolio tax rate entity making no election); and   |    |
|      | “(ii) the portfolio investor rate at the time for the investor for the portfolio calculation period would, in the absence of this paragraph, be more than 0%; and  | 25 |
|      | “(iii) the portfolio calculation period includes part of a portfolio investor exit period for the investor”.   |    |
| (46) | In the definition of <b>portfolio land company</b> , in paragraph (b),—  | 30 |
|      | (a) in the words before subparagraph (i), “80%” is replaced by “80% or more”:  |    |
|      | (b) in subparagraph (ii), “of the company” is replaced by “of the company; and” and the following is added:  | 35 |

**New (majority)**

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| <p>“(c) meets the requirements of section HL 10(2) (Further eligibility requirements relating to investments) for the tax year”.</p> <p>(47) In the definition of <b>portfolio listed company</b>, in paragraph (d), “entity)” is replaced by “entity); and”, and the following is added:</p> <p>“(e) is not a portfolio investment-linked life fund”.</p> <p>(48) In the definition of <b>portfolio tax rate entity</b> in paragraph (d), “fund” is replaced by “fund; and”, and the following is added:</p> <p>“(e) is not a portfolio investment-linked life fund”.</p> <p>(49) In the definition of <b>qualifying person</b>, in paragraphs (a)(iii) and (c), “family tax credit” is replaced by “minimum family tax credit” in each place where it appears.</p> <p>(50) In the definition of <b>refundable credit</b>, in paragraph (d), “election)” is replaced by “election); or” and the following is added:</p> <p>“(e) for a tax credit under <b>section LD 12</b> (Credit for retirement scheme contribution withholding tax if retirement scheme contribution not excluded income)”.</p> <p>(51) In the definition of <b>refundable credit</b>, in <b>paragraph (e)</b> as inserted by <b>subsection (50)</b> of this section, “income)” is replaced by “income); or” and the following is added:</p> <p>“(f) for a tax credit under <b>section LH 1</b> (Tax credit relating to expenditure for research and development)”.</p> <p>(52) In the definition of <b>refundable rebate</b>, “Tax credits for family support and family plus” is replaced by “Tax credits for families”.</p> <p>(53) After the definition of <b>research</b>, the following is inserted:</p> <p>“<b>research and development activities</b> is defined in <b>section LH 5(1)</b> (Research and development activities and related terms)</p> <p>“<b>research and development project</b> is defined in <b>section LH 7(4)</b> (Eligibility of types of expenditure and depreciation loss)”.</p> | <p></p> <p>5</p> <p></p> <p>10</p> <p></p> <p>15</p> <p>20</p> <p></p> <p>25</p> <p></p> <p>30</p> |
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**New (majority)**

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| (54) In the definition of <b>resident</b> , “Tax credits for family support and family plus” is replaced by “Tax credits for families”.  |    |
| (55) In the definition of <b>residual income tax</b> ,—  |    |
| (a) in the words before paragraph (a), “Tax credits for family support and family plus” is replaced by “Tax credits for families”:   | 5  |
| (b) after paragraph (j), the following is inserted:  |    |
| “(jb) the amount of any tax credit under <b>section LD 12</b> (Credit for retirement scheme contribution withholding tax if retirement scheme contribution not excluded income) credited against the income tax.”: | 10 |
| (c) after <b>paragraph (jb)</b> , the following is inserted:   |    |
| “(jc) the amount of any tax credit under <b>section LH 1</b> (Tax credit relating to expenditure for research and development) credited against the income tax.”.  | 15 |
| (56) After the definition of <b>retained earnings</b> , the following is inserted:   |    |
| “ <b>retirement savings scheme</b> for a person means an entity satisfying the requirements of <b>section NEB 5</b> (Retirement savings schemes)   | 20 |
| “ <b>retirement scheme contribution</b> for a person means a contribution that is made—  |    |
| “(a) as an amount of—  |    |
| “(i) money:  |    |
| “(ii) imputation credits:  | 25 |
| “(iii) Maori authority credits; and  |    |
| “(b) to an entity that is eligible to be a retirement savings scheme; and  |    |
| “(c) by an entity that is eligible to be a retirement scheme contributor; and  | 30 |
| “(d) for the benefit of the person; and  |    |
| “(e) because the person is a member of, or has an ownership interest in, the entity that is eligible to be a retirement scheme contributor   |    |

New (majority)

- “**retirement scheme contribution withholding tax** means retirement scheme contribution withholding tax payable under the RSCWT rules
- “**retirement scheme contributor** means an entity satisfying the requirements of **section NEB 6** (Retirement scheme contributors) 5
- “**retirement scheme prescribed rate**, for a person and a retirement scheme contribution made for the person at a time in an income year (the **contribution year**), means—
- “(a) 39%, if none of **paragraphs (b) to (d)** apply; or 10
- “(b) 33%, if **paragraphs (c) and (d)** do not apply and the person has, in either of the 2 income years immediately before the contribution year, taxable income of \$60,000 or less; or
- “(c) 19.5%, if **paragraph (d)** does not apply and— 15
- “(i) the person has, in either of the 2 income years immediately before the contribution year, taxable income of \$38,000 or less:
- “(ii) the person is a non-resident and the retirement scheme contributor is a Maori authority; or 20
- “(d) 0%, if the person is a non-resident at the time and the contribution is non-resident withholding income
- “**retirement scheme withholding rate**, for a person and a retirement scheme contribution made for the person at a time in an income year, means,— 25
- “(a) 39%, if **paragraph (b)** does not apply; or
- “(b) the rate that the person notifies to the retirement scheme contributor as the retirement scheme prescribed rate for the person and the retirement scheme contribution—
- “(i) before the retirement scheme contribution is made; and 30
- “(ii) by a notice satisfying **section 28C** of the Tax Administration Act 1994”.
- (57) After the definition of **royalty**, the following is inserted:
- “**RSCWT rules** means— 35
- “(a) the following provisions:

New (majority)

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| <p>“(i) <b>section CX 42B</b> (Contributions to retirement savings scheme):</p> <p>“(ii) <b>section LB 3</b> (Credit of retirement scheme contribution withholding tax for imputation credit):</p> <p>“(iii) <b>section LD 4</b> (Credit of retirement scheme contribution withholding tax for Maori authority credit):</p> <p>“(iv) <b>section LD 12</b> (Credit for retirement scheme contribution withholding tax if retirement scheme contribution not excluded income):</p> <p>“(v) <b>subpart NEB</b> (Retirement scheme contribution withholding tax):</p> <p>“(vi) <b>section NF 1(2)(b)(xi) and (c)</b> (Application of RWT rules):</p> <p>“(vii) <b>section NG 16B</b> (Person withholding amount as retirement scheme contribution withholding tax when liable for non-resident withholding tax):</p> <p>“(b) <b>section 48B</b> and Part 9 of the Tax Administration Act 1994”.</p> | <p></p> <p></p> <p>5</p> <p></p> <p>10</p> <p></p> <p>15</p> <p></p> |
| <p>(58) After the definition of <b>schedular taxable income</b>, the following is inserted:</p> <p>“<b>scientific or technological uncertainty</b> is defined in <b>section LH 5(3)</b> (Research and development activities and related terms)”.</p>   | <p>20</p>  |
| <p>(59) In the definition of <b>separated person</b>, in paragraph (b), “Tax credits for family support and family plus” is replaced by “Tax credits for families”.</p>   | <p>25</p>  |
| <p>(60) After the definition of <b>social assistance suspensory loan</b>, the following is inserted:</p> <p>“<b>sound commercial reason</b> is defined in <b>section EW 26(7)</b> (Change of spreading method) for the purposes of that section”.</p>   | <p>30</p>  |
| <p>(61) In the definition of <b>specified period</b>, in paragraph (a), “Tax credits for family support and family plus” is replaced by “Tax credits for families”.</p>   | <p>35</p>  |

**New (majority)**

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| (62) | In the definition of <b>spouse</b> , “Tax credits for family support and family plus” is replaced by “Tax credits for families”.  |    |
| (63) | After the definition of <b>surplus refundable credits</b> , the following is inserted:  |    |
|      | “ <b>systematic, investigative, and experimental activities</b> is defined in <b>section LH 5(2)</b> (Research and development activities and related terms)”.  | 5  |
| (64) | After the definition of <b>taxpayer</b> , the following is inserted:  |    |
|      | “ <b>technology</b> is defined in <b>section LH 5(5)</b> (Research and development activities and related terms) for the purposes of that subpart”.   | 10 |
| (65) | After the definition of <b>terminating share</b> , the following is inserted:   |    |
|      | “ <b>tertiary institution</b> means a body established under section 162 of the Education Act 1989”.  | 15 |
| (66) | After the definition of <b>time of the sale</b> , the following is inserted:  |    |
|      | “ <b>Tokelau International Trust Fund</b> means the trust governed by the Deed concerning the Tokelau International Trust Fund dated 10 November 2004 and signed by Her Majesty the Queen in right of New Zealand and the Government of Tokelau”. | 20 |
| (67) | In the definition of <b>venture investment agreement</b> , “for the purposes of that section” is omitted:   |    |
| (68) | <b>Subsection (28)</b> applies for the 2005–06 and later income years.  | 25 |
| (69) | <b>Subsections (14), (15), (19), (20), (23), (34), (36), and (60)</b> apply for—  |    |
|      | (a) the 2007–08 and later income years, unless <b>paragraph (b)</b> applies; or   |    |
|      | (b) the first income year for which a person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year.  | 30 |
| (70) | <b>Subsections (5), (6), (7), (10), (11), (12), (13), (16), (17), (18), (27), (30), (49), (52), (54), (55)(a), (59), (61), and (62)</b> apply for the 2007–08 and later income years.   | 35 |



**New (majority)**

- (71) **Subsections (8), (9), (24), (25), (29), (31), (32), (35), (51), (53), (55)(c), (58), (63), (64), and (65)** apply for the 2008–09 and later income years.

**136 Meaning of source deduction payment: shareholder-employees of close companies**

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- (1) The heading to section OB 2 is replaced by “**Meaning of source deduction payment**”.

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- (2) In section OB 2(1), “GC 14D” is replaced by “GC 14D, or an amount paid by a claimant under the Injury Prevention, Rehabilitation, and Compensation Act 2001 to a caregiver for providing attendant care to the claimant.”

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**New (majority)**

- (2) In section OB 2(1), “GC 14D” is replaced by “GC 14D, or a personal services rehabilitation payment for a claimant under the Injury Prevention, Rehabilitation, and Compensation Act 2001.”

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**137 Meaning of income tax**

- (1) In section OB 6(1)(d)(i), “retirement scheme contribution withholding tax,” is inserted after “specified superannuation contribution withholding tax,”.

**New (majority)**

- (2) In section OB 6(3)(o), “, **141B**,” is inserted after “sections 31”.

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**138 Further definitions of associated persons**

- (1) In section OD 8(1), “DT 2,” is omitted.

- (2) In section OD 8(3), in the words before paragraph (a), “and section NH 7” is replaced by “sections **LH 2**, ~~**LH 11**~~ **LH 12**, and NH 7”.
- (3) **Subsection (2)** applies for the 2008–09 and later income years.

**Struck out (majority)**

<b>139</b>	<b>Schedule 1—Basic rates of income tax and specified superannuation contribution withholding tax</b>	5
(1)	In the heading to schedule 1, “ <b>and specified superannuation contribution withholding tax</b> ” is replaced by “, <b>specified superannuation contribution withholding tax, and retirement scheme contribution withholding tax</b> ”.	10
(2)	After schedule 1, part A, clause 10, the following is added:	
<b>“11</b>	<b>Retirement savings contribution withholding tax</b>	
	On the amount of a retirement scheme contribution, before deduction of retirement scheme contribution withholding tax, made in an income year by a retirement scheme contributor for a person, the retirement scheme contribution withholding tax for every \$1 of the amount is—	15
	“(a) 19.5 cents, if that rate is—	
	“(i) the retirement scheme prescribed rate for the person and the retirement scheme contribution; and	20
	“(ii) before the retirement scheme contribution is made, provided by the person to the person responsible for making the deduction in a notice satisfying <b>section 28C</b> of the Tax Administration Act 1994; or	25
	“(b) 33 cents, if <b>paragraph (a)</b> does not apply and that rate is—	
	“(i) equal to or greater than the retirement scheme prescribed rate for the person and the retirement scheme contribution; and	
	“(ii) before the retirement scheme contribution is made, provided by the person to the person responsible for making the deduction in a notice satisfying <b>section 28C</b> of the Tax Administration Act 1994; or	30
	“(c) 39 cents, if <b>paragraphs (a) and (b)</b> do not apply.”	35

**New (majority)**

**139B Schedule 13—Months for payment of provisional tax and terminal tax**

- (1) In schedule 13, part B, in the first column of the table for GST ratio provisional taxpayers, “7–” is replaced by “7–8”.
- (2) **Subsection (1)** applies for provisional tax payments for the 2008–09 and later income years. 5

***KiwiSaver-related amendments to Income Tax Act 2004***

**140 Income Tax Act 2004**

**Sections 141 to 144** amend the Income Tax Act 2004.

**141 New section CS 10B inserted** 10

After section CS 10, the following is inserted:

**“CS 10B Exclusion of permitted withdrawals from KiwiSaver schemes and complying superannuation funds**

Section CS 1 does not apply to a permitted withdrawal from a KiwiSaver scheme or a complying superannuation fund. 15

“Defined in this Act: complying superannuation fund, KiwiSaver scheme, permitted withdrawal”.

**142 Contributions to employees’ superannuation schemes**

After section DC 6(1), the following is inserted:

*“Exclusion* 20

- “(1B) The employer is denied a deduction for a contribution, to the extent of the amount of the tax credit under **section <KJ 1> <KJ 6>** (Tax credits relating to employers contributing to KiwiSaver schemes and complying superannuation funds) for the PAYE period to which the contribution relates.” 25

**New (majority)**

**142B Person’s requirements**

- (1) Section KJ 2(a) is replaced by the following:

**New (majority)**

<p>“(a) has creditable membership of a complying superannuation fund or a KiwiSaver scheme; and”.</p> <p>(2) In the list of defined terms in section KJ 2, “creditable membership” is inserted.</p>	
<b>142C Section KJ 3 replaced</b>	5
Section KJ 3 is replaced by the following:	
<b>“KJ 3 Tax credit amount</b>	
<i>“Tax credit amount</i>	
“(1) The amount of the tax credit for the member credit year is—	
“(a) equal to the total amount of a person’s member credit contributions for all of the person’s complying superannuation funds and KiwiSaver schemes for the member credit year, if the first formula in <b>subsection (2)</b> calculates an amount that is less than \$1042.86 / 365:	10
“(b) equal to the amount calculated using the second formula in <b>subsection (3)</b> , if the first formula in <b>subsection (2)</b> calculates an amount that is equal to or greater than \$1042.86 / 365.	15
<i>“First formula</i>	
“(2) For the purposes of <b>subsection (1)</b> , an amount is calculated using the following formula:	20
$\frac{\text{member credit contributions}}{\text{included days.}}$	
<i>“Second formula</i>	
“(3) For the purposes of <b>subsection (1)(b)</b> , the amount of the tax credit for the member credit year is calculated using the following formula:	25
$\$1042.86 \times \frac{\text{included days}}{365.}$	
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**New (majority)**

*“Definition of items in formulas*

“(4) In the formulas,—

“(a) **member credit contributions** is the total amount of a person’s member credit contributions for all of the person’s complying superannuation funds and KiwiSaver schemes for the member credit year:

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“(b) **included days** are the number of days in the member credit year on which the person meets the requirements in section KJ 2.

“Defined in this Act: amount, complying superannuation fund, KiwiSaver scheme, member credit contributions, member credit year, salary or wages”.

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**142D Payment**

(1) The heading to section KJ 4(1) is replaced by “*Payment to fund provider by direct credit without deduction or set-off*”.

(2) In section KJ 4(1), “The Commissioner” is replaced by “Unless **subsection (3)** applies, the Commissioner”.

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(3) Section KJ 4(2) is replaced by the following:

*“Timing*

“(2) The Commissioner must pay the amount of tax credit to the fund provider within 30 working days of the provider furnishing a member credit claim form under section 68C(3) or (4) of the Tax Administration Act 1994.”

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(4) After section KJ 4(2), the following is added:

*“Exception: payment to the person or another provider*

“(3) Despite **subsection (1)**, the Commissioner may pay the amount of tax credit under section KJ 1 to—

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“(a) the person, if it would be impracticable to pay it to the person’s fund provider because the person has no fund provider or because of the person’s death or **serious illness** as that term is defined in schedule 1, clause 12(3) of the KiwiSaver Act 2006; or

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“(b) a fund provider (**provider B**) who is not described in **subsection (1)**, if the fund provider described in **subsection (1)** requests the payment to provider B because

**New (majority)**

the person is transferring or has transferred to provider B.”

**142E Rules**

- (1) In section KJ 5(3), “The fund provider must credit the amount of the tax credit on a pro rata basis” is replaced by “The fund provider must use the contribution allocation for a member to credit the amount of tax credit”. 5
- (2) In section KJ 5(6)(a)(i), “person” is replaced by “person and are held by the fund provider”.

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**143 New subpart KJ inserted** 10

After subpart KH, the following is inserted:

“Subpart KJ—KiwiSaver scheme and complying superannuation fund tax credits

**“KJ 1 Tax credits relating to employers contributing to KiwiSaver schemes and complying superannuation funds** 15

*“Tax credit*

- “(1) An employer who meets the requirements in **section KJ 2** for a PAYE period has an amount of tax credit for the PAYE period. 20

*“Amount of tax credit*

- “(2) The amount of the tax credit is calculated under **section KJ 3**.

*“Rules*

- “(3) **Section KJ 4** provides some rules for using the tax credit. **Section KJ 5** provides a special rule for certain shortpaid and unpaid amounts of compulsory employer contribution. **Section KJ 6** provides a special rule for when employees opt out of a 25

**Struck out (majority)**

KiwiSaver scheme. **Section KJ 7** provides a special rule to treat a group of persons as 1 employer.

“Defined in this Act: amount, complying superannuation fund, compulsory employer contribution, employer, employee, PAYE period, KiwiSaver scheme

<b>“KJ 2 Employer requirements</b>	5
For the purposes of <b>section KJ 1(1)</b> , the requirements are that the employer—	
“(a) pays an amount of employer contribution, and the employee is—	
“(i) aged 18 or over; and	10
“(ii) is not entitled to withdraw an amount from a fund or scheme under schedule 1, clause 4(3) (which relates to lock-in of funds) of the KiwiSaver scheme rules in the KiwiSaver Act 2006 or a rule the same as that clause; and	15
“(b) claims the amount of their entitlement to a tax credit under this subpart for an employee, in an employer monthly schedule or remittance certificate they furnish, unless they meet a requirement in <b>paragraph (c)</b> ; and	
“(c) if <b>paragraph (b)</b> does not apply,—	20
“(i) has an amount of compulsory employer contribution unpaid, specified in a notice under <b>section 101(5)</b> of the KiwiSaver Act 2006; or	
“(ii) has an amount of short payment under Part 3, subpart 3 of that Act.	25
“Defined in this Act: amount, compulsory employer contribution, employer, employer contribution, employer monthly schedule, employee, remittance certificate	
<b>“KJ 3 Tax credit amount</b>	
“(1) For the PAYE period, the amount of the tax credit is equal to the lesser of—	30
“(a) the employer contributions for the employee for the period; and	
“(b) the amount given by the following formula:	
$\$20 \times \text{weeks in PAYE period.}$	35

**Struck out (majority)**

- “(2) In the formula, **weeks in PAYE period** means the number of weeks (with fractions of a week expressed as a decimal) in the PAYE period to which payments of the employee’s salary or wages relate, to the extent to which those payments relate to an amount of employer contribution under **Part 3, subpart 3A** of the KiwiSaver Act 2006 for that employee. 5

“Defined in this Act: amount, employer contribution, PAYE period

**“KJ 4 Using the tax credit***“Timing*

- “(1) The tax credit arises— 10
- “(a) if **section KJ 2(b)** applies to the employer, on the last day for the payment of tax deductions prescribed in section NC 15 for the PAYE period:
- “(b) if **section KJ 2(c)** applies to the employer, on the day the Commissioner— 15
- “(i) receives the notice under **section 101I(5)** of the KiwiSaver Act 2006; or
- “(ii) decides that the employer has an amount of short payment under Part 3, subpart 3 of that Act.

*“Use 20*

- “(2) The tax credit is used in the following order:
- “(a) first, either—
- “(i) used by the Commissioner to pay the amount of short payment under Part 3, subpart 3 of the KiwiSaver Act 2006 that relates to a compulsory employer contribution for the PAYE period; or 25
- “(ii) paid by the Commissioner to the fund provider of the complying superannuation fund to meet the amount of compulsory employer contributions unpaid, specified in a notice under **section 101I(5)** of that Act: 30
- “(b) second, used by the Commissioner to pay an amount that is payable by the employer to the Commissioner under an Inland Revenue Act for the PAYE period:



**Struck out (majority)**

- “(c) third, used by the Commissioner to pay an amount that is payable by the employer to the Commissioner under an Inland Revenue Act:
- “(d) fourth, treated as tax paid in excess and refundable under section MD 1. 5
- “Treatment of tax credit used*
- “(3) An amount of tax credit used or paid under **subsection (2)(a)** is treated as an amount of compulsory employer contribution—
- “(a) received by the Commissioner for the PAYE period, for the purposes of calculating an amount of short payment under Part 3, subpart 3 of the KiwiSaver Act 2006; or 10
- “(b) consequentially reducing a relevant amount of compulsory employer contributions remaining unpaid, for the purposes of **section 101K** of that Act.
- “Defined in this Act: amount, Commissioner, compulsory employer contribution, employer, PAYE period, tax deduction 15
- “KJ 5 Treatment when short payment and unpaid amount of compulsory employer contributions found after tax credit used**
- “(1) This section applies, for an amount of tax credit, if— 20
- “(a) the amount of tax credit is used by the Commissioner, under 1 or both of **section KJ 4(2)(b) and (c)**, to pay an amount payable that is described in those paragraphs; and
- “(b) after the amount of tax credit has been used by the Commissioner under those paragraphs, there is, for the period to which the amount of tax credit relates,— 25
- “(i) an amount of short payment under Part 3, subpart 3 of the KiwiSaver Act 2006:
- “(ii) compulsory employer contributions unpaid, specified in a notice under **section 101I(5)** of that Act. 30
- “(2) To the extent to which the amount of tax credit for the period is not greater than the total amounts described in **subsections**

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<b>(1)(b)(i) and (ii)</b> for the period to which the amount of tax credit relates,—	
“(a) the amount of tax credit is treated as not used under <b>section KJ 4(2)(b) or (c)</b> ; and	
“(b) an amount payable that would, but for this section, be paid under <b>section KJ 4(2)(b) or (c)</b> using the amount of tax credit is treated as being unpaid; and	5
“(c) the amount of tax credit is used under <b>section KJ 4(2)(a)</b> , instead.	
“Defined in this Act: amount, Commissioner, compulsory employer contribution, employer	10
<b>“KJ 6 Employees who opt out</b>	
“(1) This section applies when an employee opts out under the KiwiSaver Act 2006.	
“(2) The amount of tax credit for an employer contribution for the employee’s salary or wages is treated as an amount of tax credit paid in excess of that properly payable under this subpart.	15
“Defined in this Act: employee, salary or wages	
<b>“KJ 7 Group of persons 1 employer</b>	
For the purposes of <b>sections KJ 1 to KJ 6</b> , a group of persons described in one of the following paragraphs is treated as 1 employer:	20
“(a) 2 or more companies, if those companies are a group of companies; and	25
“(b) all partners in a partnership; and	
“(c) all persons in whom property has become vested or to whom the control of property has passed in the case of each estate of a deceased person or each trust or each company in liquidation or each assigned estate or each other case where property is vested or controlled in a fiduciary capacity.	30
“Defined in this Act: employer, company, group of companies”.	

**New (majority)**

**143 New sections KJ 6 to KJ 12 added**

In subpart KJ, the following is added:

**“KJ 6 Tax credits relating to employers contributing to KiwiSaver schemes and complying superannuation funds**

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*“Tax credit*

“(1) An employer who meets the requirements in **section KJ 7** for a PAYE period has an amount of tax credit for the PAYE period.

*“Amount of tax credit*

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“(2) The amount of the tax credit is calculated under **section KJ 8**.

*“Rules*

“(3) **Section KJ 9** provides some rules for using the tax credit. **Section KJ 10** provides a special rule for certain shortpaid and unpaid amounts of compulsory employer contribution. **Section KJ 11** provides a special rule for when employees opt out of a KiwiSaver scheme. **Section KJ 12** provides a special rule to treat a group of persons as 1 employer.

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*“Treatment of private domestic workers*

“(4) For the purposes of this section and **sections KJ 7 to KJ 12**, a private domestic worker who is an employer under paragraph (c) of the definition of **employer** in section 4 of the KiwiSaver Act 2006 is treated as making payments of salary or wages to themselves in the capacity of employee. Consequently, the private domestic worker may be both employer and employee, for the purposes of this section and **sections KJ 7 to KJ 12**.

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*“Defined in this Act: amount, complying superannuation fund, compulsory employer contribution, employee, employer, KiwiSaver scheme, PAYE period, private domestic worker*

**“KJ 7 Employer requirements**

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For the purposes of **section KJ 6(1)**, the requirements are that the employer—

## New (majority)

- “(a) pays an amount of employer contribution, and the employee is—
- “(i) aged 18 or over; and
- “(ii) is not entitled to withdraw an amount from a fund or scheme under schedule 1, clause 4(3) (which relates to lock-in of funds) of the KiwiSaver scheme rules in the KiwiSaver Act 2006 or a rule the same as that clause; and 5
- “(b) claims the amount of their entitlement to a tax credit under this subpart for an employee, in an employer monthly schedule or remittance certificate they furnish, unless they meet a requirement in **paragraph (c)**; and 10
- “(c) if **paragraph (b)** does not apply,—
- “(i) has an amount of compulsory employer contribution unpaid, specified in a notice under **section 101(5)** of the KiwiSaver Act 2006; or 15
- “(ii) has an amount of short payment under Part 3, subpart 3 of that Act.
- “(d) meets 1 of the requirements in **section 6(2)** of that Act.
- “Defined in this Act: amount, compulsory employer contribution, employee, employer, employer contribution, employer monthly schedule, remittance certificate 20

**“KJ 8 Tax credit amount***“Tax credit amount*

- “(1) For the PAYE period, the amount of the tax credit is equal to the lesser of— 25
- “(a) the employer contributions for the employee, to the extent to which the employee meets the requirements of **section KJ 7(a)** for the period; and
- “(b) the amount calculated using the following formula: 30
- $\$20 \times \text{weeks in PAYE period.}$

*“Definition of item in formula*

- “(2) In the formula, **weeks in PAYE period** is the number of weeks (with fractions of a week expressed as a decimal) in the PAYE period that the employee meets the requirements of 35

**New (majority)**

**section KJ 7(a)**, including weeks in the PAYE period that the employer does not pay an amount of employer contribution.

“Defined in this Act: amount, employee, employer, employer contribution, PAYE period

<b>“KJ 9 Using the tax credit</b>	<b>5</b>
<i>“Timing</i>	
“(1) The tax credit arises—	
“(a) on the last day for the payment of tax deductions prescribed in section NC 15 for the PAYE period, if <b>section KJ 7(b)</b> applies to the employer and the employer is not a private domestic worker:	10
“(b) on the last day for the payment of tax prescribed in section NC 16 for the PAYE period, if <b>section KJ 7(b)</b> applies to the employer and the employer is a private domestic worker:	15
“(c) if <b>section KJ 7(c)</b> applies to the employer, on the day the Commissioner—	
“(i) receives the notice under <b>section 101I(5)</b> of the KiwiSaver Act 2006; or	
“(ii) decides that the employer has an amount of short payment under Part 3, subpart 3 of that Act.	20
<i>“Use</i>	
“(2) The tax credit is used in the following order:	
“(a) first, either—	
“(i) used by the Commissioner to pay the amount of short payment under Part 3, subpart 3 of the KiwiSaver Act 2006 that relates to a compulsory employer contribution for the PAYE period; or	25
“(ii) paid by the Commissioner to the fund provider of the complying superannuation fund to meet the amount of compulsory employer contributions unpaid, specified in a notice under <b>section 101I(5)</b> of that Act:	30
“(b) second, used by the Commissioner to pay employer contributions:	35

**New (majority)**

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| <p>“(c) third, used by the Commissioner to pay an amount that is payable by the employer to the Commissioner under an Inland Revenue Act for the PAYE period:</p> <p>“(d) fourth, used by the Commissioner to pay an amount that is payable by the employer to the Commissioner under an Inland Revenue Act:</p> <p>“(e) fifth, treated as tax paid in excess and refundable under section MD 1.</p> <p style="margin-top: 20px;"><i>“Treatment of tax credit used</i></p> <p>“(3) An amount of tax credit used or paid under <b>subsection (2)(a)</b> is treated as an amount of compulsory employer contribution—</p> <p>    “(a) received by the Commissioner for the PAYE period, for the purposes of calculating an amount of short payment under Part 3, subpart 3 of the KiwiSaver Act 2006:</p> <p>    “(b) consequentially reducing a relevant amount of compulsory employer contributions remaining unpaid, for the purposes of <b>section 101K</b> of that Act:</p> <p>    “(c) received by the Commissioner, for the purposes of section 74 of that Act.</p> <p style="margin-top: 10px;"><i>“Defined in this Act: amount, Commissioner, compulsory employer contribution, employer, PAYE period, tax deduction</i></p> <p style="margin-top: 20px;"><b>“KJ 10 Treatment when short payment and unpaid amount of compulsory employer contributions found after tax credit used</b></p> <p style="margin-top: 10px;"><i>“When this section applies</i></p> <p>“(1) This section applies, for an employer, if—</p> <p>    “(a) the Commissioner has used an amount of tax credit, under 1 or both of <b>section KJ 9(2)(c) and (d)</b>, to pay an amount payable that is described in those paragraphs; and</p> <p>    “(b) after the amount of tax credit has been used by the Commissioner under those paragraphs, there is, for the PAYE period to which the amount of tax credit relates,—</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> |
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**New (majority)**

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| <p style="margin-left: 40px;">“(i) an amount of short payment under Part 3, subpart 3 of the KiwiSaver Act 2006:</p> <p style="margin-left: 40px;">“(ii) compulsory employer contributions unpaid, specified in a notice under <b>section 101(5)</b> of that Act.</p>   | 5  |
| <p style="margin-left: 40px;"><i>“Liability to pay for credits already used</i></p>   |    |
| <p>“(2) The employer is liable to pay an amount equal to the lesser of—</p> <p style="margin-left: 40px;">“(a) the amount of tax credit used that relates to the PAYE period; and</p> <p style="margin-left: 40px;">“(b) the amounts described in <b>subsections (1)(b)(i) and (ii)</b> for that PAYE period.</p> | 10 |
| <p style="margin-left: 40px;"><i>“Treatment of liability</i></p>  |    |
| <p>“(3) The employer’s liability under <b>subsection (2)</b> is treated as a liability to pay a tax deduction for the PAYE period in which the relevant amounts in <b>subsections (1)(b)(i) and (ii)</b> are notified to the employer.</p>  | 15 |
| <p style="margin-left: 40px;"><i>“New tax credit granted</i></p>  |    |
| <p>“(4) An amount equal to the employer’s liability under this section is treated as a tax credit to be used under <b>section KJ 9(2)(a)</b>.</p>   | 20 |
| <p style="margin-left: 40px;">“Defined in this Act: amount, Commissioner, compulsory employer contribution, employer, PAYE period, tax deduction</p>  |    |
| <p><b>“KJ 11 Employees who opt out</b></p>  |    |
| <p style="margin-left: 40px;"><i>“When this section applies</i></p>   |    |
| <p>“(1) This section applies when an employee opts out under the KiwiSaver Act 2006.</p>  | 25 |
| <p style="margin-left: 40px;"><i>“Treatment of tax credits</i></p>  |    |
| <p>“(2) The amount of tax credit for an employer contribution for the employee’s salary or wages is treated as an amount of tax</p>   |    |

**New (majority)**

credit paid in excess of that properly payable under this subpart.

“Defined in this Act: employee, salary or wages

**“KJ 12 Group of persons 1 employer**

For the purposes of **sections KJ 6 to KJ 11**, a group of persons described in 1 of the following paragraphs is treated as 1 employer: 5

- “(a) 2 or more companies, if those companies are a group of companies; and
- “(b) all partners in a partnership; and 10
- “(c) all persons in whom property has become vested or to whom the control of property has passed in the case of each estate of a deceased person or each trust or each company in liquidation or each assigned estate or each other case where property is vested or controlled in a fiduciary capacity. 15

“Defined in this Act: company, employer, group of companies”.

**143B Calculation amounts in relation to current specified superannuation contribution for complying superannuation fund 20**

In section NE 3(6), the definition of **salary or wages** is omitted.

**Struck out (majority)**

**144 Definitions**

- (1) This section amends section OB 1.
- (2) In the definition of **complying fund rules**,— 25
  - (a) in paragraph (b), “described in” is replaced by “described in regulations made under section 229(1) of the KiwiSaver Act 2006 and”;
  - (b) paragraphs (i) and (j) are replaced by the following:
    - “(i) require the deduction from an employee’s salary or wages of an amount that is equal to or greater than the 30



**Struck out (majority)**

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|     | amount required to be deducted, if subpart 1 of Part 3 of the KiwiSaver Act is treated as applying (with necessary modifications) to the employee and their employer; and |    |
|     | “(j) prevent a person over the New Zealand superannuation qualification age from joining; and”.   | 5  |
|     | (c) paragraph (k) is repealed:  |    |
|     | (d) in paragraph (l), “section 196” is replaced by “sections 101G and 196”.   |    |
| (3) | After the definition of <b>complying fund rules</b> , the following is inserted:  | 10 |
|     | “ <b>compulsory employer contribution</b> has the same meaning as in the KiwiSaver Act 2006”.   |    |
| (4) | Paragraph (a) of the definition of <b>employee’s superannuation accumulation</b> , “wages” is replaced by the following:  | 15 |
|     | “(a) employer contributions”.   |    |
| (5) | After the definition of <b>employer</b> , the following is inserted:  |    |
|     | “ <b>employer contribution</b> has the same meaning as in the KiwiSaver Act 2006”.  |    |
| (6) | The definition of <b>PAYE period</b> is replaced by the following:  | 20 |
|     | “ <b>PAYE period</b> has the same meaning as in section NC 15(8) (Payment of tax deductions to Commissioner)”.  |    |

**New (majority)**

**144 Definitions**

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| (1) | This section amends section OB 1.  |    |
| (2) | In the definition of <b>complying fund rules</b> ,—  | 25 |
|     | (a) in paragraph (b), “described in” is replaced by “described in regulations made under section 229(1) of the KiwiSaver Act 2006 and”:  |    |
|     | (b) after paragraph (cb), the following is inserted:   |    |
|     | “(cc) require the trustees, at the member’s request, to pay any withdrawal that is allowed under the rules in paragraphs (a) to (c) as a lump sum, as if the withdrawal were a | 30 |

**New (majority)**

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|     | permitted withdrawal to which schedule 1, clause 5 of the KiwiSaver Act 2006 applied (with necessary modifications); and”:   |    |
|     | (c) paragraph (j) is replaced by the following:  |    |
|     | “(j) prevent a person over the New Zealand superannuation qualification age from joining; and”:  | 5  |
|     | (d) paragraph (k) is repealed:   |    |
|     | (e) in paragraph (l), “section 196” is replaced by “sections 101G and 196”.  |    |
| (3) | After the definition of <b>complying superannuation fund</b> , the following is inserted:  | 10 |
|     | “ <b>compulsory employer contribution</b> has the same meaning as in the KiwiSaver Act 2006”.  |    |
| (4) | After the definition of <b>credit transfer notice</b> the following is inserted:   | 15 |
|     | “ <b>creditable membership</b> —   |    |
|     | “(a) means, for a person, membership in a KiwiSaver scheme or a complying superannuation fund; and   |    |
|     | “(b) includes, for a person,—  |    |
|     | “(i) the period—   | 20 |
|     | “(A) beginning on the earlier of the first day of the month in which contributions are first received by the Commissioner for the person or the first day of the month in which KiwiSaver contributions are first deducted for the person; and | 25 |
|     | “(B) ending on the day on which securities are first allotted by the KiwiSaver scheme for the person:  |    |
|     | “(ii) the days in the month in which securities are first allotted by the KiwiSaver scheme or complying superannuation fund in relation to the person:   | 30 |
|     | “(iii) for the period beginning on 1 July 2007 and ending on the day on which securities are first allotted by the KiwiSaver scheme for the person, the days in the month that the KiwiSaver scheme  | 35 |

**New (majority)**

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|     | receives a valid application for membership from the person and any remaining days in that period, if the person makes contributions in relation to the KiwiSaver scheme before 1 November 2007”.  | 5  |
| (5) | In the definition of <b>employee’s superannuation accumulation</b> , paragraph (a) is replaced by the following:<br>“(a) employer contributions:”.   |    |
| (6) | After the definition of <b>employer</b> , the following is inserted:<br>“ <b>employer contribution</b> has the same meaning as in the KiwiSaver Act 2006”.   | 10 |
| (7) | The definition of <b>member credit contributions</b> is replaced by the following:<br>“ <b>member credit contributions</b> means, for a person and a member credit year, the total of the following:   | 15 |
|     | “(a) superannuation contributions to the person’s complying superannuation funds and KiwiSaver scheme to the extent to which the contributions are subject to KiwiSaver scheme rules or complying fund rules, but excluding the following:   | 20 |
|     | “(i) specified superannuation contributions for the person:  |    |
|     | “(ii) contributions withdrawn under a mortgage diversion facility provided for in regulations made under section 229 of the KiwiSaver Act 2006:  | 25 |
|     | “(iii) any amounts that are accounted for under <b>paragraph (b)</b> :   |    |
|     | “(b) amounts that have been received and held in respect of the person by the Commissioner and to which section 73, 74, or 75 of the KiwiSaver Act 2006 apply, but excluding specified superannuation contributions for the person and amounts that are never paid by the Commissioner to the provider of the person’s KiwiSaver scheme, unless the amounts are never paid to the provider because of— | 30 |
|     | “(i) the person’s death:   | 35 |

**New (majority)**

- “(ii) a refund under section 113 of the KiwiSaver Act 2006”.
- (8) The definition of **PAYE period** is replaced by the following:  
**“PAYE period,—**  
 “(a) for the purposes of **subpart KJ** (KiwiSaver scheme and complying superannuation fund tax credits) means the first PAYE period, the second PAYE period, or the month in which a deduction of PAYE is made or to which a payment of tax under section NC 16 relates, as the case may be:  
 “(b) is defined in section NC 15(8) (Payment of tax deductions to Commissioner) for the purposes of that section”.
- (9) In the definition of **salary or wages**, paragraph (d) is replaced by the following:  
 “(d) for the purposes of sections NE 3 and NE 3B (which relate to SSCWT) means **salary or wages**, as defined in section 4 of the KiwiSaver Act 2006”.
- (10) In the definition of **superannuation scheme**, paragraph (a)(ib) is repealed.

**Part 2**  
**Amendments to Tax Administration Act 1994**

*General amendments to Tax Administration Act 1994*

- 145 Tax Administration Act 1994**  
**Sections 146 to 195** amend the Tax Administration Act 1994.

**Struck out (majority)**

- 146 Interpretation**  
 (1) In section 3(1), after the definition of **business**, the following is inserted:  
 “**business group amnesty** means an amnesty declared by the Commissioner under **section 226B**”.

**Struck out (majority)**

- (2) In section 3(1), in the definition of **response period**, paragraphs (c) and (d) are replaced by the following:
- “(c) if the notice is a notice of proposed adjustment that is issued by a disputant and the initiating notice is either a notice of disputable decision issued by the Commissioner or a notice revoking or varying a disputable decision that is not an assessment,— 5
- “(i) the 4-month period starting on the date of issue of the initiating notice, unless **subparagraph (ii)** applies; or 10
- “(ii) the 1-year period starting on the date of issue of the initiating notice, if the notice of proposed adjustment relates solely to a claim for an amount of tax credit under **section LH 1** of the Income Tax Act 2004: 15
- “(d) if the notice is a notice of proposed adjustment that is issued by a taxpayer under section 89DA and the initiating notice is a notice of assessment issued by the taxpayer,—
- “(i) the 4-month period starting on the date on which the taxpayer’s notice of assessment is received at an office of the Department, unless **subparagraph (ii) or (iii)** apply; or 20
- “(ii) the 1 year period starting on the date on which the taxpayer’s notice of assessment is received at an office of the Department, if the notice of proposed adjustment relates solely to a claim for an amount of tax credit under **section LH 1** of the Income Tax Act 2004 and **subparagraph (iii)** does not apply; or 25 30
- “(iii) the period starting on the date on which the taxpayer’s notice of assessment is received at an office of the Department and ending on the last day of the 1 year period that starts on the latest date on which the statement under **section 68E** relating to the taxpayer’s assessment may be furnished, if the notice of proposed adjustment relates solely to a claim for an amount of tax 35

**Struck out (majority)**

- credit under **section LH 1** of the Income Tax Act 2004.”.
- (3) In section 3(1), the definition of **tax agent** is replaced by the following:
- “**tax agent** means a person who—
- (a) is eligible under **section 34B(2)** to be a tax agent; and
- (b) is listed by the Commissioner as a tax agent—
- (i) before the date on which the **Taxation (Annual Rates, Business Taxation, KiwiSaver, and Remedial Matters) Act 2007** receives the Royal assent:
- (ii) on or after the date on which the **Taxation (Annual Rates, Business Taxation, KiwiSaver, and Remedial Matters) Act 2007** receives the Royal assent, after the person applies under **section 34B** to be listed by the Commissioner; and
- (c) is not later removed by the Commissioner from the list of tax agents”.
- (4) **Subsection (2)** applies for the 2008–09 and later income years.

**New (majority)**

- 146 Interpretation**
- (1) In section 3(1), after the definition of **business**, the following is inserted:
- “**business group amnesty** means an amnesty declared by the Commissioner under **section 226B**”.
- (2) In section 3(1), in the definition of **incremental late payment penalty**, “section 139B(2B)” is replaced by “**section 139B(2)(b)**”.
- (3) In section 3(1), in the definition of **initial late payment penalty**, “section 139B(2A)” is replaced by “**section 139B(2)(a)**”.
- (4) In section 3(1), in the definition of **response period**, paragraphs (c) and (d) are replaced by the following:
- “(c) if the notice is a notice of proposed adjustment that is issued by a disputant and the initiating notice is either a

**New (majority)**

notice of disputable decision issued by the Commissioner or a notice revoking or varying a disputable decision that is not an assessment,—

- “(i) the 4-month period starting on the date of issue of the initiating notice, unless **subparagraph (ii)** applies; or 5
- “(ii) the 1-year period starting on the date of issue of the initiating notice, if the notice of proposed adjustment relates solely to a claim for an amount of tax credit under **section LH 1** of the Income Tax Act 2004: 10
- “(d) if the notice is a notice of proposed adjustment not relating solely to a claim for an amount of tax credit under **section LH 1** of the Income Tax Act 2004 that is issued by a taxpayer under section 89DA and the initiating notice is a notice of assessment issued by the taxpayer, the 4-month period starting on the date on which the taxpayer’s notice of assessment is received at an office of the Department: 15
- “(e) if the notice is a notice of proposed adjustment relating solely to a claim for an amount of tax credit under **section LH 1** of the Income Tax Act 2004 that is issued by a taxpayer under section 89DA and the initiating notice is a notice of assessment issued by the taxpayer,— 20
- “(i) the 2-year period starting on the date on which the taxpayer’s notice of assessment is received at an office of the Department, if the taxpayer is not a member of an internal software development group and not a partner in a partnership to which **section 68E** applies; or 25
- “(ii) the period starting on the date on which the taxpayer’s notice of assessment is received at an office of the Department and ending on the day that is 2 years after the latest day for any member of the taxpayer’s internal software development group or for the taxpayer’s partnership to furnish 30

**New (majority)**

- a return of income or joint return of income for  
the relevant tax year under section 37”.
- (5) In section 3(1), in **paragraph (e)** of the definition of **response period**, as inserted by **subsection (4)**,—
- (a) in **subparagraph (i)**, “2-year period” is replaced by “1-year period”: 5
- (b) in **subparagraph (ii)**, “2 years” is replaced by “1 year”.
- (6) In section 3(1), the definition of **tax agent** is replaced by the following:
- “**tax agent** means a person who— 10
- (a) is eligible under **section 34B(2)** to be a tax agent; and
- (b) is listed by the Commissioner as a tax agent—
- “(i) before the date on which the **Taxation (Annual Rates, Business Taxation, KiwiSaver, and Remedial Matters) Act 2007** receives the Royal assent: 15
- “(ii) on or after the date on which that Act receives the Royal assent, after the person applies under **section 34B** to be listed by the Commissioner; and
- (c) is not later removed by the Commissioner from the list of tax agents”. 20
- (7) **Subsection (4)** applies for the 2008–09 and 2009–10 income years.
- (8) **Subsection (5)** applies for the 2010–11 and later income years.

**147 Keeping of business records**

- (1) In the heading to section 22, “**business records**” is replaced by “**business and other records**”. 25
- (2) After section 22(2)(c), the following is inserted:
- “(cb) is a person to whom the RSCWT rules apply and who makes any retirement scheme contribution to a retirement savings scheme:”. 30
- (3) After section 22(2)(e), the following is inserted:
- “(eb) is claiming a tax credit under **section LH 1** of the Income Tax Act 2004:



“(ec) is a listed research provider under **section <LH 7> <LH 8>**  
of that Act.”.

**Struck out (majority)**

- (4) After section 22(2)(kb), the following is inserted:
- “(kc) the person’s claim for an amount of tax credit under **section LH 1** of the Income Tax Act 2004; and
  - “(kd) the person’s compliance with **section LH 7(1)(e)** of that Act, if the person is a listed research provider under **section LH 7** of that Act; and”.

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**New (majority)**

- (4) After section 22(2)(kb), the following is inserted:
- “(kc) the person’s claim for an amount of tax credit under **section LH 1** of the Income Tax Act 2004; and
  - “(kd) the person’s compliance with **section LH 8(1)(e)** of that Act, if the person is a listed research provider under **section LH 8** of that Act; and”.

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- (5) After section 22(2)(l), the following is inserted:
- “(lb) every retirement scheme contribution, and the taxable value of that contribution, made by the person to any retirement savings scheme, those records to include, without limiting the generality of the preceding provisions of this paragraph, details of the recipient of the retirement scheme contribution and the occasion of making it; and”.

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- (6) In section 22(7)(d)(iii)(C), “the trust.” is replaced by “the trust:”, and the following is added:

“(e) for the purposes of **subsection (2)(kc)**, other documents evidencing research and development activities.”

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- (7) **Subsections (1) to (6)** apply for the 2008–09 and later income years.

**New (majority)**

**147B Section 28B repealed**

Section 28B is repealed.

**147C New section 28B inserted**

After section 28, the following is inserted:

**“28B Investor to advise portfolio tax rate entity of investor’s  
tax file number** 5

A resident of New Zealand who is an investor in a portfolio tax rate entity must give notice of the person’s tax file number to the entity within 1 month of the date of a request from the entity for the tax file number.” 10

**148 New section 28C inserted**

After section 28B, the following is inserted:

**“28C Person advising retirement savings scheme of  
retirement scheme prescribed rate** 15

A person who gives a notice that the retirement scheme prescribed rate for the person and an income year is less than 39% must include the person’s tax file number in the notice.”

**149 Shareholder dividend statement to be provided by  
company**

After section 29(1)(ia), the following is inserted: 20

“(ib) the amount, if any, of the dividend paid to a retirement savings scheme as a retirement scheme contribution for the shareholder:

“(ic) the name of the retirement savings scheme to which any retirement scheme contribution was paid: 25

“(id) the amount, if any, of imputation credit used to satisfy a liability of the company for retirement scheme contribution withholding tax:

“(ie) the amount, if any, of imputation credit remaining after the company has used an imputation credit in satisfying a liability for retirement scheme contribution withholding tax:” 30

**150 Maori authority to give notice of amounts distributed**

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

- “(eb) the amount, if any, of the distribution paid to a retirement savings scheme as a retirement scheme contribution for the shareholder: 5
- “(ec) the name of the retirement savings scheme to which any retirement scheme contribution was paid:
- “(ed) the amount, if any, of Maori authority credit used to satisfy a liability of the company for retirement scheme contribution withholding tax: 10
- “(ee) the amount, if any, of Maori authority credit remaining after the company has used an imputation credit in satisfying a liability for retirement scheme contribution withholding tax:”.

**New (majority)**

**150B Portfolio tax rate entity to give statement to investors and request information 15**

Section 31B(2B) and (3) are replaced by the following:

- “(2B) A portfolio tax rate entity must give a notice required by subsection (1) or (2) before the end of the 1-month period beginning after the end of the period to which the notice relates. 20
- “(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 information that the Commissioner considers relevant for each tax year in a notice— 25
  - “(a) by the 30 June after the end of the tax year, if **paragraph (b)** does not apply; or
  - “(b) by the end of the second month following the month in which the corresponding income year for the portfolio tax rate entity ends, if the corresponding income year ends after the tax year.” 30

**150C Annual returns of income**

- (1) In the heading to section 33, “**Annual returns**” is replaced by “**Returns**”.

**New (majority)**

- (2) In section 33(1), “portfolio tax rate entity” is replaced by  
“portfolio tax rate entity who makes payments of income tax  
under section HL 21 or HL 23 of the Income Tax Act 2004”.
- (3) After section 33(1B), the following is inserted:
- “(1C) A portfolio tax rate entity or portfolio investor proxy who  
makes payments of income tax under section HL 21 or HL 23  
of the Income Tax Act 2004 must furnish to the Commis-  
sioner the returns for which the entity is responsible under  
section 57B.”

**151 Annual returns of income not required** 10

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

**Struck out (majority)**

“(iiic) an amount paid under section 81(1)(b) of the  
Injury Prevention, Rehabilitation, and Compensa-  
tion Act 2001 to a claimant under that Act; or”.

**New (majority)**

“(iiic) a personal service rehabilitation payment for a  
claimant under the Injury Prevention, Rehabilita-  
tion, and Compensation Act 2001; or”.

- (2) In section 33A(1)(a)(iv), “(iiib)” is replaced by “(iiic)”.
- (3) Section 33A(2)(cb)(i) is replaced by the following:
- “(i) a withholding payment, if it is not— 20
- “(A) an amount or proportion of a withholding  
payment for which the Commissioner has  
made a determination under regulation 7 of  
the Income Tax (Withholding Payments)  
Regulations 1979: 25

**Struck out (majority)**

“(B) income that is an amount paid under section 81(1)(b) of the Injury Prevention, Rehabilitation, and Compensation Act 2001 to a claimant under that Act:

**New (majority)**

“(B) income that is a personal service rehabilitation payment for a claimant under the Injury Prevention, Rehabilitation, and Compensation Act 2001:”.

- (4) After section 33A(2)(cb), the following is inserted:
- “(d) is entitled to an amount of tax credit under **section LH 1** of the Income Tax Act 2004; or”.
- (5) **Subsection (4)** applies for the 2008–09 and later income years.

**Struck out (majority)**

**152 New section 33C inserted**

After section 33B, the following is inserted:

**“33C Return not required for certain providers of attendant care**

A natural person who derives income in an income year for providing attendant care to a claimant under section 81(1)(b) of the Injury Prevention, Rehabilitation, and Compensation Act 2001, either from a payment by the claimant or from a payment on behalf of the claimant by the Accident Compensation Corporation, is not required to furnish a return of income for the corresponding tax year if—

- “(a) the taxable income of the natural person does not exceed \$9,500 for the tax year; and
- “(b) tax is deducted at the rate of 15% from relevant amounts paid under section 81(1)(b) of the Accident Compensation Corporation; and

**Struck out (majority)**

“(c) the natural person is not required to furnish a return of income under section 33A(1) for the tax year, ignoring income from providing attendant care for the purposes of that section.”

**New (majority)**

- 152 New section 33C inserted** 5
- After section 33B, the following is inserted:
- “33C Return not required for certain providers of personal services**
- A natural person who derives income in an income year for providing personal services to a person who is a claimant under the Injury Prevention, Rehabilitation, and Compensation Act 2001 is not required to furnish a return of income for the corresponding tax year if— 10
- “(a) a personal service rehabilitation payment is made for the claimant and for the personal services; and 15
- “(b) the taxable income of the person does not exceed \$9,500 for the tax year; and
- “(c) tax is deducted at the rate of 15% from the personal service rehabilitation payment; and
- “(d) the person is not required to furnish a return of income under section 33A(1) for the tax year, ignoring for the purposes of that section income from providing personal services for which personal service rehabilitation payments are made.” 20
- 153 New section 34B inserted** 25
- After section 34, the following is inserted:
- “34B Commissioner to list tax agents**
- “(1) The Commissioner must compile and maintain a list of persons who are tax agents.
- “(2) A person is eligible to be a tax agent if the person— 30
- “(a) prepares the returns of income required to be furnished for 10 or more taxpayers; and

**Struck out (majority)**

- “(b) is 1 of the following:
- “(i) a practitioner in a professional public practice:
  - “(ii) a person in a business or occupation of preparing returns of income:
  - “(iii) the Maori Trustee.

5

**New (majority)**

- “(b) is 1 of the following:
- “(i) a practitioner carrying on a professional public practice:
  - “(ii) a person carrying on a business or occupation in which returns of income are prepared:
  - “(iii) the Maori Trustee.

10

**Struck out (majority)**

- “(3) A person who is not a tax agent and who is eligible to be a tax agent may give a notice to the Commissioner in a form approved by the Commissioner—
- “(a) stating that the person wishes to be listed as a tax agent; and
  - “(b) providing the information required by **subsection (11)**, if the person is not a natural person; and
  - “(c) providing any other information required by the Commissioner.

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**New (majority)**

- “(3) A person who is not a tax agent and who is eligible to be a tax agent may give a notice (the **application**) to the Commissioner in a form approved by the Commissioner—
- “(a) stating that the person wishes to be listed as a tax agent; and

25

**New (majority)**

- |   |    |
|---|----|
| <div style="border: 1px solid black; padding: 10px; margin-bottom: 10px;"> <p>“(b) providing the information required by <b>subsection (11)</b>, if the person is not a natural person; and</p> <p>“(c) providing any other information required by the Commissioner.</p> </div>  |    |
| <p>“(4) The Commissioner may request further information from the person (the <b>applicant</b>) making the application and obtain information relating to the applicant from other persons before deciding whether to list the applicant as a tax agent.</p>  | 5  |
| <p>“(5) The Commissioner must list the applicant as a tax agent if the Commissioner is satisfied by the available information that—</p> <p style="padding-left: 20px;">“(a) the applicant is entitled to make the application; and</p> <p style="padding-left: 20px;">“(b) listing the applicant as a tax agent would not adversely affect the integrity of the tax system.</p> | 10 |
| <p>“(6) An applicant is listed as a tax agent from the date given in the Commissioner’s notice informing the applicant of the Commissioner’s decision to list the applicant as a tax agent.</p>   | 15 |
| <p>“(7) The Commissioner must refuse to list an applicant as a tax agent if the Commissioner is satisfied that—</p> <p style="padding-left: 20px;">“(a) the applicant is not entitled to make the application:</p> <p style="padding-left: 20px;">“(b) listing the applicant as a tax agent would adversely affect the integrity of the tax system.</p>                         | 20 |
| <p>“(8) The Commissioner may remove a person from the list of tax agents if the Commissioner is satisfied that—</p> <p style="padding-left: 20px;">“(a) the applicant is not eligible to be a tax agent:</p> <p style="padding-left: 20px;">“(b) continuing to list the applicant as a tax agent would adversely affect the integrity of the tax system.</p>                    | 25 |
| <p>“(9) Before refusing to put a person on the list of tax agents, or removing a person from the list, the Commissioner must—</p> <p style="padding-left: 20px;">“(a) give notice to the person of the Commissioner’s reasons for the proposed decision:</p>  | 30 |

**Struck out (majority)**

- “(b) consider any arguments against the proposed decision that are provided by the person within—



**Struck out (majority)**

- “(i) the period of 30 days beginning from the day of the notice, if **subparagraph (ii)** does not apply; or
- “(ii) the period of less than 30 days allowed by the Commissioner, if the Commissioner considers such a period is necessary to protect the integrity of the tax system. 5

**New (majority)**

- “(b) consider any arguments against the proposed decision that are provided by the person within the period, beginning from the day of the notice,—
  - “(i) of 30 days, unless **subparagraph (ii) or (iii)** applies; or 10
  - “(ii) allowed by the Commissioner of less than 30 days, if the Commissioner considers such a period is necessary to protect the integrity of the tax system; or
  - “(iii) allowed by the Commissioner of more than 30 days, if the Commissioner considers such a period is appropriate in the circumstances. 15
- “(10) A person listed as a tax agent is removed from the list on the date of the Commissioner’s notice that informs the person of the Commissioner’s decision to remove the person from the list. 20
- “(11) An entity that is not a natural person must provide to the Commissioner the information described in **subsection (12)** if the entity—
  - “(a) makes an application under **subsection (3)**: 25
  - “(b) is a tax agent who—
    - “(i) has not made an application under **subsection (3)** and has not previously provided information to the Commissioner as required by this subsection:
    - “(ii) has previously provided information to the Commissioner as required by this subsection and that information is inaccurate. 30

“(12) The information that **subsection (11)** requires an entity to provide to the Commissioner consists of the names of the following persons—

**Struck out (majority)**

“(a) each person responsible for the filing of the entity’s tax returns, if the entity is a body corporate:

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**New (majority)**

“(a) each person having the duties of tax manager, chief financial officer, chief executive officer, or director, if the entity is a body corporate other than a closely-held company:

“(b) each shareholder of the entity, if the entity is a closely-held company:

10

“(c) each partner in the entity, if the entity is a partnership:

“(d) each member of the entity, if the entity is an unincorporated body.

“(13) An entity that is a tax agent and is required by **subsection (11)** to provide information to the Commissioner must provide the information by—

15

“(a) the day 12 months after the day on which the **Taxation (Annual Rates, Business Taxation, KiwiSaver, and Remedial Matters) Act 2007** receives the Royal assent, if the entity has not made an application under **subsection (3)** and has not previously provided information to the Commissioner as required by **subsection (11)**:

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**Struck out (majority)**

“(b) the end of the 3-month period beginning from the first day on which the information most recently provided to the Commissioner as required by **subsection (11)** is inaccurate.

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**New (majority)**

“(b) the end of the 12-month period beginning from the first day on which the information most recently provided to the Commissioner as required by **subsection (11)** is inaccurate.”

- 154 Dates by which annual returns to be furnished** 5  
After section 37(4A), the following is inserted:  
“(4B) If the Commissioner extends under subsection (4) the time for a person listed as a tax agent to furnish a return of income for a taxpayer and the person ceases to be a tax agent before the extension of time would have expired, the Commissioner must extend the taxpayer’s time for furnishing the return to a date of 31 March on or after the date that would have applied if the person had continued to be a tax agent.” 10
- 155 Annual returns by persons who receive subpart KD credit** 15  
(1) In section 41(3)(b), “family tax credit” is replaced by “minimum family tax credit”.  
(2) **Subsection (1)** applies for the 2007–08 and later income years.
- 156 Non-active companies may be excused from filing returns** 20  
(1) After section 43A(2)(d)(ii), the following is inserted:  
“(iib) give rise to an amount of tax credit under **section LH 1** of the Income Tax Act 2004; or”.  
(2) **Subsection (1)** applies for the 2008–09 and later income years.
- 157 New section 48B inserted** 25  
After section 48, the following is inserted:  
“**48B Reconciliation statement for retirement scheme contribution withholding tax**  
“(1) If a retirement scheme contributor has made a retirement scheme contribution to a retirement savings scheme for a person in an income year, the retirement scheme contributor, or the retirement savings scheme acting on behalf of the 30”

- retirement scheme contributor, must deliver to the Commissioner a reconciliation statement for the income year showing the information required by—
- “(a) **subsection (2)**, relating to the person; and
  - “(b) **subsection (3)**, relating to the retirement scheme contributor. 5
- “(2) The reconciliation statement must show the following information for the income year relating to the person referred to in **subsection (1)**:
- “(a) the total amount of retirement scheme contribution withholding tax payable on retirement scheme contributions; and 10
  - “(b) the total amount of imputation credits and Maori authority credits used in meeting the liability for retirement scheme contribution withholding tax; and 15
  - “(c) the total amount of retirement scheme contribution withholding tax paid or payable other than by using imputation credits and Maori authority credits; and
  - “(d) the amount of each retirement scheme contribution <subject to retirement scheme contribution withholding tax>; and 20
  - “(e) the rate used to calculate the retirement scheme contribution withholding tax on the retirement scheme contribution; and
  - “(f) the retirement scheme contribution withholding tax for the retirement scheme contribution; and 25
  - “(g) the amount of imputation credits attached to the retirement scheme contribution; and
  - “(h) the amount of imputation credits used to meet the liability for retirement scheme contribution withholding tax on the retirement scheme contribution; and 30
  - “(i) the amount of Maori authority credits attached to the retirement scheme contribution; and
  - “(j) the amount of Maori authority credits used to meet the liability for retirement scheme contribution withholding tax on the retirement scheme contribution; and 35
  - “(k) the amount of retirement scheme contribution withholding tax remaining owing on the retirement scheme contribution after the use of imputation credits and Maori authority credits; and 40

- “(l) the amount of retirement scheme contribution withholding tax on the retirement scheme contribution paid other than by the use of imputation credits and Maori authority credits; and
- “(m) the tax file number, if a rate of less than 39% is used to calculate the retirement scheme contribution withholding tax on a retirement scheme contribution; and 5
- “(n) the amount of the imputation credits or Maori authority credits attached to the retirement scheme contribution that are not used to meet the liability for retirement scheme contribution withholding tax<; and> 10

**New (majority)**

- |  |    |
|--|----|
| <ul style="list-style-type: none"> <li>“(o) the total amount of non-resident withholding tax payable on retirement scheme contributions; and</li> <li>“(p) the amount of each retirement scheme contribution that is non-resident withholding income; and</li> <li>“(q) any other particulars the Commissioner may require.</li> </ul> | 15 |
|--|----|
- “(3) The reconciliation statement must show the following information for the income year relating to the retirement scheme contributor referred to in **subsection (1)**:
    - “(a) the total amount of retirement scheme contributions for which retirement scheme contribution withholding tax is payable; and 20
    - “(b) the total amount of retirement scheme contribution withholding tax payable on retirement scheme contributions; and 25
    - “(c) the total amount of imputation credits used in meeting the liability for retirement scheme contribution withholding tax; and
    - “(d) the total amount of Maori authority credits used in meeting the liability for retirement scheme contribution withholding tax; and 30
    - “(e) the total amount of retirement scheme contribution withholding tax paid or payable other than by using imputation credits and Maori authority credits.
  - “(4) The reconciliation statement required by **subsection (1)** for an income year must be received by the Commissioner on or 35

before the end of the second month following the end of the income year.”

**New (majority)**

**157B Portfolio tax rate entities and portfolio investor proxies to make returns, file annual reconciliation statement**

- |     |  |    |
|-----|--|----|
| (1) | Section 57B(1)(b) is replaced by the following:  | 5  |
|     | “(b) by the day that is the end of the month beginning from the end of the portfolio calculation period.”  |    |
| (2) | Section 57B(3)(a)(ii) is replaced by the following:  |    |
|     | “(ii) by the day given by <b>subsection (3B)</b> for the portfolio investor exit period; and”.   | 10 |
| (3) | After section 57B(3), the following is inserted:   |    |
|     | “(3B) A person who is required to perform responsibilities under subsection (3)(a) for a portfolio investor exit period must perform the responsibilities by the day that is—  |    |
|     | “(a) the end of the 1-month period beginning from the end of the portfolio investor exit period, if <b>paragraphs (b) and (c)</b> do not apply; or   | 15 |
|     | “(b) the 15 January following the end of the portfolio investor exit period, if the portfolio investor exit period ends in November; or  | 20 |
|     | “(c) the end of the month beginning from the end of the month in which the portfolio investor exit period ends, if the day given by <b>paragraph (a)</b> does not exist.”  |    |
| (4) | In section 57B(4)(b), “for the tax year” is inserted after “income tax”.   | 25 |
| (5) | After section 57B(6), the following is added:  |    |
|     | “(7) A person who is a portfolio tax rate entity or portfolio investor proxy and makes a payment of income tax under section HL 23B of the Income Tax Act 2004 for a period in an income year that is not included in a return required by subsection (3) must file a tax return for the period— | 30 |
|     | “(a) in the prescribed form showing—   |    |
|     | “(i) the amount of the payment for the period; and   |    |

**New (majority)**

- |  |                    |
|--|--------------------|
| <p>“(ii) the information concerning the payment that would be required in a return under subsection (3); and</p> <p>“(iii) further information that the Commissioner considers relevant; and</p> <p>“(b) by the day that is—</p> <p>    “(i) the end of the month beginning from the end of the month in which the period ends, if <b>subparagraph (ii)</b> does not apply; or</p> <p>    “(ii) the 15 January following the end of the period, if the period ends in November.”</p> | <p>5</p> <p>10</p> |
|--|--------------------|

**157C Disclosure of interest in foreign company or foreign investment fund**

After section 61(1B), the following is inserted:

- |  |           |
|--|-----------|
| <p>“(1C) A portfolio tax rate entity that does not make payments of tax under section HL 22 of the Income Tax Act 2004 is required to make a disclosure under subsection (1) in the prescribed form by the due date for the entity’s return under section 57B for the tax year.”</p> | <p>15</p> |
|--|-----------|

**158 New sections 68D and 68E inserted**

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- (1) Before section 69, the following is inserted:

**“68D Statements in relation to research and development tax credits: single persons**

- |   |                     |
|---|---------------------|
| <p>“(1) This section applies to a person who—</p> <p>    “(a) is not a member of an internal software development group; and</p> <p>    “(b) is not a partner in a partnership to which <b>section 68E</b> applies.</p> <p>“(2) The person must furnish, in the form and electronic format prescribed by the Commissioner, a statement in relation to research and development tax credits under <b>section LH 1</b> of the Income Tax Act 2004 that they claim for a tax year.</p> | <p>25</p> <p>30</p> |
|---|---------------------|

**Struck out (majority)**

- “(3) The statement described in **subsection (2)** must be furnished to the Commissioner—
- “(a) only in the electronic format prescribed by the Commissioner; and
  - “(b) no later than the last day for furnishing a return of income for the relevant tax year under section 37. 5

**New (majority)**

- “(3) The statement described in **subsection (2)** must be furnished to the Commissioner no later than—
- “(a) the day that is 30 days after the last day for furnishing a return of income for the relevant tax year under section 37; or 10
  - “(b) the day that is 2 years after the last day for furnishing a return of income for the relevant tax year under section 37, if—
    - “(i) that tax year is the 2008–09 or 2009–10 tax year; 15
    - and
    - “(ii) the person has not claimed, in a return of income for that tax year, research and development tax credits under **section LH 1** of the Income Tax Act 2004. 20

- “(4) A person is treated as complying with this section for the purposes of **section LH 1(4)** of the Income Tax Act 2004 before the last day for furnishing a statement under **subsection (3)**.

**“68E Statements in relation to research and development tax credits: internal software development groups and partnerships 25**

- “(1) This section applies to—
- “(a) an internal software development group;
  - “(b) a partnership that chooses to apply this section.
- “(2) The nominated member of an internal software development group or the partnership must furnish, in the electronic format prescribed by the Commissioner, a statement in relation to research and development tax credits under **section LH 1** of the 30



Income Tax Act 2004 that the members of the internal software development group or partners of the partnership claim for a tax year.

**Struck out (majority)**

- |   |    |
|---|----|
| “(3) The statement described in <b>subsection (2)</b> must be furnished to the Commissioner no later than—  | 5  |
| “(a) the latest day for furnishing a return of income or joint return of income for the relevant tax year under section 37 for any member of the internal software development group or for the partnership; or |    |
| “(b) such further time beyond the day described in <b>paragraph (a)</b> as the Commissioner may allow, but only if the case is one of simple oversight.   | 10 |

**New (majority)**

- |  |    |
|--|----|
| “(3) The statement described in <b>subsection (2)</b> must be furnished to the Commissioner no later than,—  |    |
| “(a) the day that is—  | 15 |
| “(i) 30 days after the latest day for any member of the internal software group or for the partnership to furnish a return of income or joint return of income for the relevant tax year under section 37;                     |    |
| or   | 20 |
| “(ii) such later day that the Commissioner may allow, if the Commissioner considers that a failure to meet the requirements of <b>subparagraph (i)</b> is a result of simple oversight; or                                     |    |
| “(b) the day that is 2 years after the latest day for any member of the internal software group or for the partnership to furnish a return of income or joint return of income for the relevant tax year under section 37, if— | 25 |
| “(i) that tax year is the 2008–09 or 2009–10 tax year; and   | 30 |

**New (majority)**

- |  |  |    |
|--|--|----|
|  | <p style="margin: 0;">“(ii) no member or partner has claimed, in a return of income for that tax year, research and development tax credits under <b>section LH 1</b> of the Income Tax Act 2004.</p>  |    |
| “(4)   | A member of an internal software development group and a partner in a partnership are treated as complying with this section for purposes of <b>section LH 1(4)</b> of the Income Tax Act 2004 before the last day for furnishing a statement under <b>subsection (3)</b> .” | 5  |
| (2)  | <b>Subsection (1)</b> applies for the 2008–09 and later income years.  | 10 |
| <p><b>159 Particulars to be included in income statement</b></p> |  |    |
| (1)  | In section 80E(2)(ea), “family support and family plus” is replaced by “Working for Families tax credits”.   |    |
| (2)  | <b>Subsection (1)</b> applies for the 2007–08 and later income years.  |    |
| <p><b>160 Officers to maintain secrecy</b></p>                   |  |    |
| (1)  | Before section 81(4)(g), the following is inserted:  | 15 |
|  | “(fc) communicating to a person who is a member, employee, or agent, of the New Zealand Customs Service, information that—   |    |
|  | “(i) the person is authorised by the New Zealand Customs Service to receive; and   | 20 |
|  | “(ii) relates to a person who is liable to pay financial support under the Child Support Act 1991; and   |    |
|  | “(iii) the Commissioner considers is not undesirable to disclose and is reasonably necessary for the purposes specified in <b>sections 280K and 280L</b> of the Customs and Excise Act 1996:”.   | 25 |
| (2)  | After section 81(4)(lb), the following is inserted:  |    |
|  | “(lc) communicating to a taxpayer whose return of income is being or has been prepared by another person as an agent of the taxpayer—  | 30 |
|  | “(i) whether the person is listed as a tax agent:  |    |

“(ii) any decision of the Commissioner removing the person from the list of tax agents or refusing to list the person as a tax agent:”.

**161 Disclosure of information concerning actions of tax advisor**

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- (1) The heading to section 81B is replaced by “**Disclosure of information concerning tax advisor or person acting as tax agent**”.
- (2) In section 81B, the following is added as subsection (2):

**Struck out (majority)**

- |   |    |
|---|----|
| “(2) Despite section 81, if the Commissioner removes a person from the list of tax agents or refuses to list the person as a tax agent the Commissioner may supply— | 10 |
| “(a) to an association or group—  |    |
| “(i) of which the person is, or purports to be, a member as a person who is in a business of preparing tax returns for other people; and                            | 15 |
| “(ii) whose members are subject to a professional code of conduct and a disciplinary process that enforces compliance with the code of conduct:                     |    |
| “(b) information about—   | 20 |
| “(i) the decision of the Commissioner:  |    |
| “(ii) an action or omission of the person influencing the decision.”  |    |

**New (majority)**

- |   |    |
|---|----|
| “(2) Despite section 81, the Commissioner may supply information about a person to an association or group if—  | 25 |
| “(a) the person is, or purports to be, a member of the association or group as a person who is in a business of preparing tax returns for other people; and |    |
| “(b) the members of the association or group are subject to—  | 30 |
| “(i) a professional code of conduct; and  |    |

**New (majority)**

- |       |  |   |
|-------|--|---|
| “(ii) | a disciplinary process that enforces compliance with the code of conduct; and  |   |
| “(c)  | the information—   |   |
| “(i)  | is relevant to a decision of the Commissioner removing the person from the list of tax agents or refusing to list the person as a tax agent: | 5 |
| “(ii) | in the Commissioner’s opinion, is or would be relevant to a decision referred to in <b>subparagraph (i).</b> ”                               |   |

**162 Disclosure of information in relation to family income assistance** 10

- |     |   |  |
|-----|---|--|
| (1) | In section 85G,—  |  |
| (a) | in the heading: “ <b>family income assistance</b> ” is replaced by “ <b>Working for Families tax credits</b> ”:         |  |
| (b) | in subsection (1)(a), “family support credit” is replaced by “family tax credit”. <span style="float: right;">15</span> |  |
| (2) | <b>Subsection (1)</b> applies for the 2007–08 and later income years.   |  |

**New (majority)**

- |             |   |  |
|-------------|---|--|
| <b>162B</b> | Use of information supplied under section 85GA  |  |
|             | In the heading to section 85GC, “ <b>section 85GA</b> ” is replaced by “ <b>section 85GB</b> ”. <span style="float: right;">20</span> |  |

**163 Where Commissioner accepts adjustment proposed by disputant**

- |      |   |  |
|------|---|--|
|      | Section 89J, other than the heading, is replaced by the following:  |  |
| “(1) | If the Commissioner accepts or is deemed to accept an adjustment proposed by a disputant, and section 89L does not apply, the Commissioner must include or take account of the adjustment in— <span style="float: right;">25</span> |  |
| “(a) | a notice of assessment issued to the disputant; and   |  |
| “(b) | any further notice of assessment or further amended assessment issued to the disputant. <span style="float: right;">30</span>   |  |

- “(2) Despite **subsection (1)**, the Commissioner may issue a notice of assessment or an amended assessment that does not include or take into account an adjustment that the Commissioner has accepted, or is deemed to have accepted, if the Commissioner considers that the disputant in relation to the adjustment— 5
- “(a) was fraudulent:
- “(b) wilfully misled the Commissioner.

**Struck out (majority)**

“(c) omitted to supply the Commissioner with relevant information.”

- 164 Determinations relating to financial arrangements** 10
- After section 90AC(1)(b), the following is inserted:

**Struck out (majority)**

“(ba) the alternative method that may be applied to determine the income derived or expenditure incurred for a financial arrangement or class of financial arrangements under **section EW 15C(5)** of the Income Tax Act 2004:”. 15

**New (majority)**

“(ba) the method that may be applied to determine the income derived or expenditure incurred for a financial arrangement or class of financial arrangements under **section EW 15B(5)(c) or EW 15D(2)(d)** of the Income Tax Act 2004:”.

**Struck out (majority)**

- 165 Determination on type of interest in FIF and use of fair dividend rate method** 20
- Section 91AAO(2) is repealed.

**New (majority)**

- |   |    |
|---|----|
| <b>165 Determination on type of interest in FIF and use of fair dividend rate method</b>  |    |
| (1) Section 91AAO(2) and (3) are replaced by the following:   |    |
| “(2) In making a determination, the Commissioner may take into account the following:   | 5  |
| “(a) the principle that the fair dividend rate method should not be used for an attributing interest in a FIF that is economically equivalent to a loan denominated in New Zealand dollars:       |    |
| “(b) the extent to which the assets of a FIF—   | 10 |
| “(i) are loans, fixed rate shares as defined in section LF 2 of the Income Tax Act 2004, or arrangements with a fixed economic return:  |    |
| “(ii) are denominated in New Zealand dollars:   |    |
| “(iii) have a value in New Zealand dollars that is substantially unaffected by variations in currency exchange rates:   | 15 |
| “(c) the compliance costs incurred by a person required to use the fair dividend rate method:   |    |
| “(d) arrangements affecting the assets of a FIF and interests held directly or indirectly in a FIF.   | 20 |
| “ (3) A determination may be made for income years specified in the determination.  |    |
| “ (3B) A determination does not apply for a person and an income year beginning before the date of the determination unless the person chooses that the determination apply for the income year.” | 25 |
| (2) Section 91AAO(5) is replaced by the following:  |    |
| “ (5) The Commissioner must:  |    |
| “(a) notify the making of a determination in the <i>Gazette</i> within 30 days of the date of the determination; and  | 30 |
| “(b) publish the determination in a publication of the department as soon as possible.”   |    |
| <b>166 New heading and section 91AAP inserted</b>   |    |
| (1) After section 91AAO, the following is inserted:   | 35 |

*“Determinations relating to research and development tax credits*

**“91AAP Determinations relating to requirements for research and development tax credits**

- “(1) For the purposes of a person or group of persons claiming a tax credit under **section LH 1** of the Income Tax Act 2004, if the person or group of persons applies in writing requesting a determination under this section, the Commissioner may determine whether— 5
- “(a) a person meets the eligibility requirements in **section LH 2** of that Act: 10
- “(b) expenditure or depreciation loss meets the requirements of the definition of **eligible amount** in **section LH 3** of that Act:
- “(c) an activity meets the requirements of the definition of **research and development activities** in **section <LH 4> <LH 5>** of that Act. 15
- “(2) An application under **subsection (1)** must be made in accordance with relevant regulations, or, if there are no relevant regulations, in accordance with a procedure that the Commissioner prescribes. 20
- “(3) Subject to this section, a determination made under **subsection (1)** is treated as made under that subsection, and as valid, on and after the date on which the Commissioner signs it.

**Struck out (majority)**

- “(4) A determination made under **subsection (1)** is binding the Commissioner and on the person or group of persons who request it. 25

**New (majority)**

- “(4) A determination made under **subsection (1)** is binding on the Commissioner but not binding on the person or group of persons who request it. 30
- “(5) A determination under **subsection (1)** is void, and treated as not existing, from the earliest of—

- “(a) the date on which legislation comes into force which, to the detriment of the person or group of persons relying on the determination, repeals or amends law relevant to the determination:
- “(b) the date on which a material misrepresentation or omission occurs, whether intentional or not: 5
- “(c) the date on which the Commissioner sends a notice to the person or group of persons that the Commissioner has withdrawn the determination.

**Struck out (majority)**

- “(6) Despite **subsection (5)(c)**, a determination that the Commissioner has withdrawn is valid, and treated as existing, to the extent that an activity that the determination relates is started before the date on which the notice of withdrawal is sent. 10
- “(7) The person or group of persons who request a determination under **subsection (1)** may dispute or challenge the determination under Parts 4A and 8A. 15

**New (majority)**

- “(6) Despite **subsection (5)(c)**, a determination that the Commissioner has withdrawn is valid, and treated as existing, to the extent that an activity to which the determination relates is started before the date on which the notice of withdrawal is sent. 20
- “(7) A determination under **subsection (1)** may not be disputed or challenged under Part 4A or 8A.”

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

**167 Taxation laws in respect of which binding rulings may be made 25**

- (1) In section 91C(1)(f), in the words before subparagraph (i), “paragraphs (a) to (e)” is replaced by “paragraphs (a) to (eb)”. 25
- (2) In section 91C(1)(f)(i), “paragraph (e)” is replaced by “paragraph (e) or (eb)”. 30



**Struck out (majority)**

- (3) The following is added to section 91C:

**New (majority)**

- (3) After section 91C(3), the following is added:

- “(4) Despite subsection (1), the Commissioner may not make a binding ruling on the following provisions and matters:
- “(a) whether a person meets the eligibility requirements in **section LH 2** of the Income Tax Act 2004: 5
- “(b) whether expenditure or depreciation loss meets the requirements of the definition of **eligible amount** in **section LH 3** of that Act:
- “(c) whether an activity meets the requirements of the definition of **research and development activities** in **section <LH 4> <LH 5>** of that Act.” 10
- (4) **Subsections (1) and (2)** apply for the 2005–06 and later income years.
- (5) **Subsection (3)** applies for the 2008–09 and later income years. 15

**168 New section 98B inserted**

After section 98, the following is inserted:

**“98B Assessment of retirement scheme contribution withholding tax**

- “(1) The Commissioner may, for any person who is chargeable with retirement scheme contribution withholding tax under **section NEB 2** of the Income Tax Act 2004, make an assessment of the amount of the retirement scheme contribution on which, in the Commissioner’s judgment, retirement scheme contribution withholding tax ought to be imposed and an assessment of the amount of that tax. 20 25
- “(2) The person is liable to pay the tax so assessed except to the extent that the person establishes in proceedings challenging the assessment that the assessment is excessive or that the person is not chargeable with the tax assessed. 30

- “(3) Sections 109, 111, and 113 shall apply, so far as may be, with respect to an assessment made under **subsection (1)** of this section as if—
- “(a) in those sections, the term “taxpayer” included a person who is chargeable with retirement scheme contribution withholding tax; and 5
- “(b) in section 113, the term “tax already assessed” included retirement scheme contribution withholding tax already assessed under **subsection (1)** of this section.
- “(4) An assessment made under this section shall be subject to challenge in the same manner as an assessment of income tax imposed under section BB 1 of the Income Tax Act 2004, and Part VIIIA of this Act shall apply accordingly.” 10

**Struck out (majority)**

- 169 Time bar for amendment of income tax assessment**
- (1) After section 108(1A), the following is inserted: 15
- “(1B) Despite subsection (1), the Commissioner may not amend an assessment so as to increase an amount of research and development tax credit under **section LH 1** of the Income Tax Act 2004 if—
- “(a) a taxpayer furnishes an income tax return for the 2008–09 or a later tax year; and 20
- “(b) 1 year has passed from the end of the tax year in which the taxpayer provides the tax return; and
- “(c) the taxpayer has not issued a notice of proposed adjustment to the Commissioner for an amount of research and development tax credit for the relevant tax year within the relevant response period.” 25
- (2) Subsection (1) applies for the 2008–09 and later income years.

**New (majority)**

- 169 Time bar for amendment of income tax assessment**
- (1) After section 108(1A), the following is inserted: 30
- “(1B) Despite subsection (1), the Commissioner may not amend an assessment so as to increase an amount of research and

**New (majority)**

development tax credit under <b>section LH 1</b> of the Income Tax Act 2004 if—	
“(a) a taxpayer furnishes an income tax return for the 2008–09 or a later tax year; and	
“(b) 2 years have passed from the end of the tax year in which the taxpayer provides the tax return; and	5
“(c) the taxpayer has not issued a notice of proposed adjustment to the Commissioner for an amount of research and development tax credit for the relevant tax year within the relevant response period.”	10
(2) In <b>section 108(1B)(b)</b> , as inserted by <b>subsection (1)</b> , “2 years have” is replaced by “1 year has”.	
(3) <b>Subsection (1)</b> applies for the 2008–09 and 2009–10 income years.	
(4) <b>Subsection (2)</b> applies for the 2010–11 and later income years.	15

**170 Extension of time bars**

- (1) In section 108B(3)(d), “section 108” is replaced by “section 108(1)”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

**171 Commissioner may at any time amend assessments** 20

- (1) In section 113(1), “section 89N” is replaced by “sections 89N and 113D”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

**172 New section 113D inserted**

- (1) After section 113C, the following is inserted: 25

**“113D Amended assessments for research and development tax credits**

If a taxpayer has issued a notice of proposed adjustment for their claim for an amount of research and development tax credit under **section LH 1** of the Income Tax Act 2004 within the relevant response period, the Commissioner may not amend an assessment so as to increase the amount of tax credit by 30

more than the adjustment proposed in the notice of proposed adjustment.”

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

**New (majority)**

**172B Residual income tax of new provisional taxpayer**

- |     |  |    |
|-----|--|----|
| (1) | Section 120KC(1)(b) is replaced by the following:  | 5  |
|     | <p>“(b) in 2 equal instalments on the interest instalment dates, for the corresponding year,—</p> <p>“(i) D and F, if section MB 8(8)(b)(i) applies; or</p> <p>“(ii) C and F, if section MB 8(8)(b)(ii) applies.”.</p> |    |
| (2) | <b>Subsection (1)</b> applies for the 2008–09 and later income years.  | 10 |

**172C Heading to example replaced**

The heading to the example after section 120KC is replaced by “**Example:** Section 120KD”.

**172D Provisional tax instalments in transitional years**

- |     |  |    |
|-----|--|----|
| (1) | In section 120KD(1), “section 120KE(1)” is replaced by “section 120KE(1) or (3)”.  | 15 |
| (2) | In section 120KD(2), the second sentence is replaced by “The date interest starts is the day after the day on which payment of the instalment is due under section MB 20 of that Act.” |    |
| (3) | <b>Subsections (1) and (2)</b> apply for the 2008–09 and later income years.   | 20 |

**172E Heading to example replaced**

The heading to the example after section 120KD is replaced by “**Example:** Section 120KE”.

**173 Provisional tax and rules on use of money interest**

- |     |  |    |
|-----|--|----|
| (1) | Section 120KE(6) is replaced by the following:   | 25 |
|     | <p>“(6) A taxpayer is not entitled to use of money interest for overpaid tax under section 120D until the later of—</p> <p>“(a) the day after the date—</p> <p>“(i) on which they notify the Commissioner under section MB 17(2); or</p> | 30 |

“(ii) set out in section MB 17(3) (as the case may be):  
“(b) the day after their last ratio instalment date.”

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

#### **174 Late filing penalties**

(1) In the heading to section 139A, “**penalties**” is replaced by **“penalty for certain returns”**. 5

(2) After section 139A(5), the following is added:

“(6) In the case of a late filing penalty for failing to file an employer monthly schedule by the due date, the Commissioner must— 10

“(a) give notice to the taxpayer that a late filing penalty will be payable for a further failure to file an employer monthly schedule on time, if the taxpayer has filed on time all employer monthly schedules due for filing in the period— 15

#### **Struck out (majority)**

“(i) beginning with the later of 1 April 2008 and the day 12 months before the due date; and

#### **New (majority)**

“(i) beginning with the later of 1 April 1999 and the day 12 months before the due date; and

“(ii) ending before the due date; or 20

“(b) give notice to the taxpayer that the penalty is payable, if the taxpayer has not filed on time all employer monthly schedules due for filing in the period referred to in **paragraph (a)**.”

#### **Struck out (majority)**

(3) **Subsections (1) and (2)** apply for employer monthly schedules due on or after 1 April 2008. 25

**New (majority)**

- (3) **Subsections (1) and (2)** apply for employer monthly schedules due on or after 1 April 1999.

**175 New section 139AAA inserted**

- (1) After section 139A, the following is inserted:

- “139AAA Late filing penalty for GST returns** 5
- “(1) This section applies to a tax return (a **GST return**) required to be furnished by a registered person under sections 16 to 18 of the Goods and Services Tax Act 1985.
- “(2) A registered person is liable to pay a late filing penalty if—
- “(a) the registered person does not complete and provide a GST return by the due date for filing the GST return; and 10
- “(b) the registered person has failed to file on time a GST return due in the period—
- “(i) beginning with the later of 1 April 2008 and the day 12 months before the due date; and 15
- “(ii) ending before the due date; and
- “(c) the Commissioner notifies the registered person that the penalty is payable.
- “(3) The late filing penalty for a GST return for a registered person is— 20

**Struck out (majority)**

- “(a) \$250, if the registered person accounts for tax payable on an invoice basis on the due date for filing the GST return; or
- “(b) \$50, if the registered person accounts for tax payable on a payments basis on the due date for filing the GST return. 25

“(a) \$250, if on the due date for filing the GST return the registered person accounts for tax payable on an invoice basis or hybrid basis; or

“(b) \$50, if on the due date for filing the GST return the registered person accounts for tax payable on a payments basis.

“(4) The Commissioner must—

“(a) give notice to the registered person that a late filing penalty will be payable for a further failure to file a GST return on time, if the registered person has filed on time all GST returns due for filing in the period—

“(i) beginning with the later of 1 April 2008 and the day 12 months before the due date; and

“(ii) ending before the due date; or

“(b) give notice to the registered person that the penalty is payable, if the registered person has not filed on time all GST returns due for filing in the period referred to in paragraph (a).”

(2) **Subsection (1)** applies for a tax return required to be furnished under sections 16 to 18 of the Goods and Services Tax Act 1985 and due on or after 1 April 2008.

**176 Late payment penalty**

(1) Section 139B(3) and (3A) are replaced by the following:

“(3) An initial late payment penalty imposed on a taxpayer under subsection (2A) is added under **subsection (3A)** to the unpaid tax to which it relates if—

“(a) the taxpayer has failed to pay on time an amount of tax due for payment in the period—

“(i) beginning with the later of 1 April 2008 and the day 2 years before the due date; and

“(ii) ending before the due date:

“(b) the taxpayer has paid on time all amounts of tax due for payment in the period referred to in **paragraph (a)** and—

**Struck out (majority)**

- “(i) the Commissioner gives the taxpayer a notice setting a further date for payment of the unpaid tax; and
- “(ii) the taxpayer does not pay the unpaid tax before the date that is the earlier of the further date and the date that is 1 month after the date of the notice. 5
- “(3A) If this subsection applies for an initial late penalty,—
- “(a) the part of the initial late penalty imposed under subsection (2A)(a) is added to the unpaid tax to which it relates on the day after the due date for payment of the unpaid tax: 10
- “(b) the part of the initial late penalty imposed under subsection (2A)(b) is added to the unpaid tax to which it relates at the end of the 6th day after the day referred to in **paragraph (a)**.” 15
- (2) **Subsection (1)** applies for unpaid tax due for payment on or after 1 April 2008.

**New (majority)**

- 176 Late payment penalty**
- (1) Section 139B(1) to (3A) are replaced by the following: 20
- “(1) This section applies to a taxpayer if and to the extent that the taxpayer does not pay by the due date (the **default date**) an amount of tax (the **unpaid tax**), calculated by the taxpayer as payable or for which the taxpayer is assessed, and—
- “(a) the unpaid tax is provisional tax or a penalty relating to a failure to pay provisional tax: 25
- “(b) the taxpayer has failed to pay on time an amount of tax due for payment in the period—
- “(i) beginning with the later of 1 April 2008 and the day 2 years before the default date; and 30
- “(ii) ending before the default date:
- “(c) the taxpayer has paid on time all amounts of tax due for payment in the period referred to in **paragraph (b)** and—



**New (majority)**

- |  |  |
|--|--|
| <p>“(i) the Commissioner gives the taxpayer a notice setting a further date for payment of the unpaid tax; and</p> <p>“(ii) the taxpayer does not pay the unpaid tax before the date that is the earlier of the further date and the date that is 1 month after the date of the notice.</p> <p>“(2) The taxpayer is liable to pay a late payment penalty consisting of—</p> <p>“ (a) an initial late payment penalty equal to the total of—</p> <p style="padding-left: 20px;">“(i) 1% of the unpaid tax; and</p> <p style="padding-left: 20px;">“(ii) 4% of the amount of tax to pay at the end of the sixth day after the day on which a penalty under <b>subparagraph (i)</b> is imposed; and</p> <p>“ (b) an incremental late payment penalty equal to 1% of the amount of tax to pay determined on each day that falls 1 month after a day on which a penalty is imposed under—</p> <p style="padding-left: 20px;">“ (i) this subsection:</p> <p style="padding-left: 20px;">“ (ii) subsection (2A)(a) or (2B) as they were before the enactment of <b>section 176</b> of the Taxation (Annual Rates, Business Taxation, KiwiSaver, and Remedial Matters) Act <b>2007</b>:</p> <p>“(3) An initial late payment penalty is added to the unpaid tax to which it relates—</p> <p style="padding-left: 20px;">“ (a) on the day after the default date for the unpaid tax, if it is imposed under <b>subsection (2)(a)(i)</b>:</p> <p style="padding-left: 20px;">“ (b) at the end of the sixth day after the day referred to in <b>paragraph (a)</b>, if it is imposed under <b>subsection (2)(a)(ii)</b>.”</p> <p>(2) In section 139B(3B),—</p> <p style="padding-left: 20px;">(a) “subsection (2A)(b)” is replaced by “<b>subsection (2)(a)(ii)</b>”:</p> <p style="padding-left: 20px;">(b) “subsection (2A)(a)” is replaced by “<b>subsection (2)(a)(i)</b>”.</p> <p>(3) <b>Subsections (1) and (2)</b> apply for unpaid tax that on or after 1 April 2008 becomes due for payment.</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> |
|--|--|

**New (majority)**

**176B Imposition of late payment penalties when financial relief sought**

- (1) In section 139BA(1),—
  - (a) “section 139B(2A)(a)” is replaced by “**section 139B(2)(a)(i)**”:
  - (b) “section 139B(2A)(b)” is replaced by “**section 139B(2)(a)(ii)**”.
- (2) **Subsection (1)** applies for unpaid tax that on or after 1 April 2008 becomes due for payment.

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**177 Late payment penalty and provisional tax**

- (1) In section 139C(2), in the definition of **provisional tax payable**, the following is inserted after paragraph (aa):
 

“(ab) for an instalment date and a taxpayer to whom section MB 10 of the Income Tax Act 2004 applies, means the lesser of—

  - “(i) the amount calculated under section MB 10 of that Act:
  - “(ii) the amount calculated as payable under section MB 10 of that Act, if the GST ratio is substituted for a GST ratio which is calculated using the taxpayer’s residual income tax for the tax year and taxable supplies for the corresponding income year.”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

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**178 Imputation penalty tax payable where end of year debit balance**

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**Struck out (majority)**

- (1) The following is added to section 140B:

**New (majority)**

- (1) After section 140B(2), the following is added:

- “(3) The amount given by subsection (2) for the year ending 31 March 2010 is reduced by the amount of imputation penalty tax payable under **section 140BB**.”
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

**179 New section 140BB inserted**

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- (1) After section 140B, the following is inserted:

**“140BB Imputation penalty tax payable in some circumstances**

- “(1) This section applies when a company has an end of year debit balance under section ME 2 of the Income Tax Act 2004 for its imputation credit account as at 31 March 2010, if the company is treated, for the purposes of this section, as only having:

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**Struck out (majority)**

- “(a) credits and balances to the extent to which they arise from income, expenditure, memorandum account debits, credits, and balances, refunds, tax, tax credits, transfers, withholdings, or other items dealt with, arising, or calculated using an old company tax rate; and
- “(b) debits and balances to the extent to which the company has, as provided by **section MZ 10** of the Income Tax Act 2004, attached imputation credits in excess of the 30/70 imputation ratio or the 30/70 combined imputation and dividend withholding payment ratio.

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**New (majority)**

- “(a) credits and balances to the extent to which they arise from memorandum account debits, credits, and balances, refunds, tax, tax credits, transfers, withholdings, or other items dealt with, arising, or calculated using an old company tax rate; and

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**New (majority)**

“(b) debits and balances to the extent to which the company has, as provided by **section MZ 13** of the Income Tax Act 2004, attached imputation credits in excess of the 30/70 imputation ratio or the 30/70 combined imputation and dividend withholding payment ratio.

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“(2) The company is liable for a special tax known as imputation penalty tax.

“(3) The amount of imputation penalty tax is 10% of the positive difference between zero and the end of year debit balance described in **subsection (1)**.”

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

**180 Dividend withholding payment penalty tax payable  
where end of year debit balance**

**Struck out (majority)**

(1) The following is added to section 140C:

**New (majority)**

(1) After section 140C(2), the following is added:

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“(3) The amount given by subsection (2) for the year ending 31 March 2010 is reduced by the amount of dividend withholding payment penalty tax payable under **section 140CA**.”

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

**181 New section 140CA inserted**

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(1) After section 140C, the following is inserted:

**“140CA Dividend withholding payment penalty tax payable  
in some circumstances**

“(1) This section applies when a company has an end of year debit balance under section MG 1 of the Income Tax Act 2004 for its dividend withholding payment account as at 31 March

25

2010, if the company is treated, for the purposes of this section, as only having:

**Struck out (majority)**

- |   |    |
|---|----|
| “(a) credits and balances to the extent to which they arise from income, expenditure, memorandum account debits, credits, and balances, refunds, tax, tax credits, transfers, withholdings, or other items dealt with, arising, or calculated using an old company tax rate; and                | 5  |
| “(b) debits and balances to the extent to which the company has, as provided by <b>section MZ 10</b> of the Income Tax Act 2004, attached imputation credits in excess of the 30/70 dividend withholding payment ratio or the 30/70 combined imputation and dividend withholding payment ratio. | 10 |

**New (majority)**

- |   |    |
|---|----|
| “(a) credits and balances to the extent to which they arise from memorandum account debits, credits, and balances, refunds, tax, tax credits, transfers, withholdings, or other items dealt with, arising, or calculated using an old company tax rate; and                                     | 15 |
| “(b) debits and balances to the extent to which the company has, as provided by <b>section MZ 13</b> of the Income Tax Act 2004, attached imputation credits in excess of the 30/70 dividend withholding payment ratio or the 30/70 combined imputation and dividend withholding payment ratio. | 20 |
| “(2) The company is liable for a special tax known as dividend withholding payment penalty tax. 25  |    |
| “(3) The amount of imputation penalty tax is 10% of the positive difference between zero and the end of year debit balance described in <b>subsection (1)</b> .”  |    |
| (2) <b>Subsection (1)</b> applies for the 2008–09 and later income years.   | 30 |

**182 Tax shortfalls**

- (1) In section 141(7)(b), “or a reduction in tax to pay” is inserted after “refund of tax”.
- (2) In section 141(7), in the words after paragraph (c), “or reduction,” is inserted after “increased refund,”. 5
- (3) After section 141(7), the following is inserted:  
“(7B) The Commissioner may exercise the discretion under subsection (7) in relation to a taxpayer and an associated person having a different return period if—  
    “(a) subsection (7) would apply to the taxpayer in the absence of this subsection if the associated person’s return period were the same as the taxpayer’s return period; and 10  
    “(b) the taxpayer’s return period affected by the adjustment referred to in subsection (7)(a) overlaps the associated person’s return period affected by the adjustment referred to in subsection (7)(b); and 15  
    “(c) the taxpayer’s tax position is not an abusive tax position and does not involve evasion or a similar act.”
- (4) After section 141(7), the following is inserted: 20  
“(7C) **Subsection (7D)** applies if—  
    “(a) the Commissioner makes an adjustment to a taxpayer’s tax position (**taxpayer A**) for a tax credit under **section LH 1** of the Income Tax Act 2004 relating to **internal software development**, as that term is defined in **section <LH 11> <LH 12>** of that Act; and 25  
    “(b) the adjustment described in **paragraph (a)** results in a tax shortfall; and  
    “(c) the Commissioner makes an adjustment to another taxpayer’s tax position (**taxpayer B**) for a tax credit under **section LH 1** of that Act for internal software development as defined in **section <LH 11> <LH 12>** of that Act; and 30  
    “(d) the adjustment described in **paragraph (c)** is for the same tax year as the adjustment described in **paragraph (a)**; and 35  
    “(e) for **taxpayer B**, an entitlement to an amount of refund or increased refund of tax (the **refund amount**) results from the adjustment described in **paragraph (c)**; and

- “(f) for the period to which the adjustments described in **paragraphs (a) and (c)** relate, taxpayer A and taxpayer B are members of the same internal software development group, as that term is defined in **section <LH 11> <LH 12>** of that Act; and 5
- “(g) the tax credits described in **paragraphs (a) and (c)** relate to expenditure or depreciation loss under **subpart LH** incurred while taxpayer A and taxpayer B are members of the same internal software development group, as that term is defined in **section <LH 11> <LH 12>** of that Act. 10
- “(7D) If this subsection applies because of **subsection (7C)** of this Act, then, for the purposes of imposing a penalty, the Commissioner may treat an amount that is less than or equal to taxpayer B’s refund amount, described in **subsection (7C)(e)**, as an amount of tax paid by taxpayer A. Treating the amount as tax 15  
paid by taxpayer A for the purposes of imposing a penalty reduces taxpayer A’s shortfall.”

**Struck out (majority)**

- (5) **Subsection (3)** applies for tax positions taken on or after 1 April 2008.

**New (majority)**

- (5) **Subsections (1) to (3)** apply for tax positions taken on or after 20  
1 April 2008.
- (6) **Subsection (4)** applies for the 2008–09 and later income years.

**183 Not taking reasonable care**

- (1) After section 141A(2), the following is inserted:

**Struck out (majority)**

- “(2B) A taxpayer who, in taking a tax position, relies on an action or 25  
advice of a tax advisor engaged by the taxpayer takes reasonable care in relying on the action or advice except if the taxpayer—

**Struck out (majority)**

- “(a) is the employer of the tax advisor:
- “(b) does not provide to the tax advisor adequate information relating to the tax position:
- “(c) does not provide to the tax advisor adequate instructions relating to the tax position: 5
- “(d) has reason to believe that the action or advice is incorrect:
- “(e) has previously had a tax shortfall for the same type of tax arising from a corresponding tax position in an earlier return and does not take reasonable care to avoid the further tax shortfall.” 10

**New (majority)**

- “(2B) A taxpayer who, in taking a tax position, relies on an action or advice of a tax advisor engaged by the taxpayer, or by a company in the same group of companies as the taxpayer, takes reasonable care in relying on the action or advice except if the taxpayer— 15
- “(a) is the employer of the tax advisor:
- “(b) does not provide to the tax advisor adequate information relating to the tax position:
- “(c) does not provide to the tax advisor adequate instructions relating to the tax position: 20
- “(d) has reason to believe that the action or advice is incorrect:
- “(e) has previously, for a period ending less than 4 years before the beginning of the period to which the tax position relates, had a tax shortfall for the same type of tax arising from a corresponding tax position and does not take reasonable care to avoid the further tax shortfall.” 25

- (2) **Subsection (1)** applies for tax positions taken on or after 1 April 2008. 30



## 184 Unacceptable tax position

### New (majority)

(1A) In section 141B(1B), “numbers in a return” is replaced by  
“numbers used in, or for use in preparing, a return”.

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

“(1C) A taxpayer does not take an unacceptable tax position if— 5

“(a) the taxpayer adopts IFRSs for the purposes of financial reporting before the 2007–08 income year; and

“(b) the taxpayer’s tax position relates to a period—

“(i) starting on and including the first day of the first income year for which a person adopts IFRSs for the purposes of financial reporting; and 10

“(ii) finishing on and including the last day of the 2006–07 income year; and

### Struck out (majority)

“(c) a tax shortfall for a return period wholly in the period described in **paragraph (b)** arises from actual or potential accounting under IFRSs; and 15

“(d) the tax shortfall is due to accounting which, if viewed objectively, passes the standard of being about as likely as not to represent acceptable accounting practice under IFRSs; and 20

### New (majority)

“(c) a tax shortfall for a return period in the period described in **paragraph (b)** arises from actual or potential accounting under IFRSs; and

“(d) the tax shortfall is due to an application of IFRSs which, if viewed objectively, passes the standard of being about as likely as not to represent acceptable accounting practice under IFRSs; and 25

“(e) the taxpayer has fully-disclosed the IFRS-related tax position.”

- (2) Section 141B(2) is replaced by the following:
- “(2) A taxpayer is liable to pay a shortfall penalty if the taxpayer takes an unacceptable tax position in relation to income tax and the tax shortfall arising from the taxpayer’s tax position is more than both— 5
- “(a) \$50,000:
- “(b) 1% of the taxpayer’s total tax figure for the relevant return period.”
- (3) **Subsection (2)** applies for tax positions taken on or after 1 April 2008. 10

**185 Abusive tax position**

- (1) Section 141D(4) is replaced by the following:
- “(4) This section applies to a taxpayer if the taxpayer has taken an unacceptable tax position.”
- (2) **Subsection (1)** applies for tax positions taken on or after 1 April 2008. 15

**186 Evasion or similar act**

- (1) After section 141E(2), the following is inserted:
- “(2B) No person shall be chargeable with a shortfall penalty under subsection (1)(b) for taking a tax position if the person is chargeable with a shortfall penalty under **section 141ED** for taking the tax position.” 20
- (2) **Subsection (1)** applies for tax positions taken on or after 1 April 2008.

**Struck out (majority)**

- 187 New section 141ED inserted** 25
- (1) After section 141EC, the following is inserted:
- “141ED Notifying but not paying PAYE liability**
- “(1) A taxpayer is liable to pay a shortfall penalty (referred to as a shortfall penalty for “notifying but not paying PAYE liability”) if— 30
- “(a) the taxpayer—
- “(i) completes an employer monthly schedule showing an amount (the **original amount**) payable by

**Struck out (majority)**

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| <p style="margin-left: 40px;">the taxpayer to the Commissioner for the return period; and</p> <p style="margin-left: 20px;">“(ii) provides the employer monthly schedule to the Commissioner by the due date; and</p> <p style="margin-left: 20px;">“(iii) fails to pay the original amount and any penalty under this section (the <b>due amount</b>) to the Commissioner by the due date; and</p> <p style="margin-left: 20px;">“(b) the Commissioner gives a notice to the taxpayer that the taxpayer is liable to pay a penalty.</p> <p>“(2) The penalty payable for notifying but not paying PAYE liability is—</p> <p style="margin-left: 20px;">“(a) 20% of the due amount on the day that the Commissioner issues a notice under <b>subsection (1)(b)</b>, if the taxpayer on the 30th day after the day of the notice has—</p> <p style="margin-left: 40px;">“(i) failed to agree with the Commissioner an arrangement to pay the due amount; and</p> <p style="margin-left: 40px;">“(ii) failed to pay the due amount; or</p> <p style="margin-left: 20px;">“(b) 20% of the due amount on the day that the Commissioner issues the notice, if the taxpayer before the day of the notice has—</p> <p style="margin-left: 40px;">“(i) agreed with the Commissioner an arrangement to pay the due amount; and</p> <p style="margin-left: 40px;">“(ii) failed to honour the agreement; or</p> <p style="margin-left: 20px;">“(c) 10% of the due amount on the day that the Commissioner issues the notice, if—</p> <p style="margin-left: 40px;">“(i) the taxpayer on or before the 30th day after the day of the notice pays the due amount; and</p> <p style="margin-left: 40px;">“(ii) <b>paragraph (b)</b> does not apply.</p> <p>“(3) A taxpayer may be liable to pay more than 1 shortfall penalty for notifying but not paying PAYE liability arising from an employer monthly schedule.</p> <p>“(4) The amount given by <b>subsection (2)</b> for a shortfall penalty on a due amount is added to the due amount for the purposes of a further shortfall penalty.</p> <p>“(5) The maximum amount of shortfall penalties under this section that may be added to the original amount is 150% of the original amount.</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> |
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**Struck out (majority)**

- “(6) A taxpayer is not liable to pay a shortfall penalty for notifying but not paying PAYE liability if the Commissioner withdraws the notice referred to in **subsection (1)(b)**.
- “(7) A taxpayer is not liable to pay a shortfall penalty for notifying but not paying PAYE liability arising from an employer monthly schedule and a notice referred to in **subsection (1)(b)** if the Commissioner—
- “(a) gives the notice referred to in **subsection (1)(b)** within the 30-day period beginning from the day on which the Commissioner gives an earlier notice relating to the employer monthly schedule; and
  - “(b) the Commissioner does not withdraw the earlier notice.”
- (2) **Subsection (1)** applies for tax positions taken on or after 1 April 2008.

**New (majority)****187 New section 141ED inserted**

- (1) After section 141EC, the following is inserted:
- “141ED Not paying employer monthly schedule amount**
- “(1) A taxpayer is liable to pay a penalty (referred to as a penalty for not paying employer monthly schedule amount) if—
- “(a) the taxpayer—
    - “(i) completes an employer monthly schedule showing an amount of tax (the **returned amount**) payable by the taxpayer to the Commissioner for the return period; and
    - “(ii) provides the employer monthly schedule to the Commissioner; and
    - “(iii) fails to pay to the Commissioner by the due date an amount owing to the Commissioner (the **unpaid amount**) of the returned amount; and
  - “(b) the Commissioner, after the due date for the returned amount, gives to the taxpayer a notice (the **Commissioner’s notice**)—

**New (majority)**

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| <p>“(i) that the taxpayer is liable to pay a penalty for failing to pay the unpaid amount by the due date and how the penalty is calculated; and</p> <p>“(ii) of the circumstances in which further penalties will be imposed and how a further penalty will be calculated; and</p> <p>“(iii) of actions that the taxpayer may take to avoid the imposition of further penalties; and</p> <p>“(c) <b>subsection (3)</b> does not apply to the taxpayer.</p> <p>“(2) Before giving to the taxpayer the first Commissioner’s notice in relation to the returned amount, the Commissioner must give to the taxpayer a notice that a penalty may be imposed under this section if the unpaid amount is not paid.</p> <p>“(3) A taxpayer is not liable to pay a penalty for not paying employer monthly schedule amount in relation to an unpaid amount if—</p> <p style="padding-left: 20px;">“(a) the taxpayer is a receiver or liquidator—</p> <p style="padding-left: 40px;">“(i) appointed after the end of the return period referred to in <b>subsection (1)(a)</b>; and</p> <p style="padding-left: 40px;">“(ii) having insufficient funds available to pay the unpaid amount:</p> <p style="padding-left: 20px;">“(b) the taxpayer—</p> <p style="padding-left: 40px;">“(i) agrees with the Commissioner, before the penalty date under <b>subsection (4)</b> for the due amount, to an instalment arrangement (the <b>instalment arrangement</b>), of the same type as an instalment arrangement referred to in section 177B, to pay the unpaid amount; and</p> <p style="padding-left: 40px;">“(ii) pays the unpaid amount under the instalment arrangement.</p> <p>“(4) A penalty payable for not paying employer monthly schedule amount in relation to an unpaid amount has a due date (the <b>penalty date</b>) that is—</p> <p style="padding-left: 20px;">“(a) the date of the Commissioner’s notice, if the penalty is the first penalty in relation to the returned amount; or</p> <p style="padding-left: 20px;">“(b) one month after the penalty date for the preceding penalty, if <b>paragraph (a)</b> does not apply.</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> |
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## New (majority)

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| “(5) The amount of the penalty for not paying employer monthly schedule amount in relation to an unpaid amount is—  |    |
| “(a) 10% of the unpaid amount on the day before the penalty date, if the taxpayer—  |    |
| “(i) fails to agree to an instalment arrangement with the Commissioner before the day that is 1 month after the penalty date; and   | 5  |
| “(ii) fails to pay the unpaid amount before the day that is 1 month after the penalty date; or  |    |
| “(b) 10% of the unpaid amount on the day before the penalty date, if the taxpayer—  | 10 |
| “(i) agrees to an instalment arrangement with the Commissioner before the penalty date; and   |    |
| “(ii) fails to comply with the instalment arrangement before the day that is 1 month after the penalty date; or   | 15 |
| “(c) 5% of the unpaid amount on the day before the penalty date, if—  |    |
| “(i) the taxpayer pays the unpaid amount, or agrees to an instalment arrangement with the Commissioner, after the penalty date and before the day that is 1 month after the penalty date; and       | 20 |
| “(ii) <b>paragraph (b)</b> does not apply.  |    |
| “(6) A taxpayer may be liable to pay more than 1 penalty for not paying employer monthly schedule amount arising from an employer monthly schedule.   | 25 |
| “(7) The maximum amount of penalties under this section that may be imposed is 150% of the returned amount that is unpaid when the first penalty is imposed under this section.                     |    |
| “(8) If the penalty date for a penalty would, in the absence of this subsection, be a date in a month that does not exist in the month, the penalty date is the date of the last day in the month.” | 30 |
| (2) <b>Subsection (1)</b> applies for tax positions taken on or after 1 April 2008.   | 35 |

**Struck out (majority)**

**188 Reduction in penalty for voluntary disclosure of tax shortfall**

- (1) Section 141G(3)(a) is replaced by the following:
  - “(a) for pre-notification disclosure is—
    - “(i) 100%, if the shortfall penalty is for not taking reasonable care or for taking an unacceptable tax position; or
    - “(ii) 75%, if **subparagraph (i)** does not apply.”.
- (2) **Subsection (1)** comes into force on **17 May 2007**.

**New (majority)**

**188 Reduction in penalty for voluntary disclosure of tax shortfall** 10

- (1) Section 141G(3)(a) is replaced by the following:
  - “(a) for pre-notification disclosure is—
    - “(i) 100%, if the shortfall penalty is for not taking reasonable care, for taking an unacceptable tax position, or for an unacceptable interpretation; or
    - “(ii) 75%, if **subparagraph (i)** does not apply.”.
- (2) **Subsection (1)** applies for voluntary disclosures made on or after 17 May 2007.

**Struck out (majority)**

**189 Reduction where temporary shortfall** 20

- (1) Section 141I(3)(d) is replaced by the following:
  - “(d) the Commissioner is satisfied that, before the end of the 2-year period beginning after the day on which the taxpayer took the tax position, the tax shortfall will be remedied—
    - “(i) as a result of actions taken by the taxpayer:
    - “(ii) by the operation of law or circumstances.”
- (2) **Subsection (1)** applies for tax positions taken on or after 1 April 2008.

**New (majority)**

**189 Reduction where temporary shortfall**

- (1) Section 141I(3) is replaced by the following:
- “(3) A tax shortfall is a temporary tax shortfall for the return period of a tax position if, when the Commissioner considers the assessment of a shortfall penalty, the Commissioner is satisfied that—
- “(a) the tax shortfall has been or will be, in an earlier or later return period, permanently reversed or corrected—
- “(i) before the end of the 4-year period beginning after the day on which the taxpayer took the tax position; and
- “(ii) with the effect that the taxpayer pays or returns for the relevant return periods the correct total amount of tax, not including penalties and interest, in respect of the tax position; and
- “(iii) as a result of actions taken by the taxpayer or by the operation of law or circumstances; and
- “(b) no tax shortfall will arise in a later return period in respect of a similar tax position; and
- “(c) no arrangement exists with the purpose or effect of creating for another return period a tax deferral or advantage related to the tax position.”
- (2) **Subsection (1)** applies for tax positions taken on or after 1 April 2008.

**Struck out (majority)**

**190 Limitation on reduction of shortfall penalty**

- (1) Section 141J(d) is replaced by the following:
- “(d) is reduced by—
- “(i) 100%, if the shortfall penalty is for not taking reasonable care or for taking an unacceptable tax position and the tax shortfall is temporary and voluntarily disclosed in accordance with section 141G before notification of audit; or



**Struck out (majority)**

- “(ii) 75%, if **subparagraph (i)** does not apply:”.
- (2) **Subsection (1)** comes into force on **17 May 2007**.

**New (majority)**

**190 Limitation on reduction of shortfall penalty**

- (1) Section 141J, other than the heading, is replaced by the following: 5
- “(1) This section applies to a shortfall penalty payable by a taxpayer if—
- “(a) the taxpayer makes a voluntary disclosure; and
- “(b) the shortfall penalty is payable in respect of a temporary tax shortfall; and 10
- “(c) the shortfall penalty would be reduced under section 141G or 141H in the absence of this section.
- “(2) The shortfall penalty is reduced by—
- “(a) 100%, if— 15
- “(i) the shortfall penalty is for not taking reasonable care, for taking an unacceptable tax position, or for taking a tax position involving an unacceptable interpretation of a tax law; and
- “(ii) the tax shortfall is voluntarily disclosed under section 141G before notification of a pending tax audit or investigation; or 20
- “(b) 75%, if **paragraph (a)** does not apply.
- “(3) A shortfall penalty to which this section applies is not reduced under any other section.”
- (2) **Subsection (1)** applies for voluntary disclosures made on or after 17 May 2007. 25

**191 Section 141KB repealed**

- (1) Section 141KB is repealed.
- (2) **Subsection (1)** applies for tax positions taken on or after 1 April 2008. 30

**192 Due date for payment of late filing penalty**

(1) In section 142(1), “or a return required by sections 16 to 18 of the Goods and Services Tax Act 1985” is inserted after “an employer monthly schedule”.

(2) After section 142(1A), the following is inserted:

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“(1B) The due date for the payment of a late filing penalty for a return required by sections 16 to 18 of the Goods and Services Tax Act 1985 for a taxable period is—

**Struck out (majority)**

“(a) the 28th day of the month following the end of the taxable period, if **paragraph (b) or (c)** do not apply; or

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**New (majority)**

“(a) the 28th day of the month following the end of the taxable period, if **paragraphs (b) and (c)** do not apply; or

“(b) the 15th day of January, if the month following the end of the taxable period is December; or

“(c) the 7th day of May, if the month following the end of the taxable period is April.”

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(3) **Subsections (1) and (2)** apply for a tax return required to be furnished under sections 16 to 18 of the Goods and Services Tax Act 1985 and due on or after 1 April 2008.

**New (majority)**

**192B New due date for payment of tax that is not a penalty**

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(1) Section 142A(1), (1B), and (2) are replaced by the following:

“(1) This section applies if the Commissioner makes for a taxpayer—

“(a) an assessment (the **new assessment**) of tax for which the taxpayer has not been assessed earlier:

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“(b) an amended assessment (the **increased assessment**)—  
“(i) of an amount of tax exceeding the amount for which the taxpayer is liable immediately before the increased assessment; and

**New (majority)**

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| “(ii) made less than 30 days before, or on or after, the due date for the tax for which the taxpayer is liable immediately before the increased assessment. |    |
| “(2) The Commissioner must—   | 5  |
| “(a) fix a date that is 30 or more days after the date of the notice of the assessment for the payment of—  |    |
| “(i) the tax under a new assessment:  |    |
| “(ii) the increase of tax under an increased assessment; and  | 10 |
| “(b) give notice of the date to the taxpayer in the notice of the assessment.”  |    |
| (2) In section 142A(3),—  |    |
| (a) in the words before paragraph (a), “Subsections (1) and (2) do” is replaced by “Subsection (2) does”:   | 15 |
| (b) in paragraph (b), “subsection (1) or” is deleted.   |    |
| (3) Section 142A(4) is repealed.  |    |

**193 Knowledge offences**

In section 143A(5)(f), “2006.” is replaced by “2006:” and the following is added:

- “(g) a deduction of retirement scheme contribution withholding tax.”

**194 Imposition of civil and criminal penalties**

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| (1) In section 149(2), “, other than under <b>section 141ED</b> ,” is inserted after “shortfall penalty”. | 25 |
| (2) In section 149(5), “, other than under <b>section 141ED</b> ,” is inserted after “shortfall penalty”. |    |
| (3) <b>Subsections (1) and (2)</b> apply for tax positions taken on or after 1 April 2008.                |    |

**New (majority)**

**194B Remission for reasonable cause**

In section 183A(1)(h), “2006.” is replaced by “2006:” and the following is added:

- “(i) a penalty for not paying employer monthly schedule amount imposed by **section 141ED**.”

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**194C Remission consistent with collection of highest net revenue over time**

In section 183D(1), after paragraph (bc), the following is inserted:

- “(bd) a penalty for not paying employer monthly schedule amount imposed by **section 141ED**; and”.

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**194D Small amounts of penalties and interest not to be charged**

In section 183F(1), after paragraph (ba), the following is inserted:

- “(bb) a taxpayer is not liable to pay a penalty for not paying employer monthly schedule amount if the unpaid amount on the day before the date of the Commissioner’s notice under **section 141ED(1)(b)** is less than \$100.”

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**195 New section 226B inserted**

After section 226, the following is inserted:

**“226B Business group amnesties**

**Struck out (majority)**

- “(1) The Commissioner may declare an amnesty (a **business group amnesty**) under this section in relation to a group of persons, each of whom carries on a type of activity as a main business (the **affected business**), if the Commissioner considers that declaring the amnesty is consistent with—
- “(a) protection of the integrity of the tax system; and

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**Struck out (majority)**

“(b) collection over time of the highest net revenue that is practicable within the law.

**New (majority)**

- “(1) The Commissioner may declare an amnesty (a **business group amnesty**) under this section in relation to a group of persons, each of whom carries on a type of activity as the person’s main business (the **affected business**), if the Commissioner considers that declaring the amnesty is consistent with—
- “(a) protection of the integrity of the tax system; and
- “(b) collection over time of the highest net revenue that is practicable within the law.
- “(2) The Commissioner, when declaring a business group amnesty, must announce the days that begin and end the period for which the business group amnesty is available.
- “(3) The Commissioner may change a day that begins or ends the period for which a business group amnesty is available by an announcement made on or before the day.
- “(4) A person is eligible to benefit from a business group amnesty if the person—
- “(a) is carrying on the affected business when the amnesty becomes available; and
- “(b) has carried on the affected business throughout the period of 3 income years ending before the income year in which the amnesty becomes available; and
- “(c) has not previously benefited from a business group amnesty; and
- “(d) has not been notified of a pending tax audit or investigation before the amnesty becomes available.
- “(5) During the period for which a business group amnesty is available, a person may give a notice to the Commissioner in a form prescribed by the Commissioner—
- “(a) stating that the person wishes to benefit from the amnesty; and

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“(b) stating that the person is carrying on the affected business; and “(c) stating the period for which, and the place at which, the person has carried on the affected business as a business; and “(d) providing a statement of assets and liabilities for the income year ending before the income year in which the business group amnesty becomes available; and	5
<b>Struck out (majority)</b>	
“(e) providing any other information required by the Commissioner.	10
<b>New (majority)</b>	
“(e) giving details of actions and omissions relating to the business that the person considers might give rise to an assessment, amended assessment, or prosecution if the person did not benefit from the amnesty; and “(f) providing any other information required by the Commissioner.	15
“(6) A person who is eligible under <b>subsection (4)</b> and gives a notice under <b>subsection (5)</b> is a person (an <b>affected person</b> ) who benefits from the amnesty.	
“(7) The Commissioner may, as if the business group amnesty were not declared,— “(a) investigate the financial affairs of an affected person for the period of— “(i) the income year ending before the income year in which the Commissioner declares the amnesty; and “(ii) the income year in which the Commissioner declares the amnesty; and “(b) make an assessment or amended assessment of the affected person for the income years referred to in <b>paragraph (a)</b> .	20 25 30

- “(8) After an affected person gives a notice under **subsection (5)**, the Commissioner must not, in relation to income years before the income years referred to in **subsection (7)(a)**,—
- “(a) begin an investigation of the income and deductions of the affected person relating to the affected business: 5
- Struck out (majority)**
- “(b) make an assessment or amended assessment of the affected person based on figures for income and deductions relating to the affected business that differ from the declared income and deductions relating to the affected business, except if **subsection (10)** applies. 10
- New (majority)**
- “(b) make an assessment or amended assessment of the affected person based on figures for income and deductions relating to the affected business that differ from the figures for income and deductions relating to the affected business included by the affected person in a return of income provided before the date of the notice under **subsection (5)**, except if **subsection (10)** applies. 15
- “(9) After an affected person gives a notice under **subsection (5)**, the Commissioner must not begin under this or another Act a prosecution of the affected person for an action or omission before or in giving the notice if— 20
- “(a) the affected person provides information relating to the action or omission to the Commissioner; and
- “(b) **subsection (10)** does not apply.
- “(10) The Commissioner may make an assessment, make an amended assessment, or bring a prosecution, that would otherwise be contrary to **subsection (8) or (9)**, if the assessment or prosecution arises from an investigation of which the person is given notice, and that the Commissioner begins, before the affected person gives the notice under **subsection (5)**. 25 30
- “(11) The Commissioner must report in writing to the Minister on the results of a business group amnesty in a report accompanying a report under section 141L.

“(12) The Minister must lay a copy of the report before the House of Representatives at the same time as the report under section 141L.”

*KiwiSaver-related amendments to Tax Administration Act 1994*

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196	<div> <div>Tax Administration Act 1994</div> <div>Sections 197 to 199 amend the Tax Administration Act 1994.</div> </div>

New (majority)	
196	<div> <div>Tax Administration Act 1994</div> <div>Sections 197 to 199G amend the Tax Administration Act 1994.</div> </div>

197	<div> <div>Interpretation</div> <div>In section 3(1), in the definition of <b>tax</b>—</div> <div>(a) the following is inserted after paragraph (a)(iii)(CB):</div> <div> <div>“(CC) an amount of short payment under Part 3, subpart 3 of the KiwiSaver Act 2006 that relates to a compulsory employer contribution:</div> <div>“(CD) an amount of compulsory employer contributions unpaid, specified in a notice under <b>section 101I(5)</b> of the KiwiSaver Act 2006.”:</div> </div> <div>(b) the following is inserted after paragraph (a)(vii):</div> <div>“(viii) an amount of short payment under Part 3, subpart 3 of the KiwiSaver Act 2006 that does not relate to a compulsory employer contribution.”:</div> <div>(c) the following is inserted after paragraph (d)(iii)(C):</div> <div>“(CB) an amount of short payment under Part 3, subpart 3 of the KiwiSaver Act 2006 that relates to a compulsory employer contribution:</div> </div>	<div>10</div> <div>15</div> <div>20</div> <div>25</div>
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“(CC) an amount of compulsory employer contributions unpaid, specified in a notice under **section 101(5)** of the KiwiSaver Act 2006.”:

- (d) the following is inserted after paragraph (d)(viii): 5
- “(viii) an amount of short payment under Part 3, subpart 3 of the KiwiSaver Act 2006 that does not relate to a compulsory employer contribution.”.

**New (majority)**

**197B Interpretation**

In section 3(1), in the definition of **civil penalty**, in paragraph (e), “or 216” is omitted. 10

**198 Construction of certain provisions**

**Struck out (majority)**

The following is inserted after section 4A(3)(bb):

**New (majority)**

After section 4A(3)(bb), the following is inserted:

- “(bc) amounts of compulsory employer contributions that must be paid under **Part 3, subpart 3A** of the KiwiSaver Act 2006 to the Commissioner, including an amount of compulsory employer contributions unpaid, specified in a notice under **section 101(5)** of that Act; or”.
- 15

**New (majority)**

**198B Tax credit relating to KiwiSaver and complying superannuation fund members: member credit form**

- (1) In section 68C(3)(a), “and tax file number” is replaced by “and (if known) tax file number”. 20
- (2) Section 68C(4) is replaced by the following:

**New (majority)**

“(4) The fund provider may claim an amount of a tax credit under section KJ 1 of the Income Tax Act 2004 for the person if the provider meets the requirements of subsection (2)(b) and (c), and is satisfied that the amount of tax credit has not previously been claimed. A claim under this subsection may be supplementary to or included in a claim under subsection (3), and must be in the form prescribed under subsection (3).”

5

**199 Persons excluded**

**Struck out (majority)**

The following is inserted after section 120B(b):

**New (majority)**

After section 120B(b), the following is inserted:

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“(bb) an employer in relation to amounts of compulsory employer contributions that must be paid under **Part 3, subpart 3A** of the KiwiSaver Act 2006 to the Commissioner, including an amount of compulsory employer contributions unpaid, specified in a notice under **section 101(5)** of that Act; or”.

15

**New (majority)**

**199B Challenging civil penalties**

In section 138L(2)(ab), “or 216” is omitted.

**199C Knowledge offences**

In section 143A(5)(f), “2006.” is replaced by “2006:”, and the following is added:

20

“(g) amounts of compulsory employer contributions that must be paid under **Part 3, subpart 3A** of the KiwiSaver Act 2006 to the Commissioner, including an amount of

**New (majority)**

compulsory employer contributions unpaid, specified in  
a notice under **section 101(5)** of that Act.”

**199D Deduction of tax from payments due to defaulters**

In section 157(10), in the definition of **income tax**, after  
paragraph (g), the following is added:

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“(h) an amount of short payment under **Part 3, subpart 3** of the  
KiwiSaver Act 2006 that relates to a compulsory  
employer contribution:

“(i) an amount of compulsory employer contributions  
unpaid, specified in a notice under **section 101(5)** of the  
KiwiSaver Act 2006.”

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**199E Remission for reasonable cause**

In section 183A(1)(h), “or 216” is omitted.

**199F Remission in circumstances of qualifying event**

In section 183ABA(3A), “or 216” is omitted.

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**199G Remission consistent with collection of highest net  
revenue over time**

In section 183D(1)(bc), “or 216” is omitted.

**Part 3**

**Amendments to other Acts and Regulations**

20

*Amendments to KiwiSaver Act 2006*

**200 KiwiSaver Act 2006**

**Sections 201 to 237** amend the KiwiSaver Act 2006.

**Struck out (majority)**

**201 Interpretation**

(1) This section amends section 4(1).

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(2) The definition of **deduction rate** is replaced by the following:

**Struck out (majority)**

- “**deduction rate** means the rate at which deductions must be made under **section 66 or 66A**, as the case may be”.
- (c) does not include a compulsory employer contribution for the purposes of **section 99**
- (3) After the definition of **employer**, the following is inserted: 5
- “**employer contribution**—
- “(a) means a specified superannuation contribution made by an employer for an employee’s KiwiSaver scheme or complying superannuation fund; and
- “(b) includes a compulsory employer contribution under **subpart 3A of Part 3**; and”.
- (4) The following is added to the definition of **salary or wages**: 10
- “(c) **section 101B(4)** applies in **subpart 3A of Part 3**”.
- (5) After the definition of **salary or wages**, the following is inserted: 15
- “**specified superannuation contribution** has the same meaning as in section OB 1 of the Income Tax Act 2004”.

**New (majority)****201 Interpretation**

- (1) This section amends section 4(1).
- (2) The definition of **deduction rate** is replaced by the following: 20
- “**deduction rate** means the rate at which deductions must be made under **section 66 or 66A**, as the case may be”.
- (3) After the definition of **default KiwiSaver scheme**, the following is inserted:
- “**defined benefit scheme member** means an employee in relation to whom the employer pays, credits, or provides for amounts (**defined benefit contributions**), and— 25
- “(a) the defined benefit contributions are specified superannuation contributions made to a registered superannuation scheme (the **contributions scheme**), and— 30
- “(i) the contributions scheme was registered before 17 May 2007, or the contributions scheme is one

**New (majority)**

(a <b>succeeding scheme</b> ) for which there is, due to all relevant members transferring to the succeeding scheme by virtue of section 9BAA of the Superannuation Schemes Act 1989, a prior registered superannuation scheme (a <b>prior scheme</b> ) and that prior scheme or another prior scheme for the contributions scheme were registered before 17 May 2007; and	5
“(ii) the employer provided access for employees generally to the contributions scheme or a prior scheme for the contributions scheme before 17 May 2007; and	10
“(iii) the employee—	
“(A) is employed by the employer before 1 April 2008, and the employer makes or has agreed with the employee to make specified superannuation contributions for the employee before 1 April 2008 to the contributions scheme or a prior scheme for the contributions scheme; or	15
“(B) is covered by a collective agreement that is in force before 17 May 2007 and expires after 1 April 2008 under which the employer is required to make specified superannuation contributions to the contributions scheme or a prior scheme for the contributions scheme; or	20
“(C) has had contributions paid or credited to the contributions scheme or a prior scheme for the contributions scheme by a previous employer, and those contributions met the requirements of this definition; and	25
“(b) the defined benefit contributions are made in respect of a retirement benefit for the employee that is calculated by reference to their salary or wages; and	30
“(c) the employer is required to make the defined benefit contribution by statute, trust deed, or under an employment contract (including a collective agreement)”.	35

(4) The definition of **employer** is replaced by the following:

“**employer** means,—

“(a) in relation to a person (**person A**) who is not a private domestic worker, the person (**person B**) who pays, or is liable to pay, salary or wages to person A: 5

“(b) for the purposes of subparts 1 and 3 of Part 3, in relation to a private domestic worker who is liable to pay tax to the Commissioner under section NC 16 of the Income Tax Act 2004, the private domestic worker, not person B: 10

“(c) for the purposes of **subpart 3A of Part 3**, in relation to a private domestic worker who is liable to pay tax to the Commissioner under section NC 16 of the Income Tax Act 2004, the private domestic worker, not person B, if the worker chooses to be the employer by applying **subpart 3A of Part 3**”. 15

(5) After the definition of **employer**, the following is inserted:

“**employer contribution**—

“(a) means a specified superannuation contribution made by an employer for an employee’s KiwiSaver scheme or complying superannuation fund; and 20

“(b) includes a compulsory employer contribution under **subpart 3A of Part 3**; and

“(c) does not include—

“(i) an amount that does not count as a contribution under section 68(2); and 25

“(ii) for the purposes of **section 99**, a compulsory employer contribution to the extent provided by that section”.

(6) In the definition of **independent trustee**,— 30

(a) in paragraph (a)(i), “, administration manager, or investment manager” is omitted:

(b) paragraph (a)(iii) is omitted:

(c) in paragraph (a)(viii), “does not have a director to whom any of subparagraphs (i) to (vii) would apply” is 35

**New (majority)**

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|-----|--|----|
|     | <p>replaced by “has no director that fails to meet any of the requirements described in subparagraphs (i) to (vii)”:</p>   |    |
| (d) | <p>in paragraph (b), “does not have a director to whom any of subparagraphs (i) to (vii) would apply” is replaced by “has a director that meets all of the requirements described in subparagraphs (i) to (vii)”.</p>                      | 5  |
| (7) | <p>The definition of <b>PAYE period</b> is replaced by the following:<br/> <b>“PAYE period</b> has the same meaning as in <b>paragraph (a)</b> of the definition of <b>PAYE period</b> in section OB 1 of the Income Tax Act 2004”.</p>    | 10 |
| (8) | <p>After the definition of <b>personal representative</b>, the following is inserted:<br/> <b>“private domestic worker</b> has the same meaning as in section OB 1 of the Income Tax Act 2004”.</p>  |    |
| (9) | <p>In the definition of <b>salary or wages</b>,—</p>   | 15 |
| (a) | <p>paragraph (a) is replaced by the following:<br/> <b>“(a)</b> it excludes—</p>   |    |
|     | <p>    <b>“(i)</b> salary or wages described in subparagraphs (iv), (v), (ix), or (xi) of paragraph (b) of that definition in that Act; and</p>  | 20 |
|     | <p>    <b>“(ii)</b> payments that are income under section CF (1)(b) to (e), (g), or (h) of that Act:”</p>   |    |
| (b) | <p><b>paragraph (a)</b>, as amended, and paragraph (b) are both replaced by the following:</p>   |    |
|     | <p><b>“(a)</b> it excludes—</p>  | 25 |
|     | <p>    <b>“(i)</b> salary or wages described in subparagraphs (i), (iv), (v), (ix), or (xi) of paragraph (b) of that definition in that Act; and</p>   |    |
|     | <p>    <b>“(ii)</b> payments that are income under section CF (1)(b) to (e), (g), or (h) of that Act; and</p>  | 30 |
|     | <p>    <b>“(iii)</b> expenditures on account of an employee and allowances calculated by reference to reasonable actual costs, if the expenditures or allowances are for accommodation overseas or other costs of living overseas; and</p> | 35 |

**New (majority)**

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|--|--|
| <p>“(iv) for the purposes of contributions to complying superannuation funds, bonuses, commissions, and other amounts not included in an employee’s gross base salary or wages by the relevant complying superannuation fund; and</p> <p>“(v) for the purposes of <b>subpart 3A of Part 3 of this Act</b>,—</p> <p style="padding-left: 40px;">“(A) salary or wages described in subparagraphs (x), or (xii) to (xvi) of paragraph (b) of that definition in that Act; and</p> <p style="padding-left: 40px;">“(B) payments of weekly compensation, as defined in the Injury Prevention, Rehabilitation, and Compensation Act 2001, made by an employer, unless the employer chooses to not exclude the payments from this definition of salary or wages:</p> <p>“(b) it includes extra pay (as defined in section OB 1 of the Income Tax Act 2004), unless—</p> <p style="padding-left: 40px;">“(i) otherwise excluded under <b>paragraph (a)</b> of this definition; or</p> <p style="padding-left: 40px;">“(ii) the amount is a redundancy payment”.</p> <p>(10) After the definition of <b>salary or wages</b>, the following is inserted:</p> <p style="padding-left: 40px;">“<b>specified superannuation contribution</b> has the same meaning as in section OB 1 of the Income Tax Act 2004”.</p> <p><b>201B Meaning of provider</b></p> <p style="padding-left: 40px;">In section 5(1), “provider of a scheme” is replaced by “provider of a KiwiSaver scheme or a complying superannuation fund”.</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> |
| <p><b>202 Application</b></p> <p>(1) In section 6(1)(a), “personally present” is replaced by “living”.</p>   | <p>30</p>  |



**New (majority)**

- (2) In section 6(2)(b), “2004).” is replaced by “2004); or”, and the following is added:

“(c) the employer does not meet the requirements in subsections (a) and (b), and the employer chooses to apply this Act.”

5

**202B Who automatic enrolment rules apply to**

In section 10, in the words before the paragraphs, “who” is replaced by “who is not a secondee and”.

**202C Meaning of new employment**

- (1) In the heading to section 11, “**new employment**” is replaced by “**new employment and secondee**”. 10

- (2) In section 11(1)(c), “employment.” is replaced by “employment; and”, and the following is inserted:

“(d) does not include employment, at the end of a secondment, by the employer from which a secondee was seconded.” 15

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

“(2B) **Secondee** means an employee seconded from an employer to the employment of another employer (**employer B**), in respect of which the employee is on employer B’s payroll.” 20

**203 Temporary employment**

- (1) In section 12(1)(b), “or less.” is replaced by “or less; or”, and the following is added:

“(c) the employment is described in section 28(1)(a)(ii) of the Holidays Act 2003.” 25

- (2) Section 12(2)(b) is replaced by the following:

“(b) in the case of employment which was temporary under subsection (1)(b), on the 28th day after the employee started the employment.”

**204 How to opt out**

The following is added to section 17:

- “(6) For the purposes of sections 17 to 20, a PAYE intermediary (within the meaning of section OB 1 of the Income Tax Act 2004) acting under subpart NBA of that Act is treated as an employer.” 5

**Struck out (majority)**

**205 Extension of opt-out period**

In section 18(2), “opt-out notice” is replaced by “opt-out notice, if it is received by the Commissioner or the employer”.

**New (majority)**

**205 Extension of opt-out period**

- (1) In section 18(1)(b)(iv), “accepted.” is replaced by “accepted; or”, and the following is added: 10
- “(v) a mistake described in **section 59A(b)** has occurred.”
- (2) In section 18(2), “opt-out notice” is replaced by “opt-out notice, if it is received by the Commissioner or the employer”. 15

**205B New section 23A inserted**

After section 23, the following is inserted:

**“23A PAYE intermediaries**

For the purposes of sections 22 and 23, a PAYE intermediary (within the meaning of section OB 1 of the Income Tax Act 2004) acting under subpart NBA of that Act is treated as an employer.” 20

**205C Eligibility of employers who have schemes established under master trusts**

In section 28(b), “scheme.” is replaced by “scheme; and”, and the following is added: 25

- “(c) anything else that the Government Actuary decides is relevant to evidencing compliance with the rules in section 25, in respect of the employer’s employees.”

**New (majority)**

**205D How to opt in**

After section 34(4), the following is added:

- “(5) For the purposes of sections 34 to 37, a PAYE intermediary (within the meaning of section OB 1 of the Income Tax Act 2004) acting under subpart NBA of that Act is treated as an employer.” 5

**205E Effect of opting in by employees**

In section 36(1),—

- (a) in the words before paragraph (a), “opts in” is replaced by “opts in under section 34(1)(a) or (b)”: 10
  - (b) in paragraph (a),—
    - (i) in the words before subparagraph (i), “becomes” is replaced by “is”: 15
    - (ii) in the words before subparagraph (i), “automatic” is omitted: 15
    - (iii) in subparagraph (i), “the employer to whom the opting in relates” is replaced by “the employee’s employer”:
  - (c) after subsection (1), the following is added: 20
- “(1B) If an employee to whom **subsection (1)(a)(i)** applies has more than 1 employer who pays salary or wages to them, then, despite **subsection (1)(a)(i)**, they may choose 1 or more employers who must make deductions of contributions from salary or wages in accordance with subpart 1 of Part 3.” 20

**206 Commissioner must supply information pack** 25

- (1) In section 40(1), “must supply” is replaced by “must initially supply”.
- (2) In section 40(2), “on request” is replaced by “on any reasonable request”.

**207 Employer may choose scheme for employees** 30

- (1) In section 46(2), “new” is omitted.

**New (majority)**

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|-----|---|
| (2) | In section 46(3)(b), “would apply,” is replaced by “apply, or would apply”. |
|-----|---|

**208 Effect of employer choice of KiwiSaver scheme**

Sections 48(1) and (2) are replaced by the following:

- |      |  |    |
|------|--|----|
| “(1) | This section applies when—   | 5  |
|      | “(a) an employer’s choice of KiwiSaver scheme is effective under section 47; and   |    |
|      | “(b) an employee of the employer has not directly contracted to be a member of a KiwiSaver scheme with the provider of a scheme; and | 10 |
|      | “(c) the employee is an employee—  |    |
|      | “(i) to whom the automatic enrolment rules apply; or   |    |
|      | “(ii) who opted in under section 34(1)(b); and   |    |
|      | “(d) more than 3 months have passed since the Commissioner received the first contribution in respect of the employee; and           | 15 |
|      | “(e) there is no relevant dispute under section 212 or 213 in relation to Part 2 or 3.   |    |
| “(2) | On the first day that this section applies, the employee is treated as having—   | 20 |
|      | “(a) offered to be a member of the employer’s chosen KiwiSaver scheme; and   |    |
|      | “(b) subscribed for securities in that scheme.”  |    |

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

- |      |  |    |
|------|--|----|
| (1)  | Section 50(1) is replaced by the following:  | 25 |
| “(1) | This section applies, in respect of a person who is an employee of an employer and their employment with that employer, when the Commissioner has received from the employer,— | 30 |
|      | “(a) notice under section 23 of the person’s automatic enrolment; or   |    |
|      | “(b) notice under section 34(3) of a person’s opt-in under section 34(1)(b).”  | 35 |

- (2) In section 50(3), the words before the paragraphs are replaced by “As soon as practicable, the Commissioner must, in respect of the person’s employment with the employer,—”.

**210 Completion of allocation to default KiwiSaver scheme if person does not choose KiwiSaver scheme** 5

- (1) In section 51(4)(a), “3 months” is replaced by “as soon as practicable after 3 months”.
- (2) In section 51(5), “Part 1 or 2” is replaced by “Part 2 or 3”.

**New (majority)**

**210B Notification of transfers and requirement to transfer funds and information** 10

Sections 56(3)(c)(iv) and (v) are replaced by the following:

“(iv) as to whether the Crown contribution under section 226 is included in the member’s accumulation transferred to the new scheme.”

**211 Involuntary transfer** 15

In section 57(3), “section 44” is replaced by “section 44, but excluding section 44(b) (which relates to allocation to an employer’s chosen KiwiSaver scheme)”.

**New (majority)**

**211B New subpart 4 of Part 2 added** 20

After subpart 3 of Part 2, the following is added:

“Subpart 4—Initial and confirmed back-dated validation of invalid membership

**“59A When this subpart applies**

This subpart applies when, because of a mistake,—

- “(a) this Act has been applied to a person to whom, as a matter of law, this Act does not apply because the person fails to meet the requirements of section 6: 25
- “(b) the automatic enrolment rules have been applied to a person to whom, as a matter of law, those rules do not

**New (majority)**

<p>apply because the person fails to meet the requirements for the rules to apply:</p>	
<p>“(c) the rule allowing opt-in, in section 33, has been applied to a person to whom, as a matter of law, that rule does not apply because the person fails to meet the requirement of section 33(a).</p>	5
<p><b>“59B Initial back-dated validation</b></p>	
<p>“(1) As soon as practicable after anyone discovers the mistake, they must notify the Commissioner or the relevant KiwiSaver scheme provider.</p>	10
<p>“(2) The person described in <b>section 59A</b> is treated as a person who meets the requirements of section 6, the requirements for the application of the automatic enrolment rules, or the requirement of section 33(a), for a period—</p>	
<p>“(a) starting on the earliest day on which this Act applies, the automatic enrolment rules, or the rule allowing opt-in were applied to the person because of the mistake described in <b>section 59A</b>; and</p>	15
<p>“(b) ending on the earlier of—</p>	
<p>“(i) 3 months after the mistake is discovered by the person’s KiwiSaver scheme provider:</p>	20
<p>“(ii) 3 months after the mistake is notified to the provider by the Commissioner or another person:</p>	
<p>“(iii) the day the provider pays the member’s accumulation for the person to the Commissioner.</p>	25
<p><b>“59C Confirmed back-dated validation</b></p>	
<p>“(1) This section applies if, during the period of initial back-dated validation under <b>section 59B</b>, the person described in <b>section 59A</b>—</p>	
<p>“(a) is a person who meets the requirements of section 6, and the Commissioner decides that it is appropriate to apply this section:</p>	30
<p>“(b) is a person to whom the automatic enrolment rules were applied because of the mistake described in <b>section 59A</b>, and—</p>	35

**New (majority)**

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|---|---|
| <p style="margin-left: 40px;">“(i) they meet the requirements of section 6 or become a person who meets the requirements of section 6; and</p> <p style="margin-left: 40px;">“(ii) they are less than the New Zealand superannuation qualification age; and</p> <p style="margin-left: 40px;">“(iii) they do not opt out.</p> <p>“(2) The person is treated as a person in relation to whom no mistake described in <b>section 59A</b> was made, and, at that time, met the requirements of section 6 or the requirements of the automatic enrolment rules.</p> <p>“(3) The Commissioner must notify the provider that this section applies.</p> <p>“(4) The relevant provider does not pay the member’s accumulation for the person to the Commissioner.</p>   | <p>5</p> <p>10</p>                                |
| <p><b>“59D What happens when initial back-dated validation ends, with no confirmed back-dated validation?”</b></p>  |   |
| <p>“(1) This section applies when the period of initial back-dated validation under <b>section 59B</b> ends, and confirmed back-dated validation under <b>section 59C</b> has not occurred.</p> <p>“(2) The relevant provider must immediately—</p> <p style="margin-left: 20px;">“(a) provide the Commissioner with a notice stating, for the relevant person:</p> <p style="margin-left: 40px;">“(i) the amount of contributions received directly by the provider (not via the Commissioner) and when they were received; and</p> <p style="margin-left: 40px;">“(ii) the amounts paid out by the provider under a mortgage diversion facility, and when they were paid out; and</p> <p style="margin-left: 40px;">“(iii) the amounts paid out by the provider to the person as permitted withdrawals, when they were paid out, the types of permitted withdrawals, and the amount of Crown contributions included in the permitted withdrawals; and</p> <p style="margin-left: 20px;">“(b) pay the member’s accumulation for the person to the Commissioner, if the provider has not already done so.</p> | <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> |

**New (majority)**

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|--|----|
| “(3) The Commissioner must pay, in accordance with <b>subsection (4)</b> , as soon as practicable and without further authority than this section, an amount (the <b>refund amount</b> ) equal to the total of—  | 5  |
| “(a) the contributions received by the provider (whether directly or via the Commissioner), less the total of—   | 5  |
| “(i) the amounts paid out by the provider under a mortgage diversion facility:   |    |
| “(ii) the amounts paid out by the provider to the person as permitted withdrawals, excluding the amount of Crown contributions included in the permitted withdrawals:  | 10 |
| “(iii) Crown contributions:  |    |
| “(b) the contributions held in respect of the person in the holding account described in section 72, net of interest under section 84:   | 15 |
| “(c) the total amount of interest that the Commissioner would be liable for under section 84 on contributions described in <b>paragraphs (a) and (b)</b> , excluding amounts described in <b>paragraph (a)(i) to (iii)</b> on a first-in first-out basis. For the purposes of calculating the amount of interest payable on the relevant contributions, the <b>interest period</b> in section 87 is treated as the number of days in the period— | 20 |
| “(i) beginning on the day the Commissioner received the contribution or the provider received the contribution (if the contribution was not via the Commissioner):   | 25 |
| “(ii) ending with the day that the Commissioner pays the refund amount under this section.   | 30 |
| “(4) The refund amount must be paid to the person, their employer, the Crown, and any other person making a contribution in respect of the person, in proportion to the Commissioner’s best estimate of what they contributed, taking into account amounts described in <b>paragraph (a)(i) and (ii)</b> .   | 35 |
| “(5) When the Commissioner has paid the refund amount, the amount of member’s accumulation for the person previously   |    |



**New (majority)**

paid to the Commissioner (the <b>accumulation money</b> ), and the contributions held by the Commissioner in respect of the person in the holding account described in section 72 including interest under section 84 (the <b>holding account money</b> ) are treated in the following ways:	5
“(a) the accumulation money and the holding account money are public money, and are not trust money for the purposes of sections 66 to 68 of the Public Finance Act 1989:	
“(b) Subpart 2 of Part 3 does not apply to the accumulation money and holding account money, and the Commissioner must pay the money into the Crown Bank account.”	10
<b>211C When this subpart does not apply</b>	
In section 62(c), “is made” is replaced by “is made and the payment is not salary and wages for a private domestic worker.”	15
<b>211D New section 63A inserted</b>	
After section 63, the following is inserted:	
<b>“63A How subpart applies to private domestic workers</b>	20
For the purposes of this subpart, a private domestic worker who is an employer under <b>paragraph (b)</b> of the definition of <b>employer</b> is treated as making payments of salary or wages to themselves in the capacity of employee. Consequently, the private domestic worker may be both employer and employee.”	25

**Struck out (majority)**

<b>212 Section 66 replaced</b>	
Section 66 is replaced by the following:	
<b>“66 Obligation to make deductions: general rule</b>	
The employer must make deductions of contributions from each payment of the employee’s gross salary or wages of an	30

**Struck out (majority)**

amount equal to the contribution rate, unless **section 66A** applies.

**“66A Obligation to make deductions: transitional rule**

- “(1) This section applies for a payment of the employee’s gross salary or wages for a pay period that is in the period starting on 1 April 2008 and finishing on 31 March 2012 if— 5
- “(a) the employee is employed by the employer on 1 April 2008; and
- “(b) the employee is a member of a KiwiSaver scheme on 1 April 2008; and 10
- “(c) the employer has agreed before 1 April 2008 with the employee to make employer contributions in respect of the payment of the employee’s salary or wages for the KiwiSaver scheme; and
- “(d) the employee has chosen, before 1 April 2008, that employer contributions count towards the contribution rate. 15
- “(2) The employer must make deductions of contributions from the payment of gross salary or wages equal to the greater of—
- “(a) the minimum amount required to be deducted from the payment, given by **clause 1 of schedule 4**; and 20
- “(b) an amount equal to the transitional contribution rate, given by **clause 2 of schedule 4**, minus the gross amount of employer contributions paid in respect of that payment of salary or wages, to the extent to which the employer contributions— 25
- “(i) vest in the employee, as provided by the trust deed of the scheme, immediately after the contributions are made; and
- “(ii) are greater than the minimum amount of employer contributions, given by **clause 3 of schedule 4**, for that payment of salary or wages; and 30
- “(iii) are agreed, by the employee and the employer, to count towards the transitional contribution rate.”

**New (majority)**

**212 Section 66 replaced**

Section 66 is replaced by the following:

**“66 Obligation to make deductions: general rule**

The employer must make deductions of contributions from each payment of the employee’s gross salary or wages of an amount equal to the contribution rate, unless **section 66A** applies.

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**“66A Obligation to make deductions: transitional rule**

“(1) This section applies to a payment of the employee’s gross salary or wages that is for a pay period in the period starting on 1 April 2008 and finishing on 31 March 2012 if—

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“(a) the employer and the employee agree that they will use the transitional rates in **Schedule 4**; and

“(b) the employer contribution for the payment of salary or wages is equal to or greater than the relevant transitional rate for the employer, given in **Schedule 4**; and

15

“(c) the employer contribution vests in the employee, as provided by the trust deed of the KiwiSaver scheme, immediately after it is made.

“(2) The employer must make deductions of contributions from the payment of gross salary or wages equal to the relevant transitional rate for the employee, given by **Schedule 4**.”

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**212B Deductions entered in and paid out of holding account**

In section 73(3), “KiwiSaver scheme” is replaced by “KiwiSaver scheme, without further authority than this section”.

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**212C Initial contributions stay in holding account for 3 months**

(1) Section 75(1) is replaced by the following:

“(1) This section applies to all contributions received by the Commissioner in respect of a person in the 3-month period starting on the earlier of—

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“(a) the day on which the Commissioner receives the first contribution in respect of the person:

**New (majority)**

- “(b) the day on which the Commissioner is given notice or otherwise knows that the person is a member of a KiwiSaver scheme.”
- (2) In section 75(3), “3 months” is replaced by “3 months (without further authority than this section where those contributions meet the requirements of section 73(1))”. 5
- 212D Small amounts of contributions may be held until big enough to be on-paid**
- In section 77(3), “KiwiSaver scheme” is replaced by “KiwiSaver scheme (without further authority than this section where that amount meets the requirements of section 73(1))”. 10
- 213 Refund by Commissioner of amounts paid in excess of required amount of deduction or if employee opts out**
- In section 80(1), “the person from whose” is replaced by “a person in relation to whom a contribution was made, or from whose”. 15
- 214 Refund by provider of amounts paid in excess of required amount of contribution**
- In section 81(1), “the Commissioner the amount” is replaced by “the Commissioner no more than the amount”. 20

**New (majority)**

- 214B Interest on money in holding account**
- (1) In section 84(2), “Section 69 of the Public Finance Act 1989 does” is replaced by “Sections 68(2) and 69 of the Public Finance Act 1989 do”. 25
- (2) After section 84(2), the following is added:
- “(3) Despite subsection (1), the Commissioner is not liable to pay interest on any amount described in that subsection, if the relevant person has notified the Commissioner in writing of their wish to not be paid interest.” 30

**New (majority)**

**214C Deductions treated as received on 15th of month for interest purposes**

- (1) In the heading to section 85, “**Deductions treated as received on 15th of month**” is replaced by “**Time when contributions treated as received**”. 5
- (2) After section 85(2), the following is added:
- “(3) Every amount of employer contribution is treated, for the purpose of the payment of interest, as received by the Commissioner on the first day of the month in which the Commissioner receives the amount of employer contribution.” 10

**214D New section 92A inserted**

After section 92, the following is inserted:

- “**92A How subpart applies to private domestic workers**  
For the purposes of this subpart, a private domestic worker who is an employer under **paragraph (b)** of the definition of **employer** is treated as making payments of salary or wages to themselves in the capacity of employee. Consequently, the private domestic worker may be both employer and employee.” 15

**Struck out (majority)**

- 215 Section 93 replaced** 20  
Section 93 is replaced by the following:
- “**93 Employer contributions paid via Commissioner**  
“(1) An employer must pay an amount of employer contribution to the Commissioner.  
“(2) The payment of an amount of employer contribution must be accompanied by a remittance certificate. 25  
“(3) The contribution must be paid to the Commissioner within the time prescribed in section NC 15 of the Income Tax Act 2004 for the payment of tax deductions relating to the payment of salary or wages to which the contribution relates, as if the contribution were a tax deduction. 30

**Struck out (majority)**

- “(4) The employer must include details of contributions paid in respect of each employee on the employer monthly schedule for the payments of salary or wages to which the contribution relates.
- “(5) For the purposes of the Tax Administration Act 1994, to the extent to which an employer fails to comply with **subsection (4)** in respect of an amount of employer contribution that the employer must pay to the Commissioner, that amount is treated as a short payment for the PAYE period for which the failure occurs.”

**New (majority)**

**215 Section 93 replaced**

Section 93 is replaced by the following:

**“93 Employer contributions paid via Commissioner**

- “(1) An employer must pay all amounts of employer contributions to the Commissioner. 15
- “(2) The payment of an amount of employer contribution must be accompanied by a remittance certificate.
- “(3) If the employer is not a private domestic worker, the contribution must be paid to the Commissioner within the time prescribed in section NC 15 of the Income Tax Act 2004 for the payment of tax deductions relating to the payment of salary or wages to which the contribution relates, as if the contribution were a tax deduction. 20
- “(3B) If the employer is a private domestic worker, the contribution must be paid to the Commissioner within the time prescribed in section NC 16 of the Income Tax Act 2004 for the payment of tax relating to the payment of salary or wages to which the contribution relates, as if the contribution were tax. 25
- “(4) The employer must include details of employer contributions paid in respect of each employee on the employer monthly schedule for the payments of salary or wages to which the contribution relates. 30

**New (majority)**

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| <p>“(5) For the purposes of the Tax Administration Act 1994, to the extent to which an employer fails to comply with <b>subsection (4)</b> in respect of an amount of employer contribution that the employer must pay to the Commissioner, that amount is treated as a short payment for the PAYE period for which the failure occurs.”</p> | 5 |
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**216 Short payments by employers if not enough money remitted to Commissioner to cover all of employees’ deductions and employer contributions**

In section 98(3)(d), “subpart 1.” is replaced by “subpart 1; and”, and the following is added:

- “(e) employer contributions that are not compulsory employer contributions.”

**Struck out (majority)**

**217 New section 98 B inserted**

After section 98, the following is inserted: 15

**“98 B Quantifying short payments for the purposes of Income Tax Act 2004 and Tax Administration Act 1994**

For the purposes of the Income Tax Act 2004 and the Tax Administration Act 1994, an employer is treated as having an amount of short payment for a PAYE period equal to the difference between— 20

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| <p>“(a) the amount of employer contribution that is treated as received by the Commissioner under section 98(2) of this Act for the PAYE period; and</p> <p>“(b) the amount, for the PAYE period, of employer contribution shown on either or both of a remittance certificate or an employer monthly schedule in accordance with this subpart.”</p> | 25 |
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**New (majority)**

**217 New section 98A inserted**

After section 98, the following is inserted:

**“98A Quantifying short payments for the purposes of Income Tax Act 2004 and Tax Administration Act 1994**

For the purposes of the Income Tax Act 2004 and the Tax Administration Act 1994, an employer is treated as having an amount of short payment for a PAYE period equal to the difference between—

- “(a) the amount of employer contribution that is treated as received by the Commissioner under section 98(2) of this Act for the PAYE period; and
- “(b) the amount, for the PAYE period, of employer contribution shown on either or both of a remittance certificate and an employer monthly schedule in accordance with this subpart.”

**218 Short payments if not enough employer contribution remitted to cover all employees**

- (1) In section 99(2), the words before the formula are replaced by the following:
- “(2) For the purposes of this subpart, the amount of employer contribution (gross of any specified superannuation contribution withholding tax payable under the SSCWT rules) that the Commissioner is treated as receiving for any 1 employee is given by the following formula:”.
- (2) The following is added to section 99:
- “(4) For the purposes of this section, employer contribution does not include compulsory employer contribution to the extent of the employer’s entitlement to a tax credit under **section <KJ 1> <KJ 6>** of the Income Tax Act 2004 in relation to the contribution.”

**New (majority)**

**218B Refunds of employer contribution by provider**

- (1) In section 101(1),—



**New (majority)**

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| <p>(a) “may” is replaced by “must”:<br/> (b) “that this Act requires the Commissioner to on-pay to the provider” is replaced by “of the employer contribution that this Act requires”.</p> <p>(2) Section 101(2) is repealed.</p> | 5 |
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**Struck out (majority)**

**219 New subpart 3A of Part 3 inserted**

After subpart 3 of Part 3, the following is inserted:

“Subpart 3A—Compulsory employer contributions to KiwiSaver schemes and complying superannuation funds 10

**“101B Outline, and a definition**

“(1) An employer must pay, in accordance with **section 101E**, an amount of employer contribution (a **compulsory employer contribution**) calculated under **section 101D** for an employee, to the extent to which the employee meets the requirements in **section 101C** for a period to which a payment of salary or wages relates. 15

“(2) **Sections 101F and 101G** provide some rules for employer contributions, including compulsory employer contributions. Also, subpart 3 provides rules for employer contributions to KiwiSaver schemes. 20

“(3) The rest of the subpart provides rules relating to compulsory employer contributions to complying superannuation funds.

“(4) In this subpart, **salary or wages** means salary or wages defined in section 4(1), but excluding a payment of a type referred to in— 25

“(a) paragraph (b)(x) of the definition of **salary or wages** in section OB 1 of the Income Tax Act 2004 (which relates to parental leave payments paid under Part 7A of the Parental Leave and Employment Act 1987): 30

**Struck out (majority)**

- “(b) paragraph (b)(xii) to (xvi) of the definition of **salary or wages** in section OB 1 of the Income Tax Act 2004 (which relate to certain ACC payments).
- “101C Employee’s requirements**
- For the purposes of **section 101B(1)**, the requirements are that the employee—
- “(a) is a member of a KiwiSaver scheme or a complying superannuation fund for which the employer deducts or is required to deduct amounts from the salary or wages of the employee; and
- “(b) is aged 18 or over; and
- “(c) is not entitled to withdraw an amount from a fund or scheme under clause 4(3) of the KiwiSaver scheme rules (which relates to lock-in of funds) or a rule the same as that clause.
- “101D Compulsory employer contribution amount: general rule**
- “(1) The amount of a compulsory employer contribution is calculated using the following formula:
- (payment of gross salary or wages × compulsory rate) – other contributions – db increase.
- “(2) In the formula,—
- “(a) **payment of gross salary or wages** means a payment of gross salary or wages from which the employer deducts or is required to deduct an amount for the employee’s KiwiSaver scheme or complying superannuation fund:
- “(b) **compulsory rate** means, for the payment of salary or wages,—
- “(i) 1%, if the payment is made for a pay period that is in the year starting on 1 April 2008:
- “(ii) 2%, if the payment is made for a pay period that is in the year starting on 1 April 2009:
- “(iii) 3%, if the payment is made for a pay period that is in the year starting on 1 April 2010:

**Struck out (majority)**

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| <p>“(iv) 4%, if the payment is made for a pay period that is in a year starting on or after 1 April 2011:</p> <p>“(c) <b>other contributions</b> means specified superannuation contributions that the employer makes for the employee for the period to which the payment of salary or wages relates, if—</p> <p>    “(i) the employee is employed by the employer before 1 April 2008; and</p> <p>    “(ii) the employer provides to the employee access to a registered superannuation scheme as at 17 May 2007; and</p> <p>    “(iii) the employer makes or has agreed with the employee to make the specified superannuation contributions for the employee before 1 April 2008 to the registered superannuation scheme; and</p> <p>    “(iv) the specified superannuation contributions vest in the employee immediately after the contributions are paid:</p> <p>“(d) <b>db increase</b> means the amount, calculated over the period to which the payment of salary or wages relates, that is the increase in value of the employee’s accrued benefits to be provided by a registered superannuation scheme, if—</p> <p>    “(i) the scheme is a defined benefit scheme; and</p> <p>    “(ii) the increase in value is attributable to employer contributions; and</p> <p>    “(iii) the amount is not accounted for in <b>paragraph (c)</b>; and</p> <p>    “(iv) the amount is determined actuarially; and</p> <p>    “(v) the requirements of <b>paragraphs (c)(i) to (iii)</b> are met; and</p> <p>    “(vi) the amount vests in the employee as it accrues.</p> <p><b>“101E Payment</b></p> <p>“(1) If the employer and employee agree the proportions of the amount of compulsory employer contribution for a payment of salary or wages is for an employee’s KiwiSaver scheme</p> | <p></p> <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p></p> <p>35</p> |
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**Struck out (majority)**

- and complying superannuation funds, the agreed proportion of compulsory employer contributions is for the relevant scheme or fund, as agreed.
- “(2) If the employer and employee can not agree what proportion of the amount of compulsory employer contribution is for an employee’s KiwiSaver scheme or complying superannuation fund, the amount is— 5
- “(a) first, for the employee’s KiwiSaver scheme, up to the maximum required to meet an employer’s compulsory employer contribution obligations: 10
- “(b) second for the employee’s complying superannuation funds, pro-rata, to the extent to which an amount remains after applying **paragraph (a)**.
- “101F Rules: employers**
- “(1) If an amount of employer contribution for a payment of salary or wages is for the employee’s KiwiSaver scheme, the amount must be paid by the employer to the Commissioner. The amount is subject to the rules provided in subpart 3. 15
- “(2) If an amount of compulsory employer contribution for a payment of salary or wages is for the employee’s complying superannuation fund, the amount must be paid by the employer to the fund’s provider no later than one month after the payment of salary or wages. 20
- “101G Rules: providers**
- “(1) A provider must credit the amount of compulsory employer contribution they receive on a pro rata basis across the investment products to which a member has subscribed or has been allocated. 25
- “(2) The contribution must vest in the member immediately after it is paid to the provider, despite any provision to the contrary. 30

**Struck out (majority)**

***“Complying superannuation funds***

**“101H Failure to pay: provider notice**

- “(1) This section applies if the provider of a complying superannuation fund has reason to believe that an employer has failed to pay to the provider amounts of compulsory employer contribution in accordance with this subpart. 5
- “(2) The provider must immediately take reasonable steps to get the employer to pay to the provider the amounts of compulsory employer contribution.
- “(3) If the employer does not pay the amounts of compulsory employer contribution to the provider within one month of this section first applying for the amounts, and the total of the amounts is more than \$500, the provider must immediately give a notice to the Government Actuary that the provider believes that employer has failed to pay the amounts. 10 15
- “(4) A notice under **subsection (3)** must show the following:
- “(a) the name of the employer; and
  - “(b) the amounts of compulsory employer contributions unpaid; and
  - “(c) the employer’s name, address and tax file number (if known); and 20
  - “(d) specify the relevant employees to whom the failure to pay relates, their tax file numbers, and addresses; and
  - “(e) the pay periods and relevant amounts for the employees to whom the failure to pay relates; and 25
  - “(f) other information required by the Government Actuary.”

**New (majority)**

**219 New subpart 3A of Part 3 inserted**

After subpart 3 of Part 3, the following is inserted:

- “Subpart 3A—Compulsory employer contributions to KiwiSaver schemes and complying superannuation funds 30

New (majority)

**“101A General**

- “(1) An employer must pay, in accordance with **sections 101E and 101F**, an amount of employer contribution (a **compulsory employer contribution**) calculated under **section 101D** for an employee, to the extent to which the employee meets the requirements in **section 101C** for a period to which a payment of salary or wages relates. 5
- “(2) **Section 101B** provides rules relevant to parties to an employment relationship, and how they bargain in respect of compulsory employer contributions and associated matters. 10
- “(3) **Section 101G** provides rules relevant to providers who receive compulsory employer contributions directly or from the Commissioner.
- “(4) The rest of this subpart provides rules relating to compulsory employer contributions to complying superannuation funds. Also, subpart 3 provides some rules for employer contributions to KiwiSaver schemes. 15
- “(5) For the purposes of this subpart, a private domestic worker who is an employer under **paragraph (c)** of the definition of **employer** is treated as making payments of salary or wages to themselves in the capacity of employee. Consequently, for the purposes of this subpart, the private domestic worker may be both employer and employee, if the worker chooses. 20

**“101B Compulsory contributions must be paid on top of gross salary or wages except to extent that parties otherwise agree after 13 December 2007 25**

- “(1) The purpose of this section is to ensure that, for contractual arrangements of parties to an employment relationship (as defined in section 4(2) of the Employment Relations Act 2000), compulsory contributions are paid in addition to an employee’s gross salary or wages described in **section 101D(3)**. 30
- “(2) The contractual arrangements of parties to an employment relationship must not have the effect of defeating the purpose of this section described in **subsection (1)**.

**New (majority)**

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| <p>“(3) A contractual term or condition has no effect to the extent to which it is contrary to the purpose of this section described in <b>subsection (1)</b>.</p> <p>“(4) However, on and after <b>13 December 2007</b>,—</p> <p style="padding-left: 20px;">“(a) parties to an employment relationship are free to agree contractual terms and conditions that ignore the purpose of this section described in <b>subsection (1)</b>; and</p> <p style="padding-left: 20px;">“(b) to the extent of such agreement described in <b>subparagraph (a), subsections (1) to (3)</b> do not apply.</p> <p>“(5) For the avoidance of doubt, the duty of good faith described in section 4 of the Employment Relations Act 2000 always applies when parties to an employment relationship bargain for terms and conditions relating to compulsory contributions and associated matters.</p> <p>“(6) In this section, <b>compulsory contributions</b> means an amount of employer contributions equal to the amount of compulsory employer contributions that would be required by this subpart in the absence of <b>section 101D(5)(a)</b>.</p> <p><b>“101C Employee’s requirements</b></p> <p style="padding-left: 20px;">For the purposes of <b>section 101A(1)</b>, the requirements are that the employee—</p> <p style="padding-left: 40px;">“(a) is paid salary or wages from which the employer deducts or is required to deduct an amount for the employee’s KiwiSaver scheme or complying superannuation fund; and</p> <p style="padding-left: 40px;">“(b) is aged 18 or over; and</p> <p style="padding-left: 40px;">“(c) is not entitled to withdraw an amount from a fund or scheme under clause 4(3) of the KiwiSaver scheme rules (which relates to lock-in of funds) or a rule the same as that clause; and</p> <p style="padding-left: 40px;">“(d) is not a defined benefit scheme member.</p> <p><b>“101D Compulsory employer contribution amount: general rule</b></p> <p>“(1) The amount of a compulsory employer contribution is a positive amount calculated using the following formula:</p> | <p></p> <p></p> <p>5</p> <p></p> <p>10</p> <p>15</p> <p></p> <p>20</p> <p></p> <p>25</p> <p></p> <p>30</p> <p></p> <p></p> <p>35</p> |
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**New (majority)**

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| <p style="text-align: center;">(payment of gross salary or wages × CEC rate)<br/>– other contributions.</p> <p>“(2) The items in the formula are defined in <b>subsections (3) to (5)</b>.</p> <p>“(3) <b>Payment of gross salary or wages</b> is the amount of a payment of gross salary or wages from which the employer deducts or is required to deduct an amount for the employee’s KiwiSaver scheme or complying superannuation fund.</p> <p>“(4) <b>CEC rate</b> is, for the payment of gross salary or wages,—</p> <p style="padding-left: 20px;">“(a) 1%, if the payment of gross salary or wages is made for a pay period that is in the year starting on 1 April 2008:</p> <p style="padding-left: 20px;">“(b) 2%, if the payment of gross salary or wages is made for a pay period that is in the year starting on 1 April 2009:</p> <p style="padding-left: 20px;">“(c) 3%, if the payment of gross salary or wages is made for a pay period that is in the year starting on 1 April 2010:</p> <p style="padding-left: 20px;">“(d) 4%, if the payment of gross salary or wages is made for a pay period that is in a year starting on or after 1 April 2011.</p> <p>“(5) <b>Other contributions</b> is the total of amounts that the employer pays or credits in relation to the employee for the period to which the payment of gross salary or wages relates, to the extent to which the amounts are—</p> <p style="padding-left: 20px;">“(a) employer contributions made in the absence of this section:</p> <p style="padding-left: 20px;">“(b) specified superannuation contributions (the <b>contributions</b>) made to a registered superannuation scheme (the <b>contributions scheme</b>), and—</p> <p style="padding-left: 40px;">“(i) the contributions scheme was registered before 17 May 2007, or the contributions scheme is one (a <b>succeeding scheme</b>) for which there is, due to all relevant members transferring to the succeeding scheme by virtue of section 9BAA of the Superannuation Schemes Act 1989, a prior registered superannuation scheme (a <b>prior scheme</b>) and that prior scheme or another prior scheme for the contributions scheme were registered before 17 May 2007; and</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> |
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**New (majority)**

“(ii) the employer provided access for employees generally to the contributions scheme or a prior scheme for the contributions scheme before 17 May 2007; and	
“(iii) the employee is—	5
“(A) employed by the employer before 1 April 2008, and the employer makes or has agreed with the employee to make specified superannuation contributions for the employee before 1 April 2008 to the contributions scheme or a prior scheme for the contributions scheme; or	10
“(B) covered by a collective agreement that is in force before 17 May 2007 and expires after 1 April 2008 under which the employer is required to make specified superannuation contributions to the contributions scheme or a prior scheme for the contributions scheme; and	15
“(iv) the contributions scheme provides that a proportion of the contributions vest in the employee in a period starting after the employee first becomes a member of the contributions scheme and ending 5 years later:	20
“(c) specified superannuation contributions or superannuation subsidies in relation to an employee—	25
“(i) whose employment is as a member of Parliament, a judicial officer, or a sworn member of the police:	
“(ii) who is in a class of employees prescribed in regulations made under <b>section 230A</b> .	30
 <b>“101E Payment: allocation between schemes and funds</b>	
“(1) If the employer and employee agree to an allocation of compulsory employer contributions between an employee’s KiwiSaver scheme and complying superannuation funds, the contribution allocation agreed is used for allocating payments.	35

**New (majority)**

- “(2) If the employer and employee cannot agree what allocation of the amount of compulsory employer contribution is for an employee’s KiwiSaver scheme or complying superannuation funds, the amount is—
- “(a) first, for the employee’s KiwiSaver scheme, up to the maximum required to meet an employer’s compulsory employer contribution obligations: 5
- “(b) second, for the employee’s complying superannuation funds, pro-rata, to the extent to which an amount remains after applying **paragraph (a)**. 10
- “101F Payment rules: employers**
- “(1) If an amount of employer contribution for a payment of salary or wages is for the employee’s KiwiSaver scheme, the amount must be paid by the employer to the Commissioner. The amount is subject to the rules provided in subpart 3. 15
- “(2) If an amount of compulsory employer contribution for a payment of salary or wages is for the employee’s complying superannuation fund, the amount must be paid by the employer to the fund’s provider no later than 1 month after the payment of salary or wages. 20
- “101G Rules: providers**
- “(1) A provider must use the contribution allocation for a member to credit the amount of compulsory employer contribution they receive across the investment products to which a member has subscribed or has been allocated. 25
- “(2) The contribution vests in the member immediately after it is paid to the provider, despite any provision to the contrary.
- “(3) If a member of a KiwiSaver scheme or complying superannuation fund will be entitled within 2 months to withdraw an amount from the fund or scheme under clause 4(3) of the KiwiSaver scheme rules (which relates to lock-in of funds) or a rule the same as that clause, the provider must send a notice to the Commissioner stating the date on which the member will be entitled to withdraw. The Commissioner may notify 30

**New (majority)**

the member's employer of the date, for the purposes of the employer applying this subpart.

***“Complying superannuation funds***

**“101H Failure to pay: provider notice**

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| “(1) This section applies if the provider of a complying superannuation fund knows that an employer has failed to pay to the provider an amount of compulsory employer contribution in accordance with this subpart.  | 5  |
| “(2) The provider must, as soon as practicable, give a notice to the employer, requesting the payment of the amount of compulsory employer contribution. The provider must send to the Government Actuary a copy of the notice.   | 10 |
| “(3) If the employer does not pay the amount of compulsory employer contribution to the provider within 1 month of this section first applying for the amount, and the total of the amounts of compulsory employer contributions unpaid is more than \$500, then the provider must immediately give a notice to the Government Actuary. | 15 |
| “(4) A notice under <b>subsection (3)</b> must show the following:  | 20 |
| “(a) the name of the employer; and  |    |
| “(b) the amounts of compulsory employer contributions unpaid; and   |    |
| “(c) the employer's name, address, and tax file number (if known); and  |    |
| “(d) specify the relevant employees to whom the failure to pay relates, their tax file numbers, and addresses; and  | 25 |
| “(e) the pay periods and relevant amounts for the employees to whom the failure to pay relates; and   |    |
| “(f) other information required by the Government Actuary.  |    |
| “(5) If the employer pays an amount of compulsory employer contribution remedying a failure to pay that was notified to the Government Actuary under <b>subsection (3)</b> , the provider must immediately give a notice to the Government Actuary showing relevant details of the employer's payment.”                                 | 30 |

**220 New sections 101I to 101K inserted**

**Struck out (majority)**

The following is added to subpart 3A of Part 3:

**New (majority)**

After section 101H, the following is inserted:

**“101I Failure to pay: Government Actuary’s duties**

- “(1) If the Government Actuary receives a notice under **section 101H(3)**, the Government Actuary must decide the amount of compulsory employer contribution that an employer to which the notice relates has failed to pay for the relevant calendar months. 5
- “(2) The Government Actuary may use any power (with necessary modifications for complying superannuation funds) that the Government Actuary has in respect of KiwiSaver schemes in the performance of the duty to decide imposed by **subsection (1)**. 10
- “(3) As soon as practicable, the Government Actuary must give a notice to the employer showing the information described in **subsection (4)**. 15
- “(4) A notice under **subsection (3)** must—
- “(a) require the payment of the amount (the **liable amount**) that the Government Actuary has decided, under **subsection (1)** that an employer has failed to pay to the provider; and 20
  - “(b) specify the relevant calendar months and related amounts; and
  - “(c) specify that the employer must pay the liable amount within 28 days after the notice is given; and 25
  - “(d) specify the employer’s name, address and tax file number (if known); and
  - “(e) specify the relevant employees to whom the failure to pay relates, their tax file numbers, and addresses; and 30
  - “(f) specify the pay periods and relevant amounts for the employees to whom the failure to pay relates; and

- “(g) inform the employer that failure to comply with the notice will result in the Commissioner receiving notice of the failure to comply; and
- “(h) show other information required by the Commissioner.
- “(5) If the employer does not pay the liable amount in the period specified in **subsection (4)(c)** and the employer has not objected to the Government Actuary’s decision under **subsection (1)** within the time allowed under section 186, the Government Actuary must immediately— 5
  - “(a) give to the Commissioner a notice showing the information described in **subsection (6)**; and 10
  - “(b) send to the provider a copy of the notice.
- “(6) A notice under **subsection (5)** must—
  - “(a) state that the employer has failed to comply with notices under **section 101H(3)** and **subsection (3)**; and 15
  - “(b) show the information described in **subsection (4)**; and
  - “(c) specify the extent to which an amount of compulsory employer contributions remains unpaid for the liable amount; and
  - “(d) specify the relevant employees to whom the unpaid amounts relate, their tax file numbers, and addresses; and 20
  - “(e) specify the pay periods and relevant amounts for the employees to whom the unpaid amounts relate.
- “(7) If the Government Actuary makes a decision, upon an employer’s objection to the Government Actuary’s decision under **subsection (1)**, and the decision is that the employer to which the notice under **section 101H(3)** relates has failed to pay an amount of compulsory employer contribution for the relevant calendar months, the employer is treated as having not objected, and the Government Actuary must immediately give the Commissioner the notice described in **subsection (5)**. 25  
30
- “101J Failure to pay: Commissioner**
- “(1) If the Commissioner receives a notice under **section 101I(5)**, the amount of compulsory employer contributions unpaid for the liable amount, specified in that notice, is treated as an amount due and payable by the employer to the Commissioner on the 20th working day after the Commissioner receives the notice under **section 101I(5)**. 35

“(2) The Commissioner must send the employer a notice of the amount due and payable, and the due date, specified in **subsection (1)**.

**“101K Recovered amounts**

An amount of compulsory employer contribution for an employee’s complying superannuation fund that is received by the Government Actuary or the Commissioner by virtue of this subpart must be paid by them to the relevant provider. The relevant amount of compulsory employer contributions remaining unpaid for the relevant liable amount is consequentially reduced.” 5 10

**221 Who may apply for contributions holiday**

In section 102(b)(ii), “scheme.” is replaced by “scheme; or”, and the following is added:

“(iii) the date that the person is first a member of a complying superannuation fund.” 15

**New (majority)**

**221B Refund of initial contributions**

Section 113(5) and (6) are replaced by the following:

“(5) The Commissioner must refund the contributions to which the application relates, if the Commissioner is reasonably satisfied that— 20

“(a) the person and the application meet the requirements of this section; and  
“(b) reasonable alternative sources of funding have been explored and have been exhausted. 25

“(6) However, the Commissioner—

“(a) must not refund under this section any employer contributions that were made under section 93; and  
“(b) may direct that, despite **subsection (5)**, the amount to be refunded under this section is limited to a specified amount that, in the Commissioner’s opinion, is required to alleviate the particular hardship.” 30

**Struck out (majority)**

**222 New section 117B inserted**

After section 117, the following is inserted:

**“117B Restrictions on transactions**

- “(1) This section applies for a KiwiSaver scheme, to a transaction related to the KiwiSaver scheme, if the scheme has less than 20 members, treating all interests in the scheme held by persons associated under section OD 8(3) of the Income Tax Act 2004 as being held by 1 person. 5
- “(2) A transaction between a scheme’s provider, and a person associated (under section OD 8(3) of the Income Tax Act 2004) with either a provider or a member must use arm’s length amounts of consideration. 10
- “(3) Despite **subsection (2)**,—
- “(a) the KiwiSaver scheme must not have more than 5% of it assets in investments related to or managed by— 15
- “(i) a provider (other than in their capacity of provider):
- “(ii) a member:
- “(iii) a person associated (under section OD 8(3) of the Income Tax Act 2004) with a provider or a member; and 20
- “(b) the provider must not lend money or provide financial assistance to—
- “(i) a member:
- “(ii) a person associated (under section OD 8(3) of the Income Tax Act 2004) with a provider or a member.” 25

**New (majority)**

**222 New section 117A inserted**

After section 117, the following is inserted:

**“117A Restrictions on transactions 30**

- “(1) This section applies to a KiwiSaver scheme if the scheme has less than 20 members, treating all interests in the scheme held

**New (majority)**

- by persons associated under section OD 8(3) of the Income Tax Act 2004 as being held by 1 person.
- “(2) A transaction between a scheme’s provider, and a person associated (under section OD 8(3) of the Income Tax Act 2004) with either a provider or a member must use arm’s length amounts of consideration. 5
- “(3) Despite **subsection (2)**,—
- “(a) the KiwiSaver scheme must not have more than 5% of its assets in investments related to or managed by—
- “(i) a provider (other than in their capacity of provider): 10
- “(ii) a member:
- “(iii) a person associated (under section OD 8(3) of the Income Tax Act 2004) with a provider or a member; and 15
- “(b) the provider must not lend money or provide financial assistance to—
- “(i) a member:
- “(ii) a person associated (under section OD 8(3) of the Income Tax Act 2004) with a provider or a member.” 20

**223 Further modifications to application of sections 8 to 11 of Superannuation Schemes Act 1989**

In section 121(3)(a), “registered superannuation scheme” is replaced by “KiwiSaver scheme”. 25

**Struck out (majority)**

**224 Requirement for annual report**

The following is added to section 123:

- “(6) The trustees must send to the Government Actuary a copy of the completed report within 28 days after its completion, and, if only abridged accounts are contained in the report, a copy of the annual accounts.” 30



**New (majority)**

**224 Requirement for annual report**

- (1) In section 123(5)(a), “KiwiSaver” is replaced by “KiwiSaver”.
- (2) In section 123(5)(e), “report.” is replaced by “report:”, and the following is added: 5
  - “(f) the total amount of each type of contribution received by the provider for the year, and the number of members credited with each type:
  - “(g) the total amount of members’ accumulations at the end of the year, and the number of members with accumulations: 10
  - “(h) the total amounts of fee subsidies credited to members for the year, and the number of members credited.”
- (3) After section 123(5), the following is added:
- “(6) The trustees must send to the Government Actuary a copy of the completed report within 28 days after its completion, and, if only abridged accounts are contained in the report, a copy of the annual accounts.” 15

**224B New section 125A added**

After section 125, the following is added: 20

**“125A Requirement for annual personalised statement of contributions and accumulations for members**

The trustee of a KiwiSaver scheme or a complying superannuation fund must provide annually to each person who is a member of the provider’s scheme or fund during the relevant year a statement showing the following for that person: 25

- “(a) the amount of each type of contribution received by the provider for the year; and
- “(b) the member’s accumulation at the end of the year.”

**New (majority)**

**224C Terms relating to members' tax credits implied into trust deed**

In section 128A,—

- (a) in subsection (1), “The terms relevant to” is replaced by “Terms necessary for giving effect to the law relating to”: 5
- (b) in subsection (2),—
  - (i) the words before subparagraph (a) are replaced by “The terms—”:
  - (ii) in subparagraph (a), “applies” is replaced by “apply”: 10
  - (iii) in subparagraph (b), “is” is replaced by “are”.

**224D New section 128B inserted**

Before the heading above section 129, the following is inserted: 15

**“128B Terms relating to back-dated validation implied into trust deed**

- “(1) Terms necessary for giving effect to the law relating to back-dated validation of invalid membership under subpart 4 of Part 2 are implied into a trust deed that establishes a KiwiSaver scheme in relation to the KiwiSaver scheme. 20
- “(2) The terms—
  - “(a) apply despite anything to the contrary in a trust deed of a scheme; and
  - “(b) are enforceable by a trustee, and by a member, of the scheme.” 25

**224E New section 128C inserted**

Before the heading above section 129, the following is inserted:

**“128C Terms relating to lump sum payments by complying superannuation funds 30**

- “(1) Terms necessary for giving effect to **paragraph (cc)** of the definition of **complying fund rules** in section OB 1 of the Income Tax Act 2004 are implied into a trust deed that establishes a

**New (majority)**

<p>complying superannuation fund in relation to the complying superannuation fund.</p>	
<p>“(2) The terms—  “(a) apply despite anything to the contrary in a trust deed of a fund; and  “(b) are enforceable by a trustee, and by a member, of the fund.”</p>	<p>5</p>

**Struck out (majority)**

<p><b>225 New section 128B inserted</b>  Before the heading above section 129, the following is inserted:</p>	<p>10</p>
<p><b>“128B Terms relating to compulsory employer contributions implied into trust deed</b></p>	
<p>“(1) The terms relating to compulsory employer contributions are implied into a trust deed that establishes—  “(a) a KiwiSaver scheme in relation to the KiwiSaver scheme;  “(b) a complying superannuation fund in relation to the complying superannuation fund.</p>	<p>15</p>
<p>“(2) The law relating to the compulsory employer contributions—  “(a) applies despite anything to the contrary in a trust deed of a scheme or fund; and  “(b) are enforceable by a trustee, and by a member, of the scheme or fund.</p>	<p>20</p>
<p>“(3) If an employer may make specified superannuation contributions which meet the requirements described in <b>subparagraphs (i) to (iii)</b> of the definition of <b>other contributions</b> in <b>section 101D(2)(c)</b>, and the employer chooses that the specified superannuation contributions should meet the requirement described in <b>subparagraph (iv)</b> of that definition, then the contributions vest in the relevant employee immediately after the contributions are made—</p>	<p>25 30</p>

**Struck out (majority)**

- “(a) if the relevant provider agrees that the contributions will vest in the relevant employee immediately after the contributions are made; and
- “(b) despite anything to the contrary in a trust deed of a scheme or a fund.”

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**New (majority)**

**225 New section 128D inserted**

Before the heading above section 129, the following is inserted:

**“128D Terms relating to compulsory employer contributions implied into trust deed**

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- “(1) Terms necessary for giving effect to the law relating to compulsory employer contributions are implied into a trust deed that establishes—

“(a) a KiwiSaver scheme in relation to the KiwiSaver scheme:

15

“(b) a complying superannuation fund in relation to the complying superannuation fund.

- “(2) The terms—

“(a) apply despite anything to the contrary in a trust deed of a scheme or fund; and

20

“(b) are enforceable by a trustee, and by a member, of the scheme or fund.”

**226 Amendment of trust deed governing KiwiSaver scheme**

- (1) In the heading to section 129, “**or participation agreement**” is inserted after “**trust deed**”.

25

- (2) In section 129(1), “trust deed of the scheme” is replaced by “trust deed of the scheme, or to a participation agreement related to the trust deed,”.

- (3) Section 129(4) is repealed.

**New (majority)**

**226B Effect of registration of KiwiSaver scheme under section 150**

In section 153(d), “the Income Tax Act 2004 and the Tax Administration Act 1994” is replaced by “provisions of the Income Tax Act 2004 and the Tax Administration Act 1994, other than those related to portfolio investment entities”.

5

**226C Duty to notify changes to Government Actuary**

In section 164(2), “section section” is replaced by “section”.

**227 Objections and appeals against decisions of Government Actuary**

10

In section 186(5), “High Court” is replaced by “High Court, unless the objection related to a decision under **section 101I**”.

**New (majority)**

**227B New section 205A inserted**

After section 205, the following is inserted:

**“205A Investment statements must contain responsible investment statement**

15

“(1) Every investment statement relating to a KiwiSaver scheme or a complying superannuation fund must contain a statement in the following form if it is a scheme that takes responsible investment, including environmental, social, and governance considerations, into account in the investment policies and procedures of the scheme:

20

‘Responsible investment, including environmental, social, and governance considerations, is taken into account in the investment policies and procedures of the scheme as at the date of this investment statement. You can obtain an explanation of the extent to which responsible investment is taken into account in those policies and procedures—

25

‘*[if the issuer has a website]* on the issuer’s website on the Internet at [*specify website address*], which is publicly accessible at all reasonable times; and

30

**New (majority)**

- ‘from the issuer, free of charge, upon request.’
- “(2) Every investment statement relating to a KiwiSaver scheme or a complying superannuation fund must contain a statement in the following form if it is a scheme that does not take responsible investment, including environmental, social, and governance considerations, into account in the investment policies and procedures of the scheme: 5
- ‘Responsible investment, including environmental, social, and governance considerations, is not taken into account in the investment policies and procedures of the scheme as at the date of this investment statement.’ 10
- “(3) The statements required by this section must be included at the end of the ‘Who is involved in providing it for me?’ section of the investment statement.
- “(4) For the purposes of the Securities Act 1978, a failure to comply with this section is also treated as if it were a failure to comply with the Securities Regulations 1983.” 15
- 227C Factual description of, or transmission of information about, KiwiSaver scheme not investment advice**
- In section 206, in the words before paragraph (a), “investment advice” is replaced by “investment advice and is not an investment broker or a broker,”. 20
- 228 Certain sections of Securities Act 1978 modified in relation to KiwiSaver scheme**
- In section 210(2)(b)(ii), “member’s interest” is replaced by “member’s accumulation” in each place where it appears. 25
- 229 Duty of Commissioner under section 50 modified in certain cases in which section 210 applies**
- (1) In section 211(1)(b), “member’s interest” is replaced by “member’s accumulation”. 30
- (2) In section 211(2), “member’s interest” is replaced by “member’s accumulation”.

**New (majority)**

**229B Application of sections 215 and 216**

- (1) In the heading to section 214, “sections 215 and 216” is replaced by “section 215”.
- (2) In section 214(1),—
  - (a) “Sections 215 and 216” is replaced by “Section 215”: 5
  - (b) “or withhold contributions” is omitted.
- (3) Section 214(2) is repealed.

**230 Penalty for employer to fail to provide information**

- (1) Section 215(2)(a) is replaced by the following:
  - “(a) nil if the Commissioner has not given notice to the employer, within the preceding 12 months, that— 10
    - “(i) a penalty may be imposed on the employer if the employer does not provide information as required by Part 2 or 3:
    - “(ii) the employer has been liable under subsection (1) 15  
in the preceding 12 months; and”.

**New (majority)**

- (2) In section 215(3), “to which any employer monthly schedule relates” is omitted.
- (3) In section 215(4), “and section 216” is omitted.

**230B Penalty for employer to fail to make deductions or to incorrectly make deductions 20**

In section 216(3), “to which any employer monthly schedule relates” is omitted.

**231 Section 216 repealed**  
Section 216 is repealed.

**New (majority)**

**231B Consent to electronic transactions**

In section 219, the following is added as subsection (2):

- “(2) This section does not apply to the Commissioner of Inland Revenue or any employee or officer of the Inland Revenue Department.” 5

**232 Refunds made by direct credit to bank account**

- (1) In section 221(1), “A refund” is replaced by “A refund by the Commissioner”. 10
- (2) In section 221(2), “a refund” is replaced by “the refund”.
- (3) In section 221(3), “a refund” is replaced by “the refund”.

**233 Fee subsidies**

In section 225(2), “or of section 226” is omitted.

**Struck out (majority)**

**234 Crown contribution**

Sections 226(1)(b) is replaced by the following:

- “(b) in any other case, as soon as practicable after 3 months after the Commissioner— 15
- “(i) is given notice that the person is a member of the KiwiSaver scheme: 20
- “(ii) otherwise knows that the person is a member of the KiwiSaver scheme.”

**New (majority)**

**234 Crown contribution**

- (1) Section 226(1) is replaced by the following:
- “(1) The Crown must pay a contribution to the first KiwiSaver scheme of which a person (A) is a member. 25



**New (majority)**

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|---|--|
| <p>“(1A) The contribution must be paid as soon as practicable after the date provided by <b>subsection (1B) or (1C)</b>.</p> <p>“(1B) Unless <b>subsection (1C)</b> applies, the date for the purposes of <b>subsection (1A)</b> is the last day of the 3-month period that starts on the earliest of the following dates:</p> <p style="padding-left: 20px;">“(a) the date on which the Commissioner receives the first contribution in respect of a person, if the person is one to whom subpart 1 of Part 3 applies:</p> <p style="padding-left: 20px;">“(b) the date that the Commissioner is given notice or otherwise knows that the person is a member of the KiwiSaver scheme.”</p> <p>(2) After section 226(1B), the following is inserted:</p> <p>“(1C) If A has transferred to their first KiwiSaver scheme from a complying superannuation fund, and A was a member of the complying superannuation fund for more than 3 months before transferring, the date for the purposes of <b>subsection (1A)</b> is the day on which the Commissioner is given notice that the person has transferred.”</p> <p>(3) In section 226(2), “The provider must credit the contribution on a pro rata basis” is replaced by “The provider must use the contribution allocation for A to credit the contribution”.</p> <p>(4) After section 226(2), the following is inserted:</p> <p>“(2B) The contribution must vest in A immediately after it is paid to the provider, despite any provision to the contrary.”</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> |
|---|--|

**235 Regulations relating to mortgage diversion facility** 25

- |  |           |
|--|-----------|
| <p>(1) In section 229(1), “a mortgage diversion facility that allows contributions to be withdrawn from KiwiSaver schemes and applied towards the payment of amounts secured by mortgages” is replaced by “mortgage diversion facilities that allow contributions in respect of a person to be withdrawn from the person’s KiwiSaver scheme and complying superannuation funds to pay amounts secured by certain mortgages relating to that person”.</p> | <p>30</p> |
|--|-----------|

- (2) In section 229(2), in the words before the paragraphs, “the mortgage diversion facility that is provided for in the regulations” is replaced by “any mortgage diversion facility provided for in regulations”.
- (3) In section 229(2)(b), “KiwiSaver” is replaced by “KiwiSaver and complying superannuation fund”. 5
- (4) Section 229(2)(c)(ii) is replaced by the following:
- “(ii) the date that the relevant KiwiSaver scheme provider or complying superannuation fund provider received the first contribution in respect of that person’s membership to the relevant scheme or fund.”. 10

**New (majority)**

- (4B) In section 229(2)(e), “made available” is replaced by “made available, but only to the extent to which the mortgage continues to be over the person’s principal residence”. 15
- (5) In section 229(2)(f), “are retained automatically in the person’s KiwiSaver account” is replaced by “are not diverted from the person’s KiwiSaver scheme and complying superannuation funds”.
- (6) Section 229(2)(i) is replaced by the following: 20
- “(i) the amount diverted from a person’s KiwiSaver scheme and complying superannuation funds is a fixed dollar amount, and is capped at not more than the total of—

**Struck out (majority)**

- “(i) half of the person’s contribution rate for their KiwiSaver scheme; and 25

**New (majority)**

- “(i) half of the total contributions deducted for or contributed by the person, received by their KiwiSaver scheme provider; and

“(ii) half of the person’s contributions to their complying superannuation funds, but limited to 4% of their annual gross base salary or wages for each complying superannuation fund:”.

**New (majority)**

**235B New section 230A inserted**

5

After section 230, the following is inserted:

**“230A Regulations relating to compulsory employer contributions**

“(1) The Governor-General may, by Order in Council made on the recommendation of the Minister of Finance, make regulations prescribing a class of employees, for the purposes of the calculation of compulsory employer contributions, under **section 101D(5)(c)(ii)**. 10

“(2) The Minister of Finance may make a recommendation under **subsection (1)** only if the Minister is satisfied that an employer may not prevent compulsory employer contributions increasing their employer contributions in relation to the class of employees because terms relating to their employer contributions are imposed independently of the employer and the class of employees.” 15  
20

**236 Schedule 1—KiwiSaver scheme rules**

(1) In clause 4(3), “equal to that” is replaced by “not more than the”.

**New (majority)**

(1B) In clause 8(8), “employer vested contributions” is replaced by “employer vested contributions that are not compulsory employer contributions”. 25

(2) In clause 12(2), the words after “member’s accumulation” are omitted.

(3) In clause 12(3)(a), “being unable” is replaced by “being totally and permanently unable”. 30

(4) In clause 13(1), the words after “the trustees” are omitted.

(5) After clause 13(1), the following is inserted:

“(1B) The application for a withdrawal under clause 10 must include a completed statutory declaration in respect of the member’s assets and liabilities.”

**New (majority)**

- |     |  |   |
|-----|--|---|
| (6) | In clause 14(2), “accumulation” is replaced by “accumulation less the amount of Crown contribution arising from a tax credit under section KJ 1 of the Income Tax Act 2004 (disregarding any positive or negative returns for the purposes of calculating that amount of Crown contribution)”. | 5 |
|-----|--|---|

**Struck out (majority)**

- |            |  |    |
|------------|--|----|
| <b>237</b> | <b>New schedule 4—Transitional contribution rates</b><br>The following is added to the KiwiSaver Act 2006: | 10 |
|------------|--|----|

**s 66A**

**Schedule 4  
Transitional rates**

- |          |   |    |
|----------|---|----|
| <b>1</b> | The minimum amount required to be deducted from the payment of salary or wages is—  | 15 |
|          | (a) 2% of the payment, if the payment is made for a pay period that is in the 2 years starting on 1 April 2008:           |    |
|          | (b) 3% of the payment, if the payment is made for a pay period that is in the year starting on 1 April 2010:              |    |
|          | (c) 4% of the payment, if the payment is made for a pay period that is in a year starting on or after 1 April 2011.       | 20 |
| <b>2</b> | The transitional contribution rate is—  |    |
|          | (a) if the payment is made for pay periods that are in the 2 years starting on 1 April 2008,—                             | 25 |
|          | (i) 4% of the payment; or   |    |
|          | (ii) 8% of the payment if the employee gives their employer a notice requiring contributions to be deducted at that rate: |    |
|          | (b) if the payment is made for a pay period that is in the year starting on 1 April 2010,—                                | 30 |

**Struck out (majority)**

**Schedule 4**—*continued*

- (i) 6% of the payment; or
- (ii) 8% of the payment if the employee gives their employer a notice requiring contributions to be deducted at that rate:
- (c) if the payment is made for a pay period that is in the year starting on 1 April 2011, 8% of the payment. 5
- 3** The minimum amount of employer contribution is—
- (a) 2% of the payment, if the payment is made for a pay period that is in the 2 years starting on 1 April 2008:
- (b) 3% of the payment, if the payment is made for a pay period that is in the year starting on 1 April 2010: 10
- (c) 4% of the payment, if the payment is made for a pay period that is in a year starting on or after 1 April 2011.”

**New (majority)**

- 237 New schedule 4—Transitional contribution rates** 15
- The following is added to the KiwiSaver Act 2006:

**Schedule 4**

s 66A

**Transitional rates for employers and employees**

Years in which pay period for payment of the employee's gross salary or wages falls	Rate for employer (%)	Rate for employee (%)	
2 years starting on 1 April 2008	2	2	
1 year starting on 1 April 2010	3	3	
1 year starting on 1 April 2011	4	4	20

*Superannuation Schemes Act 1989*

**Struck out (majority)**

**238 Superannuation Schemes Act 1989**  
**Sections 239 and 240** amend the Superannuation Schemes Act 1989.

**New (majority)**

**238 Superannuation Schemes Act 1989** 5  
**Sections 238B to 240C** amend the Superannuation Schemes Act 1989.

**238B Interpretation**  
 Section 2(1) is amended by inserting the following definition in its appropriate alphabetical order: 10  
 “**participation agreement** has the meaning given to it in section 4(1) of the KiwiSaver Act 2006”.

**239 When Government Actuary may approve transfers without consent of members and beneficiaries**  
 (1) After section 9BAA(1), the following is inserted: 15  
 “(1B) This section applies despite anything to the contrary in a scheme’s trust deed.”

**New (majority)**

(2) After section 9BAA(4), the following is inserted:  
 “(4B) For a transfer that the Government Actuary has approved,— 20  
     “(a) each member of the old scheme is treated as offering to be a member of the new scheme on the terms and conditions for that new scheme; and  
     “(b) the trustee of the new scheme is treated as accepting the member’s offer.”

**New (majority)**

**239B New section 9D inserted**

After section 9C, the following is inserted:

**“9D Implied term as to reduction of scheme insurance upon transfer out of complying superannuation fund**

- “(1) This section applies to a registered superannuation scheme (scheme A) if— 5
- “(a) scheme A provides or facilitates the provision of insurance (the **scheme insurance**) to a member or other beneficiary (the **person**); and
  - “(b) the benefit of the scheme insurance is calculated by reference to contributions for the person held by a complying superannuation fund (the **contributions**); and 10
  - “(c) an amount of contributions is transferred out of the complying superannuation fund to a complying superannuation fund or KiwiSaver scheme (other than scheme A). 15
- “(2) A term is implied into the trust deed of scheme A. That term must have the effect of allowing the benefit of the person’s scheme insurance to be reduced in proportion to the amount of contributions transferred out of the complying superannuation fund to a complying superannuation fund or KiwiSaver scheme (other than scheme A).” 20

**239C Complying superannuation funds**

After section 34(2), the following is added:

- “(3) The application must include a copy of any participation agreements that have been ratified by employers of employees in the scheme as applicable to the registered scheme.” 25

**Struck out (majority)**

**240 Dealing with applications for complying superannuation funds**

- (1) Section 35(1)(e) is replaced by the following: 30
- “(e) any relevant participation agreement is—

**Struck out (majority)**

- “(i) an agreement entered into on or before 1 July 2007:
- “(ii) an agreement (the **successor participation agreement**) entered into after 1 July 2007, if and to the extent that, due to commercial necessity, it succeeds and replaces a participation agreement (the **prior agreement**) entered into on or before 1 July 2007 or entered into after 1 July 2007 as a successor participation agreement for an earlier prior agreement.”. 5 10
- (2) The following is added to section 35:
- “(5) For the purposes of this section, **participation agreement** includes a trust deed.”

**New (majority)**

- 240 Dealing with applications for complying superannuation funds** 15
- (1) Section 35(1)(e) is replaced by the following:
- “(e) any relevant participation agreement is—
- “(i) an agreement entered into on or before 1 July 2007:
- “(ii) an agreement (the **successor participation agreement**) entered into after 1 July 2007, if it succeeds and replaces a participation agreement (the **prior agreement**) entered into on or before 1 July 2007 or entered into after 1 July 2007 as a successor participation agreement for an earlier prior agreement.”. 20 25
- (2) After section 35(4), the following is added:
- “(5) For the purposes of **subsection (1)(e)**,—
- “(a) **participation agreement** includes a trust deed:
- “(b) a participation agreement (**agreement A**) succeeds and replaces another participation agreement if— 30



<p>“(i) agreement A succeeds and replaces the other participation agreement due to the merger or acquisition of a party to the other participation agreement; or</p> <p>“(ii) all relevant members of a scheme covered by agreement A transfer by virtue of section 9BAA of the Superannuation Schemes Act 1989 to a scheme covered by the other participation agreement.”</p>	<p>5</p> <p>15</p>
<p><b>240B New section 37 added</b></p> <p>After section 36 the following is added:</p> <p><b>“37 Transitional provision relating to lodging of participation agreements</b></p> <p>The trustees of every scheme that has been approved as a complying superannuation fund before the date of commencement of this section must send to the Government Actuary, within 28 days after that commencement date, a copy of any participation agreements that have been ratified by employers of employees in the scheme as applicable to the complying superannuation fund.”</p>	<p>10</p> <p>15</p> <p>20</p>
<p><b>240C Schedule 2—Matters to be specified in annual report</b></p> <p>In schedule 2, clause 1(o)(iii), “rules.” is replaced by “rules:”, and the following is added:</p> <p>“(iv) the summary of any amendments to the trust deed that have been made since the date of the last annual report of the trustees (as required by paragraph (i)) as if the trust deed included any participation agreement that, under the terms of the relevant trust deed, forms part of or determines any of the terms of the trust deed.”</p>	<p>25</p> <p>30</p>

### *KiwiSaver Regulations 2006*

#### Struck out (majority)

**241 KiwiSaver Regulations 2006**  
**Sections 242 and 243** amend the KiwiSaver Regulations 2006.

#### New (majority)

**241 KiwiSaver Regulations 2006**  
**Sections 242 to 243E** amend the KiwiSaver Regulations 2006. 5

**242 Regulation 6 replaced**  
 Regulation 6 is replaced by the following:

**“6 Purpose of annual return regulations**  
 Regulations 8 and 9 provide for the annual return required  
 under section 125 of the Act.” 10

**243 Regulation 7 repealed**  
 Regulation 7 is repealed.

#### New (majority)

**243B Fee subsidy**  
 In regulation 20(4), “The provider must credit each instalment  
 of the fee subsidy on a pro rata basis” is replaced by “The  
 provider must use the contribution allocation for the member  
 to credit each instalment of the fee subsidy”. 15

**243C Mortgage diversion facility**

(1) In regulation 21, “KiwiSaver schemes” is replaced by  
 “KiwiSaver schemes and complying superannuation funds”. 20

(2) In regulation 21 the following is added:

“(2) For the purposes of regulations 22 to 29, a reference to a  
 KiwiSaver scheme is treated as including a reference to a  
 complying superannuation fund and a reference to KiwiSaver  
 contributions is treated as including a reference to complying  
 superannuation fund contributions.” 25

**New (majority)**

**243D What scheme provider must do to participate in mortgage diversion facility**

In regulation 27(b), “(which requires the amount to be capped at no more than half of the person’s contribution rate and to be a fixed dollar amount)” is omitted.

5

**243E New heading and regulations 30 and 31 added**

After regulation 29, the following is added:

***“Qualifying person for withdrawal for purpose of purchase of first home***

**“30 Qualifying person**

10

For the purposes of clause 8(3)(c)(ii) of Schedule 1 of the KiwiSaver Act 2006, a person is a qualifying person if they hold a notice that complies with **regulation 31** and they have given their KiwiSaver scheme provider a copy of that notice.

**“31 Notice**

15

For the purposes of **regulation 30**, a notice complies with this regulation if the notice—

“(a) is in the name of the person:

“(b) is signed by the Minister of Housing or a delegate:

“(c) states that the Minister of Housing or delegate is satisfied that the income, assets, and liabilities of the person represent a financial position that would be expected of a person that has never held an estate in land (whether alone or as a joint tenant or tenant in common).”

20

***Estate and Gift Duties Act 1968***

25

**244 Exemption for gifts to charities and certain bodies**

(1) In section 73(2)(l) of the Estate and Gift Duties Act 1968, “1996.” is replaced by “1996:” and the following is added:

“(m) any gift to the trustee of the Tokelau International Trust Fund, as defined in section OB 1 of the Income Tax Act 2004, for the purposes of that trust.”

30

- (2) In section 73(2)(m) of the Estate and Gift Duties Act 1968, “trust.” is replaced by “trust:” and the following is added:
- “(n) any gift to the trustee of the Niue International Trust Fund, as defined in section OB 1 of the Income Tax Act 2004, for the purposes of that trust.”

5

### *Goods and Services Tax Act 1985*

#### **Struck out (majority)**

- 245 Goods and Services Tax Act 1985**  
**Sections 246 to 251** amend the Goods and Services Tax Act 1985.

#### **New (majority)**

- 245 Goods and Services Tax Act 1985**  
**Sections 246 to 251B** amend the Goods and Services Tax Act 1985.

10

#### **246 Interpretation**

- (1) This section amends section 2(1).
- (2) In the definition of **tax invoice**, “section 24” is replaced by “sections 24 and 24BA”.

15

#### **247 Value of supply of goods and services**

In section 10(7), as amended by section YA 2 and schedule 21 of the Income Tax Act 2004, “sections CX 23” is replaced by “sections CX 18”.

20

#### **Struck out (majority)**

- 248 Zero-rating of goods**
- (1) In section 11(1)(l), the words before the subparagraphs, and subparagraphs (i) and (ii) are replaced by the following:
- “(l) the goods supplied are consumable stores intended for use on—

25

**Struck out (majority)**

- “(i) an aircraft on a flight, or going, to a destination outside New Zealand; or
  - “(ii) a fishing ship outside, or going outside, New Zealand fisheries waters; or
  - “(iib) a ship, other than a pleasure craft, carrying consumable stores to a foreign-going ship or to a fishing ship, if the fishing ship meets the requirements in **subparagraph (ii)**; or”.
- (2) In section 11(9), in the definition of **consumable stores**, paragraph (a), “intend to consume” is replaced by “have available to consume”.
- (3) In section 11(9), the definition of **foreign-going ship** is replaced by the following:
- “**foreign-going ship** means a ship on a voyage, or going, to a destination outside New Zealand, other than a pleasure craft or a fishing ship:”.

**New (majority)**

**248 Zero-rating of goods**

- (1) After section 11(1)(e), the following is inserted:
- “(eb) subject to subsection (4), the goods supplied—
- “(i) are supplied to a recipient who is a non-resident; and
  - “(ii) have been entered for export under the Customs and Excise Act 1996 by the supplier or will be entered for export by the supplier in the course of or as a condition of making the supply; and
  - “(iii) are exported by the recipient; and
  - “(iv) are not intended by the recipient for later importation into New Zealand for use other than in making taxable supplies or exempt supplies, with the absence of such an intention being confirmed by the recipient in a document retained by the supplier; and

## New (majority)

- |  |                               |
|--|-------------------------------|
| <p>“(v) are not used or altered by the recipient before being exported, except to the extent necessary to prepare the goods for export; and</p> <p>“(vi) leave New Zealand under an arrangement agreed by the supplier and the recipient at or before the time of the supply; and</p> <p>“(vii) do not leave New Zealand in the possession of a passenger or crew member of an aircraft or ship; or”.</p>  | <p>5</p>                      |
| <p>(2) In section 11(1)(l), subparagraphs (i) and (ii) and the words before subparagraph (i) are replaced by the following:</p> <p>“(1) the goods supplied are consumable stores intended for use on—</p> <p>“(i) an aircraft on a flight, or going, to a destination outside New Zealand; or</p> <p>“(ii) a fishing ship outside, or going outside, New Zealand fisheries waters; or</p> <p>“(iib) a ship, other than a pleasure craft, carrying consumable stores to a foreign-going ship or to a fishing ship that meets the requirements in <b>subparagraph (ii)</b>; or”.</p> | <p>10</p> <p>15</p> <p>20</p> |
| <p>(3) In section 11(4),—</p> <p>(a) “If subsection (1)(d) or (1)(e) applies and the goods are not exported by the supplier” is replaced by “If subsection (1)(d), (e), or <b>(eb)</b> applies and the person required to export the goods does not do so”:</p> <p>(b) “subsection (1)(d) and (1)(e)” is replaced by “subsection (1)(d), (e), and <b>(eb)</b>”.</p>  | <p>25</p>                     |
| <p>(4) In section 11(9), in the definition of <b>consumable stores</b>, paragraph (a), “intend to consume” is replaced by “have available to consume”.</p>   | <p>30</p>                     |
| <p>(5) In section 11(9), the definition of <b>foreign-going ship</b> is replaced by the following:</p>   |                               |

**New (majority)**

“**foreign-going ship** means a ship on a voyage, or going, to a destination outside New Zealand, other than a pleasure craft or a fishing ship”.

**248B Zero-rating of services**

In section 11A(1)(m)(i), “section 11(1)(a) to (e)” is replaced by “section 11(1)(a) to **(eb)**”. 5

**249 Special returns**

(1) In section 17(1), in the words before the paragraphs, “, on or before the 28th day of the month following the month within which the sale was made,” is omitted. 10

(2) After section 17(1), the following is inserted:

“(1B) A return that a person is required to furnish to the Commissioner under subsection (1) must be furnished on or before—  
 “(a) the 28th of the month following the end of the month in which the relevant sale was made, if **paragraphs (b) or (c)** do not apply; or 15  
 “(b) the 15th day of January, if November is the month in which the relevant sale was made; or  
 “(c) the 7th day of May, if March is the month in which the relevant sale was made.” 20

(3) **Subsections (1) and (2)** apply for taxable periods ending on or after 30 November 2007.

**250 Calculation of tax payable**

In section 20(2)(a), “sections 24 and 25” are replaced by “sections 24, **24BA**, and 25”. 25

**251 New section 24BA inserted**

After section 24, the following is inserted:

**“24BA Shared tax invoices**

“(1) A shared invoice is a tax invoice, if the invoice contains the following particulars— 30  
 “(a) the words “tax invoice” in a prominent place:

- “(b) the name and registration number of the principal supplier:
  - “(c) the name and address of the recipient:
  - “(d) the date upon which the tax invoice is issued:
  - “(e) a description of the goods and services supplied: 5
  - “(f) the consideration for the supply, inclusive of tax charged, and—
  - “(i) the tax charged, and the consideration for the supply, excluding tax charged; or
    - “(ii) where the amount of tax charged is the tax fraction of the consideration, a statement that the consideration includes a charge in respect of the tax. 10
- “(2) A tax invoice under this section is treated as provided by each supplier. 15
- “(3) Where a tax invoice to which this section applies has been issued in respect of a supply, the principal supplier must maintain sufficient records to enable the name, address, and registration number, if any, of the supply’s supplier to be ascertained. 20
- “(4) For the purposes of this section—
  - “**principal supplier** means, for a shared invoice,—
  - “(a) the supplier responsible for issuing the invoice, unless **paragraph (b)** applies:
  - “(b) the representative member of a group of companies for the purposes of section 55 25
  - “**shared invoice** means a single invoice for goods and services (other than goods deemed to be supplied pursuant to section 5(2)) supplied by 2 or more suppliers, if the suppliers use a single invoice because they— 30
  - “(a) have statutory obligations which make it practical to use a single invoice:
    - “(b) are part of the same group of companies for the purposes of section 55.”



**New (majority)**

**251B Group of companies**

Section 55(1) is replaced by the following:

- “(1) For the purposes of this Act, 2 or more companies (the **com-  
panies**) are eligible to be a group of companies at a time if,—
- “(a) at the time and under section IG 1 of the Income Tax Act 2004, the companies—
- “(i) are a group of companies:
- “(ii) are part of a group of companies:
- “(iii) would be a group of companies or part of a group of companies but for 1 or more of the companies being a portfolio tax rate entity; and
- “(b) the companies,—
- “(i) at the time, are each a registered person:
- “(ii) in a 12-month period that includes the time, make a total value of taxable supplies to persons other than the companies that is at least 75% of the total value of all supplies made in that period by the companies to persons other than the companies.”

***Income Tax Act 1994***

**252 Income Tax Act 1994** 20

**Sections 253 to 258** amend the Income Tax Act 1994.

**253 Public and local authorities’ exempt income**

Section CB 3(b)(ii)(A) is replaced by the following:

- “(A) any council-controlled organisation, other than a council-controlled organisation operating a hospital as a charitable activity on behalf of the local authority:”.

**254 Non-profit bodies’ and charities’ exempt income**

- (1) In section CB 4(1)(n), “trust.” is replaced by “trust:” and the following is added: 30

- “(o) any amount derived by the trustee of the Tokelau International Trust Fund.”

Taxation (Annual Rates, Business Taxation, KiwiSaver, and Remedial Matters)	
Part 3 cl 254	
(2) In section CB 4(1)(o), “Fund.” is replaced by “Fund:” and the following is added: “(p) any amount derived by the trustee of the Niue International Trust Fund.”	
(3) Section CB 4(3)(a) and (b) are replaced by the following: “(a) a council-controlled organisation, other than a council-controlled organisation operating a hospital as a charitable activity: “(b) a local authority in respect of income derived from a council-controlled organisation, other than from a council-controlled organisation operating a hospital as a charitable activity on behalf of the local authority.”	5 10
(4) <b>Subsection (1)</b> applies for the 1999–2000 and later income years.	
(5) <b>Subsection (2)</b> applies for the 2003–04 and later income years.	15
<b>255 Other exempt income</b>	
(1) In section CB 9(i), “grant.” is replaced by “grant:” and the following is added: “(j) any amount derived as a distribution from the trustee of the Tokelau International Trust Fund.”	20
(2) In section CB 9(j), “Fund.” is replaced by “Fund:” and the following is added: “(k) any amount derived as a distribution from the trustee of the Niue International Trust Fund.”	
(3) <b>Subsection (1)</b> applies for the 1999–2000 and later income years.	25
(4) <b>Subsection (2)</b> applies for the 2003–04 and later income years.	

#### New (majority)

<b>255B What constitutes an interest in a foreign investment fund</b>	
(1) After section CG 15(2), the following is inserted: “(2B) If a person is treated under section CG 23(7) to (8) as disposing of or acquiring rights in an income year, the disposal or acquisition is ignored for the purposes of subsection (2)(d).”	30

**New (majority)**

- (2) **Subsection (1)** applies for the 1995–96 and later income years.

**255C Companies required to maintain imputation credit account**

In section ME 1(2)(i), “section 24” is replaced by “section 266”.

5

**256 Use of credit to reduce dividend withholding payment, or use of debit to satisfy income tax liability**

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

“(5B) An election made in respect of a company (the **first company**)  
by the first company or any other company under section MF 5(4) for an income year is invalid to the extent that the total of  
all those elections and any other elections in respect of the first  
company under section MF 10(4) for the year is greater than  
an amount calculated for the first company for the year using  
the formula in section MF 4(1)(a) (but treating item e as nil).”

10

15

“(5C) An amount of election that is invalid under **subsection (5B)**—

“(a) is not recorded as a credit in the branch equivalent tax  
account of the company that makes the election:

“(b) is not an amount of debit balance in respect of which the  
election is made:

20

“(c) does not relate to the election.”

- (2) **Subsection (1)** applies for a person for the 1997–98 and later  
income years, unless the person has, for the relevant income  
year, taken a tax position in a return of income furnished to the  
Commissioner before **17 May 2007** that ignores the existence of  
**subsection (1)**.

25

- (3) If **subsection (1)** does not apply to a person for an income year  
because of **subsection (2)**, the person may treat **subsection (1)** as  
not existing.

**257 Use of consolidated group credit to reduce dividend withholding payment or use of group or individual debit to satisfy income tax liability**

30

- (1) After section MF 10(4), the following is inserted:

- “(4B) An election made in respect of a consolidated group under section MF 10(3) by any company described in section MF 10(3)(a) to (c) for an income year is invalid to the extent that the total of all those elections is greater than an amount calculated for the consolidated group for the year using the formula in section MF 8(2)(a) (but treating item **e** as nil). 5
- “(4C) An election made in respect of a company (the **first company**) by any consolidated group under section MF 10(4) for an income year is invalid to the extent that the total of all those elections and any other elections in respect of the first company under section MF 5(4) for the year is greater than an amount calculated for the first company for the year using the formula in section MF 4(1)(a) (but treating item **e** as nil). 10
- “(4D) An amount of election that is invalid under **subsections (4B) or (4C)**— 15
- “(a) is not recorded as a credit in the branch equivalent tax account of the company or consolidated group (as the case may be) that makes the election:
- “(b) is not an amount of debit balance in respect of which the election is made: 20
- “(c) does not relate to the election.”
- (2) **Subsection (1)** applies for a person for the 2005–06 and later income years, unless the person has, for the relevant income year, taken a tax position in a return of income furnished to the Commissioner before **17 May 2007** that ignores the existence of **subsection (1)**. 25
- (3) If **subsection (1)** does not apply to a person for an income year because of **subsection (2)**, the person may treat **subsection (1)** as not existing.
- 258 Definitions** 30
- (1) This section amends section OB 1.
- (2) After the definition of **New Zealand tax**, the following is inserted:
- “**Niue International Trust Fund** means the trust governed by the Deed concerning the Niue International Trust Fund dated 25 October 2006 and signed by Her Majesty the Queen in right of New Zealand and the Governments of Niue and Australia”. 35

- (3) In the definition of **taxable bonus issue**, paragraph (b) is replaced by the following:
- “(b) any bonus issue that the company elects in accordance with section CF 8(a) (or with section 3(3)(a)(i) of the Income Tax Act 1976) to be a bonus issue that will be treated as a dividend for the purposes of this Act, if the bonus issue—
- “(i) is issued fully paid from the reserves of the company:
- “(ii) would not be exempt income under section CB 10(2) to (5), if a dividend:”.
- (4) After the definition of **timing regime**, the following is inserted:
- “**Tokelau International Trust Fund** means the trust governed by the Deed concerning the Tokelau International Trust Fund dated 10 November 2004 and signed by Her Majesty the Queen in right of New Zealand and the Government of Tokelau”.
- (5) **Subsection (3)** applies for an issue of shares made on or after 16 November 2004.

### ***Taxation Review Authorities Act 1994***

#### **259 Taxation Review Authorities Act 1994**

**Sections 260 and 261** amend the Taxation Review Authorities Act 1994.

#### **260 New section 22B inserted** 25

After section 22, the following is inserted:

##### **“22B Power to order costs for filing fees**

An Authority may order the Commissioner to pay to an objector or a disputant an amount of costs not more than the filing fee paid by the objector or disputant under the relevant regulation.” 30

#### **261 Regulations**

In section 30(2)(d), “this Act.” is replaced by “this Act:”, and the following is added:

“(e) prescribing the circumstances in which any fees paid or to be paid in respect of the filing of any proceedings brought under this Act may be refunded, remitted, or waived, in whole or in part.”

5

***Taxation (Depreciation, Payment Dates Alignment, FBT,  
and Miscellaneous Provisions) Act 2006***

**262 Taxation (Depreciation, Payment Dates Alignment, FBT,  
and Miscellaneous Provisions) Act 2006**

Sections 18, 19, 26, 47, 49, 127, 192, 215, and 216 of the  
Taxation (Depreciation, Payment Dates Alignment, FBT, and  
Miscellaneous Provisions) Act 2006 are repealed. 10

***Customs and Excise Act 1996***

**263 New sections 280J, 280K, and 280L inserted**

After section 280I of the Customs and Excise Act 1996, the  
following is inserted: 15

**“280J Defined terms for sections 280K and 280L**

In **sections 280K and 280L**, unless the context otherwise  
requires,—

“**Commissioner** means the Commissioner of Inland Revenue  
as defined in section 3(1) of the Tax Administration Act 1994 20

“**Department** means the Inland Revenue Department

“**financial support debt** means an amount owing to the Com-  
missioner of—

“(a) financial support as defined in section 2 of the Child  
Support Act 1991: 25

“(b) a penalty or interest under the Child Support Act 1991

“**identifying information** means personal information that  
identifies an individual

“**officer of the Department** has the meaning given to it by  
section 3(1) of the Tax Administration Act 1994 30

“**serious default** means the state of having an amount of  
financial support debt due and owing to the Commissioner of

Inland Revenue and satisfying criteria agreed by the Commissioner and the Privacy Commissioner in consultation with the Chief Executive.

- “280K Disclosure of arrival and departure information for purposes of Child Support Act 1991** 5
- “(1) The purpose of this section is to facilitate the exchange of information between the Customs and the Department for the purpose of assisting the Commissioner to—
- “(a) locate any person who is in serious default in the payment of any financial support debt; and 10
- “(b) take appropriate debt recovery action against that person.
- “(2) For the purpose of this section, the Commissioner may supply any identifying information to the Chief Executive.
- “(3) If, in relation to a person who is in serious default, identifying information is supplied in accordance with **subsection (2)**, the Chief Executive may compare that information with any arrival and departure information held by the Customs that may relate to that person. 15
- “(4) If the Customs has arrival or departure information relating to a person who is in serious default, the Chief Executive may, for the purpose of this section, supply to the Commissioner any of the following information held by the Customs: 20
- “(a) the person’s name:
- “(b) the person’s date of birth: 25
- “(c) the person’s tax file number:
- “(d) the time and date on which the person arrived in New Zealand or, as the case may be, departed from New Zealand:
- “(e) information provided by the person when arriving in New Zealand or, as the case may be, departing from New Zealand. 30
- “(5) The Chief Executive and the Commissioner may, for the purpose of this section, determine by written agreement between them— 35
- “(a) the frequency with which information may be supplied:
- “(b) the form in which information may be supplied:
- “(c) the method by which information may be supplied.

**“280L Direct access to arrival and departure information for purposes of Child Support Act 1991**

- “(1) The purpose of this section is to facilitate the Department’s access to information stored in a database for the purpose of assisting the Commissioner to— 5
- “(a) locate any person who is in serious default in the payment of any financial support debt:
- “(b) take appropriate debt recovery action against that person.
- “(2) The Chief Executive may, for the purpose of this section, allow the Commissioner to access a database in accordance with a written agreement entered into by the Chief Executive and the Commissioner. 10
- “(3) In accessing a database for the purpose of this section, the Commissioner— 15
- “(a) may only search for arrival or departure information relating to preselected persons who are of interest to the Commissioner; and
- “(b) must not search for—
- “(i) any information other than arrival or departure information: 20
- “(ii) any information about a person who is not in serious default.
- “(4) The Commissioner must take all reasonable steps to ensure that— 25
- “(a) only persons with appropriate powers delegated to them by the Commissioner—
- “(i) have access to the database; and
- “(ii) use the database; and
- “(b) a record is kept of— 30
- “(i) every occasion on which persons access a database; and
- “(ii) the reason for accessing the database; and
- “(iii) the identity of the person who accessed the database; and 35
- “(c) every person who accesses a database for the purpose of this section complies with **subsection (3)**.
- “(5) In this section,—
- “**access a database** includes remote access to a database



“**database** means any information recording system used by the Customs to store arrival or departure information.”

### *Housing Restructuring and Tenancy Matters Act 1992*

- |            |  |   |
|------------|--|---|
| <b>264</b> | <b>Amendments to Housing Restructuring and Tenancy Matters Act 1992 made in schedule 2</b>   | 5 |
|            | The amendments to the Housing Restructuring and Tenancy Matters Act 1992 specified in <b>schedule 2</b> are made in the manner shown in that schedule. |   |

### *Privacy Act 1993*

- |            |  |    |
|------------|--|----|
| <b>265</b> | <b>Privacy Act 1993</b><br><b>Sections 266 and 267</b> amend the Privacy Act 1993.   | 10 |
| <b>266</b> | <b>Notice of adverse action proposed</b><br>After section 103(1B), the following is inserted:<br>“(1C) Nothing in subsection (1) prevents the Commissioner of Inland Revenue from immediately taking action to recover amounts relating to financial support under the Child Support Act 1991 owed to the Commissioner by an individual who is identified in information supplied to the Commissioner under <b>section 280K or 280L</b> of the Customs and Excise Act 1996.” | 15 |
| <b>267</b> | <b>Schedule 3—Information matching provisions</b><br>In schedule 3, in the entry for the Customs and Excise Act 1996, “, <b>280K, 280L</b> ” is added after “280D”.  | 20 |

### *Rates Rebate Act 1973*

- |            |  |    |
|------------|--|----|
| <b>268</b> | <b>Amendments to Rates Rebate Act 1973 made in schedule 2</b><br>The amendments to the Rates Rebate Act 1973 specified in <b>schedule 2</b> are made in the manner shown in that schedule. | 25 |
|------------|--|----|

### *Social Security Act 1964*

- 269 Amendments to Social Security Act 1964 made in schedule 2**
- The amendments to the Social Security Act 1964 specified in **schedule 2** are made in the manner shown in that schedule. 5

### *Goods and Services Tax (Grants and Subsidies) Order 1992*

- 270 Schedule—Goods and Services Tax (Grants and Subsidies) Order 1992**
- (1) The following is added to the schedule of the Goods and Services Tax (Grants and Subsidies) Order 1992: 10
- “6 The Commissioner of Inland Revenue crediting, transferring, refunding, dealing with, or otherwise paying, a person’s tax credit under the Income Tax Act 2004 or the Tax Administration Act 1994, if that tax credit is one to which the person is entitled under **section LH 1** of the Income Tax Act 2004.” 15
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

### *Health Entitlement Cards Regulations 1993*

- 271 Amendments to Health Entitlement Cards Regulations 1993 made in schedule 2**
- The amendments to the Health Entitlement Cards Regulations 1993 specified in **schedule 2** are made in the manner shown in that schedule. 20

***Income Tax (Withholding Payments) Regulations 1979***

**Struck out (majority)**

**272 Schedule—Tax deductions from withholding payments**

The following is added to the schedule of the Income Tax (Withholding Payments) Regulations 1979:

**“Part F**

**5**

<b>Class of payment</b>	<b>Rate of tax deduction</b>
An amount paid under section 81(1)(b) of the Injury Prevention, Rehabilitation, and Compensation Act 2001 to a claimant under that Act or to a caregiver on behalf of a claimant under that Act”.	15c per \$1

**10**

**New (majority)**

**272 Schedule—Tax deductions from withholding payments**

The following is added to the schedule of the Income Tax (Withholding Payments) Regulations 1979:

**“Part F**

**15**

<b>Class of payment</b>	<b>Rate of tax deduction</b>
A personal service rehabilitation payment for a claimant under the Injury Prevention, Rehabilitation, and Compensation Act 2001”.	15c per \$1

***Social Security (Temporary Additional Support)  
Regulations 2005***

**20**

**273 Amendments to Social Security (Temporary Additional Support) Regulations 2005 made in schedule 2**

The amendments to the Social Security (Temporary Additional Support) Regulations 2005 specified in **schedule 2** are made in the manner shown in that schedule.

**25**

*Student Allowances Regulations 1998*

**274 Amendments to Student Allowances Regulations 1998  
made in schedule 2**

The amendments to the Student Allowances Regulations 1998 specified in **schedule 2** are made in the manner shown in that schedule. 5

*Holidays Act 2003*

New (majority)

**274B Meaning of ordinary weekly pay**

In section 8(1)(c)(iv) of the Holidays Act 2003, “employee.” is replaced by “employee:”, and the following is added: 10

“(v) any payment of any employer contribution to a superannuation scheme for the benefit of the employee.”

**274C Meaning of relevant daily pay**

In section 9(1)(b)(iii) of the Holidays Act 2003, “employee.” is replaced by “employee; but”, and the following is added: 15

“(c) excludes any payment of any employer contribution to a superannuation scheme for the benefit of the employee.”

**275 Meaning of gross earnings**

In section 14(c)(ii) of the Holidays Act 2003, “employment.” is replaced by “employment:”, and the following is added: 20

“(iii) any payment of any employer contribution to a superannuation scheme for the benefit of the employee.” 25

## Schedule 1 Amendments to subpart KD of the Income Tax Act 2004

s 86

### Subpart KD

Subpart KD, heading: “**Tax credits for family support and family plus**” is replaced by “**Tax credits for families**”. 5

### Section KD 1A

Section KD 1A, heading: “**Family support and family plus**” is replaced by “**Working for Families tax credits**”.

Section KD 1A(1): “family support and family plus” is replaced by 10  
“a Working for Families tax credit, consisting of the family tax credit, the in-work tax credit<,> or the child tax credit continued under section KD 2AAAB, the parental tax credit, and the minimum family tax credit, after abatement (if any)”.

Section KD 1A(2): repeal. 15

### Section KD 2

Section KD 2(2), formula: the formula is replaced by “FTC + IWTCorCTC + PTC – FCA”.

#### Struck out (majority)

Section KD 2(2), in the item FSC: “FSC” is replaced by “FTC”.  
Section KD 2(2), in the item FSC: “family support credit” is 20  
replaced by “family tax credit”.

Section KD 2(2), in the item **IWP** or **CTC**: “**IWP** or **CTC**” is replaced by “**IWTCorCTC**”.

Section KD 2(2), in the item **IWP** or **CTC**, paragraphs (a) and (b)(i):  
“in-work payment” is replaced by “in-work tax credit” in each 25  
place where it appears.

Section KD 2(3): “family support credit” is replaced by “family tax credit”.

Section KD 2(6), in the formula: “NRFFS” is replaced by  
“NRFFTC”. 30

Section KD 2(6), in the item NRFFS: “NRFFS” is replaced by  
“NRFFTC”.

Section KD 2(6), in the item NRFFS: “ring-fenced family support  
recipient” is replaced by “ring-fenced family tax credit recipient”.  
Section KD 2(6B) “**ring-fenced family support recipient**” is 35  
replaced by “**ring-fenced family tax credit recipient**”.

**Section KD 2**—*continued*

**New (majority)**

- Section KD 2(2), item FSC: “FSC” is replaced by “FTC”.
- Section KD 2(2), item FSC: “family support credit” is replaced by “family tax credit”.
- Section KD 2(2), item IWP or CTC: “**IWP** or **CTC**” is replaced by “**IWTCorCTC**”.
- Section KD 2(2), item IWP or CTC as amended above, paragraphs (a) and (b)(i): “in-work payment” is replaced by “in-work tax credit” in each place where it appears. 5
- Section KD 2(3): “family support credit” is replaced by “family tax credit”.
- Section KD 2(6), formula: “NRFFS” is replaced by “NRFFTC”. 10
- Section KD 2(6), item NRFFS: “NRFFS” is replaced by “NRFFTC”.
- Section KD 2(6), item NRFFS: “ring-fenced family support recipient” is replaced by “ring-fenced family tax credit recipient”.
- Section KD 2(6B): “**ring-fenced family support recipient**” is replaced by “**ring-fenced family tax credit recipient**”. 15

**Section KD 2AAA**

- Section KD 2AAA, heading: “**In-work payment**” is replaced by “**In-work tax credit**”.
- Section KD 2AAA(1): “in-work payment” is replaced by “in-work tax credit”. 20

**Struck out (majority)**

- Section KD 2AAA(2), in the words before the formula and in the item **children**, paragraph (b): “in-work payment” is replaced by “in-work tax credit” in each place where it appears.

**New (majority)**

- Section KD 2AAA(2), words before the formula and paragraph (b) of item **children**: “in-work payment” is replaced by “in-work tax credit” in each place where it appears. 25

**Section KD 2AAAB**

**Section KD 2AAAB**—*continued*

Section KD 2AAAB(b): “in-work payment” is replaced by “in-work tax credit”.

**Section KD 2AA**

Section KD 2AA(3): “family support credit” is replaced by “family tax credit”.

Section KD 2AA(3A): “in-work payment” is replaced by “in-work tax credit”. 5

**Section KD 2A**

Section KD 2A, heading: “**family support credit, in-work payment**” is replaced by “**family tax credit, in-work tax credit**”.

**Struck out (majority)**

Section KD 2A, in the words before paragraph (a) and in paragraph (a): “the family support credit, in-work payment” is replaced by “the family tax credit, the in-work tax credit” in each place where it appears. 10

**New (majority)**

Section KD 2A, in the words before paragraphs and in paragraph (a): “the family support credit, in-work payment” is replaced by “the family tax credit, the in-work tax credit” in each place where it appears. 15

Section KD 2A(c)(i): “family support credit” is replaced by “family tax credit”.

Section KD 2A(c)(ii): “in-work payment” is replaced by “in-work tax credit”. 20

**Section KD 3**

Section KD 3, heading: “**family tax credit**” is replaced by “**minimum family tax credit**”.

**Section KD 3A** 25

Section KD 3A, heading: “**family tax credit**” is replaced by “**minimum family tax credit**”.

**Section KD 5**

Section KD 5(4)(c)(ii): “family support credit” is replaced by “family tax credit”. 30

**Section KD 5**—*continued*

Section KD 5(4)(c)(iib): “in-work payment” is replaced by “in-work tax credit”.

Section KD 5(4)(c)(iv): “family tax credit” is replaced by “minimum family tax credit”.

Section KD 5(6A)(b)(ii): “family support credit, in-work payment, child tax credit, parental tax credit, family credit abatement, and family tax credit” is replaced by “family tax credit, in-work tax credit, child tax credit, parental tax credit, family credit abatement, and minimum family tax credit”.

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**Section KD 5C**

Section KD 5C, heading: “**family support amounts, abatement threshold amounts, amounts of in-work payment and parental tax credit, and amount of family tax credit**” is replaced by “**family tax credit amounts, abatement threshold amounts, amounts of in-work tax credit and parental tax credit, and amount of minimum family tax credit**”.

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Section KD 5C(1)(a): “family support credits” is replaced by “family tax credits”.

Section KD 5C(1)(c): “in-work payment” is replaced by “in-work tax credit”.

**Struck out (majority)**

Section KD 5C(1)(d): “family tax credit” is replaced by “minimum family tax credit”.

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Section KD 5C(4): “in-work payment” is replaced by “in-work tax credit”.

**Section KD 6**

Section KD 6(1A)(b): “family support credit” is replaced by “family tax credit”.

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**Section KD 7**

Section KD 7(2B): “family support credit” is replaced by “family tax credit”.

**Section KD 7A**

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Section KD 7A(1)(a): “family tax credit” is replaced by “minimum family tax credit”.



**Section KD 7A**—*continued*

**Struck out (majority)**

Section KD 7A(2), in the item a, paragraph (b): “family tax credit” is replaced by “minimum family tax credit”.

Section KD 7A(3), in the item a, paragraph (b): “family tax credit” is replaced by “minimum family tax credit”.

**New (majority)**

Section KD 7A(2), item a, paragraph (b): “family tax credit” is replaced by “minimum family tax credit”.

Section KD 7A(3), item a, paragraph (b): “family tax credit” is replaced by “minimum family tax credit”.

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ss 264, 268, 269, 271, 273, and  
274

## Schedule 2

### Amendments to other Acts and Regulations

#### *Public Acts*

**Housing Restructuring and Tenancy Matters Act 1992** 5  
**(1992 No 76)**

#### Struck out (majority)

<p>Section 46(2)(c), in the words before the subparagraphs and in subparagraph (i): “family support” is replaced by “family tax credits” in each place where it appears.</p> <p>Section 46(3)(b), in the words before the subparagraphs and in subparagraph (i): “family support” is replaced by “family tax credits” in each place where it appears.</p>	10
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#### New (majority)

<p>Section 46(2)(c), in the words before the subparagraphs and in subparagraph (i): “family support” is replaced by “family tax credits” in each place where it appears.</p> <p>Section 46(3)(b), in the words before the subparagraphs and in subparagraph (i): “family support” is replaced by “family tax credits” in each place where it appears.</p>	15
<p>Schedule 2, clause 4, heading: “<b>family support</b>” is replaced by “<b>family tax credit</b>”.</p> <p>Schedule 2, clause 5, heading: “<b>family support</b>” is replaced by “<b>family tax credit</b>”.</p> <p>Schedule 2, clause 5: “child support” is replaced by “family tax credit”.</p>	20
<p>Schedule 2, clause 9(c): “family tax credit” is replaced by “minimum family tax credit”.</p> <p>Schedule 2, clause 10(a)(ii): “in-work payment” is replaced by “in-work tax credit”.</p>	25

#### **Rates Rebate Act 1973 (1973 No 5)**

Section 2(1), definition of <b>income</b> , paragraph (d)(vi): “family support” is replaced by “family tax credit”.	30
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**Social Security Act 1964 (1964 No 136)**

Schedule 18, Part 1, clause 1, definition of **base rate**, paragraphs (b) and (d): “family support” is replaced by “family tax credit” in each place where it appears.

Schedule 18, Part 1, clause 1, definition of **base rate**, paragraphs (e)(ii) and (g)(ii): “family support” is replaced by “family tax credit” in each place where it appears. 5

***Regulations***

**Health Entitlement Cards Regulations 1993 (SR 1993/169)**

Regulation 2, definition of **family credit income**, paragraph (b): “family tax credit” is replaced by “minimum family tax credit”. 10

**Social Security (Temporary Additional Support) Regulations 2005 (SR 2005/334)**

Regulation 13, example 1, items 1 and 4: “family support” is replaced by “family tax credit” in each place where it appears. 15

Regulation 13, example 2, items 1 and 4: “family support” is replaced by “family tax credit” in each place where it appears.

Schedule 3, part 1, clause 1(b): “family support credit of tax” is replaced by “family tax credit”.

**Student Allowances Regulations 1998 (SR 1998/277)** 20

Regulation 2(1), definition of **personal income**, paragraph (d): “family support” is replaced by “family tax credit”.

Regulation 2(1), definition of **spousal or partner’s income**, paragraph (d): “family support” is replaced by “family tax credit”.

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**Legislative history**

17 May 2007

Introduction (Bill 119–1)

17 May 2007

First reading and referral to Finance and Expenditure Committee

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