

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

Government Bill

Explanatory note

General policy statement

Business Tax Review

The Government announced in Budget 2007 its decisions following from the Business Tax Review. The key decisions, which are in accordance with the Government's economic transformation goals, include the introduction of a tax credit for research and development and the reduction of the company tax rate from 33% to 30% from the start of the 2008–09 income year. With the reduction in the company tax rate a number of mainly transitional changes have been made. The most significant of these is that, for the first 2 years after the new rate is introduced, a company making distributions to shareholders out of profits that have been taxed at 33% will be able to attach imputation credits at the old 33/67 ratio of tax credits to cash.

KiwiSaver scheme

The Government announced in Budget 2007 a set of enhancements to KiwiSaver. The enhancements build on the core features of the original KiwiSaver model in a manner that significantly increases the incentives for a person to join and to continue making contributions to KiwiSaver. The key features of the enhancements are:

- A tax credit is available to a member who is between 18 years of age and the age of eligibility to withdraw the member's interests in the KiwiSaver or complying superannuation fund. The tax credit will match the member's contributions dollar for dollar up to a cap of \$20 per week (\$1,042.86 per year).

- Employees contributing to KiwiSaver or complying superannuation funds through the workplace receive compulsory employer contributions if the employee is between 18 years of age and the age of eligibility to withdraw the member's interests. The compulsory contributions are phased in over 4 years, starting at 1% from 1 April 2008 and reaching 4% of gross salary or wages from 1 April 2011.
- Employers receive a tax credit, reimbursing their contributions to KiwiSaver or complying superannuation funds, of up to \$20 a week per employee.

Encouraging saving contributes, in particular, to the Government's Economic Transformation and Families—Young and Old themes, with the following broad objectives:

A better retirement

- ensuring all New Zealanders have the opportunity to save to secure a better standard of living in retirement.

A stronger economy

- helping to reduce pressure on inflation and the current account deficit;
- furthering development of stronger and deeper capital markets; and
- offering a more competitive package of workplace rewards.

A fairer society

- providing a greater and broader ownership stake in New Zealand; and
- reducing large inequalities in wealth, which tend to undermine social cohesion.

Tax incentives for giving to charitable organisations

Budget 2007 introduces measures to remove the current caps on the dollar amount of charitable donations that are eligible for tax relief. This will generally mean that the total of all donations made in a tax year will be limited only by the amount of the donor's net income. The changes will remove some of the tax barriers to even more generous contributions to charities and other non-profit organisations by individuals, companies and Maori authorities. The changes are a direct result of the Confidence and Supply Agreement between United Future and Labour.

Part 1

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

Annual rates of income tax for 2007–08 tax year

This provision sets the annual income tax rates that will apply for the 2007–08 tax year. The rates that will apply are those in schedule 1 of the Income Tax Act 2004.

General amendments to Income Tax Act 2004

Tax credits for research and development

The bill introduces a tax credit for research and development (R&D) conducted predominantly in New Zealand by New Zealand businesses. The aim of the incentive is to improve the productivity and international competitiveness of New Zealand businesses by encouraging businesses to invest more in R&D.

The credit applies only to businesses that satisfy the general eligibility criteria, conduct eligible R&D activities and incur eligible R&D expenditure. The credit applies at the rate of 15% of eligible expenditure in a year. It is a refundable credit—that is, the credit will be paid out to people with exempt income and to taxpayers in loss.

Consequential changes are made to the Tax Administration Act 1994 and the Goods and Services Tax (Grants and Subsidies) Order 1992.

General eligibility criteria

A claimant for an R&D tax credit must satisfy the general eligibility criteria given below.

- A claimant must be in business, and the expenditure for which a claim is made must relate to that business. An exception exists for industry research co-operatives, which have special rules. Crown Research Institutes, tertiary institutions, and District Health Boards and entities associated with them are not eligible for the credit.
- More than \$20,000 of eligible expenditure must be incurred in the year for which a claim is made, except if the R&D services are purchased from a listed research provider.

- A claimant must bear the financial and technical risk associated with the project, have control over the R&D work, and own the project results.
- R&D must be conducted predominantly in New Zealand (see ineligible expenditure).

Eligible R&D activities

R&D activities are defined as:

- (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:
 - acquiring new knowledge; or
 - creating new or improved materials, products, devices, processes or services;
- (b) other activities that are commensurate with, required for, and integral to, the carrying on of the activities in paragraph (a).

There is a list of activities that are excluded from being core activities referred to in paragraph (a) (though they may be support activities referred to in paragraph (b)). The main activities are:

- exploring for minerals, petroleum, natural gas or geothermal energy;
- research in social sciences, arts or humanities;
- market research or market development;
- quality control or routine testing of products, processes or services;
- cosmetic or stylistic changes to products, processes or services; and
- routine collection of information.

Eligible expenditure

The credit can be claimed for eligible R&D costs. The main types are:

- the cost of employee salaries, training, recruitment, relocation and travel;
- depreciation of tangible assets used wholly or mainly in conducting R&D;
- the cost of consumables;

- overhead costs that relate to administration, personnel, repairs and maintenance, cleaning and security, rates, utilities, insurance, and leasing of buildings, plant and equipment; and
- payments to people and entities conducting R&D on behalf of the claimant.

Some expenditure is not eligible. The main exclusions are:

- expenditure on R&D conducted overseas (the credit may be claimed for R&D conducted overseas only for an amount up to 10% of eligible expenditure on R&D conducted in New Zealand);
- interest;
- core technology (technology used as a basis for further R&D);
- expenditure funded by a government grant and any required co-funding;
- expenditure on intangible assets; and
- professional fees in determining eligibility for the credit.

Cap on in-house-use software development

There is a cap of \$2,000,000 on eligible expenditure where the core R&D activity is in-house-use software development. The Minister of Finance has a discretion to raise the cap if that is in the national interest.

Application

The credit will apply from the 2008–09 income year.

Company tax rate

Following the reduction in the company tax rate and the top rate for widely held savings vehicles and portfolio investment entities from 33% to 30%, the bill introduces a number of mainly transitional amendments to the Income Tax Act 2004 and the Tax Administration Act 1994. The amendments relate to the maximum imputation credit ratio, the dividend withholding payment (DWP) credit ratio, qualifying company election tax (QCET), branch equivalent and conduit memorandum accounts, and foreign investor tax credits (FITC).

Most of the amendments apply from the commencement of the 2008–09 income year. The exceptions are:

- the amendments relating to a portfolio tax rate entity that does not choose to be subject to section HL 22, which will apply from 1 April 2008; and
- the amendments relating to adjustments for QCET in imputation credit accounts, which will apply from the date of introduction.

Imputation credit and dividend withholding payment credit ratios

A reduction in the company tax rate to 30% will automatically cause the ratio of credit to cash (“the tax credit ratio”) for imputation credits and DWP credits to fall to 30/70. To ensure that shareholders are not disadvantaged by this fall, the bill introduces a transitional period. Under the rules, a company will be able to allocate imputation and DWP credits at a maximum tax credit ratio of 33/67 to the extent that there are credits. The transitional period will apply from the beginning of a company’s 2008–09 income year to the end of its 2009–10 imputation year (being 31 March 2010). Appropriate changes are also made to the benchmark dividend rules.

Under the rules, if the 33/67 tax credit ratio is used during the transitional period, the amount of imputation or DWP credits included as a credit against the income tax liability of a shareholder company or widely-held savings vehicle will be capped applying the 30/70 tax credit ratio. This is to ensure that credits attached to dividends received cannot be used to shelter other income.

The bill also introduces a special imputation and DWP penalty tax payable in some circumstances. Under the proposed rules, if a company elects to over-impute dividends using the 33/67 tax credit ratio during the transitional period and, in doing so, causes a debit balance to arise in relation to the number of these credits, a new 10% transitional imputation penalty tax will apply.

The penalty will only be applied once when the taxpayer has a debit balance in its 33/67 imputation credit account or DWP account as at 31 March 2010.

Qualifying company election tax

Following the reduction in the company tax rate, the rate of QCET will automatically fall to 30%.

The bill introduces new rules to allow payments of QCET to be credited to a company's imputation credit account. These rules are required to prevent incentives for companies that are contemplating winding up to convert to qualifying company status in order to reduce the shareholders' resultant tax liability on distributions.

Branch equivalent and conduit memorandum accounts

The bill introduces new tax rules to reduce the entries in these accounts that relate to periods when the tax rate was 33%. The reductions reflect the reduction in the company tax rate.

A reduction is necessary because credits in these accounts will be used to match future actual or potential income tax liabilities that will have been calculated using the lower company tax rate.

Foreign investor tax credits

A reduction in the company tax rate and the introduction of a transitional period (discussed above) will affect how foreign investor tax credits (FITC) are calculated. The bill introduces new tax rules that amend the FITC formula to be consistent with the reduced company tax rate and allow the use of 2 FITC formulas during the transitional period.

Under the proposed rules, if a dividend is imputed at 30/70 or less, the new 30/70 FITC formula will apply. If the tax credit ratio for imputation credits exceeds 30/70, the credits will be apportioned between 33% credits and 30% credits.

Changes relating to International Financial Reporting Standards

The proposed amendments prompted by the International Financial Reporting Standards (IFRSs) change tax rules relating to research or development expenditure, trading stock valuation, and timing of income and expenditure under financial arrangements. These changes are necessary to ensure that taxpayers who adopt IFRSs for the purpose of financial reporting can continue to use the tax rules relating to research or development and trading stock and use, for tax purposes, the methods of timing income and expenditure of financial arrangements specified by IFRSs. The key changes are described below.

- **Research or development expenditure**—the research or development expenditure rules in section DB 26 of the Income Tax Act 2004 are updated to reflect changes brought about by IFRSs. Some provisions in the old standard FRS 13 (such as paragraphs 2.3 and 5.4) are no longer applicable and the tax law has been amended accordingly.
- **Trading stock rules**—the trading stock valuation rules are updated to refer to the new accounting standard, NZIAS 2. Section EB 6(1B) of the Income Tax Act 2004 is inserted so that primary sector producers who use IFRSs can value their trading stock at cost for taxation purposes despite having to account for them at fair value under NZIAS 41.
- **Financial arrangement rules**—the financial arrangement spreading rules have been re-ordered so that taxpayers who adopt IFRSs for financial reporting purposes will use the IFRS timing rules for taxation purposes. However, credit impairment timing rules have not changed. Credit impairments are not deductible for tax purposes until actually written-off as being bad in the income year, in accordance with section DB 23 of the Income Tax Act 2004.
- **Exemption from unacceptable tax position penalties**—a legislative relief from unacceptable tax position penalties under the Tax Administration Act 1994 is provided for early adopters of IFRSs who may be filing their tax returns prior to the enactment of the proposed amendments.
- **Application dates**—taxpayers who adopt IFRSs for financial reporting purposes are required to apply IFRSs for taxation purposes contemporaneously, or from the 2007–08 income year at the latest. However, taxpayers can elect to use the existing financial arrangement rules in the 2005–06 and 2006–07 income years even if they have adopted IFRSs for financial reporting purposes.

Remedial amendments relating to the offshore portfolio share investment rules

Several remedial amendments are proposed for the new offshore portfolio share investment rules. The more significant of these amendments are described below.

- It is proposed that the fair dividend rate method not be used for an interest in a non-resident if the non-resident has assets of which 80% or more by value consist, directly or indirectly, of debt instruments denominated in New Zealand dollars or are hedged to achieve the effect of being denominated in New Zealand dollars.
- The exemption for shares in certain Australian-resident companies currently requires the Australian company to be included in an approved Australian Stock Exchange index at all times during the income year. It is proposed to amend this listing requirement so that the Australian company may meet the requirement at any time during the year for shareholders who are not managed funds or who do not do daily valuations. For managed funds, or any other shareholder applying the fair dividend rate method on a daily basis, the Australian company must meet the requirement on the first day of the shareholder's income year.

A number of other amendments have been proposed to give full effect to policy decisions or to rectify technical deficiencies in the legislation.

Retirement scheme contributions withholding tax (RSCWT)

These provisions introduce a new withholding tax that can be applied to certain contributions to retirement savings schemes. The withholding tax will replace income tax on the contributions. In addition, the contributions will not be taken into account for social assistance purposes, because they will be locked in, and so will not be available for day-to-day living costs. Replacing income tax with a withholding tax, and ensuring that contributions are not taken into account for social assistance purposes will reduce savers' compliance costs, and thus reduce barriers to saving.

Contributing entities will be able to apply the withholding tax rules provided that the criteria below are met.

- Contributing entities must be: a company but not a close company; a widely held unit trust; or a Maori authority.
- Contributions must be made by virtue of a saver's shareholding, unit holding or membership in the contributing entity.
- The savings scheme must be a portfolio investment entity (PIE).

- Contributions must be locked in until retirement, but withdrawals may be permitted for: first home purchase; significant financial hardship; serious illness; permanent emigration; and repaying student loans.
- The Commissioner of Inland Revenue must be satisfied that the scheme's rules are fair and reasonable, and the Commissioner's approval must be given for the withholding tax rules to be used.

Individual savers will be required to declare a tax rate to the contributing entity. The applicable tax rates are:

- 19.5% if the saver's taxable income in the preceding income year is \$38,000 or less;
- 33% if the saver's taxable income in the preceding income year is more than \$38,000 and less than or equal to \$60,000; and
- 39% if the saver's taxable income in the preceding income year is more than \$60,000.

Life insurance

The bill introduces 2 amendments to the taxation of life insurers. Under the first, life insurers can elect to exclude realised New Zealand and listed Australian equity gains in unit-linked life insurance products. The second amendment accounts for the fair dividend rate method in a life insurer's policyholder base tax calculation.

The amendments may apply to a life insurer for the 2008–09 and later income years, unless the life insurer makes an election before 1 April 2008, in which case, the amendments may apply from 1 October 2007, or for an income year beginning on or after 1 April 2007.

Write-down rates for bloodstock (shuttle stallions)

This provision enables shuttle stallions to qualify for the same write-down rates as other stallions that are new to New Zealand ownership.

Tax incentives for giving to charitable organisations

The bill introduces amendments that will substantially increase the tax relief for donations of money made by individuals, companies

and Maori authorities to donee organisations. These proposed changes are aimed at facilitating greater giving to such organisations and encouraging a culture of generosity in New Zealand. The proposed changes are part of the Government's response to the options canvassed and submissions received from a wide range of people and organisations in relation to the Government's October 2006 discussion document *Tax incentives for giving to charities and other non-profit organisations*. In particular, the proposed amendments will:

- remove the individual rebate threshold limit of \$1,890;
- remove the company deduction limit of 5% of the entity's net income;
- remove the Maori authority deduction limit of 5% of the entity's net income; and
- extend the company deduction provision to close companies not listed on a recognised stock exchange.

Under the proposed rules, the tax relief available will be limited only by the amount of the donor's net income. It is proposed that these new rules apply for the 2008–09 and later tax years.

Working for Families tax credits

The bill introduces changes to the names of the credits in the Income Tax Act 2004, the Tax Administration Act 1994, and various other Acts and regulations. The changes are as follows:

Current names	New names
family assistance	Working for Families tax credits
family support	family tax credit
in-work payment	in-work tax credit
parental tax credit	parental tax credit (unchanged)
family tax credit	minimum family tax credit

It also contains the following remedial amendments:

- modifications to the formula for the calculation of the parental tax credit to be used when parents choose to receive the credit as a lump sum and the child has been born within the last 56 days of a tax year;
- a replacement definition of "net specified income" to ensure that the minimum family tax credit is calculated from a base of after-tax income in all cases; and

- provisions for the automatic write-off of a 53rd interim weekly instalment or a 27th interim fortnightly instalment, regardless of whether the instalments have been paid by the Inland Revenue Department or the Ministry of Social Development, to ensure no-one is disadvantaged.

Remedial provisions arising from the *Rewriting the Income Tax Act* project

Major Land Developments – Section CB 11

Section CB 11 of the Income Tax Act 2004 has been the subject of a number of submissions to the Rewrite Advisory Panel. These submissions asserted that the drafting of the provision contains an unintended change in law. The Panel did not agree that the provision contained an unintended change in law. But it considered that the rule contained uncertainty about whether the provision applies to developments undertaken by a landowner for the purposes of and use in their own commercial undertakings.

The amendment ensures that the rule in section CB 11 will not apply to sales of land made after commencement of the Act if the landowner uses the land for the purposes of and use in their own commercial undertakings, including rental income. However, these exclusions will not generally apply if the landowner is a land developer.

Transitional provisions are intended to ensure that this policy extends back to open tax years where a person has taken a tax position consistent with the policy of the amendment.

Unintended changes

The Rewrite Advisory Panel has identified that the Income Tax Act 2004, as originally enacted, contains some unintended changes in legislative outcomes when compared with the Income Tax Act 1994. The Panel has recommended that these changes in outcome should be corrected with the remedial amendment applying from the beginning of the 2005–06 income year. The provisions affected are:

- Section CT 6. The amendment to section CT 6 clarifies that exploration and prospecting activities are included in the meaning of petroleum mining operations.

- Section DC 9. The amendment ensures that, on the transfer of a business with continuing employees, the purchaser is allowed a deduction for satisfying transferred employment obligations to the extent that the amount paid in satisfying the obligations exceeds the valuation of the obligations in the transfer (sale and purchase) agreement.
- Section IG 2(9). A cross-reference is corrected.
- Section 10(7) of the GST Act. A cross-reference is corrected.

Minor, remedial, or consequential matters

Donee status

The Hamlin Charitable Fistula Hospitals Trust, the Hope Foundation Development Trust, the Hope International Charitable Trust, the Limbs 4 All Charitable Trust, the New Zealand Disaster Assistance Response Team Trust, the Operation Restore Hope Charitable Trust, and The World Swim for Malaria Foundation (New Zealand) are engaged in activities which come within the guidelines established by Cabinet for granting donee status to organisations which send moneys offshore. Proposed amendments add them to the list of approved organisations in section KC 5(1) of the Income Tax Act 2004.

Tax exemption for Tokelau and Niue International Trust Funds

Amendments are proposed to ensure that the contributions received, income earned, and distributions made, by the Tokelau International Trust Fund and the Niue International Trust Fund are exempt from taxation. The proposed amendments will apply to each fund from the date that the fund was established.

Branch equivalent tax accounts

Amendments are proposed to tighten and clarify the rules applying to branch equivalent tax accounts, ensuring they are not used inappropriately to offset or defer tax on income that is properly taxable in New Zealand.

Other minor, remedial, or consequential matters

A number of proposed amendments affect the legislation aligning payments of provisional tax with GST payments and providing a

method of calculating provisional tax by using a percentage of the figure for the taxpayer's GST taxable supplies. The amendments are intended to do the following:

- ensure that taxpayers who cease using the ratio method and commence paying GST 6-monthly will be required to make only 2 provisional tax payments;
- allow a taxpayer, with an extension of time to file a return, to use information which is 3 years old to calculate the ratio if this is the latest information available;
- extend the late payment penalty to late payments of provisional tax where the taxpayer uses the GST ratio method to calculate provisional tax;
- ensure taxpayers who account for GST on a payments basis can adjust the ratio method calculation for asset sales only to the extent that they have received payment for the asset;
- enable taxpayers to apply by phone, instead of in writing, to continue to use the GST ratio method in circumstances where the default is due to circumstances beyond their control;
- provide additional time to file special GST returns where the returns are due over the Christmas and Easter periods;
- enable taxpayers to receive interest on any voluntary payments made where they cease using the GST ratio method prior to their first instalment; and
- correct minor cross referencing errors and insert correct references to the term "income year".

KiwiSaver-related amendments to Income Tax Act 2004

Tax credit for employer contributions to a KiwiSaver scheme or a complying superannuation fund

The bill introduces a new subpart KJ of the Income Tax Act 2004 to provide a tax credit for employer contributions to a KiwiSaver scheme or a complying superannuation fund. The tax credit reimburses employers for the contributions they have to make to an employee's KiwiSaver or complying superannuation fund. The amount of the tax credit will be equal to the lesser of the employer's contribution or \$20 a week for each employee.

The credit will be payable in respect of employer contributions (both compulsory and voluntary) to an employee's KiwiSaver scheme or complying superannuation fund. The credit will only be available in

respect of contributions made for employees that are aged between 18 years of age and the age of eligibility for withdrawal from a KiwiSaver scheme (that is the age of eligibility for New Zealand superannuation or 5 years of membership, whichever, is the later).

The credit will be integrated into the PAYE process so that value for the credit can be given to the employer at the same time the employer is required to remit the employer contributions to the provider or the Inland Revenue Department. For employer contributions to a KiwiSaver scheme, the tax credit will be offset against the amount of the employer contributions payable in the first instance. If a credit still remains, then it will be offset against the other PAYE liabilities due, then against any tax arrears owed by the employer. If a tax credit still remains after the various offsets, it will be refunded. In the case of a tax credit for employer contributions to a complying superannuation fund, the tax credit will be offset against the PAYE liabilities due in the first instance and then offset against any tax arrears owed by the employer. If a tax credit still remains after the various offsets, it will be refunded. The bill amends the Tax Administration Act 1994 to ensure that compulsory employer contributions are treated as a tax for administrative purposes.

To prevent associated employers from claiming more than 1 credit in respect of an employee, associated employers will be treated as 1 employer for the purposes of claiming the credit.

For income tax purposes the deduction that an employer will be able to make for an employer contribution will be limited to the amount for which there is no tax credit. Furthermore, the credit will not be subject to GST or income tax.

KiwiSaver technical amendments

A number of amendments are being made as a consequence of the compulsory employer contribution to a KiwiSaver scheme or complying superannuation fund.

In addition, the Income Tax Act is being amended to ensure that no permitted KiwiSaver withdrawal or complying superannuation fund withdrawal is subject to the fund withdrawal tax.

Part 2

Amendments to Tax Administration Act 1994

General amendments to Tax Administration Act 1994

Tax penalties, tax agents, and disclosures

The bill introduces amendments aimed at encouraging taxpayers to voluntarily comply with their tax obligations. These changes bring into effect the proposals set out in the October 2006 Government discussion document *Tax penalties, tax agents and disclosures*. The amendments include:

- amending the definition of “tax agent” to give the Commissioner a discretion to withhold recognition or remove a person as a tax agent when the action is necessary to protect the integrity of the tax system;
- clarifying that when an employer monthly schedule is filed late a warning will be given—the warning will include a statement that late filing penalties will be imposed on subsequent late filing;
- introducing late filing penalties for late GST returns which will apply in the same way the late filing penalty applies to late employer monthly schedules;
- notifying a taxpayer the first time their payment is late rather than imposing an immediate late payment penalty;
- allowing the Commissioner to treat return periods that overlap as the same return period for associated persons and allowing tax refunds to be used to reduce an associated person’s tax shortfall;
- prescribing the circumstances in which a shortfall penalty for not taking reasonable care can be imposed when the taxpayer has used a tax agent;
- reducing the scope of the unacceptable tax position shortfall penalty by assessing the penalty only in relation to income tax shortfalls and increasing the thresholds;
- repealing the threshold for the assessment of the abusive tax position shortfall penalty;
- introducing a new graduated penalty to apply when an employer files an employer monthly schedule but does not pay the associated PAYE;

- not imposing the shortfall penalty for not taking reasonable care or an unacceptable tax position when the tax shortfall is voluntarily disclosed before notification of a pending tax audit or investigation;
- clarifying the temporary shortfall legislation so that a tax shortfall is treated as permanently reversed or corrected if it appears from the taxpayer's actions or through operation of law that the shortfall will be remedied—for a shortfall to be considered temporary it must be permanently reversed or corrected within 2 years of the tax position being taken; and
- giving the Commissioner of Inland Revenue the power to offer limited amnesties to specific industries in respect of which tax evasion is a significant concern.

The voluntary disclosure amendment, once enacted, will apply to disclosures made from the date this bill is introduced. The changes to the definition of “tax agent” and the power to offer amnesties will apply from the date the bill is enacted. The other changes apply from 1 April 2008.

Commissioner's acceptance of a taxpayer's notice of proposed adjustment

The amendment will make it clear that the Commissioner cannot issue a notice of proposed adjustment (NOPA) in respect of the same issue after accepting (or being treated as having accepted) a taxpayer NOPA except when the taxpayer:

- was fraudulent;
- wilfully misled the Commissioner; or
- failed to supply the Commissioner with relevant information.

KiwiSaver-related amendments to Tax Administration Act 1994

The bill amends the Tax Administration Act 1994 to ensure that compulsory employer contributions are treated as a tax for administrative purposes.

Part 3 Amendments to other Acts and Regulations

Amendments to KiwiSaver Act 2006

Compulsory employer contributions to KiwiSaver schemes or complying superannuation funds

New subpart 3A will be added to Part 3 of the KiwiSaver Act 2006 and will require employers to contribute compulsory employer contributions to a KiwiSaver scheme or complying superannuation fund to match an employee's contributions deducted from their gross salary or wages. The amount of the compulsory employer contribution will be phased in as follows:

Tax year	Employer compulsory contribution rate (percentage of gross salary or wages)
2008–09	1%
2009–10	2%
2010–11	3%
2011–12	4%

An employer will be required to make contributions only in respect of employees that are aged between 18 years of age and the age of eligibility for withdrawal from their KiwiSaver scheme or complying superannuation fund (that is the age of eligibility for New Zealand superannuation or 5 years of membership, whichever is the later). Such contributions will vest in the employee immediately.

Employer contributions to an existing registered superannuation scheme will count towards the compulsory amount in some circumstances. This is to mitigate the risk of wind-up of existing schemes. Again such contributions will need to vest in the employee immediately.

Currently, the KiwiSaver Act allows employer contributions to count towards the employee's contribution rate if the employee so chooses. From 1 April 2008, this ability will be removed and employees will have to contribute a minimum 4% of their gross salary or wages to a KiwiSaver scheme or complying superannuation scheme. Transitional rules will apply in respect of those employees who have chosen during the period 1 July 2007 to 31 March 2008 that employer contributions will count towards their contribution rate. The effect of these transitional rules is to increase

the employee's contribution rate incrementally to 4% by the 2011–12 tax year.

Employees will be able to withdraw compulsory employer contributions in the following circumstances:

- to assist with the purchase of the member's first home;
- in the case of significant financial hardship;
- in the case of serious illness;
- on permanent emigration from New Zealand;
- on the death of the member;
- as required by any statute such as an order made under section 31 of the Property (Relationships) Act; and
- upon the age of eligibility of New Zealand superannuation or 5 years of membership, whichever is the later.

Employer contributions will not be able to be diverted as part of a mortgage diversion mechanism.

All employer contributions (both compulsory and voluntary) to a KiwiSaver scheme must be paid to the Inland Revenue Department as part of the PAYE process. This will allow the Inland Revenue Department to ensure that the compulsory contributions are paid by employers and the necessary enforcement action to collect short payments or identify non-compliance is taken. Where a short payment is made by an employer, the value of the employer tax credit will be paid by the Inland Revenue Department to the KiwiSaver scheme provider (to be deposited into the member's account) and the difference between the employer contribution and the tax credit will be recovered from the employer using existing tax collection mechanisms. When such short payments are collected, the Inland Revenue Department will pay the difference to the KiwiSaver scheme provider.

In the case of a complying superannuation fund, as is the current situation, the onus will be on the provider to ensure that employer contributions are made. The bill will provide that, after taking reasonable steps to ensure payment, the provider will be required to inform the Government Actuary of short payments. The Government Actuary will investigate the matter to determine the amount of the short payment. Once there is agreement between the employer and the Government Actuary as to the amount of the short payment, the amount will be passed on to the Inland Revenue Department for collection. Such amounts will be passed on to the Inland Revenue

Department on or after 1 April 2009. In such situations, the Inland Revenue Department will pay to the provider the value of the employer tax credit, but collect the full amount of the short payment from the employer.

The bill also contains a number of consequential amendments to the KiwiSaver Act to ensure that the requirement for compulsory employer contributions operates within the existing KiwiSaver framework.

The requirement for compulsory employer contributions will apply from 1 April 2008.

KiwiSaver technical amendments

The bill makes a number of technical amendments to the KiwiSaver Act 2006 to give full effect to the initial policy decisions or to rectify technical deficiencies in the legislation. The more significant of the proposed amendments:

- include in the definition of “temporary employment” casual employment that is “intermittent or irregular” in nature and as a result such an employee will not be subject to automatic enrolment rules;
- require a person to be living, or normally living in New Zealand, to join KiwiSaver;
- ensure that when a person is transferred from a complying superannuation fund to a KiwiSaver scheme they are eligible to receive the \$1000 Crown contribution; and
- apply the serious illness withdrawal facility only in cases where the member is permanently and totally disabled or where death is imminent and allow the member to withdraw the \$1000 Crown contribution in such cases.

KiwiSaver-related amendments to other Acts and Regulations

Several technical KiwiSaver related amendments are being made to the Superannuation Schemes Act 1989 and the KiwiSaver Regulations 2006.

The Superannuation Schemes Act 1989 is being amended:

- to ensure that provisions in superannuation scheme and KiwiSaver trust deeds do not override the statutory provisions enabling transfers to alternate schemes without member consent; and
- so that a complying superannuation fund continues to be approved as such if a participation agreement entered into on or before 1 July 2007 is replaced due to commercial necessity after that date.

The KiwiSaver Regulations 2006 are being amended to replace and repeal redundant clauses as a result of the inclusion in the KiwiSaver Act of the requirement for a trustee to file an annual report.

Goods and Services Tax Act 1985

GST and consumable stores

Proposed amendments to the Goods and Services Tax Act 1985 clarify that the zero-rating rules apply to consumable stores (such as fuel) supplied to aircraft and ships that depart New Zealand or are present in New Zealand as part of a wider international journey.

GST and shared invoicing

Amendments are proposed to simplify the disclosures required on a “tax invoice” when 2 or more suppliers use 1 invoice to charge customers for supplies of goods and services. The change applies to suppliers that are in the same GST group or are required under statute to invoice on behalf of another person.

Income Tax Act 1994

Branch equivalent tax accounts

Amendments are proposed to tighten and clarify the rules applying to branch equivalent tax accounts, ensuring they are not used inappropriately to offset or defer tax on income that is properly taxable in New Zealand.

Consequential remedial matters

Other proposed amendments to the Income Tax Act 1994 are all consequential remedial matters.

Taxation Review Authorities Act 1994

Proposed amendments to the Taxation Review Authorities Act 1994 allow the Taxation Review Authority to make an award of costs for the Authority's filing fees and empower the Governor-General to make regulations in relation to the Authority's filing fees and fee waiver.

Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006

ACC attendant care payments

The commencement date is deferred for amendments, made last year in the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006, to the taxation of payments by the Accident Compensation Corporation (ACC) to attendant caregivers. The deferral is to be from 1 April 2008 to 1 July 2008.

Customs and Excise Act 1996

Information sharing between Inland Revenue Department and Customs

Proposed amendments to the Customs and Excise Act 1996, the Tax Administration Act 1994, and the Privacy Act 1993 allow for the introduction of an information sharing system between the Inland Revenue Department and New Zealand Customs. The purpose of the information match is to allow the Inland Revenue Department to identify when certain persons with outstanding child support debt are entering or leaving New Zealand.

Income Tax (Withholding Payments) Regulations 1979

The Income Tax (Withholding Payments) Regulations 1979 are being amended to set, at 15 cents in the dollar, the withholding rate from payments by the Accident Compensation Corporation (ACC) to attendant caregivers.

Clause-by-clause analysis

Clause 1 gives the title of the Act.

Clause 2 gives the commencement dates for provisions in the Act.

Part 1

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

Annual rates of income tax for 2007–08 tax year

Clause 3 sets the income tax imposed by *section BB 1* of the Income Tax Act 2004 for the 2007–08 tax year at the basic rates specified in *schedule 1* of the Income Tax Act 2004.

General amendments to Income Tax Act 2004

Clauses 5 to 139 amend the *Income Tax Act 2004*.

Clause 5 inserts new *section BE 1(5B)*, which requires the payment of retirement scheme contribution withholding tax on a retirement scheme contribution to a retirement savings scheme.

Clause 6 amends *section CB 11*, which relates to the disposal of land involved in development or division work, by replacing *subsection (2)* to make the section subject to additional exclusions for business premises and for investment land.

Clause 7 amends *section CB 18*, consequential to the amendment in *clause 6*.

Clause 8 amends *section CB 21*, consequential to the amendment in *clause 6*.

Clause 9 amends *section CD 32(26)* to provide for transitional effects, relating to tax credits, of the change in the tax rate for companies.

Clause 10 consequentially amends a cross-reference in *section CD 42(5)* to the heading of *schedule 1*.

Clause 11 inserts new *section CE 12*, which provides that tax credits allowed under new *section LD 1B*, inserted by *clause 95*, are added to a caregiver's income.

Clause 12 amends the definition of *accident compensation payment* in *section CF 1(2)* by adding new *paragraph (g)*.

Clause 13 inserts new *section CQ 5(1B)*, providing that certain transactions deemed to occur under the foreign investment fund rules are ignored under the section.

Clause 14 consequentially amends a cross-reference in *section CS 1(5)* to the heading of *schedule 1*.

Clause 15 repeals *section CS 2(4B)*.

Clause 16 amends the definition of *petroleum miner* in *section CT 6(1)* and repeals *section CT 6(3) and (4)*, as part of the correction of an unintended change in the law made by the Act.

Clause 17 inserts new *section CT 6B* defining *petroleum mining operations*, as part of the correction of an unintended change in the law made by the Act.

Clause 18 inserts new *section CW 28B*, providing that certain payments by the Accident Compensation Corporation to a claimant towards the cost of attendant care by a caregiver are exempt income of the claimant.

Clause 19 replaces *section CW 32(4)(c)(i)* to provide that a local authority derives exempt income from a council-controlled organisation if the organisation is operating a hospital as a charitable activity on behalf of the local authority.

Clause 20 replaces *section CW 34(3)*, to provide that if a charity operating a hospital is a council-controlled organisation and derives non-business income, the council-controlled organisation and the local authority controlling the organisation derive exempt income.

Clause 21 replaces *section CW 35(2)*, to provide that if a charity operating a hospital is a council-controlled organisation and derives business income, the council-controlled organisation and the local authority controlling the organisation derive exempt income.

Clause 22 inserts a new heading and *sections CW 49C and CW 49D*. The new sections provide that income of the trustees of the Niue International Trust Fund and the Tokelau International Trust Fund is exempt income and distributions by the trustees are exempt income for the recipients.

Clause 23 replaces the heading above *section CX 42*.

Clause 24 inserts new *section CX 42B*, providing that a retirement scheme contribution is excluded income of the trustee of the retirement savings scheme, and of the person who receives the benefit except in specified circumstances.

Clause 25 amends *section DB 26*, as part of the adoption of New Zealand equivalents to International Financial Reporting Standards (IFRSs). The amendment also ensures that certain features of IFRSs relating to research or development are incorporated into the taxation regime.

Clause 26 amends *section DB 27*, as part of the adoption of New Zealand equivalents to International Financial Reporting Standards (IFRSs). The amendment also ensures that certain features of IFRSs relating to research or development are incorporated into the taxation regime.

Clause 27 amends *section DB 32(1) and (3)*, increasing the limit on the deductions that a company is allowed for donations.

Clause 28 amends *section DC 9(2) and (3)*, and inserts new *subsection (3B)*, to allow a deduction for the purchaser of a business with greater employment income obligations than are allowed for in the purchase price.

Clause 29 amends the heading to *subpart DF*.

Clause 30 adds new *section DF 4*, providing that a person receiving certain accident compensation payments towards the cost of attendant care by a caregiver is allowed a deduction for payments to the caregiver from the amount received.

Clause 31 inserts new *section DN 6(1B)*, providing that certain transactions deemed to occur under the foreign investment fund rules are ignored under the section.

Clause 32 replaces *section DS 2(3) and (4)*, changing the timing of deductions for film production expenditure on a film for which a large budget screen production grant is made.

Clause 33 amends *section DV 11(2)*, increasing the limit on the deductions that a Maori authority is allowed for donations.

Clause 34 amends *section EB 6*, as part of the adoption of New Zealand equivalents to IFRSs. The amendment also ensures that certain features of IFRSs relating to primary production are modified for tax purposes.

Clause 35 amends *section EB 9*, as part of the adoption of New Zealand equivalents to IFRSs.

Clause 36 amends *section EB 12*, as part of the adoption of New Zealand equivalents to IFRSs.

Clause 37 amends *section EB 19*, as part of the adoption of New Zealand equivalents to IFRSs.

Clause 38 amends *section EB 22*, as part of the adoption of New Zealand equivalents to IFRSs.

Clause 39 amends *section EC 41*, to extend the bloodstock write-down regime to ex-shuttle stallions.

Clause 40 amends *section ED 1*, as part of the adoption of New Zealand equivalents to IFRSs.

Clause 41 amends *section EJ 4(1)* so that the section provides for the allocation of a deduction of expenditure incurred in acquiring a film right in a feature film for which a large budget screen production grant is made.

Clause 42 amends *section EJ 5(1)* so that the section provides for the allocation of a deduction of expenditure incurred in acquiring a film right in a film, other than a feature film, for which a large budget screen production grant is made.

Clause 43 amends *section EJ 7* consequentially so that the section does not apply to allocate a deduction of expenditure incurred in acquiring a film right in a New Zealand film if the film is one for which a large budget screen production grant is made.

Clause 44 amends *section EJ 8* consequentially so that the section does not apply to allocate a deduction of expenditure incurred in acquiring a film right in a non-New Zealand film if the film is one for which a large budget screen production grant is made.

Clause 45 amends *section EW 14*, as part of the adoption of New Zealand equivalents to IFRSs. The amendment allows the use of a new spreading method for the purposes of the financial arrangements rules, based on IFRSs.

Clause 46 amends *section EW 15*, as part of the adoption of New Zealand equivalents to IFRSs. The amendment allows the use of a new spreading method for the purposes of the financial arrangements rules, based on IFRSs, and accounts for fees under that method.

Clause 47 inserts new *sections EW 15B and EW 15C*, as part of the adoption of New Zealand equivalents to IFRSs. The new sections allow the use of a new spreading method for the purposes of the financial arrangements rules, based on IFRSs.

Clause 48 amends *section EW 16*, as part of the adoption of New Zealand equivalents to IFRSs. The amendment allows the use of a new spreading method for the purposes of the financial arrangements rules, based on IFRSs.

Clause 49 amends *section EW 17*, as part of the adoption of New Zealand equivalents to IFRSs. The amendment allows the use of a new spreading method for the purposes of the financial arrangements rules, based on IFRSs.

Clause 50 amends *section EW 18*, as part of the adoption of New Zealand equivalents to IFRSs. The amendment allows the use of a new spreading method for the purposes of the financial arrangements rules, based on IFRSs.

Clause 51 amends *section EW 19*, as part of the adoption of New Zealand equivalents to IFRSs. The amendment allows the use of a new spreading method for the purposes of the financial arrangements rules, based on IFRSs.

Clause 52 amends *section EW 20*, as part of the adoption of New Zealand equivalents to IFRSs. The amendment allows the use of a new spreading method for the purposes of the financial arrangements rules, based on IFRSs.

Clause 53 repeals *section EW 21*, as part of the adoption of New Zealand equivalents to IFRSs. The repeal removes the financial reporting spreading method for the purposes of the financial arrangements rules, in the light of the new IFRS-based method allowed.

Clause 54 amends *section EW 23*, as part of the adoption of New Zealand equivalents to IFRSs. The amendment allows the use of a new spreading method for the purposes of the financial arrangements rules, based on IFRSs.

Clause 55 amends *section EW 24*, as part of the adoption of New Zealand equivalents to IFRSs. The amendment is part of setting consistency requirements for the use of the new spreading method based on IFRSs.

Clause 56 inserts new *section EW 25B*, as part of the adoption of New Zealand equivalents to IFRSs. The amendment is part of setting consistency requirements for the use of the new spreading method based on IFRSs.

Clause 57 amends *section EW 26*, as part of the adoption of New Zealand equivalents to IFRSs. The amendment relates to changing spreading methods, in the context of the new spreading method based on IFRSs.

Clause 58 amends *section EW 31*, as part of the adoption of New Zealand equivalents to IFRSs. The amendment allows the use of a

new spreading method for the purposes of the financial arrangements rules, based on IFRSs, and accounts for fees under that method.

Clause 59 consequentially amends a cross-reference in *section EX 19(4)* to the heading of *schedule 1*.

Clause 60 makes minor remedial changes to *section EX 33*, relating to the description of direct income interests that are exempt under the new foreign investment fund (FIF) rules that were introduced by the *Taxation (Savings Investment and Miscellaneous Provisions) Act 2006*.

Clause 61 makes minor remedial changes to *section EX 33B* relating to the description of direct income interests that are exempt under the new FIF income rules.

Clause 62 amends the description in *section EX 33C* of the rights in a Australian company that are exempt under the new FIF income rules.

Clause 63 amends the description in *section EX 33D* of the rights in certain listed Australian unit trusts that are exempt under the new FIF income rules.

Clause 64 amends the rules in *section EX 40* relating to the availability under the new FIF rules of the fair dividend rate method for calculating FIF income or loss.

Clause 65 amends a cross-reference in *section EX 40B*.

Clause 66 consequentially amends a cross-reference in *section EX 43(5)(c)* to the heading of *schedule 1*.

Clause 67 inserts a cross-reference in *section EX 44(4)*.

Clause 68 amends the rules in *section EX 44B(2)*, relating to the availability under the new FIF rules of the fair dividend rate method for calculating FIF income or loss, and inserts a new *subsection (5)* providing for the treatment under the method of a returning share transfer.

Clause 69 makes remedial amendments to *section EX 44C*, relating to the fair dividend rate method of calculating FIF income or loss.

Clause 70 makes remedial amendments to *section EX 44D*, relating to the fair dividend rate method of calculating FIF income or loss.

Clause 71 makes a remedial amendment to *section EX 44E*, relating to the fair dividend rate method of calculating FIF income or loss.

Clause 72 makes remedial amendments to *section EX 45B*, relating to the cost method of calculating FIF income or loss.

Clause 73 makes a remedial amendment to *section EX 50(8)(c)*, relating to changes by trustees of methods of calculating FIF income or loss.

Clause 74 adds a new *section EX 51(5)*, providing for the treatment of changes between the comparative value method for calculating FIF income or loss and the fair dividend rate method.

Clause 75 replaces *section EX 54B(1)*, expanding the application of the rules relating to interests that produce FIF income or loss for the first time as a result of the new FIF rules.

Clause 76 replaces *section EX 56(2)* to reinstate a method of determining the cost of interests in a FIF that cannot be specifically identified.

Clause 77 amends *section EY 42(1)* and inserts new *section EY 42(5B)* and *(5C)* to provide for adjustments to the calculation of policyholder income by a life insurer using the fair dividend rate method of calculating FIF income or loss or having an investment in a portfolio investment entity (PIE).

Clause 78 inserts new *section EY 42B*, which gives the adjustment required by *section EY 42* for a life insurer using the fair dividend rate method, and new *section EY 42C*, which gives the adjustment required by *section EY 42* for a life insurer having an investment in a PIE.

Clause 79 amends *section GC 28* to provide for changes to the names of existing tax credits for families.

Clause 80 amends *section HG 13* to provide for transitional effects, relating to tax credits, of the change in the tax rate for companies.

Clause 81 amends *section HL 3(5)* to provide the eligibility criteria for a life insurer to be a PIE and portfolio investment-linked life fund.

Clause 82 consequentially amends *section HL 8(1)* so that it does not apply to a portfolio investment-linked life fund.

Clause 83 amends *section HL 11(2)* to provide for elections relating to portfolio investment-linked life funds.

Clause 84 amends *section IG 2(9)*, correcting a cross-reference.

Clause 85 amends *section KC 5*, which allows a rebate of tax for donors of gifts to listed organisations. *Subclause (1)* changes the name of 1 organisation already on the list and *subclause (2)* adds 7 new organisations to the list. *Subclause (3)* removes a cap on the amount of gifts by a taxpayer that attract the rebate.

Clause 86 applies to *subpart KD* the amendments specified in *schedule 1*, relating to the names of tax credits for families.

Clause 87 amends *section KD 1(1)*, which relates to the calculation of the income of a family used to calculate tax credits for the family. The amendments exclude from the income a retirement scheme contribution, in some circumstances, and include in the income a distribution from a retirement savings scheme of a retirement scheme contribution, in some circumstances.

Clause 88 amends *section KD 2(2)*, changing the names of tax credits for families.

Clause 89 amends *section KD 2A*, consequential to the insertion of *section KD 2B*.

Clause 90 inserts new *section KD 2B* providing for a person who elects to receive a parental tax credit in a lump sum relating to a birth occurring near the end of a tax year.

Clause 91 amends *section KD 7A* to provide for tax credits received in weekly or fortnightly instalments.

Clause 92 amends *section LB 1* to provide for transitional effects, relating to tax credits, of the change in the tax rate for companies.

Clause 93(1) amends *section LB 2(2)* to provide for transitional effects, relating to tax credits, of the change in the tax rate for companies. *Clause 93(2)* inserts new *section LB 2(8)*, allowing the use of imputation credits received with dividends that under *section EX 47* are not taxed.

Clause 94 inserts new *section LB 3*, allowing an imputation credit attached to a retirement scheme contribution to be used to meet a liability for retirement scheme contribution withholding tax on the contribution.

Clause 95 inserts new *sections LD 1B and LD 1C* providing tax credits for tax deductions from accident compensation payments made by the Accident Compensation Corporation towards the provision by a caregiver of attendant care for a claimant.

Clause 96 inserts new *section LD 4*, allowing a Maori authority credit attached to a retirement scheme contribution to be used to meet a liability for retirement scheme contribution withholding tax on the contribution.

Clause 97 amends *section LD 8(1)(a)* to provide for transitional effects, relating to tax credits, of the change in the tax rate for companies.

Clause 98 amends *section LE 2(2)* to provide for the change in the tax rate for companies and adds new *subsection (13)* to provide for transitional effects, relating to tax credits.

Clause 99 amends *section LE 3(6)* to provide for transitional effects, relating to tax credits, of the change in the tax rate for companies.

Clause 100 inserts new *subpart LH*, governing a tax credit for expenditure or depreciation loss incurred in research and development. *Section LH 1* provides for the tax credit and its treatment. *Section LH 2* gives the eligibility requirements for a person to have the tax credit and gives the minimum amount of expenditure or depreciation loss necessary. *Section LH 3* gives the amount of a tax credit in terms of the amount of eligible expenditure or depreciation loss. *Section LH 4* defines the following terms: *research and development activities*; *scientific or technological uncertainty*; *systematic, investigative, and experimental activities*; *novelty*; and *technology*. *Section LH 5* gives activities excluded from being systematic, investigative, and experimental activities. *Section LH 6* gives eligible types of expenditure and depreciation loss and types of expenditure and depreciation loss that are excluded. *Subsections (3) and (4)* give the meaning of *core technology* and *research and development project*. *Section LH 7* gives the requirements for a person to be a *listed research provider*. *Section LH 8* gives the requirements for a person to be an *industry research co-operative*. *Section LH 9* provides for a limit on the eligible amount of expenditure for a person or group of related persons involved in software development other than for sale or lease of the developed software. *Section LH 10* provides some special rules, for the purpose of the tax credit, relating to depreciation loss for depreciable property. *Section LH 11* defines several terms used in *section LH 10*.

Clause 101 amends *section MB 6(5)*, providing for a taxpayer who changes their method of determining the taxpayer's liability for provisional tax after the date of an instalment.

Clause 102 amends *section MB 7(3)*, which relates to the GST ratio method of determining provisional tax, and inserts new *subsection (3B)*, to provide for the situation in which a taxpayer has been given an extension of time to file a return for the preceding year.

Clause 103 corrects a cross-reference in *section MB 8(6)*.

Clause 104 makes some remedial amendments to *section MB 15(2) and (8)*.

Clause 105 amends *section MB 17(2) and (4)*. It corrects a cross-reference and clarifies the treatment of a taxpayer who changes their method of determining the taxpayer's liability for provisional tax.

Clause 106 makes some remedial amendments to *section MB 18(2)*.

Clause 107 amends *section MD 1(4)(a)*, changing a reference to tax credits for families.

Clause 108 amends *section ME 4*, making a change as part of the change of the tax rate for companies, inserting a reference to qualifying company election tax, and providing for the new tax credit for research and development under *subpart LH*.

Clause 109 amends *section ME 5(1)(c)*, changing the rate used to calculate the debit to the imputation credit account of a company making an on-market cancellation of a share.

Clause 110 amends *section ME 8* to provide for transitional effects, relating to tax credits, of the change in the tax rate for companies.

Clause 111 amends *section ME 11* to provide for the new tax credit for research and development under *subpart LH*.

Clause 112 amends *section ME 31* to provide for transitional effects, relating to tax credits, of the change in the tax rate for companies.

Clause 113 amends *section ME 33* to provide for transitional effects, relating to tax credits, of the change in the tax rate for companies.

Clause 114 amends *section ME 36* to provide for transitional effects, relating to tax credits, of the change in the tax rate for companies.

Clause 115 amends *section ME 38* to provide for transitional effects, relating to tax credits, of the change in the tax rate for companies.

Clause 116 amends *section MF 3* to provide for transitional effects, relating to tax credits, of the change in the tax rate for companies.

Clause 117 amends *section MF 4* to exclude dividends from some controlled foreign companies from producing debits in a company's

BETA account and to provide for transitional effects, relating to tax credits, of the change in the tax rate for companies.

Clause 118 amends *section MF 5* to limit the amount of credits that may be used in an election under the section.

Clause 119 amends *section MF 8(4)*, and adds new *section MF 8(7)*, to exclude dividends from some controlled foreign companies from producing debits in a group's BETA account and to provide for transitional effects, relating to tax credits, of the change in the tax rate for companies.

Clause 120 amends *section MF 10* to limit the amount of credits that may be used in an election under the section.

Clause 121 amends *section MG 8* to provide for transitional effects, relating to tax credits, of the change in the tax rate for companies.

Clause 122 amends *section MG 10* to provide for transitional effects, relating to tax credits, of the change in the tax rate for companies.

Clause 123 amends *section MI 3* to provide for transitional effects, relating to tax credits, of the change in the tax rate for companies.

Clause 124 amends *section MI 4* to provide for transitional effects, relating to tax credits, of the change in the tax rate for companies.

Clause 125 amends *section MI 5* to provide for transitional effects, relating to tax credits, of the change in the tax rate for companies.

Clause 126 amends *section MI 15* to provide for transitional effects, relating to tax credits, of the change in the tax rate for companies.

Clause 127 amends *section MI 17* to provide for transitional effects, relating to tax credits, of the change in the tax rate for companies.

Clause 128 amends *section MI 18* to provide for transitional effects, relating to tax credits, of the change in the tax rate for companies.

Clause 129 amends *section MK 4* to provide for the new tax credit for research and development under *subpart LH*.

Clause 130 inserts new *sections MZ 10 to MZ 19*, providing for transitional effects, relating to tax credits, of the change in the tax rate for companies. *Section MZ 10* relates to the allocation of imputation credits and dividend withholding payment credits. *Section MZ 11* relates to benchmark dividends. *Section MZ 12* relates to the determination of a credit. *Section MZ 13* provides for the modification of the amount of a credit of tax for imputation credits and

dividend withholding payment credits. *Section MZ 14* relates to credits for non-resident investors. *Section MZ 15* relates to the definition of fully credited dividends. *Section MZ 16* relates to dividends from qualifying companies. *Section MZ 17* relates to a statutory producer board or a co-operative company attaching imputation credits or making notional distributions. *Section MZ 18* relates to credits and debits in a BETA account. *Section MZ 19* relates to credits and debits in a conduit tax relief account.

Clause 131 corrects some cross-references in *section ND 1U*.

Clause 132 corrects a cross-reference in *section ND 1V*.

Clause 133 inserts new *subpart NEB*, which provides for retirement scheme contribution withholding tax. *Section NEB 1* imposes retirement scheme contribution withholding tax. *Section NEB 2* requires retirement scheme contribution withholding tax to be deducted. *Section NEB 3* provides for the payment and notice of the deductions made. *Section NEB 4* provides for consequences of a failure to make deductions. *Section NEB 5* gives the criteria for eligibility to be a retirement savings scheme. *Section NEB 6* gives the criteria for eligibility to be a retirement scheme contributor. *Section NEB 7* provides for the application of other provisions to retirement scheme contribution withholding tax.

Clause 134 corrects a cross-reference in *section NF 8(1)*.

Clause 135 amends *section OB 1*, which contains the definitions of terms used in the *Income Tax Act 2004*. *Subclause (2)* consequentially amends cross-references in the definition of *applicable basic tax rate*. *Subclause (3)* inserts the definition of *attendant care*. *Subclause (4)* consequentially amends a cross-reference in the definition of *basic rates*. *Subclause (5)* consequentially amends a cross-reference in the definition of *child*. *Subclause (6)* amends the name of a tax credit in the definition of *child*. *Subclause (7)* consequentially amends a cross-reference in the definition of *civil union partner*. *Subclause (8)* inserts the definition of *core technology*. *Subclause (9)* inserts the definition of *district health board*. *Subclause (10)* consequentially amends a cross-reference in the definition of *elected period*. *Subclause (11)* amends the name of a tax credit in the definition of *eligible period*. *Subclause (12)* consequentially amends a cross-reference in the definition of *employer's contributions to superannuation savings*. *Subclause (13)* consequentially amends a cross-reference in the definition of *employment*.

Subclause (14) amends the name of a tax credit in the definition of *employment*. *Subclause (15)* inserts the definition of *fair value method*. *Subclause (16)* consequentially repeals the definition of *family plus*. *Subclause (17)* amends the defined term in the definition of *family support credit*. *Subclause (18)* consequentially repeals the definition of *family tax credit*. *Subclause (19)* consequentially repeals the definition of *Financial Reporting Standard No 13 1995 (Accounting for Research and Development Activities)*. *Subclause (20)* consequentially amends a cross-reference in the definition of *fully conduit tax relief credited*. *Subclause (21)* inserts the definitions of *IFRS* and *impaired credit adjustment*. *Subclause (22)* inserts the definition of *industry research co-operative*. *Subclause (23)* inserts the definitions of *internal software development*, *internal software development controller*, and *internal software development group*. *Subclause (24)* amends the definition of *investor*, to provide for an investor in a portfolio investment-linked life fund. *Subclause (25)* replaces the definition of *in-work payment*. *Subclause (26)* inserts the definition of *listed research provider*. *Subclause (27)* consequentially amends a cross-reference in the definition of *Maori authority rules*. *Subclause (28)* inserts the definition of *minimum family tax credit*. *Subclause (29)* replaces the definition of *net specified income*. *Subclause (30)* inserts the definition of *new tax rate person*.

Subclause (31) inserts the definition of *Niue International Trust Fund*. *Subclause (32)* inserts the definition of *non-integral fee*. *Subclause (33)* inserts the definition of *novelty*. *Subclause (34)* inserts the definitions of *NZIAS 2*, *NZIAS 8*, *NZIAS 39*, and *NZIAS 41*. *Subclause (35)* inserts the definition of *old company tax rate*. *Subclause (36)* replaces the definition of *petroleum mining operations*. *Subclause (37)* amends the definition of *portfolio investment entity* to include a portfolio investment-linked life fund. *Subclause (38)* inserts the definition of *portfolio investment-linked life fund*. *Subclause (39)* amends the definition of *portfolio listed company* to exclude a portfolio investment-linked life fund. *Subclause (40)* amends the definition of *portfolio tax rate entity* to exclude a portfolio investment-linked life fund. *Subclause (41)* amends the name of a tax credit in the definition of *qualifying person*. *Subclause (42)* amends the definition of *refundable credit* to include a tax credit for research and development. *Subclause (43)* consequentially amends a cross-reference in the definition of *refundable rebate*. *Subclause*

(44) inserts the definitions of *research and development activities* and *research and development project*. Subclause (45) consequentially amends a cross-reference in the definition of *resident*. Subclause (46) consequentially amends a cross-reference in the definition of *residual income tax* and inserts provision for a tax credit for research and development.

Subclause (47) inserts the definitions of *retirement savings scheme*, *retirement scheme contribution*, *retirement scheme contribution withholding tax*, *retirement scheme contributor*, and *retirement scheme prescribed rate*. Subclause (48) inserts the definition of *RSCWT rules*. Subclause (49) inserts the definition of *scientific or technological uncertainty*. Subclause (50) consequentially amends a cross-reference in the definition of *separated person*. Subclause (51) inserts the definition of *sound commercial reason*. Subclause (52) consequentially amends a cross-reference in the definition of *specified period*. Subclause (53) consequentially amends a cross-reference in the definition of *spouse*. Subclause (54) inserts the definition of *systematic, investigative, and experimental activities*. Subclause (55) inserts the definition of *technology*. Subclause (56) inserts the definition of *tertiary institution*. Subclause (57) inserts the definition of *Tokelau International Trust Fund*.

Clause 136 consequentially amends *section OB 2*, providing for an amount paid by a claimant to a caregiver for providing attendant care to the claimant.

Clause 137 amends *section OB 6(1)(d)* to provide for retirement scheme contribution withholding tax.

Clause 138 consequentially amends cross-references in *section OD 8*.

Clause 139 amends *schedule 1* to provide for the rate of retirement savings contribution withholding tax.

KiwiSaver-related amendments to Income Tax Act 2004

Clauses 141 to 144 make KiwiSaver-related amendments to the *Income Tax Act 2004*.

Clause 141 inserts *section CS 10B*, to exclude permitted withdrawals from KiwiSaver and complying superannuation funds from the superannuation fund withdrawal taxation regime.

Clause 142 amends *section DC 6*, to deny a deduction to an employer for their superannuation contributions to the extent to which they have entitlement to the employer tax credit for the contribution.

Clause 143 inserts a new *subpart KJ*, to provide a tax credit to an employer for their contributions to an employee's KiwiSaver scheme and complying superannuation fund (the *employer tax credit*). New *section KJ 1* provides for the employer tax credit. New *section KJ 2* gives the requirements for an employer to qualify for the employer tax credit. New *section KJ 3* calculates the amount of the employer tax credit. New *section KJ 4* gives rules for the use of the employer tax credit. New *section KJ 5* provides for changing the use of the employer tax credit in certain circumstances. New *section KJ 6* provides for clawback of the employer tax credit, for employees opting out. New *section KJ 7* gives a rule that treats certain groups of persons as 1 employer for the purposes of new *sections KJ 1 to KJ 6*.

Clause 144 amends *section OB 1*. *Subsection (2)* amends the definition of *complying fund rules*, to allow for mortgage diversion, compulsory employer contributions, and a maximum age of joining. *Subsection (3)* inserts the definition of *compulsory employer contribution*. *Subsection (4)* amends the definition of *employee's superannuation accumulation*, to allow for compulsory employer contributions. *Subsection (5)* inserts a new definition of *employer contribution*, to allow for compulsory employer contributions. *Subsection (6)* inserts a new definition of *PAYE period*, as part of introducing the employer tax credit.

Part 2

Amendments to Tax Administration Act 1994

General amendments to Tax Administration Act 1994

Clauses 146 to 195 amend the *Tax Administration Act 1994*.

Clause 146 amends *section 3(1)*, which defines terms used in the Act. *Subclause (1)* inserts the definition of *business group amnesty*. *Subclause (2)* amends the definition of *response period* to provide for notices relating to the new tax credit under *subpart LH* of the Income Tax Act 2004 for research and development. *Subclause (3)* replaces the definition of *tax agent* to provide for listing of tax agents by the Commissioner under new *section 34B*.

Clause 147 amends *section 22* to provide for the keeping of business records relating to retirement scheme contribution withholding tax and tax credits for research and development.

Clause 148 inserts new *section 28C*, relating to notices of a person's retirement scheme prescribed rate.

Clause 149 amends *section 29(1)* to provide for notice from a company to a shareholder of a retirement scheme contribution made for the shareholder.

Clause 150 amends *section 31(1)* to provide for notice from a Maori authority to a member of a retirement scheme contribution made for the member.

Clause 151 amends *section 33A*, which relates to taxpayers who are not required to make annual returns of income. *Subclause (1)* amends *subsection (1)(a)* to provide that a person is not required to make a return if the person's sole income is payments from the Accident Compensation Corporation towards care of the person by a caregiver. *Subclause (2)* corrects a cross-reference. *Subclause (3)* makes a consequential amendment to *subsection (2)*. *Subclause (4)* amends *subsection (2)* to provide that a person with a tax credit for research and development is required to make an annual return.

Clause 152 inserts new *section 33C*, which provides that a person derives income for providing attendant care to a claimant receiving payments from the Accident Compensation Corporation towards the attendant care need not make an annual return in specified circumstances.

Clause 153 inserts new *section 34B*, providing for the Commissioner to keep a list of tax agents.

Clause 154 inserts new *section 37(4B)*, providing for the treatment of a tax return if the taxpayer is a client of a person who is removed from the list of tax agents before the tax return is provided to the Commissioner.

Clause 155 amends the name of a tax credit in *section 41(3)(b)*.

Clause 156 amends *section 43A(2)(d)* to provide that a non-active company with a tax credit for research and development must make an annual return.

Clause 157 inserts new *section 48B*, requiring an annual reconciliation statement for a retirement scheme contributor.

Clause 158 inserts new *sections 68D and 68E* requiring statements to be provided in relation to tax credits for research and development.

Clause 159 amends the name of a tax credit in *section 80E(2)(ea)*.

Clause 160 amends *section 81*, which provides for officers to maintain secrecy. *Subclause (1)* inserts *subsection (4)(fc)*, providing for the exchange of information between the Commissioner and the New Zealand Customs Service relating to persons liable to pay financial support under the Child Support Act 1991. *Subclause (2)* inserts new *subsection (4)(lc)*, providing for the Commissioner to provide information to the client of a person who is removed from the list of tax agents.

Clause 161 amends *section 81B*, providing for the Commissioner to provide information to the professional association of a person who is removed from the list of tax agents.

Clause 162 amends the name of a tax credit in *section 85G*.

Clause 163 amends *section 89J* to clarify the consequences for future assessments if the Commissioner accepts an adjustment proposed by a disputant.

Clause 164 inserts new *section 90AC(1)(ba)*, providing that the Commissioner may issue a determination concerning an alternative method for determining income derived or expenditure incurred for a financial arrangement or class of financial arrangements under *section EW 15C(5)*.

Clause 165 repeals *section 91AAO(2)*.

Clause 166 inserts new *section 91AAP*, providing for the Commissioner to issue determinations relating to research and development tax credits.

Clause 167 corrects cross-references in *section 91C(1)* and inserts new *section 91C(4)*, providing that the Commissioner may not make a binding ruling on various matters relating to *subpart LH* of the Income Tax Act 2004.

Clause 168 inserts new *section 98B*, providing for the assessment of retirement scheme contribution withholding tax

Clause 169 inserts new *section 108(1B)*, providing for a time bar for amendment of an assessment of an amount of research and development tax credit.

Clause 170 corrects a cross-reference in *section 108B(3)(d)*.

Clause 171 corrects a cross-reference in *section 113(1)*.

Clause 172 inserts new *section 113D*, limiting the amount by which a Commissioner may increase the amount of tax credit for research and development following a notice of proposed adjustment from the taxpayer.

Clause 173 replaces *section 120KE(6)*, limiting the date from which a taxpayer is entitled to use of money interest for overpaid tax.

Clause 174 amends the heading of *section 139A* and inserts new *section 139A(6)*, providing that in specified circumstances the Commissioner must give a notice to an employer who has failed to file an employer monthly schedule by the due date, rather than impose a late filing penalty.

Clause 175 inserts new *section 139AAA*, providing for a late filing penalty for GST returns.

Clause 176 replaces *section 139B(3) and (3A)* to provide that if a taxpayer has paid tax liabilities on the due dates for a period of 2 years before being late with a payment, a late payment penalty is not imposed in specified circumstances.

Clause 177 amends *section 139C(2)* to provide for the calculation of provisional tax payable if, at the time of a default, the taxpayer has not been assessed for the last complete income year.

Clause 178 amends *section 140B*, consequential to the insertion of new *section 140BB*.

Clause 179 inserts new *section 140BB*, providing that an imputation penalty tax is payable in some circumstances.

Clause 180 amends *section 140C*, consequential to the insertion of new *section 140CA*.

Clause 181 inserts new *section 140CA*, providing that a dividend withholding payment penalty tax is payable in some circumstances.

Clause 182 amends *section 141(7)* and inserts new *section 141(7B) to (7D)*. New *subsection (7B)* provides that if a taxpayer has an associated taxpayer with a different return period and the taxpayer is affected by an adjustment to a tax position of the associate, the Commissioner may correspondingly adjust the taxpayer's assessment for an overlapping return period. *Subsections (7C) and (7D)* provide for adjustment of a taxpayer's tax position relating to a tax

credit for internal software development by members of an internal software development group.

Clause 183 inserts new *section 141A(2B)*, giving the circumstances in which a taxpayer takes reasonable care in relying on the action or advice of a tax advisor.

Clause 184 inserts new *section 141B(1C)*, giving circumstances in which a taxpayer who adopts IFRSs for the purposes of financial reporting before the 2007–08 income year does not take an unacceptable tax position. *Subclause (2)* replaces *section 141B(2)*, increasing the threshold amount of tax shortfall required for a penalty to be imposed.

Clause 185 replaces *section 141D(4)*, removing the threshold tax shortfall required for the section to apply to an unacceptable tax position.

Clause 186 inserts new *section 141E(2B)*, preventing the application of the section if new *section 141ED* applies.

Clause 187 inserts new *section 141ED*, imposing a shortfall penalty on a person who provides an employer monthly schedule to the Commissioner but does not pay the amount shown as being payable.

Clause 188 replaces *section 141G(3)(a)*, increasing the reduction in penalty for voluntary disclosures before notification of an audit.

Clause 189 replaces *section 141I(3)(d)*, providing when a tax shortfall is regarded as being temporary.

Clause 190 replaces *section 141J(d)*, consequentially limiting the total of multiple reductions in penalty.

Clause 191 consequentially repeals *section 141KB*.

Clause 192 amends *section 142(1)* and inserts new *section 142(1B)*, to provide for the late filing penalty for a GST return.

Clause 193 inserts new *section 143A(5)(g)*, including a deduction of retirement scheme contribution withholding tax in the application of *subsection (4)*.

Clause 194 amends *section 149* to exclude a shortfall penalty under *section 141ED* from the application of *subsections (2) and (5)*.

Clause 195 inserts new *section 226B*, providing for the declaration of an amnesty for a group of persons carrying on a type of activity as a main business.

KiwiSaver-related amendments to Tax Administration Act 1994

Clauses 197 to 199 make KiwiSaver-related amendments to the *Tax Administration Act 1994*.

Clause 197 amends the definition of *tax* in *section 3(1)*, to include a compulsory employer contribution to a KiwiSaver scheme or complying superannuation fund.

Clause 198 amends *section 4A*, so that a compulsory employer contribution to a KiwiSaver scheme or complying superannuation fund is treated as if it were a deduction under the PAYE rules.

Clause 199 amends *section 120B*, so that a failure to pay a compulsory employer contribution does not result in a liability to pay use of money interest.

Part 3 Amendments to other Acts and Regulations

Amendments to KiwiSaver Act 2006

Clauses 201 to 237 amend the *KiwiSaver Act 2006*.

Clause 201 amends *section 4(1)*. *Subclause (2)* replaces the definition of *deduction rate*, as part of introducing compulsory employer contributions, as well as to remedy a cross-reference. *Subclause (3)* inserts a new definition of *employer contribution*, as part of introducing compulsory employer contributions. *Subclause (4)* inserts a cross-reference in the definition of *salary or wages*, as part of introducing compulsory employer contributions. *Subclause (5)* inserts a new definition of *specified superannuation contribution*, as part of introducing compulsory employer contributions.

Clause 202 amends *section 6(1)(a)*, to require a person to be living in New Zealand, rather than be personally present, to be able to join KiwiSaver.

Clause 203 amends *section 12*, to ensure that casual employees are not subject to the automatic enrolment rules.

Clause 204 adds a new *section 17(6)*, to provide for PAYE intermediaries in the context of opting out for employees.

Clause 205 amends *section 18(2)*, to clarify notice requirements in the context of opting out for employees.

Clause 206 amends *section 40*, to clarify the supply of information packs by the Commissioner.

Clause 207 amends *section 46(2)*, as a remedial matter.

Clause 208 amends *section 48*, to ensure correct allocation to employer chosen KiwiSaver schemes.

Clause 209 amends *section 50*, to remedy drafting issues.

Clause 210 amends *section 51*, to remedy drafting issues.

Clause 211 amends *section 57*, to remedy drafting issues.

Clause 212 replaces *section 66* and adds a new *section 66A*. These sections provide for deductions from employees' salary or wages in the context of compulsory employer contributions. Transitional provisions for compulsory employer contributions are provided in *section 66A*.

Clause 213 amends *section 80*, to remedy drafting issues.

Clause 214 amends *section 81*, to remedy drafting issues.

Clause 215 replaces *section 93*, to ensure employer contributions for KiwiSaver schemes are correctly paid to the Commissioner, as part of introducing compulsory employer contributions.

Clause 216 adds *section 98(3)(e)*, as part of introducing compulsory employer contributions.

Clause 217 inserts a new *section 98B*, to ensure employer contributions for KiwiSaver schemes are correctly paid to the Commissioner, as part of introducing compulsory employer contributions.

Clause 218 amends *section 99*, to remedy operational issues, and as part of introducing compulsory employer contributions and the associated tax credit.

Clause 219 inserts a new *Part 3, subpart 3A*, with a commencement date of 1 April 2008. New *section 101B* outlines compulsory employer contributions and new provisions related to employer contributions. A definition of *salary or wages* is also provided. New *section 101C* provides the requirements for an employee for which compulsory employer contributions are required. *Section 101D* calculates the amount of compulsory employer contribution for an employee. *Section 101E* provides some rules for paying the compulsory employer contribution, and *sections 101F and 101G* provide further rules in respect of the compulsory employer contribution. New *section 101H* provides some rules for when there is a failure by

an employer to pay compulsory employer contributions to a complying superannuation fund.

Clause 220 inserts new *sections 101I to 101K* into new *Part 3, subpart 3A* (inserted by *clause 219*), with a commencement date of 1 April 2009. New *sections 101I to 101K* provide more rules for when there is a failure by an employer to pay compulsory employer contributions to a complying superannuation fund, including investigating, confirming, and collecting of a debt for the failure to pay. The Government Actuary is involved in investigating and confirming the debt, and the Commissioner collects the debt.

Clause 221 adds *section 102(b)(iii)*, to allow for complying superannuation funds.

Clause 222 inserts a new *section 117B*, to regulate the transactions of small and self-managed KiwiSaver schemes.

Clause 223 amends *section 121(3)(a)*, as a remedial matter.

Clause 224 amends *section 123*, to provide reporting requirements.

Clause 225 inserts a new *section 128B*, allowing terms relating to compulsory employer contributions to be implied into, and override, relevant trust deeds.

Clause 226 amends *section 129*, as a remedial matter.

Clause 227 amends *section 186(5)*, as part of introducing compulsory employer contributions. The amendment is related to the Government Actuary confirming a debt.

Clause 228 amends *section 210(2)(b)(ii)*, to remedy drafting issues.

Clause 229 amends *section 211*, to remedy drafting issues.

Clause 230 replaces *section 215(2)(a)*, to ensure the penalties regime works as intended.

Clause 231 repeals *section 216*, as part of introducing compulsory employer contributions. The repeal is related to the substitution of *Tax Administration Act 1994* penalties for employer contributions.

Clause 232 amends *section 221*, as a minor remedial matter.

Clause 233 corrects a reference in *section 225(2)*.

Clause 234 inserts a new *section 226(1)(b)* to ensure members transferring into a KiwiSaver scheme from a complying superannuation fund get the Crown contribution.

Clause 235 amends *section 229*, to accommodate complying superannuation funds in mortgage diversion facility regulations.

Clause 236 makes various changes to the *KiwiSaver scheme rules* in *schedule 1*, including allowing Crown contributions to be withdrawn in the case of serious illness, and making remedial amendments.

Clause 237 adds a new *schedule 4*, as part of introducing compulsory employer contributions. The new schedule sets out transitional rates for deductions from employees' salary or wages, in the context of compulsory employer contributions being phased in over 4 years.

Superannuation Schemes Act 1989

Clauses 239 and 240 amend the *Superannuation Schemes Act 1989*.

Clause 239 inserts a new *section 9BAA(1B)*, to ensure the relevant provisions apply despite anything to the contrary in a trust deed.

Clause 240 replaces *section 35(1)(e)*, to allow successor agreements to be entered into after 1 July 2007, and still qualify for complying superannuation fund status.

KiwiSaver Regulations 2006

Clauses 242 and 243 amend the *KiwiSaver Regulations 2006*.

Clause 242 replaces *regulation 6*, to ensure the correct annual return requirements in the *KiwiSaver Act 2006* are referred to.

Clause 243 repeals *regulation 7*, due to the relevant information requirements being in the *KiwiSaver Act 2006*.

Estate and Gift Duties Act 1968

Clause 244 makes 2 amendments to *section 73(2)*, with the effect that gifts to the trustees of the Tokelau International Trust Fund and the Niue International Trust Fund are exempt from gift duty. The amendments commence on 1 April 1999 and 1 April 2003, respectively.

Goods and Services Tax Act 1985

Clauses 246 to 251 amend the *Goods and Services Tax Act 1985*.

Clause 246 amends *section 2(1)*, which contains definitions of terms used in the Act. *Subclause (2)* inserts a cross-reference to new *section 24BA* in the definition of *tax invoice*.

Clause 247 corrects a cross-reference in *section 10(7)* inserted by *section YA 2* and *schedule 21* of the *Income Tax Act 2004*.

Clause 248 amends *section 11(1)(l)* by clarifying the situations in which supplies of consumable stores to ships are zero-rated and amends the definitions in *section 11(9)* of *consumable stores* and *foreign-going ship*.

Clause 249 amends *section 17*, changing the dates by which special returns must be provided to the Commissioner for sales made in November or March.

Clause 250 amends *section 20(2)(a)* by inserting a cross-reference to new *section 24BA*.

Clause 251 inserts new *section 24BA*, which provides for shared tax invoices if more than 1 supplier is involved in a supply.

Income Tax Act 1994

Clauses 253 to 258 amend the *Income Tax Act 1994*.

Clause 253 amends *section CB 3* so that a local authority derives exempt income from a council-controlled organisation operating a hospital as a charitable activity on behalf of the local authority. The amendment corresponds to that made by *clause 21*. It comes into force on 1 April 2001.

Clause 254 amends *section CB 4*. The amendments in *subclauses (1) and (2)* have the effect that income of the trustees of the Tokelau International Trust Fund and the Niue International Trust Fund is exempt income. The amendments correspond to an amendment made by *clause 22*. They apply from the 1999–2000 tax year and the 2003–04 tax year, respectively. The amendment in *subclause (3)* is consequential to the amendment made by *clause 253*.

Clause 255 makes 2 amendments to *section CB 9*, with the effect that distributions from the trustees of the Tokelau International Trust Fund and the Niue International Trust Fund are exempt income for recipients. The amendments correspond to an amendment made by *clause 22*. They apply from the 1999–2000 tax year and the 2003–04 tax year, respectively.

Clause 256 inserts new *subsections (5B) and (5C)* in *section MF 5*, providing for the effect of elections made by a company in relation to credits in a BETA account. The amendment applies from the 1997–98 income year.

Clause 257 inserts new *subsections (4B), (4C), and (4D)* in *section MF 10*, providing for the effect of elections made by a consolidated group in relation to credits in a BETA account. The amendment applies from the 2005–06 income year.

Clause 258 amends *section OB 1*, which contains definitions of terms used in the Act. *Subclause (2)* inserts the definition of *Niue International Trust Fund*. *Subclause (3)* amends the definition of *taxable bonus issue* with effect from 16 November 2004. *Subclause (4)* inserts the definition of *Tokelau International Trust Fund*.

Taxation Review Authorities Act 1994

Clauses 260 and 261 amend the *Taxation Review Authorities Act 1994*.

Clause 260 inserts new *section 22B*, which provides for the order by an Authority of some costs against the Commissioner.

Clause 261 inserts new *section 30(2)(e)*, which provides that a regulation may provide for the refund, remission, or waiver of filing fees.

Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006

Clause 262 repeals *sections 18, 19, 26, 47, 49, 127, 192, 215, and 216* of the *Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006*, as part of the changes to the treatment of payments by the Accident Compensation Corporation for services of caregivers.

Customs and Excise Act 1996

Clause 263 inserts new *sections 280J, 280K, and 280L* after *section 280I* of the *Customs and Excise Act 1996*.

Housing Restructuring and Tenancy Matters Act 1992

Clause 264 applies the amendments to the *Housing Restructuring and Tenancy Matters Act 1992* made in *schedule 2*.

Privacy Act 1993

Clauses 266 and 267 amend the Privacy Act 1993.

Clause 266 inserts a new subsection after section 103(1B), excusing the Commissioner from providing a notice of proposed action before recovering unpaid financial support from a person identified from information supplied under section 280K or 280L of the Customs and Excise Act 1996.

Clause 267 inserts in schedule 3 a cross-reference to sections 280K and 280L of the Customs and Excise Act 1996.

Rates Rebate Act 1973

Clause 268 applies the amendments to the Rates Rebate Act 1973 made in schedule 2.

Social Security Act 1964

Clause 269 applies the amendments to the Social Security Act 1964 made in schedule 2.

Goods and Services Tax (Grants and Subsidies) Order 1992

Clause 270 adds a new clause to the schedule of the Goods and Services Tax (Grants and Subsidies) Order 1992, as part of introducing the tax credit for expenditure on research and development under subpart LH of the Income Tax Act 2004.

Health Entitlement Cards Regulations 1993

Clause 271 applies the amendments to the Health Entitlement Cards Regulations 1993 made in schedule 2.

Income Tax (Withholding Payments) Regulations 1979

Clause 272 adds a new Part F to the schedule of the Income Tax (Withholding Payments) Regulations 1979, as part of the changes to the treatment of payments by the Accident Compensation Corporation for services of caregivers.

***Social Security (Temporary Additional Support)
Regulations 2005***

Clause 273 applies the amendments to the *Social Security (Temporary Additional Support) Regulations 2005* made in *schedule 2*.

Student Allowances Regulations 1998

Clause 274 applies the amendments to the *Student Allowances Regulations 1998* made in *schedule 2*.

Holidays Act 2003

Clause 275 inserts a new *section 14(c)(iii)* into the *Holidays Act 2003*, to ensure that employer contributions are excluded from gross earnings under that Act.

Schedule 1

Schedule 1 makes the amendments to *subpart KD of the Income Tax Act 2004* applied by *section 86*.

Schedule 2

Schedule 2 makes the amendments to other Acts and Regulations applied by *sections 264, 268, 269, 271, 273, and 274*.

Regulatory impact and compliance cost statement

An objective in developing tax law is to ensure that costs associated with the functioning of the tax system are minimised. This objective must necessarily be balanced by the need to protect the tax base, to treat taxpayers fairly, and to ensure an efficient system.

Fair dividend rate and life insurers

Statement of the public policy objective

The public policy objective is to tax investment income on an efficient and equitable basis.

Statement of the nature and magnitude of the problem and the need for government action

Last year Parliament enacted major changes to the taxation of off-shore portfolio equity. As a result, all portfolio shares (interests of

less than 10%) in non-resident companies other than Australian listed companies will now be taxed on a deemed fair dividend rate of 5% instead of actual returns (dividends, plus realised gains in the case of revenue account holders).

Under the operation of the current life insurance tax rules a life insurer effectively pays tax on the higher of the life office base (LOB) which taxes underwriting profit and net investment income, and the policyholder base (PHB) which taxes movements in policyholder reserves. Where a life insurer's PHB tax liability is greater than its LOB, the life insurer is effectively paying tax on the actual movement in realised and unrealised gains on those portfolio interests, rather than at the fair dividend rate, as applies to all other investors. The total amount of this extra tax is estimated at \$8 million per year.

Life insurers will therefore, in some circumstances, pay tax on those interests on a different basis from that intended, purely as a consequence of a technical anomaly of the life insurance rules. Life insurers should be subject to the same tax consequences on offshore portfolio investments as other savings vehicles. Otherwise, investment decisions will be based on considerations of entity choice and tax, rather than the merits of the investment itself. This will lead to distortionary investment decision-making. An unexpected technical consequence of the fair dividend rate rules means that life insurers are not taxed on an equivalent basis to other savings vehicles.

Statement of feasible options (regulatory and/or non-regulatory) that may constitute viable means for achieving the desired objective

Status quo

Under the current life insurance tax rules, a life insurer effectively pays tax on the higher of the LOB and the PHB. Tax on investment income on the LOB is determined under ordinary rules, so the fair dividend rate is applied to the relevant shares. However, tax on the PHB is calculated on actual returns (through movements in reserves) on those shares, and not at the fair dividend rate.

Preferred option: Amending the policyholder base

It is proposed that the PHB tax calculation be changed so that the fair dividend rate will apply to both the LOB and to the PHB on an equivalent basis.

Statement of the net benefit of the proposal, including the total regulatory costs (administrative, compliance, and economic costs) and benefits (including non-quantifiable benefits) of the proposal, and other feasible options

Government

Based on industry statistics, life insurers owned approximately \$2.47 billion in offshore non-Australian equities as of 31 December 2006. Assuming a 6% total return on offshore equities, that would indicate a revenue cost of \$8 million per year. A 6% total return assumption was used in costing the fair dividend rate tax reform and is about the average return earned over the last 9 years. However, the actual returns varied widely from year to year, ranging from +37% in 1998 to -37% in 2002. In addition, owing to the various anomalies in the current rules, a number of life insurers do not actually have PHB tax liabilities so the actual fiscal cost or fiscal gain will vary widely from year to year.

Life insurers

Life insurers will pay \$8 million per year less in tax. The compliance cost implications for business are outlined in the attached Business Compliance Cost Statement. The equal treatment of life insurers with other investments will mean that life insurers are a more attractive investment than they are now (but equally attractive on a tax basis to other investments). This may increase investment, but any effect will be small as the tax reduction is small relative to the total equity and policyholder funds invested in life insurers.

Society

The proposed reform will have no impact on the tax obligations of individual investors. There will be small benefits to individual investors as the lower tax increases dividends and share prices, but the effect will be very small as the tax reduction is small relative to the total equity and policyholder funds invested in life insurers.

Statement of consultation undertaken

Stakeholders consulted

Officials have regularly and comprehensively consulted with the body that represents the life insurance industry, the Investment Savings and Insurance Association of New Zealand. No significant concerns were raised.

Government departments and agencies consulted

The Treasury and the Inland Revenue Department have been consulted in the reform and agree with the recommendations.

Compliance costs

The proposed reform will require life insurers to understand the new rules and update work programmes and spreadsheets. It has not been possible to quantify the level of compliance costs but as the required changes are minor and apply to a relatively small number of large businesses which are already expert in life insurance taxation, the costs are expected to be minimal.

Tax Agents

Statement of the public policy objective

The key objective is to enhance the integrity of the tax system by reducing the risk some tax agents pose.

Statement of the nature and magnitude of the problem and the need for government action

Currently, more than 4500 tax agents are registered with the Inland Revenue Department, representing more than 1.7 million taxpayers. The services tax agents provide have a significant influence on raising voluntary compliance levels and reducing compliance and administrative costs.

To be recognised as a tax agent, a person must apply to the Inland Revenue Department by making an application to be a tax agent or agency. Currently, tax agent status is not limited to natural persons, and includes individuals, partnerships, companies and other entities. Provided that an agent meets the very limited criteria, the Inland Revenue Department cannot refuse to register the entity as a tax agent. A person who meets the criteria must be registered even if, for example, they have a long record of non-compliance in their own tax affairs or in the tax affairs of their clients, or if they have been convicted of offences involving serious dishonesty. This risks undermining the integrity of the tax system.

As the Inland Revenue Department continues to provide tax agents with a greater range of self-service options and greater online access, the ability to place a high level of trust in tax agents assumes much greater importance.

The current ability of an individual or an entity to engage with the Inland Revenue Department and taxpayers as a tax agent with very limited restrictions is inconsistent with similar positions of trust that have strict criteria for eligibility. In tax legislation, for example, the Income Tax Act 2004 contains comprehensive rules on who may be accredited as a PAYE intermediary.

The Inland Revenue Department does not maintain a publicly accessible list of people who are registered as tax agents.

***Statement of feasible options (regulatory and/or non-regulatory)
that may constitute viable means for achieving the desired
objective***

Status quo

A tax agent is defined in the Tax Administration Act 1994 as *a person who prepares the returns of income required to be furnished for 10 or more taxpayers and who—*

- (a) *carries on a professional public practice; or*
- (b) *carries on any business in which returns of income are prepared; or*
- (c) *is the Maori Trustee.*

Professional bodies, such as the New Zealand Institute of Chartered Accountants and others with a significant function of providing tax advice, have their own membership criteria based on standards of integrity.

Alternative option: regulated tax agent rules

This option would regulate tax agent rules. Regulated rules such as Australia's would require, for example, relevant qualifications, experience in a wide range of tax issues, and continuing education. On balance, it appears that any benefit from such rules would be outweighed by higher compliance and administrative costs.

Preferred option

The definition of "tax agent" is amended by adding a requirement that the Commissioner of the Inland Revenue Department must be satisfied that listing a person as a tax agent is consistent with the protection of the integrity of the tax system. Operational guidelines will be provided on the circumstances in which the Commissioner's discretion might be exercised. These guidelines will be publicly available from the Inland Revenue Department. Potential factors might include, whether a person has been found guilty of an offence or breach by the disciplinary body of a professional organisation of which they are a member (such as the New Zealand Institute of Chartered Accountants), whether the person is an undischarged bankrupt or an insolvent entity, or whether the person is an individual or a body corporate that has been convicted of a crime involving dishonesty (within the meaning of section 2(1) of the Crimes Act 1961) and has been sentenced for that crime within the last 7 years.

Amending the definition provides the Commissioner with the discretion to withhold recognition, or remove a person as a tax agent when the Commissioner thinks the action is necessary to protect the integrity of the tax system. The person could still work as a tax agent but they would not be entitled to the benefits of being a tax agent, for example, an extended period of time in which to file their clients' income tax returns, extension by 2 months of the terminal tax date for taxpayers linked to a tax agent, and the services the Inland Revenue Department specifically provides to tax agents and their clients.

The Inland Revenue Department will give a tax agent notice of the intention to revoke the agent's listing and give reasons for the intended revocation. If the agent does not resolve the matters listed in the notice of intended revocation to the satisfaction of the Commissioner, their agency status will be revoked and the agent and the taxpayers linked to that agent advised accordingly.

An exception to the Inland Revenue Department's secrecy obligations will be made allowing the Inland Revenue Department to provide information to professional bodies about the agency listings it has revoked.

Statement of the net benefit of the proposal, including the total regulatory costs (administrative, compliance, and economic costs) and benefits (including non-quantifiable benefits) of the proposal, and other feasible options

Government

The major benefit is protecting the integrity of the tax system.

There are no significant administrative costs to the Government in implementing this reform and any costs can be met within existing baselines.

Tax agents

It is envisaged that the decision not to grant, or remove tax agent status would be exercised only in a very small number of cases.

Removing tax agent status or not granting tax agent status will make it harder for a person to work as a tax agent as they will not have the extended period of time in which to file returns, pay terminal tax or the services the Inland Revenue Department provides to tax agents and their clients.

Society

There would be a benefit to society in that taxpayers will have the assurance that their tax agent does not pose a risk to the integrity of the tax system and to their tax matters.

Statement of consultation undertaken

Stakeholders consulted

A discussion document *Tax penalties, tax agents and disclosures* was released in October 2006. Eleven submissions were received on the discussion document. Some submissions commented on factors that ought to be included in the guidelines (and where necessary legislation), for example, that Corporate taxpayers can also be tax agents, tax agents should be given notice of the Inland Revenue Department's intention to revoke the tax agent's listing and reasons for the intended revocation, allowing sufficient time to remedy any matters identified. These factors have been incorporated into the proposal.

One submission expressed concern that the discretion could be abused by the Inland Revenue Department in situations where unrelated disputes exist with the tax agent. Officials disagree and consider that the decision to remove a tax agent's status as an agent should never be a factor discussed in connection with an investigation, but rather an independent decision at a senior level.

Government departments and agencies consulted

The government departments consulted are the Inland Revenue Department and the Treasury. No concerns were raised.

Business compliance cost statement

Individual agents currently registered as tax agents will not be required to reapply for their agency status. Entities will continue to be listed as tax agents provided they supply the Inland Revenue Department with the names of:

- all individuals who are members of the entity, if the entity is an unincorporated body;
- each person acting as a director, secretary or statutory officer, if the entity is a body corporate; and
- all partners if the entity is a partnership.

The information is necessary to enable the Commissioner to be satisfied on an ongoing basis that, given the involvement of these individuals, it is consistent with protection of the integrity of the tax system for the entity to have agency status.

The Inland Revenue Department will allow 12 months from the enactment of the new rules for this information to be provided.

Tax penalties

Statement of the public policy objectives

The public policy objectives are to:

- ensure that the scope of shortfall penalties, especially those for “not taking reasonable care” and “unacceptable tax position”, is clear;
- provide better recognition of compliant behaviour, including recognition of voluntary disclosures; and
- encourage on-time filing of GST returns and payments of all tax types.

Statement of the nature and magnitude of the problem and the need for government action

Because New Zealand’s tax system relies on self-assessment, rules are necessary to encourage taxpayers to file their tax returns on time, to pay on time and, as far as possible, to correctly calculate their tax

liabilities. For the system to work, it is vital that those who do not comply with the rules are seen to face the consequences. It is also important that the penalties that result when someone has not complied are in keeping with the severity of the offence.

The current penalty rules are seen as being too harsh in some cases. For example, the unacceptable tax position shortfall penalty is aimed at ensuring that where there is a significant amount of tax at stake that taxpayers ensure their tax positions are correct. Often this penalty is assessed when the incorrect tax position relates to a one-off transaction and a mistake has been made by the taxpayer in determining the facts. In such cases the imposition of the penalty appears overly harsh. The rules are also seen as too harsh where the taxpayer is usually compliant but inadvertently misses a payment.

In some cases the penalty rules are also acting as a disincentive for taxpayers to comply. For example, taxpayers who voluntarily disclose tax shortfalls see the consequence of making the disclosure being the imposition of a shortfall penalty. Therefore, rather than disclosing the tax shortfall, taxpayers will correct the tax position in a later return and risk the possible imposition of a penalty if the return is audited.

Statement of feasible options (regulatory and/or non-regulatory) that may constitute viable means for achieving the desired objectives

Status quo

Penalties are currently of 3 types—late payment penalties, late filing penalties and shortfall penalties. When taxpayers do not file their returns on time, late filing penalties of \$50 to \$500 may apply.

When a payment is not made on time, late payment penalties apply. The initial late payment penalty is imposed in 2 stages—1% the day after the due date and 4% six days later. If payment is not made, incremental late payment penalties of 1% are imposed each month that the amount remains unpaid.

If taxpayers do not accurately calculate their tax liabilities, shortfall penalties of 20% to 150% may be imposed. Shortfall penalties are imposed when a required standard of behaviour has been breached. The basic standard required is that taxpayers must take reasonable care. Use-of-money interest, while not a penalty, also applies to underpayments and overpayments.

Alternative options

A number of alternatives were considered and they are detailed in the discussion document.

Preferred option

The legislation is amended to provide further incentives to voluntarily comply, encourage filing of returns and payment of tax and ensure that any penalty assessed is in step with the breach. The amendments include:

- prescribing the circumstances when a shortfall penalty for not taking reasonable care may be imposed including when taxpayers have used a tax agent as—
 - failing to provide adequate information to the agent;
 - failing to provide adequate instructions to the agent;
 - unreasonably relying on an agent or advisor; and
 - having had a tax shortfall previously which concerned the same error or action;
- refining the scope of the unacceptable tax position shortfall penalty by—
 - removing GST and withholding-type taxes from the scope of the unacceptable tax position shortfall penalty so that the unacceptable tax position shortfall penalty applies only to tax positions taken in respect of income tax; and
 - increasing the thresholds for assessment of the unacceptable tax position shortfall penalty so that it will apply when the tax shortfall arising from the taxpayer's tax position is more than both \$50,000 and 1% of the taxpayer's total tax figure for the relevant return period;
- improving recognition of good compliance by—
 - notifying a taxpayer the first time their payment is late rather than imposing an immediate late payment penalty, if payment was not made by a certain date the penalty would be imposed (if returns are filed on time for 2 years the process would reset, that is, the next late payment would receive a warning letter);

- not imposing a shortfall penalty for not taking reasonable care or taking an unacceptable tax position when a tax shortfall is voluntarily disclosed before notification of a pending tax audit or investigation; and
- introducing a new graduated penalty to apply when an employer has filed an employer monthly schedule but not paid the PAYE; and
- extending the late filing penalty to GST returns that are not filed by the due date, with 2 levels of penalty: if the taxpayer's taxable supplies are more than \$1.3 million the late filing penalty will be \$250, and for taxpayers with taxable supplies less than or equal to \$1.3 million the penalty will be \$50.

Statement of the net benefit of the proposal, including the total regulatory costs (administrative, compliance, and economic costs) and benefits (including non-quantifiable benefits) of the proposal, and other feasible options

Government

The major benefit is that taxpayers are encouraged to comply with their tax obligations. The legislation provides incentives to comply, rather than disincentives, so taxpayers will file their returns on time, pay their tax on time and correct mistakes.

These proposals will also have associated administrative costs which have not yet been quantified. Three of the proposals will require computer system changes—introducing the warning/notification before the imposition of the late payment penalty, imposing late filing penalties on late GST returns and the new PAYE shortfall penalty. Once the administrative costs are determined and the proposals finalised, funding will be sought as part of the Inland Revenue Department's normal budget bid.

While the fiscal costs of these proposals are difficult to estimate with accuracy, it is estimated (based on available information) that they will have a fiscal cost of approximately \$8.0 million per annum. Applying the voluntary disclosure proposal from an earlier date will increase the fiscal costs; this is expected to be less than \$1.0 million. The fiscal costs arise from the reduction in the level and number of penalties imposed. This fiscal cost may be offset to some extent as a

result of the impost of the new GST late filing penalty. However, it is expected that the revenue generated from this new penalty will diminish quickly as taxpayers adjust their behaviour and file GST returns on time.

Society

By filing their returns on time and paying their tax on time taxpayers will incur fewer penalties. If taxpayers become aware of mistakes they are encouraged to come forward and notify the Inland Revenue Department of the mistake rather than correcting the mistake in a later return and fearing the imposition of a penalty that is disproportionate to their breach.

Taxpayers will pay approximately \$8.0 million less in penalties each year. The early application of the voluntary disclosure amendment will mean that taxpayers pay approximately \$1.0 million less in penalties in the next year.

The proposed amendments do not result in any compliance costs.

Statement of consultation undertaken

A discussion document *Tax penalties, tax agents and disclosures* was released in October 2006. Eleven submissions were received on the discussion document. The submissions raised concerns that have been taken into account in developing the proposals. There were 3 changes made as a result of submissions.

- The discussion document proposed that shortfall penalties for not taking reasonable care or for taking an unacceptable tax position not be applied if the taxpayer made a voluntary disclosure before being notified of a pending audit but only if the voluntary disclosure were made within 2 years of the tax position being taken. Submissions noted that the 2-year requirement meant that there would be a disincentive to disclose tax shortfalls more than 2 years old, even if they arose from the same issue as a tax shortfall occurring in the 2-year time span. The proposal now applies to voluntary disclosures regardless of when the tax position was taken.

- Also in relation to the voluntary disclosure proposal, submitters considered that the amendment to the voluntary disclosure rules should apply as soon as possible. They were concerned that taxpayers might delay making voluntary disclosures until the proposal is enacted. The proposal will apply from the date the bill is introduced.
- Submissions made on the introduction of the late filing penalty relating to GST returns expressed the concern that a \$250 late filing penalty was too high. It is proposed that there be 2 levels of penalty. If the taxpayer's taxable supplies are more than \$1.3 million (being the threshold for using the invoice basis) the late filing penalty will be \$250. For taxpayers with taxable supplies less than or equal to \$1.3 million, the penalty will be \$50.

The government agencies consulted were the Inland Revenue Department and the Treasury. No concerns were raised.

BETA accounts

Statement of the public policy objective

The objective is to prevent the BETA mechanism from being used inappropriately to offset or defer tax.

Statement of the nature and magnitude of the problem and the need for government action

Branch equivalent tax accounts (or BETAs) prevent companies being taxed twice on their foreign income. Generally speaking, New Zealand companies are taxed on all foreign income as it is earned (known as "accrual taxation"). Accrual taxation could give rise to economic double taxation where dividend withholding payment (DWP) is also imposed when foreign profits are repatriated as dividends. BETAs provide relief from such double taxation by allowing companies, in effect, to offset tax paid on 1 stream of income against tax due on the other stream through a system of debits and credits.

Currently, this BETA mechanism may give rise to scope for inappropriate avoidance or deferral of tax, contrary to the policy intent. Where DWP is imposed on dividends but there is no corresponding accrual taxation of the underlying profits, surplus BETA debits may be generated which can be used to offset tax on other income. In

addition, current law does not expressly limit the conversion of debits into a loss to the amount necessary to offset income tax on attributed CFC income in the absence of New Zealand losses. If companies could convert debits into losses regardless of the level of their attributed CFC income, they could use those losses to relieve other income that is properly taxable.

Statement of feasible options (regulatory and/or non-regulatory) that may constitute viable means for achieving the desired objectives

Status quo

Maintaining the status quo is not considered appropriate.

Amend Income Tax Act

Two changes are proposed:

- that the law be amended so that companies' access to BETA debits is limited by reference to their liability to tax on foreign income; and
- that the law be amended to prevent BETA debits being generated when DWP is paid on dividends received from "grey list" investments. (There is no accrual taxation of profits derived from direct investment into any of the 8 countries on the "grey list", which are considered to have tax systems similar to those of New Zealand.)

Statement of the net benefit of the proposal, including the total regulatory costs (administrative, compliance, and economic costs) and benefits (including non-quantifiable benefits) of the proposal, and other feasible options

Government and society

The proposed changes will ensure that the law clearly aligns with the established policy intent behind the BETA mechanism and prevent erosion of the tax base.

Business

There should be no additional compliance costs for businesses.

Statement of consultation undertaken

Government departments and agencies consulted

The Treasury and the Inland Revenue Department have been consulted. No concerns were raised.

Retirement scheme contribution withholding tax

Statement of the public policy objectives

The public policy objectives are to ensure that taxes are equitable between taxpayers, and to decrease barriers to long term savings.

Statement of the nature and magnitude of the problem and the need for government action

Under current rules, locked-in contributions to long term retirement savings schemes are part of taxable income, and are taken into account for the purposes of assessing eligibility for social assistance, where that social assistance is delivered through tax systems. This creates barriers to making contributions to retirement savings schemes, because people who receive such contributions may be required to file tax returns, and there may be an impact on any social assistance they receive.

Investment income earned through portfolio investment entities (PIEs), and employer contributions to employee superannuation schemes are excluded from taxable income and not taken into account for social assistance purposes, because the income is locked-in, or not readily available for day-to-day living expenses. Subjecting locked-in contributions to long term savings schemes to income tax, and taking them into account for social assistance purposes, would not be consistent with the treatment of PIE investment income and employer superannuation contributions.

Te Wananga o Ngai Tahu (TRoNT) is setting up a long term savings scheme for its members. The principal purpose of the scheme is to provide retirement savings. About 40,000 members of Ngai Tahu are expected to join the scheme. Although the individual contributions made by TRoNT will not be large, and thus any impact on members' social assistance will be minimal, it is possible that savers in this scheme (or in other schemes which may be set up) may suffer decreases in social assistance entitlements because they choose to save.

Statement of feasible options (regulatory and/or non-regulatory) that may constitute viable means for achieving the desired objective

Status quo

Under the Income Tax Act 2004, locked-in contributions to long term savings schemes are subject to income tax and are taxed at individual savers' marginal tax rates (varying according to savers' circumstances). The contributions are also taken into account for social assistance purposes where that social assistance is delivered through the tax system. Entities making contributions are required to deduct resident withholding tax (RWT) at the applicable rates for dividends and Maori authority contributions. Savers receiving the contributions may be required to file tax returns to recover any overpaid RWT. Any social assistance that savers receive through the tax system may be reduced by 20c for each \$1 of contributions received. These costs might create barriers to savings through long term savings schemes.

Alternative option

The alternative option is the same as the preferred option below, except that contribution withholding tax rates could be set at different rates. This option is not preferred because it could create opportunities for taxpayers to avoid tax, by converting taxable income taxed at higher rates to retirement scheme contributions taxed at lower rates..

Preferred option: Amend the Income Tax Act 2004

Amend the Income Tax Act 2004 to set up new rules for taxing locked-in contributions to long term retirement savings schemes. In particular the rules will:

- allow the rules to be used in respect of schemes set up by companies (but not closely held companies), widely held unit trusts, and Maori authorities, thus helping to ensure that there is an arm's-length relationship between contributors and savers;
- impose a final withholding tax on contributions to long term savings schemes, instead of income tax;
- exclude contributions to long term savings schemes from being taken into account for the purposes of social assistance delivered through the tax system;

- align tax rates on contributions with tax rates on income, that is 19.5%, 33%, and 39%, with the applicable rate dependent on individual savers' taxable income;
- require schemes to be PIEs, reinforcing the arm's-length relationship between contributors and savers;
- allow withdrawals for retirement, first home purchase, tertiary education (repaying student loans), significant financial hardship, serious illness (total and permanent disability, or imminent death) and permanent emigration;
- require that retirement withdrawals will be taken into account for the purposes of assessing entitlement to social assistance if those withdrawals are made before the age of eligibility for New Zealand Superannuation, and the member is still eligible to receive contributions (this rule is similar to existing rules for employer superannuation contributions);
- require members who declare an incorrect rate to entities to file tax returns and pay any outstanding tax, but continue to exclude such income from being taken into account for social assistance purposes (similar to existing rules with respect to declaring an incorrect rate for PIE purposes); and
- require the reasonableness of a scheme's lock-in rules, and thus the eligibility of contributors to use the withholding tax rules, to be assessed by the Commissioner of Inland Revenue.

Statement of the net benefit of the proposal, including the total regulatory costs (administrative, compliance, and economic costs) and benefits (including non-quantifiable benefits) of the proposal, and other feasible options

Government

There may be an increase in the cost of family assistance if savers elect to receive income that might otherwise have been included in taxable income as savings scheme contributions. However, it is not certain that any increase will occur, because it is not certain that savers would have received the income in any form other than savings contributions, and it is not likely that savers will be able to convert other forms of income into savings contributions, given the

rules promoting arm's-length relationships between contributors and savers.

The cost of administering the new tax will be minimised by collecting the tax through existing mechanisms for specified superannuation contribution withholding tax.

Contributing entities

Contributing entities will incur extra compliance costs in administering the withholding tax. However, they will only incur these costs if they elect to use the withholding tax rules, and by doing so, they will reduce compliance costs for savers. These costs are discussed in greater detail in the business compliance cost statement.

Savers

Overall, savers' costs in complying with tax rules will be reduced. Savers will incur some costs because they will have to declare a tax rate to the contributing entity. However, this will be less than the costs they would have incurred if the contributions were taxed through income tax, because they will not be required to file tax returns.

Some savers might have received less social assistance if the contributions were taxed through income tax, but taxing the contributions through the withholding tax will prevent this potential cost. Some savers may be able to increase entitlements to social assistance if they are able to arrange for income taxed through income tax to be converted into contributions taxed through the withholding tax. However, this is not a likely outcome given the rules promoting an arm's-length relationship between contributors and savers.

Society

Society will benefit through the reduction in barriers to saving, and through maintaining equity between taxpayers.

Statement of consultation undertaken

Stakeholders consulted

Te Rununga o Ngai Tahu, the Investment Savings and Insurance Association of New Zealand and the New Zealand Institute of Chartered Accountants were consulted in the development of this proposal. No significant concerns were raised.

Government departments and agencies consulted

The Treasury, the Inland Revenue Department, the Ministry of Economic Development, the Ministry of Social Welfare and Te Puni Kokiri were consulted in the development of this proposal. No significant concerns were raised.

Initial application

In the first instance, only Te Rununga o Ngai Tahu is known to be planning to use the withholding tax rules.

The Inland Revenue Department will publish an explanation of the new rules in the *Tax Information Bulletin* once the new rules are enacted.

Compliance cost statement

The majority of changes to current law in the bill are remedial in nature and so are expected to decrease compliance costs, or keep them the same. The following changes to current law that are contained in the bill are expected to increase compliance costs.

Retirement scheme contribution withholding tax

Companies, unit trusts and Maori authorities that elect to set up long term savings schemes, or savings schemes as their nominees, will incur one-off compliance costs setting up systems for calculating and deducting the withholding tax. There will be on-going compliance costs in administering the withholding tax, including collecting tax rates from savers, calculating and deducting the withholding tax, paying it over to the Inland Revenue Department, and keeping records. The likely extent of the compliance costs has not been quantified, but they are expected to be low, given that they are a marginal cost in addition to existing tax compliance costs.

Consultation

Most proposals contained in the bill were subject to the generic tax policy process. Exceptions were changes relating to the KiwiSaver scheme, changes relating to the proposed new tax rate for companies, and a number of minor remedial amendments.

The generic tax policy process is a robust consultative policy development process focussed on tax policy development. For the

major measures in the bill, this process included the release of the following discussion documents or issues papers:

R & D tax credits

Tax incentives for giving to charities and other non-profit organisations

Tax penalties, tax agents and disclosures

Consultation on specific matters was undertaken with other professional groups, industry representatives, and individual taxpayers, according to their expertise on the proposed amendments. This included consultation with:

- Accident Compensation Corporation
- Air New Zealand Limited
- AMP
- ASFONZ
- Chapman Tripp
- Charities Commission
- Corporate Taxpayers Group
- Deloitte
- Department of Prime Minister and Cabinet
- Ernst & Young
- ING
- Investment Savings and Insurance Association of New Zealand
- Kensington Swan
- KPMG
- NZ Funds Management
- New Zealand Institute of Chartered Accountants
- New Zealand Law Society
- New Zealand Screen Council
- New Zealand Superannuation Fund
- Office for the Community and Voluntary Sector
- Owens Tax Advisors Limited
- PricewaterhouseCoopers
- Russell McVeagh
- Shell New Zealand Limited
- Sport and Recreation New Zealand
- Superannuation industry participants

- Tertiary Education Commission
- Te Rununga o Ngai Tahu
- Waitaki District Council.

The Treasury was consulted and involved in the policy development of the amendments in the bill. Other agencies consulted were:

- Department of Internal Affairs
 - Department of Labour—Immigration
 - Ministry of Economic Development
 - Ministry of Education
 - Ministry of Foreign Affairs and Trade
 - Ministry of Justice
 - Ministry of Social Development
 - NZAID
 - New Zealand Customs Service
 - New Zealand Trade and Enterprise
 - Ministry of Research, Science and Technology
 - Office of the Privacy Commissioner
 - Ministry for Culture and Heritage
 - Ministry of Research Science and Technology
 - Ministry of Education and the Tertiary Education Commission
 - NZ Police's Strategic Intelligence Unit
 - Te Puni Kokiri.
-

Hon Peter Dunne

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

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. 5
 - (2) **Sections 256 and 257** are treated as coming into force on 1 April 1997.
 - (3) **Section 244(1)** is 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
 - (5) **Section 244(2)** is treated as coming into force on 1 April 2003.
 - (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.
- (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. 5
- (9) **Section 85(1)** is treated as coming into force on 1 July 2005.
- (10) **Sections 131 and 132** are treated as coming into force on 1 April 2006.
- (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. 10
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, 215, 216, 217, 218(2), 219, 222, 225, 227, 231, 237, and 260** come into force on 1 April 2008. 30
- (17) **Sections 11, 12, 18, 29, 30, 95, 135(3), 136, 151, 152, and 272** come into force on 1 July 2008. 35
- (18) **Section 220** comes into force on 1 April 2009.

- (19) **Sections 160(1), 263, 266, and 267** come into force on the earlier of the following:
- (a) a date to be fixed by the Governor-General by Order in Council:
 - (b) 1 April 2009. 5
- (20) **Section 166** comes into force on the earlier of the following:
- (a) a date to be fixed by the Governor-General by Order in Council:
 - (b) 1 April 2010.

Part 1 10

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

Annual rates of income tax for 2007–08 tax year

- 3 Rates of income tax for 2007–08 tax year**
- (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. 15
 - (2) The Taxation (Annual Rates of Income Tax 2006–07) Act 2006 is repealed.

General amendments to Income Tax Act 2004 20

- 4 Income Tax Act 2004**
Sections 5 to 139 amend the Income Tax Act 2004.

- 5 Withholding liabilities**
- (1) After section BE 1(5), the following is inserted:
“*Retirement scheme contributions* 25

- “(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.”
- (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. 30

- 6 Disposal: amount from major development or division and not already in income**
- (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: 10
- (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 15
- (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 20
- (iv) provides the return to the Commissioner by the due date for the return.
- 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
- (ii) takes a tax position relating to the disposal in a return for the income year of the disposal; and 35

		Taxation (Annual Rates, Business Taxation, KiwiSaver, and Remedial Matters)	
Part 1 cl 7			
	(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.	5
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 ”.		
(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”.		10
(3)	Subsection (2) 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—	15
	(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 (2) applied for the disposal; and	20
	(iv)	provides the return to the Commissioner by the due date for the return.	
9	Determination of amount of credit in certain cases		25
	In section CD 32(26)(b), “dividend” is replaced by “dividend (section MZ 15 (Fully credited: modifying the actual ratio) modifies this paragraph)”.		
10	Prevention of double taxation of share cancellation dividends		30
	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)”.		
			35

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

“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. 15
- “Defined in this Act: income, income year, payment”.*

12 Benefits, pensions, compensation, and government grants

- 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: 20
- “(g) an amount paid under section 81(1)(b) of the Injury Prevention, Rehabilitation, and Compensation Act 2001.”

13 When FIF income arises

- After section CQ 5(1), the following is inserted: 25
- “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).” 30

- 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.”
(2) Section CT 6(3) and (4) are repealed.
(3) In the list of defined terms in section CT 6,— 15
(a) “petroleum mining operations” is inserted:
(b) “removal or restoration operations” is omitted.
(4) **Subsections (1) to (3)** apply for the 2005–06 and later income years.
- 17 New section CT 6B inserted** 20
(1) After section CT 6, the following is inserted:
“CT 6B Meaning of petroleum mining operations
“Meaning
“(1) **Petroleum mining operations** means an activity included in the activities described in **subsection (2)** and not excluded by **subsection (3)**. 25
“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: 30
“(c) producing petroleum:
“(d) processing, storing, or transmitting petroleum before its dispatch to a buyer, consumer, processor, refinery, or user:

- “(e) removal or restoration operations.
- “*Activities: exclusions*
- “(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 5
- “(b) it is done—
- “(i) by liquefaction or compression; or
- “(ii) for the extraction of constituent products; or 10
- “(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”.
- (2) **Subsection (1)** applies for the 2005–06 and later income years.
- 18 New section CW 28B inserted 15**
- After section CW 28, the following is inserted:
- “**CW 28B Payment of certain accident compensation payments**
- 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— 20
- “(a) the person is a claimant under that Act; and
- “(b) the person pays an amount to a caregiver for providing attendant care to the person in the year; and
- “(c) the amount paid to the caregiver is equal to or more than 25
- 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.
- “Defined in this Act: attendant care, exempt income, income year, payment”.
- 19 Local authorities 30**
- 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:” 35

- 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: 5
 - “(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.” 10
- 21 Charities: business income**
Section CW 35(2), other than the heading, is replaced by the following:
- “(2) This section does not apply to income derived by— 15
- “(a) a council-controlled organisation, other than a council-controlled organisation operating a hospital as a charitable activity:
 - “(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.” 20
- 22 New heading and sections CW 49C and CW 49D inserted**
- (1) After section CW 49B, the following is inserted: 25
- “Income of, and distributions by, certain international funds***
- “CW 49C Income of certain international funds**
An amount of income derived by a person is exempt income if the person is— 30
- “(a) the trustee of the Niue International Trust Fund:
 - “(b) the trustee of the Tokelau International Trust Fund.
- “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—
- “(a) the trustee of the Niue International Trust Fund:
 - “(b) the trustee of the Tokelau International Trust Fund. 5
- “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.
- 23 Heading above section CX 42 replaced** 10
The heading above section CX 42 is replaced by “*Contributions to superannuation scheme or retirement savings scheme*”.
- 24 New section CX 42B inserted**
After section CX 42, the following is inserted:
- “CX 42B Contributions to retirement savings scheme** 15
“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— 20
 - “(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: 25
 - “(b) the trustee of the retirement savings scheme.
- “Exclusion*
- “(2) **Subsection (1)(a)** does not apply if the person for whose benefit the retirement scheme contribution is provided— 30
- “(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:

“(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

25 Research or development

(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”. 10

(2) Section DB 26(3) is repealed.

(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”. 15

(4) Section DB 26(4)(b) is replaced by the following:

“(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.” 20

(5) Section DB 26(5)(b) is replaced by the following:

“(b) has written off the expenditure due to its being an immaterial amount for financial reporting purposes; and”. 25

(6) **Subsections (1) to (5)** 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

26 Some definitions

(1) Section DB 27(1) is replaced by the following:

“Definitions

- “(1) In this section, and in section DB 26,—
“**development** is defined in paragraph 8 of the reporting
standard
“**reporting standard** means the New Zealand Equivalent to 5
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
“**research** is defined in paragraph 8 of the reporting
standard.” 10
- (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.
- (3) **Subsections (1) and (2)** apply for— 15
(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. 20
- 27 Gifts of money by company**
- (1) Section DB 32(1), other than the heading, is replaced by the
following:
“(1) This section applies to a company.”
(2) In section DB 32(3), “5% of” is omitted. 25
(3) **Subsection (1)** applies for the 2008–09 and later income years.
- 28 Sale of business: transferred employment income
obligations**
- (1) In section DC 9(2)(a), “any part” is replaced by “the provi-
sion made by the seller for a part”. 30
(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:
“(3) If the seller and the buyer are associated persons at the time of 35
the sale,—

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“(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	5
“(b) subsection (2) does not apply; and	
“(c) section EA 4(5) (Deferred payment of employment income) applies.	
<i>“Deduction: Buyer’s payment exceeding provision</i>	
“(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.”	10
(4) In section DC 9(4)(b), “subsection (3) overrides” is replaced by “subsections (3) and (3B) override”.	
(5) Subsections (1) to (4) apply for the 2005–06 and later income years.	15
29 Heading to subpart DF	
In the heading to subpart DF, “grants” is replaced by “grants and compensation”.	
30 New section DF 4 added	20
After section DF 3, the following is added:	
“DF 4 Payment for attendant care by person receiving certain accident compensation payments	
<i>“When this section applies</i>	
“(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.	25
<i>“Deduction</i>	
“(2) The person is allowed a deduction for the amount paid by them to a caregiver for providing attendant care to the person 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.	30 35

“Link with subpart DA

- “(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.

5

“Defined in this Act: assessable income, attendant care, capital limitation, general limitation, general permission, income year, payment, private limitation .

31 When FIF loss arises

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

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

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- “(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).”

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32 Film production expenditure

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

“Exclusion

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- “(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:

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

“Timing of deduction

- “(4) The deduction is allocated under—

“(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

30

“(b) section EJ 4 (Expenditure incurred in acquiring film rights in feature films) or EJ 5 (Expenditure incurred in

35

- acquiring film rights in films other than feature films) if 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.
- 33 Maori authorities: donations** 5
- (1) In section DV 11(2), “5% of” is omitted.
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 34 Cost**
- (1) In section EB 6(1), “, unless subsection (1B) applies” is inserted after “accounting practice”. 10
- (2) After section EB 6(1), the following is inserted:
“Valuation at cost: agricultural produce
 “(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 15
 “(b) include and allocate costs so that the value of their closing stock is not materially different from the value 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”. 20
- (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.” 25
- (5) In section EB 6, in the list of defined terms, “NZIAS 2” and “NZIAS 41” are inserted. 30
- (6) **Subsections (1) to (5)** 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 35

years, if that first income year is before the 2007–08 income year.

- 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”. 5
- (2) In section EB 9, in the list of defined terms, “NZIAS 2” is inserted.
- (3) **Subsections (1) and (2)** apply for—
- (a) the 2007–08 and later income years, unless **paragraph (b)** applies; or 10
- (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. 15
- 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”. 20
- (2) In section EB 9, in the list of defined terms, “NZIAS 8” is inserted.
- (3) **Subsections (1) and (2)** apply for—
- (a) the 2007–08 and later income years, unless **paragraph (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.
- 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”. 30
- (2) In section EB 9, in the list of defined terms, “NZIAS 2” 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. 5
- 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”. 10
 - (2) In section EB 22, in the list of defined terms, “NZIAS 8” is inserted.
 - (3) **Subsections (1) and (2)** 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
- 39 Reduction: bloodstock not previously used for breeding in New Zealand**
- (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: 25
 - “(b) before a person (**person A**) acquired it, was not used for breeding in New Zealand by any other person.”
 - (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— 30
- “(a) the other person transferred the bloodstock to person A under a matrimonial agreement to which section FF 12 (Bloodstock) applies: 35

- “(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:
- “(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— 5
- “(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.” 10
- (4) **Subsections (2) and (3)** apply to bloodstock acquired on or after 1 August 2007.
- 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”. 15
- (2) In section EB 1, in the list of defined terms, “NZIAS 8” 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
- 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— 30
- “(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.” 35

(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” 5

“(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): 10

“(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 15

(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” 20

“(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 25

“(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** 30

(1) The heading to section EJ 8 is replaced by “**Film production expenditure for other films having no large budget screen production grant**”.

(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—
- “(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.

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”.
- (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.

46 What is included when spreading methods used

- (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:
 - “(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—
- (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. 5
- 47 New sections EW 15B and EW 15C inserted**
- (1) After section EW 15, the following is inserted:
- “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. 10
- “Compliance*
- “(2) A person who must use the IFRS method for an arrangement must comply with the requirements of **section EW 15C**. 15
- “Defined in this Act: financial arrangement, NZIAS 39*
- “EW 15C IFRS method: requirements**
- “Who this section applies to*
- “(1) This section applies to a person who must use the IFRS method for a financial arrangement under **section EW 15B**. 20
- “Applying IFRS*
- “(2) For the financial arrangement, a person must allocate an amount to an income year in accordance with NZIAS 39, as modified by **subsections (3) and (4)**, unless the exception in **subsection (5)** applies. 25
- “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.
- “Modification: equity reserves* 30
- “(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.

“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: 5
- “(a) Determination G9C: Financial arrangements that are denominated in a currency other than New Zealand dollars: an expected value approach: 10
- “(b) Determination G14B: Forward contracts for foreign exchange and commodities: an expected value approach:
- “(c) Determination G27: Swaps: 15
- “(d) a determination made by the Commissioner under **section 90AC(1)(ba)** of the Tax Administration Act 1994:
- “(e) an alternative method to 1 of those described in **paragraphs (a) to (d)**, if that alternative— 20
- “(i) has regard to the principles of accrual accounting; and
- “(ii) conforms with commercially acceptable practice; 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 described in **paragraphs (a) to (d)**. 25

“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 movements in fair value as determined under NZIAS 39 30
- “**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: 35

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- “(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 arrangement, forward contract, futures contract, impaired credit adjustment, income year, NZIAS 39”. 5
- (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. 10
- 48 Yield to maturity method or alternative** 15
- (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 person is not required to use the IFRS method under **section EW 15B**,”. 20
- (3) **Subsections (1) and (2)** apply for—
- (a) the 2007–08 and later income years; 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
- 49 Straight-line method**
- (1) In section EW 17(1)(b), “EW 25(1).” is replaced by “EW 25(1); and”, and the following is added: 30
- “(c) the person is not required to use the IFRS method under **section EW 15B**.”
- (2) **Subsection (1)** applies for—
- (a) the 2007–08 and later income years, unless **paragraph (b)** applies; or 35

- (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
- 50 Market valuation method**
- (1) In section EW 18(1)(f), “way).” is replaced by “way); and”, and the following is added:
- “(g) the person is not required to use the IFRS method under **section EW 15B.**” 10
- (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. 15
- 51 Choice among first 3 spreading methods**
- (1) In the heading to section EW 19, “**first 3**” is replaced by “**some**”. 20
- (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. 25
- 52 Determination method or alternative** 30
- (1) In section EW 20(1)(b)(ii), “do so.” is replaced by “do so; and”, and the following is added:
- “(c) the person is not required to use the IFRS method under **section EW 15B.**”
- (2) After section EW 20(2)(b), the following is inserted: 35

- “(bb) the person is not required to use the IFRS method under **section EW 15B**; and”.
- (3) **Subsections (1) and (2)** apply for—
- (a) the 2007–08 and later income years, unless **paragraph (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 **subsections (1) and (2)** in a return of income for that year. 10
- 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)** 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 **subsection (1)** in a return of income for that year. 20
- 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— 25
- (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. 30
- 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 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 **subsection (1)** in a return of income for that year. 10
- 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. 15
- “Defined in this Act: financial arrangement, income year”. 20
- (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. 25
- 57 Change of spreading method**
- (1) In section EW 26, the following is added: 30
- “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. 35

- (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. 5
- 58 Base price adjustment formula**
- (1) In section EW 31(7), “ignoring non-contingent fees.” is replaced by “ignoring—”, and the following is added: 10
- “(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.” 15
- (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 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 **subsections (1) and (2)** in a return of income for that year. 25
- 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)”. 30
- 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: 35

- “(c) the person has held shares in the company at all times after a time when—”.
- (2) In section EX 33(3)(g)(i), “or more” is added after “\$1,000,000”.
- (3) Section EX 33(4)(c) is replaced by the following: 5
“(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”.
- (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”. 10
- (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: 15
“(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”.
- 61 Exemptions limited by income years: shares in certain grey list companies** 20
- (1) In section EX 33B(1)(a)(ii), “is listed” is replaced by “has shares in it listed”.
- (2) In section EX 33B(1)(a)(v), “is listed” is replaced by “has shares in it listed”.
- (3) In section EX 33B(2)(a)(ii), “is listed” is replaced by “has shares in it listed”. 25
- (4) In section EX 33B(2)(a)(iv), “is listed” is replaced by “has shares in it listed”.
- 62 Exemption: shares in listed Australian company**
- Section EX 33C, other than the heading and list of defined terms, is replaced by the following: 30
- “*Exemption*
- “(1) A person’s rights in a FIF in an income year are not an attributing interest if—
- “(a) the rights are a share; and 35

- “(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)**. 5
- “*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 10
- “(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),—
- “(i) at a time in the income year, if **subparagraphs (ii) and (iii)** do not apply; or 15
- “(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
- “(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 20 25
- “(c) at all times in the income year, is not an entity described in schedule 4, part B (Foreign investment funds); and
- “(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.” 30
- 63 Exemption: units in certain Australian unit trusts**
- (1) Section EX 33D(1)(c) to (e) are replaced by the following:
- “(c) at all times in the year when the person holds a right in the FIF, the unit trust is resident in Australia; and 35
- “(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
- “(e) the unit trust meets the requirements of—
- “(i) **subsection (2)** relating to the assets of the unit trust
that are shares (the **held shares**) being held by the 5
unit trust at the end of the trust’s accounting year
(the **trust’s year**) 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:
- “(ii) **subsection (4)** relating to the distributions by the 10
unit trust during the trust’s year.”
- (2) Section EX 33D(2) to (4) are replaced by the following:
- “Requirements for unit trust’s assets that are shares*
- “(2) A unit trust meets the requirements of this subsection if the 15
total market value of the held shares exceeds the total cost of
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)**,— 20
- “(a) **disposal proceeds** is the total proceeds derived by the
unit trust during the year from disposals of shares dur-
ing the year:
- “(b) **share costs** is the total cost of the shares involved in the 25
disposals referred to in **paragraph (a)**.”
- “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 30
formula—
- $$\frac{0.7}{0.3} \times (\text{closing} - \text{opening} - \text{contributions}).$$

“Definition of items in formula

- “(5) In the formula in **subsection (4)**,—
- “(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: 5
 - “(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:
 - “(c) **contributions** is the total amount of contributions by investors to the unit trust during the trust’s year. 10

“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.”
- (3) In section EX 33D, in the list of defined terms, “accounting year” is inserted. 15

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— 20
 - “(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:
 - “(ii) not of a type that is listed in **subsection (9)**; and”. 25
- (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— 30
- “(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: 35
 - “(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— 5
 - “(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 10
 - “(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:
- “(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:” 15
- (5) **Subsection (4)** applies for the 2008–09 and later income years. 20
- 65 Use of particular calculation methods required**
- In section EX 40B, in the words before paragraph (a), “section EX 40(8)(a)” is replaced by “section EX 40(8)(a)(ii)”.
- 66 Branch equivalent method** 25
- In section EX 43(5)(c), “(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)” 30
- 67 Comparative value method**
- In section EX 44(4), “LB 2 (Credit of tax for imputation credit) or” is inserted before “LC 1”.

68 Fair dividend rate method

- (1) Section EX 44B(2), other than the heading, is replaced by the following:
- “(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—
- “(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
- “(ii) chooses that this paragraph apply.”
- (2) After section EX 44B(4), the following is added:
- “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,—
- “(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
- “(c) the share supplier is treated as not deriving a replacement payment for a dividend referred to in **paragraph (b)**.”

69 Fair dividend rate method: usual method

- (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”.
- (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—

5

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:

10

“(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.”

15

(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”.

20

(5) In section EX 44C(11)(a), “incurred” is replaced by “derived or incurred”.

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

“Treatment of deemed transaction under section EX 54B

“(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)**.”

25

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**”.

30

(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.” 5
- (3) Section EX 44D(7)(c)(ii) is replaced by the following: 10
- “(ii) the amount (the **quick sale gains**) determined under **subsection (12B)**.”
- (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”. 15
- (5) After section EX 44D(12), the following is inserted:

“Quick sale gains

- “(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— 20
- return – (interest × average cost).

“Definition of items in formula

- “(12C) In the formula— 25
- “(a) **return** is the total amount derived by the entity from holding or disposing of the interest: 25
- “(b) **interest** is the amount of the interest:
- “(c) **average cost** 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.” 30
- (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”. 35
- (7) In section EX 44D(13)(a), “incurred” is replaced by “derived or incurred”.

- (8) After section EX 44D(14), the following is added:

“Treatment of deemed transaction under section EX 54B

- “(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 **subsection (7)**.”

5

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”.

10

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—

15

“(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

20

“(iii) the person chooses that this paragraph apply; or”.

- (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”.

25

- (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”.

30

- (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”.

35

**Taxation (Annual Rates, Business
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- (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 replaced by “incurs in acquiring or increasing during the income year before the relevant income year”. 5
- (10) In section EX 45B(12)(c), “section EX 44C” is replaced by “section EX 44E”.
- 73 Limits on changes of method**
- In section EX 50(8)(c), “or deceased person” is added after “natural person”. 10
- 74 Consequences of changes in method**
- (1) In section EX 51(4)(c)(ii), “year; or” is replaced by “year.”
- (2) After section EX 51(4), the following is added:
- “Changes between comparative value method and fair dividend rate method* 15
- “(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—
- “(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 25
- “(b) reacquired the interest at the start of the income year; and
- “(c) received for the disposal and paid for the reacquisition an amount equal to the market value of the interest at the time of the disposal.” 30

- 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.”
- 76 Measurement of cost**
- Section EX 56(2) is replaced by the following: 15
- “FIFO cost flow identification*
- “(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.” 20
- 77 Policyholder income formula**
- (1) Section EY 42(1) is replaced by the following:
- “Formula*
- “(1) The **policyholder income formula** is— 25
- claim due + (closing actuarial reserves
– opening actuarial reserves)
– (FDR adjustment + PIE adjustment)
– (premium – underwriting result)
_____ 30
(1 – tax rate).”
- (2) After section EY 42(5), the following is inserted:
- “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.”

- (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 5
 - (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 10
 - (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.

78 New sections EY 42B and 42C inserted 15

- (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— 20
- “(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
 - “(c) the property is not held in a portfolio investment entity that is a portfolio investment-linked life fund. 25

“Formula

- “(2) In using the policyholder income formula, the life insurer must calculate the item **FDR adjustment** using the following formula: 30

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

“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,— 5

“(a) calculated using accepted accounting practice; and

“(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. 10

“FDR income

“(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 15

“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— 20

“(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). 25

“Formula

“(2) In using the policyholder income formula, the life insurer must calculate the item **PIE adjustment** using the following formula: 30

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

“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)**,— 5

“(a) calculated using accepted accounting practice; and

“(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. 10

“FDR income

“(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)**. 15

“Excluded shares

“(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): 20

“(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— 25

“(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”. 30

(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 35

(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
- (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. 5
- 79 Tax credits for family support and family plus**
- (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**”. 10
- 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 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”. 20
- (4) **Subsection (1)** applies for the 2008–09 and later income years.
- 81 Eligibility requirements for entities**
- (1) After section HL 3(5), the following is inserted:
- “*Eligibility requirements for portfolio investment-linked life fund and electing entity*” 25
- “(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). 30

“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.” 5
- (2) In section HL 3, in the list of defined terms, “portfolio investment-linked life fund” is inserted.
- 82 Imputation credit distribution requirement: imputation credit account company**
- (1) Section HL 8(1), except the heading, is replaced by the following: 10
- “(1) This section applies to a portfolio investment entity that—
- “(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. 15
- 83 Election to become portfolio investment entity and cancellation of election**
- (1) After section HL 11(2), the following is added: 20
- “Exception to when election effective: certain elections relating to portfolio investment-linked life funds*
- “(2B) Despite subsection (2), an election received by the Commissioner 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 25
- “(b) the date of receipt is before 1 April 2008; and
- “(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.
- 84 Net loss offset between group companies** 30
- (1) In section IG 2(9), “”Section IE 1(4) is replaced by “Sections CG 2 and DE 28”.
- (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: 5
“(cv) Hamlin Charitable Fistula Hospitals Trust:
“(cw) Hope Foundation Development Trust:
“(cx) Hope International Charitable Trust:
“(cy) Limbs 4 All Charitable Trust:
“(cz) New Zealand Disaster Assistance Response Team 10
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: 15
“(2) The amount of the rebates provided for in this section is, for a
taxpayer and a tax year, 33½% of the total amount of all gifts
described in subsection (1) made by the taxpayer in the tax
year.”
- (4) **Subsection (2)** applies for the 2007–08 and later tax years. 20
- (5) **Subsection (3)** applies for the 2008–09 and later tax years.
- 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. 25
- 87 Determination of net income**
- (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 30
absence of **section CX 42B(2)**; and”.
- (2) After section KD 1(1)(h), the following is inserted:
“(hb) where the person receives a distribution from a retire-
ment savings scheme of a retirement scheme contribu-
tion, the distribution is treated as assessable income 35

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—

- “(i) not eligible to receive New Zealand superannuation; and 5
- “(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: 10
 - “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 15
 - “(b) parental tax credit abatement under **section KD 2B**, for the eligible period.”
- (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”. 20
- (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. 25

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

- (1) In section KD 2A, the following is added as subsection (2):
 - “(2) Subsection (1)(b) and (c)(iii) is overridden to the extent to which **section KD 2B** applies.” 30
- (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:

- “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. 5
- “(2) Despite section KD 2A, for an eligible period in which a person is entitled to a parental tax credit, an amount of tax 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: 10
- $$\text{full-year abatement} \times \frac{56}{365} - \text{abatement used.}$$
- “(3) In the formula,— 15
- “(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).” 20
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 91 Effect of extra interim instalment on entitlement to tax credit** 25
- (1) In section KD 7A(1)(b)(i), “fortnight” is replaced by “fortnight or a week, as the case may be,”.
- (2) In section KD 7A(1)(b)(ii), “week” is replaced by “fortnight or a week, as the case may be,”. 30
- (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—
- “(a) the formula in subsection (2), if the person has received instalments described in subsection (1)(c)(i): 35
- “(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—”.

- (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.
- 92 Determination of amount of credit in certain cases** 5
- 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)”.
- 93 Credit of tax for imputation credit**
- (1) In section LB 2(2), “income year” is replaced by “income year (**section MZ 13** (Credit of tax for imputation credits and dividend withholding payment credits: modifying amount) modifies this subsection)”.
- (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 interest in an attributing interest in a foreign investment fund.”
- 94 New section LB 3 inserted** 25
- After section LB 2, the following is inserted:
- “LB 3 Credit of retirement scheme contribution withholding tax for imputation credit**
- “(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:
- “(a) the amount of the imputation credit:

- “(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 imputation credit exceeds the liability of the retirement scheme contributor for retirement scheme contribution withholding tax on the retirement scheme contribution,— 5
- “(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 10
- “(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.”
- 95 New sections LD 1B and LD 1C inserted 15**
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—
- “(a) a claimant under the Injury Prevention, Rehabilitation, and Compensation Act 2001— 20
- “(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 25
- “(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.
- “(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. 30
- “(3) The amount of the credit allowed under **subsection (2)** is calculated using the following formula: 35
- $$\frac{\text{amount received} \times \text{tax rate}}{1 - \text{tax rate.}}$$

- “(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)**: 5
 - “(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.
- “**LD 1C Tax deductions from certain accident compensation payments: credit allowed to claimant** 10
- “(1) This section applies if—
- “(a) a claimant under the Injury Prevention, Rehabilitation, and Compensation Act 2001 is paid an amount under section 81(1)(b) of that Act for a period; and 15
 - “(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 the claimant, after any deduction of tax under this Act, described in **paragraph (a)**. 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: 25
- $$\text{total tax deductions} = \frac{\text{amount paid} \times \text{tax rate}}{1 - \text{tax rate}}$$
- “(3) In the formula,—
- “(a) **total tax deductions** is the total deductions of tax for the amount paid to the claimant under section 81(1)(b) of the Injury Prevention, Rehabilitation, and Compensation Act 2001 for the period: 30
 - “(b) **amount paid** is the amount paid to the caregiver, described in **subsections (1)(b) and (c)**:
 - “(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 Compensation Act 2001.” 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; and 20
- “(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** (Credit of tax for imputation credits and dividend withholding payment credits: modifying amount) modifies this paragraph)”. 30

98 Credits in respect of dividends to non-resident investors

- (1) In section LE 2(2), in the formula, “67/120” is replaced by “7/10”. 35
- (2) The following is added to section LE 2:
- “(13) **Section MZ 14** (Credits for non-resident investors) modifies subsections (2), (9) and (10).”

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

99 Special rules for holding companies

In section LE 3(6), in item **T**, “income year” is replaced by
“income year (**section MZ 14** (Credits for non-resident inves-
tors) modifies this item”.

5

100 New subpart LH inserted

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

“Subpart LH—Business expenditure tax credits

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

10

“Tax credit

“(1) A person has a tax credit for a tax year under this section if the
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

15

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

“Depreciation loss

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

20

“Administration requirements

“(4) Despite **subsection (1)**, a person does not have a tax credit for a
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*

25

“(5) For the purposes of sections BC 9 and BC 10, the person’s tax
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 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: 5
 - “(b) second, use the tax credit to satisfy the person’s income tax liability for a tax year that is after the tax year, applying this paragraph to tax years in numerical order:
 - “(c) third, 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: 10
 - “(d) fourth, pay an amount that is payable by the person under an Inland Revenue Act:
 - “(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. 15
- “Defined in this Act: corresponding income year, depreciation loss, income tax liability, surplus credit, tax, tax year 20

“LH 2 Expenditure by person for purposes of research and development

“Eligible person

- “(1) A person is eligible for a tax credit at a time in an income year if, at the time,— 25
- “(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
 - “(b) the person is not— 30
 - “(i) a Crown Research Institute, a tertiary institution, or a district health board:
 - “(ii) controlled by entities referred to in **subparagraph (i)**:
 - “(iii) an associate under section OD 8(3) of an entity referred to in **subparagraph (i)**. 35

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“Requirements for tax credit

- “(2) A person has a tax credit for a tax year if—
- “(a) the person carries on research and development activities related to—
 - “(i) the person’s business, if **subparagraph (ii)** does not apply: 5
 - “(ii) the businesses of persons who are industry members under **section LH 8**, if the person is an industry research co-operative; and
 - “(b) the person— 10
 - “(i) controls the research and development activities; and
 - “(ii) bears the financial and technical risk of the research and development activities; and
 - “(iii) owns the results of the research and development activities, if any; and 15
 - “(c) in a period in the corresponding income year, the person is eligible for a tax credit and has—
 - “(i) expenditure on the research and development activities: 20
 - “(ii) an amount of depreciation loss for depreciable property used in the research and development activities; and
 - “(d) the expenditure or the amount of depreciation loss—
 - “(i) is of a kind listed in **section LH 6(1)**; and 25
 - “(ii) is not of a kind listed in **section LH 6(2)**; and
 - “(e) the expenditure or the amount of depreciation loss—
 - “(i) is a deduction of the person allocated to the corresponding income year:
 - “(ii) would be a deduction of the person allocated to the corresponding income year if the person derived income other than exempt income: 30
 - “(iii) is expenditure subject to the capital limitation that is incurred by the person in developing depreciable property and would be a deduction of the person allocated to the corresponding income year if section DB 26(1) (Research or development) applied; and 35

- “(f) the amount of the expenditure or depreciation loss that under **subsection (3)** may contribute to the person’s tax credit meets the requirements of **subsection (4)**.
- “*Amount of expenditure or depreciation loss contributing to tax credit* 5
- “(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—
- “(a) meets the requirements of **subsection (2)(d) and (e)**; and 10
- “(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 15
- “(c) meets the requirements of **section LH 9**, if the expenditure or amount of depreciation loss relates to internal software development. 20
- “*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—
- “(a) a payment to a listed research provider not associated with the person: 25
- “(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—
- $$\$20,000 \times \frac{\text{days}}{\text{year days}}. \quad 30$$
- “*Definition of items in formula*
- “(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: 35
- “(b) **year days** is the number of days in the corresponding income year.

“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:
 - “(b) other activities that are commensurate with, required for, and integral to, the carrying on of the activities referred to in **paragraph (a)**. 35

- “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 5
 - “(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. 10
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.
- “Defined in this Act: novelty, research and development activities, scientific or technological uncertainty, systematic, investigative, and experimental activities, technology 25
- “**LH 5 Activities excluded from being systematic, investigative, and experimental activities**
The following activities are not systematic, investigative, and experimental activities: 30
- “(a) prospecting for, exploring for, drilling for, or producing, minerals, petroleum, natural gas, or geothermal energy: 30
 - “(b) research in social sciences, arts, or humanities: 35
 - “(c) market research, market testing, market development, or sales promotion (including consumer surveys): 35

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- “(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:
- “(f) routine collection of information: 5
- “(g) commercial, legal, and administrative aspects of patenting, licensing, or other activities:
- “(h) activities involved in complying with statutory requirements or standards:
- “(i) management studies or efficiency surveys: 10
- “(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:
- “(k) pre-production activities, such as demonstration of commercial viability, tooling-up, and trial runs. 15

“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 **section LH 1** for a person for research and development activities of the person, expenditure or depreciation loss must be 1 or more of the following: 20
 - “(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: 25
 - “(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— 30
 - “(i) used wholly or mainly in conducting the research and development activities; and
 - “(ii) not in a pool with other depreciable property, or in a pool of depreciable property used wholly in conducting research and development activities:
 - “(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

-
- “(d) expenditure on materials incorporated into a trial model or preliminary version of a product or plant in the research and development activities:
 - “(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: 5
 - “(f) expenditure on items consumed in the research and development activities: 10
 - “(g) the amount by which expenditure on items processed or transformed into products in the research and development activities exceeds the amount of—
 - “(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) payments to another person for conducting the research and development activities on behalf of the person.
 - “*Excluded types of expenditure and depreciation loss* 20
 - “(2) The following expenditure and depreciation losses do not give rise to a tax credit under **section LH 1** for a tax year for a person for research and development activities of the person:
 - “(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 section EE 32 (Items no longer used): 25
 - “(c) expenditure on property or services, other than a right to use property, purchased directly or indirectly by the person (the **purchaser**) from an associated person (an **associate**), to the extent to which the amount exceeds the amount of expenditure or depreciation loss—
 - “(i) meeting the requirements of **section LH 2(2)(d) and (e)**; and
 - “(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: 35

- “(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:
- “(e) an amount of depreciation loss for depreciable property created by the research and development activities: 5
- “(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: 10
- “(g) expenditure or an amount of depreciation loss incurred in purchasing, leasing, or obtaining a right to use core technology:
- “(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 **section LH 9**: 15
- “(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: 20
- “(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 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: 25
- “(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: 30
- “(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: 35
- “(m) donations: 40

- “(n) professional fees incurred in determining whether activities are research and development activities or whether the person or expenditure is eligible:
- “(o) expenditure or an amount of depreciation loss incurred in purchasing, leasing, or obtaining a right to use intangible property: 5
- “(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. 10
- “*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: 15
- “(b) the basis for new knowledge that is to be obtained as a purpose of the research and development activities:
- “(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. 20
- “*Meaning of research and development project*
- “(4) For a person, **research and development project** means a process— 25
- “(a) consisting of co-ordinated research and development activities controlled by the person; and
- “(b) having start and finish dates; and
- “(c) undertaken collectively to achieve a specified objective within constraints of time, cost, and other resources; and 30
- “(d) of which the person bears the financial and technical risk and owns the results, if any; and
- “(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 35

loss that would be an eligible amount under **section LH 2**
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 develop-
ment project, tax year

5

“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— 10

“(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 15

“(c) will charge market prices for carrying out the research
and development activities; and

“(d) will be available to carry out research and development
activities on behalf of persons not associated with the
applicant; and 20

“(e) will keep records sufficient to show—

“(i) whether the applicant is complying with the
requirements of **paragraphs (a) to (d)**; and

“(ii) the amounts derived and incurred by the appli-
cant in carrying out research and development
activities on behalf of other persons. 25

“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)**. 30

“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—

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

“(b) under **subsection (5)**, by a notice of the Commissioner. 35

- “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: 5
- “(a) the date specified in the notice:
- “(b) the date on which the Commissioner receives the notice.
- “Commissioner may remove person from list of listed research providers* 10
- “(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: 15
- “(a) the date specified in the notice:
- “(b) the date 1 month after the date of the notice.
- “Defined in this Act: associated person, Commissioner, listed research provider, notice, research and development activities 20
- “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 25
- “(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 30
- “(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. 35
- “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

“(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. 5

“Eligible amount for developer’s year

“(2) A developer has for the developer’s year an eligible amount under **section LH 2** equal to— 10

“(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

“(b) the amount given by **subsection (6)** for the developer’s year, if— 15

“(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 20

“(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 25

“(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.

*“Developer having no associated internal software
developer for period* 30

“(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: 35

“(b) the amount for the period calculated using the formula—

$$\text{limit} \times \frac{\text{days}}{\text{year days}}$$

“Definition of items in formula

- “(4) In the formula in **subsection (3)(b)**,— 5
- “(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)**:
- “(b) **days** is the number of days in the period: 10
- “(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

- “(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 2** for the period equal to the smallest of— 20
- “(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: 25
- “(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. 30

“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— 35
- $$\text{limit} \times \frac{\text{days}}{\text{year days}}$$

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- “Definition of items in formula*
- “(8) In the formula in **subsection (7)**,—
- “(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)**: 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 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— 20
- $$\text{group limit} \times \frac{\text{days}}{\text{year days}}.$$
- “Definition of items in formula*
- “(10) In the formula in **subsection (9)(b)**,— 25
- “(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)**:
- “(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.
- “Developer having associated internal software developer with different income year* 35
- “(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.

“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. 5

“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: 10

“(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

“(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— 20

“(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— 25

“(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— 30

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Taxation (Annual Rates, Business Taxation, KiwiSaver, and Remedial Matters)	
Part 1 cl 100	
“(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	5
“(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	10
“LH 10 Depreciation loss for depreciable property: some special rules for tax credit	
<i>“When this section applies</i>	
“(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.	15
<i>“Depreciation loss for tax credit</i>	
“(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:	20
“(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	25
“(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.	
<i>“Market value and 20% loading</i>	30
“(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—	35

- “(i) did not meet those requirements when, but for **subsection (2)(a)(i)**, the person acquired the item; or
- “(ii) was acquired by the person, but for **subsection (2)(a)(i)**, before the first day of the 1995–96 income year.

5

“No allowable deduction: general permission

- “(4) Nothing in this section allows a deduction under section DA 1.

“Defined in this Act: acquire, deduction, depreciable property, depreciation loss, exempt income, income year, own

10

“LH 11 Definitions

In this subpart—

“**associated internal software developer**, for a person who is carrying on internal software development at a time, means another person—

15

“(a) who is carrying on internal software development at the time; and

“(b) for whom the internal software development controller is the same as the internal software development controller of the person

20

“**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—

25

“(a) not associated with the person under section OD 8(3) (Further definitions of associated persons); and

“(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—

30

“(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

- “(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.
- 101 Estimation method**
- (1) Section MB 6(5), except the heading, is replaced by the following: 20
- “(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:— 25
- “(a) C and F for changes to a 6-monthly GST taxable period: 30
- “(b) B, D, and F for other changes.”
- (2) **Subsection (1)** applies for provisional tax payments for the 2008–09 and later tax years.
- 102 GST ratio method**
- (1) After section MB 7(3), the following is inserted:

*“When amounts based on tax year immediately before
preceding year*

- “(3B) If subsection (3) does not apply because there is no assessment for the year before the preceding year referred to in that subsection, and the absence of assessment is due to an extension 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.” 5
- (2) **Subsection (1)** applies for provisional tax payments for the 2008–09 and later income years. 10
- 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. 15
- 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”: 20
- (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”. 25
- (3) **Subsections (1) and (2)** 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)”. 30
- (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 1994, as never changing the way they determine an amount of provisional tax under this section”. 35

- (3) **Subsections (1) and (2)** apply for provisional tax payments for the 2008–09 and later income years.

106 Disposal of assets

- (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 5
 - (b) paragraphs (a) and (b) are replaced by the following:
 - “(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: 10
 - “(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.” 15
- (2) **Subsection (1)** applies for provisional tax payments for the 2008–09 and later income years. 20

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.

108 Credits arising to imputation credit account 25

- (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: 30
“(ib) the amount of any tax credit under **section LH 1** 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 **subsection (1)(ae)**, on the date the qualifying company election tax is paid:” 35

- (5) After section ME 4(2)(g), the following is inserted:
“(gb) 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**.” 5
- (6) **Subsections (1), (3) and (5)** apply for the 2008–09 and later income years.
- 109 Debits arising to imputation credit account**
- (1) In section ME 5(1)(c), item **b** is replaced by the following:
“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.” 10
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 110 Allocation rules for imputation credits**
The following is added to section ME 8: 15
- “(6) **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.”
- 111 Credits arising to imputation credit account of group** 20
- (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: 25
“(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. 30

- 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).” 5
- 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** 10
The following is added to section ME 36:
“(3) **Section MZ 17** (Attaching imputation credits and notional distributions: modifying amounts) modifies subsection (1).”
- 115 Notional distribution deemed to be dividend or taxable Maori authority distribution** 15
The following is added to section ME 38:
“(3) **Section MZ 17** (Attaching imputation credits and notional distributions: modifying amounts) modifies subsection (1).”
- 116 Branch equivalent tax account of company** 20
The following is added to section MF 3:
“(3) **Section MZ 18** (BETA reductions) modifies this section.”
- 117 Credits and debits arising to branch equivalent tax account of company**
(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”. 25
(2) The following is added to section MF 4:
“(7) **Section MZ 18** (BETA reductions) modifies the amounts of credits, debits, and balances arising under this section.” 30

- 118 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 for 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 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).”
- “(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 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)**.
- (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.
- 119 Debits and credits arising to group branch equivalent tax account**
- (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) **Section MZ 18** (BETA reductions) modifies this section.”
- 120 Use of consolidated group credit to reduce dividend withholding payment, or use of group or individual debit to satisfy income tax liability**
- (1) After section MF 10(4), the following is inserted:
- “(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).

- “(4C) An election made for a company (the **first company**) 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).” 5 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: 15
 - “(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)**. 20
- (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. 25

121 Allocation rules for dividend withholding payment credits

The following is inserted after section MG 8(4): 30

- “(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.”

- 122 Dividend with both imputation credit and dividend withholding payment credit attached**
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.” 5
- 123 Conduit tax relief account**
The following is added to section MI 3:
- “(3) **Section MZ 19** (Conduit tax relief account reductions) modifies this section.” 10
- 124 Credits arising to conduit tax relief account**
The following is added to section MI 4:
- “(3) **Section MZ 19** (Conduit tax relief account reductions) modifies this section.”
- 125 Debits arising to conduit tax relief account** 15
The following is added to section MI 5:
- “(8) **Section MZ 19** (Conduit tax relief account reductions) modifies this section.”
- 126 Consolidated group conduit tax relief account** 20
The following is added to section MI 15:
- “(2) **Section MZ 19** (Conduit tax relief account reductions) modifies this section.”
- 127 Credits arising to group conduit tax relief account**
The following is added to section MI 17:
- “(3) **Section MZ 19** (Conduit tax relief account reductions) modifies this section.” 25
- 128 Debits arising to group conduit tax relief account**
The following is added to section MI 18:
- “(5) **Section MZ 19** (Conduit tax relief account reductions) modifies this section.” 30

- 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 years. 10
- 130 New sections MZ 10 to MZ 19 added**
- (1) The following is added to subpart MZ:
- “MZ 10 Allocation of imputation credits and dividend withholding payment credits: modifying maximum credit ratio** 15
- “(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 20
- “(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. 25
- “(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),—
- “(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: 35

- “(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:
- “(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. 5

“MZ 11 Benchmark dividends: credit ratio change

- “(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 10
 - “(ii) finishing on 31 March 2010; and
 - “(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). 15
 - “(c) in relation to a benchmark dividend that—
 - “(i) was one to which **section MZ 10** applied; or
 - “(ii) has a relevant ratio of 33/67, due to reasons other than the application of **section MZ 10**.
- “(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,—
 - “(a) in the case of a benchmark dividend described in **subsection (1)(c)(i)**, **section MZ 10** does not apply to the subsequent dividend, due to the absence of a relevant credit balance described in **section MZ 10(1)(b)**: 25
 - “(b) in the case of a benchmark dividend described in **subsection (1)(c)(ii)**, the subsequent dividend has a ratio of 30/70. 30

“MZ 12 Determination of credit: modifying maximum ratios

- “(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 35
 - “(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—
- “(i) the imputation ratio is greater than 30/70 and less than or equal to 33/67; or 5
 - “(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 withholding payment ratio is greater than 30/70 and less than or equal to 33/67. 10
- “(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. 15
- “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 20
 - “(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— 25
 - “(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 withholding payment ratio is greater than 30/70 and less than or equal to 33/67; and 30
 - “(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: 35

dividend and credits \times 0.30.

- “(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 attached. 5
- “(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: 10
- 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. 15
- “(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. 20
- “MZ 14 Credits for non-resident investors** 25
- “(1) This section applies—
- “(a) for a company paying or deriving a dividend with imputation credits attached 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 30
- “(b) to a dividend and imputation credits, to the extent to which, in the absence of subpart LE,—
- “(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 35
- “(ii) the imputation ratio is greater than 30/70 and less than or equal to 33/67; and
- “(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.
- “(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.
- “(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.
- “(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.
- “**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
- “(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.
- “**MZ 16 Dividends from qualifying companies: modifying for tax rate change**
- “(1) This section applies—
- “(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
- “(b) to the extent to which **section MZ 10** applies for the dividend. 5
- “(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 c 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 **section MZ 10**. 10
- “(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 **section MZ 10**. 15
- “MZ 17 Attaching imputation credits and notional distributions: modifying amounts**
- “(1) This section applies— 20
- “(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 the first day of the board’s or company’s 2008–09 income year; and 25
- “(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 other items dealt with, arising, or calculated using an old company tax rate. 30
- “(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%. 35

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- “(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 credits and debits relate to their 2007–08 or earlier income years. 35

- “(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** 5
- (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. 10
- 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. 15
- 133 New subpart NEB inserted**
- After subpart NEA, the following is inserted:
- “Subpart NEB—Retirement scheme contribution withholding tax
- “NEB 1 Retirement scheme contribution withholding tax imposed** 20
- “Retirement scheme contribution subject to withholding tax*
- “(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, **clause 11** (Basic rates of income tax, specified superannuation contribution withholding tax, and retirement scheme contribution withholding tax). 25
- “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— 30

- “(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
- “(b) the amount of retirement scheme contribution withholding tax payable under the RSCWT rules on the retirement scheme contribution. 5
- “Defined in this Act: retirement savings scheme, retirement scheme contribution, retirement scheme contribution withholding tax, retirement scheme prescribed rate, RSCWT rules 10
- “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**. 15
- “Appointment of retirement savings scheme as agent* 20
- “(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 25
- “NEB 3 Payment and notice of deductions**
- “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,— 30
- “(a) pay the amount of the deduction to the Commissioner; and 35

- “(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. 5
- “*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. 10
- “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 15
- “**NEB 4 Failure to deduct**
- “*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— 20
- “(a) payable to the Commissioner by the retirement scheme contributor; and 25
- “(b) becoming due and payable on the 20th of the month following the month in which the retirement scheme contribution was made.
- “*Formula for amount of debt*
- “(2) The amount of the debt is calculated using the formula— 30
- $$\frac{\text{tax rate}}{1 - \text{tax rate}} \times \text{contribution to scheme} - \text{tax already paid.}$$

“Definition of items in formula

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

“Tax rate

“(4) **Tax rate** is the rate of retirement scheme contribution withholding tax for the person stated in schedule 1 part A, **clause 11** 5
(Basic rates of income tax, specified superannuation contribution withholding tax, and retirement scheme contribution withholding tax).

“Contribution to scheme

“(5) **Contribution to scheme** is the amount of the retirement 10
scheme contribution received by the retirement savings scheme, excluding the amount of retirement scheme contribution withholding tax.

“Tax already paid

“(6) **Tax already paid** is any amount of retirement scheme contri- 15
bution withholding tax for the contribution that has already been paid.

“Defined in this Act: Commissioner, retirement savings scheme, retirement scheme contribution, retirement scheme contribution withholding tax, retirement scheme contributor 20

“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— 25

- “(a) the entity is a portfolio investment entity; and 25
- “(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 30
- “(c) under the distribution rules, the person is not permitted to make a withdrawal before the age of retirement other than a withdrawal— 30
 - “(i) for the repayment by the person of a student loan as defined in the Students Loan Scheme Act 1992: 35

- “(ii) that the person would be permitted to make if the scheme were a KiwiSaver scheme under the KiwiSaver Act 2006; and
- “(d) the Commissioner approves the distribution rules as being fair and reasonable. 5
- “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 **subsection (1)**; and 10
- “(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 15
- “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— 20
- “(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. 25
- “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 30
- “(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 35

“NEB 7 Application of other provisions to retirement scheme contribution withholding tax		
<i>“Section GC 20 and sections 170(2), 171, and 172 of the Tax Administration Act 1994</i>		
“(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—		5
“(a) a reference to a resident withholding tax deduction were a reference to a deduction of retirement scheme contribution withholding tax:		10
“(b) a reference to the RWT rules were a reference to the RSCWT rules.		
<i>“Other provisions, except for RSCWT rules</i>		15
“(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 were income tax levied under section BB 1 (Imposition of income tax).		20
<i>“Relationship with other RSCWT rules</i>		
“(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”.		25
 134 Resident withholding tax deductions from dividends deemed to be dividend withholding payment credits		
(1) In section NF 8(1), “LD 9” is replaced by “LD 9, excluding sections LB 1(1)(d) and (e)”.		
(2) Subsection (1) applies—		30
(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.		

135 Definitions

- (1) This section amends section OB 1.
- (2) In the definition of **applicable basic tax rate**,—
 - (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)”: 5
 - (b) in paragraph (b), “(Basic rates of income tax and specified superannuation contribution withholding tax)” is omitted. 10
- (3) After the definition of **at all relevant times**, the following is inserted:

“**attendant care** is defined in schedule 1, clause 12 of the Injury Prevention, Rehabilitation, and Compensation Act 2001”. 15
- (4) In the definition of **basic rates**, “(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
- (5) In the definition of **child**, paragraph (b), “Tax credits for family support and family plus” is replaced by “Tax credits for families”.
- (6) In the definition of **child**, paragraph (b)(iii), “family tax credit” is replaced by “minimum family tax credit”. 25
- (7) In the definition of **civil union partner**, “Tax credits for family support and family plus” is replaced by “Tax credits for families”.
- (8) After the definition of **core acquisition price**, the following is inserted: 30

“**core technology** is defined in **section LH 6(3)** (Eligibility of types of expenditure and depreciation loss)”.
- (9) After the definition of **District Committee**, the following is inserted: 35

“**district health board** means a district health board established by or under section 19 of the New Zealand Public Health and Disability Act 2000”.

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- (10) In the definition of **elected period**, “Tax credits for family support and family plus” is replaced by “Tax credits for families”.
- (11) In the definition of **eligible period**, paragraph (f), “ring-fenced family support recipient” is replaced by “ring-fenced family tax credit recipient”. 5
- (12) In the definition of **employer’s contributions to superannuation savings**, 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)”. 10
- (13) In the definition of **employment**, paragraph (d), “Tax credits for family support and family plus” is replaced by “Tax credits for families”. 15
- (14) In the definition of **employment**, paragraph (e), “family tax credit” is replaced by “minimum family tax credit”.
- (15) After the definition of **fair dividend rate method**, the following is inserted:
“**fair value method** is defined in **section EW 15C(6)** (IFRS method: requirements) for the purposes of that section”. 20
- (16) The definition of **family plus** is repealed.
- (17) In the definition of **family support credit**, “family support credit” is replaced by “family tax credit”.
- (18) The definition of **family tax credit** existing before this Act is repealed. 25
- (19) The definition of **Financial Reporting Standard No 13 1995 (Accounting for Research and Development Activities)** is repealed.
- (20) In the definition of **fully conduit tax relief credited**, item **T**, “(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)”. 30
- (21) After the definition of **identical share**, the following is inserted: 35

- “**IFRS** 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
- “**impaired credit adjustment** is defined in **section EW 15C(6)** (IFRS method: requirements) for the purposes of that section”. 5
- (22) After the definition of **indirect income interest**, the following is inserted:
- “**industry research co-operative** means a person who is an industry research co-operative under **section LH 8** (Industry research co-operatives)”. 10
- (23) After the definition of **intermediary**, the following is inserted:
- “**internal software development** is defined in **section LH 11** (Definitions) for the purposes of **subpart LH** (Business expenditure tax credits) 15
- “**internal software development controller** is defined in **section LH 11** (Definitions) for the purposes of **subpart LH** (Business expenditure tax credits) 20
- “**internal software development group** is defined in **section LH 11** (Definitions) for the purposes of **subpart LH** (Business expenditure tax credits)”. 20
- (24) In the definition of **investor**, paragraph (c), “in the company” is replaced by “in the company:”, and the following is added: 25
- “(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”. 30
- (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)”. 30
- (26) After the definition of **listed PAYE intermediary claim form**, the following is inserted: 35

- “**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)”. 5
- (28) After the definition of **minibus**, the following is inserted: 10
 “**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: 15
 “**net specified income**, for subpart KD, a person, and a specified period, means an amount calculated using the following formula: 15

$$\text{modified income} \times \frac{52}{\text{weeks}} - \text{modified liability} + \text{received} - \text{paid} \quad 20$$
 “ 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: 25
 “(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): 30
 “(d) **received** is the amount of income in section KD 1(1)(a) for the year: 35
 “(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**,—
- “(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: 5
- “**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”. 10
- (32) After the definition of **non-filing taxpayer**, the following is inserted:
- “**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”. 15
- (33) After the definition of **notional offshore investment amount**, the following is inserted:
- “**novelty** is defined in **section LH 4(4)** (Research and development activities and related terms) for the purposes of that subpart”. 20
- (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 25
- “**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
- “**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 30
- “**NZIAS 41** is defined in **section EB 6(3)** (Cost) for the purposes of that section”. 35
- (35) After the definition of **offshore permit area**, the following is inserted:

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- “**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)”.
- (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”.
- (38) After the definition of **portfolio investment entity**, the following is inserted:
“**portfolio investment-linked life fund** means a fund in which—
“(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
“(b) has become a portfolio investment entity under section HL 12 (Becoming portfolio investment entity); and
“(c) has not ceased to be a portfolio investment entity under section HL 14 (Ceasing to be portfolio investment entity)”.
- (39) In the definition of **portfolio listed company**, paragraph (d), “entity)” is replaced by “entity); and”, and the following is added:
“(e) is not a portfolio investment-linked life fund”.
- (40) In the definition of **portfolio tax rate entity**, paragraph (d), “fund” is replaced by “fund; and”, and the following is added:
“(e) is not a portfolio investment-linked life fund”.
- (41) In the definition of **qualifying person**, paragraphs (a)(iii) and (c), “family tax credit” is replaced by “minimum family tax credit” in each place where it appears.
- (42) In the definition of **refundable credit**, paragraph (d), “election)” is replaced by “election); or” and the following is added:

- “(e) for a tax credit under **section LH 1** (Tax credit relating to expenditure for research and development)”.
- (43) In the definition of **refundable rebate**, “Tax credits for family support and family plus” is replaced by “Tax credits for families”.
- (44) After the definition of **research**, the following is inserted:
“research and development activities is defined in **section LH 4(1)** (Research and development activities and related terms)
“research and development project is defined in **section LH 6(4)** (Eligibility of types of expenditure and depreciation loss)”.
- (45) In the definition of **resident**, “Tax credits for family support and family plus” is replaced by “Tax credits for families”.
- (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:
 “(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:
“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—
 “(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
 “(c) by an entity that is eligible to be a retirement scheme contributor; and
 “(d) for the benefit of the person; and

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- “(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
- “**retirement scheme contribution withholding tax** means retirement scheme contribution withholding tax payable under the RSCWT rules 5
- “**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,— 10
- “(a) if the person is not a resident at the time, a rate of 39%; or
- “(b) if the person is a resident at the time, a rate of— 15
- “(i) 19.5% if the person had, in the income year ending before the contribution year, taxable income of \$38,000 or less; or
- “(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 20
- “(iii) 39%, if the person had, in the income year ending before the contribution year, taxable income of more than \$60,000”. 25
- (48) After the definition of **royalty**, the following is inserted:
- “**RSCWT rules** means—
- “(a) the following provisions:
- “(i) **section CX 42B** (Contributions to retirement savings scheme): 30
- “(ii) **subpart NEB** (Retirement scheme contribution withholding tax):
- “(b) **section 48B** and Part 9 of the Tax Administration Act 1994”.
- (49) After the definition of **schedular taxable income**, the following is inserted: 35
- “**scientific or technological uncertainty** is defined in **section LH 4(3)** (Research and development activities and related terms)”.

- (50) In the definition of **separated person**, paragraph (b), “Tax credits for family support and family plus” is replaced by “Tax credits for families”.
- (51) After the definition of **social assistance suspensory loan**, the following is inserted: 5
“**sound commercial reason** is defined in **section EW 26(6)** (Change of spreading method) for the purposes of that section”.
- (52) In the definition of **specified period**, paragraph (a), “Tax credits for family support and family plus” is replaced by “Tax credits for families”. 10
- (53) In the definition of **spouse**, “Tax credits for family support and family plus” is replaced by “Tax credits for families”.
- (54) After the definition of **surplus refundable credits**, the following is inserted: 15
“**systematic, investigative, and experimental activities** is defined in **section LH 4(2)** (Research and development activities and related terms)”.
- (55) After the definition of **taxpayer**, the following is inserted: 20
“**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: 25
“**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: 30
“**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”.
- (58) **Subsections (15), (19), (21), (32), (34) and (51)** 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.
- (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. 5
- (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.
- 136 Meaning of source deduction payment: shareholder-employees of close companies** 10
- (1) The heading to section OB 2 is replaced by “**Meaning of source deduction payment**”.
- (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.” 15
- 137 Meaning of income tax**
- In section OB 6(1)(d)(i), “retirement scheme contribution withholding tax,” is inserted after “specified superannuation contribution withholding tax,”. 20
- 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**, and NH 7”.
- (3) **Subsection (2)** applies for the 2008–09 and later income years. 25
- 139 Schedule 1—Basic rates of income tax and specified superannuation contribution withholding tax**
- (1) In the heading to schedule 1, “**and specified superannuation contribution withholding tax**” is replaced by “**, specified superannuation contribution withholding tax, and retirement scheme contribution withholding tax**”. 30
- (2) After schedule 1, part A, clause 10, the following is added:

“11 Retirement savings contribution withholding tax	
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—	5
“(a) 19.5 cents, if that rate is—	
“(i) 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 section 28C of the Tax Administration Act 1994; or	10
“(b) 33 cents, if paragraph (a) does not apply and that rate is—	15
“(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 section 28C of the Tax Administration Act 1994; or	20
“(c) 39 cents, if paragraphs (a) and (b) do not apply.”	
<i>KiwiSaver-related amendments to Income Tax Act 2004</i>	25
140 Income Tax Act 2004	
Sections 141 to 144 amend the Income Tax Act 2004.	
141 New section CS 10B inserted	
After section CS 10, the following is inserted:	
“CS 10B Exclusion of permitted withdrawals from KiwiSaver schemes and complying superannuation funds	30
Section CS 1 does not apply to a permitted withdrawal from a KiwiSaver scheme or a complying superannuation fund.	
“Defined in this Act: complying superannuation fund, KiwiSaver scheme, permitted withdrawal”.	35

- 142 Contributions to employees’ superannuation schemes**
After section DC 6(1), the following is inserted:
“Exclusion
“(1B) The employer is denied a deduction for a contribution, to the extent of the amount of the tax credit under **section KJ 1** (Tax credits relating to employers contributing to KiwiSaver schemes and complying superannuation funds) for the PAYE period to which the contribution relates.” 5
- 143 New subpart KJ inserted**
After subpart KH, the following is inserted: 10
“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.
“Amount of tax credit 20
“(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 KiwiSaver scheme. **Section KJ 7** provides a special rule to treat a group of persons as 1 employer. 25
“Defined in this Act: amount, complying superannuation fund, compulsory employer contribution, employer, employee, PAYE period, KiwiSaver scheme 30
- “**KJ 2 Employer requirements**
For the purposes of **section KJ 1(1)**, the requirements are that the employer—

- “(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
- “(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
- “(c) if **paragraph (b)** does not apply,—
- “(i) has an amount of compulsory employer contribution unpaid, specified in a notice under **section 1011(5)** of the KiwiSaver Act 2006; or
 - “(ii) has an amount of short payment under Part 3, subpart 3 of that Act.
- “Defined in this Act: amount, compulsory employer contribution, employer, employer contribution, employer monthly schedule, employee, remittance certificate
- “KJ 3 Tax credit amount**
- “(1) For the PAYE period, the amount of the tax credit is equal to the lesser of—
- “(a) the employer contributions for the employee for the period; and
 - “(b) the amount given by the following formula:
$$\$20 \times \text{weeks in PAYE period.}$$
- “(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.
- “Defined in this Act: amount, employer contribution, PAYE period

“KJ 4 Using the tax credit

“Timing

- “(1) The tax credit arises—
- “(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: 5
 - “(b) if **section KJ 2(c)** applies to the employer, on the day the Commissioner—
 - “(i) receives the notice under **section 1011(5)** of the KiwiSaver Act 2006; or 10
 - “(ii) decides that the employer has an amount of short payment under Part 3, subpart 3 of that Act.

“Use

- “(2) The tax credit is used in the following order:
- “(a) first, either— 15
 - “(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
 - “(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 1011(5)** of that Act: 20
 - “(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: 25
 - “(c) third, used by the Commissioner to pay an amount that is payable by the employer to the Commissioner under an Inland Revenue Act: 30
 - “(d) fourth, treated as tax paid in excess and refundable under section MD 1.

“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— 35
- “(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

“(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

5

“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—

10

“(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,—

15

“(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.

20

“(2) To the extent to which the amount of tax credit for the period is not greater than the total amounts described in **subsections (1)(b)(i) and (ii)** for the period to which the amount of tax credit relates,—

25

“(a) the amount of tax credit is treated as not used under **section KJ 4(2)(b) or (c)**; and

“(b) an amount payable that would, but for this section, be paid under **section KJ 4(2)(b) or (c)** using the amount of tax credit is treated as being unpaid; and

30

“(c) the amount of tax credit is used under **section KJ 4(2)(a)**, instead.

“Defined in this Act: amount, Commissioner, compulsory employer contribution, employer

“KJ 6 Employees who opt out

35

“(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.
- “Defined in this Act: employee, salary or wages 5
- “KJ 7 Group of persons 1 employer**
- For the purposes of **sections KJ 1 to KJ 6**, a group of persons described in one of the following paragraphs is treated as 1 employer:
- “(a) 2 or more companies, if those companies are a group of companies; and 10
- “(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. 15
- “Defined in this Act: employer, company, group of companies”.
- 144 Definitions 20**
- (1) This section amends section OB 1.
- (2) In the definition of **complying fund rules**,—
- (a) in paragraph (b), “described in” is replaced by “described in regulations made under section 229(1) of the KiwiSaver Act 2006 and”: 25
- (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 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 30
- “(j) prevent a person over the New Zealand superannuation qualification age from joining; and”.
- (c) paragraph (k) is repealed: 35
- (d) in paragraph (l), “section 196” is replaced by “sections 101G and 196”.

- (3) After the definition of **complying fund rules**, the following is inserted:
“**compulsory employer contribution** has the same meaning as in the KiwiSaver Act 2006”.
- (4) Paragraph (a) of the definition of **employee’s superannuation accumulation**, “wages” is replaced by the following: 5
“(a) employer contributions”.
- (5) After the definition of **employer**, the following is inserted:
“**employer contribution** has the same meaning as in the KiwiSaver Act 2006”. 10
- (6) The definition of **PAYE period** is replaced by the following:
“**PAYE period** has the same meaning as in section NC 15(8) (Payment of tax deductions to Commissioner)”.

Part 2

Amendments to Tax Administration Act 1994 15

General amendments to Tax Administration Act 1994

145 Tax Administration Act 1994

Sections 146 to 195 amend the Tax Administration Act 1994.

146 Interpretation

- (1) In section 3(1), after the definition of **business**, the following is inserted: 20
“**business group amnesty** means an amnesty declared by the Commissioner under **section 226B**”.
- (2) In section 3(1), in the definition of **response period**, paragraphs (c) and (d) are replaced by the following: 25
“(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,— 30
“(i) the 4-month period starting on the date of issue of the initiating notice, unless **subparagraph (ii)** applies; or

- “(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: 5
- “(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 10
- “(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 15 20
- “(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 credit under **section LH 1** of the Income Tax Act 2004:”. 25 30
- (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— 35
- “(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 5
- “(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.
- 147 Keeping of business records**
- (1) In the heading to section 22, “**business records**” is replaced by “**business and other records**”. 10
- (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:”. 15
- (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** of that Act:”. 20
- (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”. 25
- (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”. 30
- (6) In section 22(7)(d)(iii)(C), “the trust.” is replaced by “the trust.”, and the following is added: 35

- “(e) for the purposes of **subsection (2)(kc)**, other documents evidencing research and development activities.”
- (7) **Subsections (1) to (6)** apply for the 2008–09 and later income years.
- 148 New section 28C inserted** 5
After section 28B, the following is inserted:
- “28C Person advising retirement savings scheme of retirement scheme prescribed rate**
- 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.” 10
- 149 Shareholder dividend statement to be provided by company**
- After section 29(1)(ia), the following is inserted:
- “(ib) the amount, if any, of the dividend paid to a retirement savings scheme as a retirement scheme contribution for the shareholder: 15
- “(ic) the name of the retirement savings scheme to which any retirement scheme contribution was paid:
- “(id) the amount, if any, of imputation credit used to satisfy a liability of the company for retirement scheme contribution withholding tax: 20
- “(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:” 25
- 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: 30
- “(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: 35

“(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:”.

- 151 Annual returns of income not required** 5
- (1) After section 33A(1)(a)(iiib), the following is inserted:
- “(iiic) an amount paid under section 81(1)(b) of the Injury Prevention, Rehabilitation, and Compensation Act 2001 to a claimant under that Act; or”.
- (2) In section 33A(1)(a)(iv), “(iiib)” is replaced by “(iiic)”. 10
- (3) Section 33A(2)(cb)(i) is replaced by the following:
- “(i) a withholding payment, if it is not—
- “(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: 15
- “(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:”.
- (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. 25
- 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— 30
- 35

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- “(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 5
 - “(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.”
- 153 New section 34B inserted** 10
- 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— 15
 - “(a) prepares the returns of income required to be furnished for 10 or more taxpayers; and
 - “(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: 20
 - “(iii) the Maori Trustee.
 - “(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— 25
 - “(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. 30
 - “(4) The Commissioner may request further information from the person (the **applicant**) making the application and obtain information relating to the applicant from other persons before deciding whether to list the applicant as a tax agent. 35
 - “(5) The Commissioner must list the applicant as a tax agent if the Commissioner is satisfied by the available information that—
 - “(a) the applicant is entitled to make the application; and

- “(b) listing the applicant as a tax agent would not adversely affect the integrity of the tax system.
- “(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. 5
- “(7) The Commissioner must refuse to list an applicant as a tax agent if the Commissioner is satisfied that—
- “(a) the applicant is not entitled to make the application:
- “(b) listing the applicant as a tax agent would adversely affect the integrity of the tax system. 10
- “(8) The Commissioner may remove a person from the list of tax agents if the Commissioner is satisfied that—
- “(a) the applicant is not eligible to be a tax agent:
- “(b) continuing to list the applicant as a tax agent would adversely affect the integrity of the tax system. 15
- “(9) Before refusing to put a person on the list of tax agents, or removing a person from the list, the Commissioner must—
- “(a) give notice to the person of the Commissioner’s reasons for the proposed decision:
- “(b) consider any arguments against the proposed decision that are provided by the person within— 20
- “(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. 25
- “(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. 30
- “(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)**: 35
- “(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:

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- “(ii) has previously provided information to the Commissioner as required by this subsection and that information is inaccurate.
- “(12) The information that **subsection (11)** requires an entity to provide to the Commissioner consists of the names of the following persons— 5
- “(a) each person responsible for the filing of the entity’s tax returns, if the entity is a body corporate:
- “(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)**: 20
- “(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.” 25

154 Dates by which annual returns to be furnished

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.” 30 35

- 155 Annual returns by persons who receive subpart KD credit**
- (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. 5
- 156 Non-active companies may be excused from filing returns**
- (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” 10
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 157 New section 48B inserted**
 After section 48, the following is inserted:
- “48B Reconciliation statement for retirement scheme contribution withholding tax** 15
- “(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 retirement scheme contributor, must deliver to the Commissioner a reconciliation statement for the income year showing the information required by— 20
- “(a) **subsection (2)**, relating to the person; and
 “(b) **subsection (3)**, relating to the retirement scheme contributor. 25
- “(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 30
- “(b) the total amount of imputation credits and Maori authority credits used in meeting the liability for retirement scheme contribution withholding tax; and
- “(c) the total amount of retirement scheme contribution withholding tax paid or payable other than by using imputation credits and Maori authority credits; and 35

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- “(d) the amount of each retirement scheme contribution; and
 - “(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 5
 - “(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 10
 - “(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 15
 - “(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 20
 - “(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 25
 - “(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 30
 - “(o) any other particulars the Commissioner may require.
 - “(3) The reconciliation statement must show the following information for the income year relating to the retirement scheme contributor referred to in **subsection (1)**: 35
 - “(a) the total amount of retirement scheme contributions for which retirement scheme contribution withholding tax is payable; and

- “(b) the total amount of retirement scheme contribution withholding tax payable on retirement scheme contributions; and
- “(c) the total amount of imputation credits used in meeting the liability for retirement scheme contribution withholding tax; and 5
- “(d) the total amount of Maori authority credits used in meeting the liability for retirement scheme contribution withholding tax; and
- “(e) the total amount of retirement scheme contribution withholding tax paid or payable other than by using imputation credits and Maori authority credits. 10
- “(4) The reconciliation statement required by **subsection (1)** for an income year must be received by the Commissioner on or before the end of the second month following the end of the income year.” 15

158 New sections 68D and 68E inserted

- (1) Before section 69, the following is inserted:

- “68D Statements in relation to research and development tax credits: single persons** 20
- “(1) This section applies to a person who—
 - “(a) is not a member of an internal software development group; and
 - “(b) is not a partner in a partnership to which **section 68E** applies. 25
 - “(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 **section LH 1** of the Income Tax Act 2004 that they claim for a tax year.
 - “(3) The statement described in **subsection (2)** must be furnished to the Commissioner— 30
 - “(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. 35
 - “(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**
- “(1) This section applies to—
- “(a) an internal software development group: 5
 - “(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 Income Tax Act 2004 that the members of the internal software development group or partners of the partnership claim for a tax year. 10
- “(3) The statement described in **subsection (2)** must be furnished to the Commissioner no later than— 15
- “(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 **paragraph (a)** as the Commissioner may allow, but only if the case is one of simple oversight. 20
- “(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 **section LH 1(4)** of the Income Tax Act 2004 before the last day for furnishing a statement under **subsection (3)**.” 25
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 159 Particulars to be included in income statement**
- (1) In section 80E(2)(ea), “family support and family plus” is replaced by “Working for Families tax credits”. 30
- (2) **Subsection (1)** applies for the 2007–08 and later income years.
- 160 Officers to maintain secrecy**
- (1) Before section 81(4)(g), the following is inserted:
- “(fc) communicating to a person who is a member, employee, or agent, of the New Zealand Customs Service, information that— 35

- “(i) the person is authorised by the New Zealand Customs Service to receive; and
- “(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 **sections 280K and 280L** of the Customs and Excise Act 1996.” 5
- (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— 10
- “(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.” 15
- 161 Disclosure of information concerning actions of tax advisor**
- (1) The heading to section 81B is replaced by “**Disclosure of information concerning tax advisor or person acting as tax agent**”. 20
- (2) In section 81B, the following is added as subsection (2):
- “(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— 25
- “(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
- “ (ii) whose members are subject to a professional code of conduct and a disciplinary process that enforces compliance with the code of conduct: 30
- “(b) information about—
- “ (i) the decision of the Commissioner:
- “ (ii) an action or omission of the person influencing the decision.” 35

- 162 Disclosure of information in relation to family income assistance**
- (1) In section 85G,—
- (a) in the heading: “**family income assistance**” is replaced by “**Working for Families tax credits**”: 5
 - (b) in subsection (1)(a), “family support credit” is replaced by “family tax credit”.
- (2) **Subsection (1)** applies for the 2007–08 and later income years.
- 163 Where Commissioner accepts adjustment proposed by disputant** 10
- 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— 15
- “(a) a notice of assessment issued to the disputant; and
 - “(b) any further notice of assessment or further amended assessment issued to the disputant.
- “(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— 20
- “(a) was fraudulent: 25
 - “(b) wilfully misled the Commissioner:
 - “(c) omitted to supply the Commissioner with relevant information.”
- 164 Determinations relating to financial arrangements** 30
- After section 90AC(1)(b), the following is inserted:
- “(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:”.

- 165 Determination on type of interest in FIF and use of fair dividend rate method**
Section 91AAO(2) is repealed.
- 166 New section 91AAP inserted**
- (1) After section 91AAO, the following is inserted: 5
- “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— 10
- “(a) a person meets the eligibility requirements in **section LH 2** of that Act: 15
- “(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** of that Act. 20
- “(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. 25
- “(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.
- “(4) A determination made under **subsection (1)** is binding on the Commissioner and 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 35

- 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:
 - “(c) the date on which the Commissioner sends a notice to the person or group of persons that the Commissioner has withdrawn the determination. 5
- “(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.”
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 15
- 167 Taxation laws in respect of which binding rulings may be made**
- (1) In section 91C(1)(f), in the words before subparagraph (i), “paragraphs (a) to (e)” is replaced by “paragraphs (a) to (eb)”. 20
 - (2) In section 91C(1)(f)(i), “paragraph (e)” is replaced by “paragraph (e) or (eb)”.
 - (3) The following is added to section 91C:
 - “(4) Despite subsection (1), the Commissioner may not make a binding ruling on the following provisions and matters: 25
 - “(a) whether a person meets the eligibility requirements in **section LH 2** of the Income Tax Act 2004:
 - “(b) whether expenditure or depreciation loss meets the requirements of the definition of **eligible amount** in **section LH 3** of that Act: 30
 - “(c) whether an activity meets the requirements of the definition of **research and development activities** in **section LH 4** of that Act.”
 - (4) **Subsections (1) and (2)** apply for the 2005–06 and later income years. 35
 - (5) **Subsection (3)** applies for the 2008–09 and later income years.

- 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. 5
10
- “(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. 15
- “(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 20
- “(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.” 25
- 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 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 35
- “(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.”
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 5
- 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** 10
- (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: 15
- “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 more than the adjustment proposed in the notice of proposed adjustment.” 20
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 25
- 173 Provisional tax and rules on use of money interest**
- (1) Section 120KE(6) is replaced by the following:
- “(6) A taxpayer is not entitled to use of money interest for overpaid tax under section 120D until the later of—
- “(a) the day after the date— 30
- “(i) on which they notify the Commissioner under section MB 17(2); or
- “(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**”.
- (2) After section 139A(5), the following is added: 5
- “(6) In the case of a late filing penalty for failing to file an employer monthly schedule by the due date, the Commissioner must—
- “(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— 10
- “(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; or
- “(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)**.” 20
- (3) **Subsections (1) and (2)** apply for employer monthly schedules due on or after 1 April 2008.

175 New section 139AAA inserted

- (1) After section 139A, the following is inserted: 25
- “**139AAA Late filing penalty for GST returns**
- “(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— 30
- “(a) the registered person does not complete and provide a GST return by the due date for filing the GST return; and
- “(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 35
- day 12 months before the due date; and
- “(ii) ending before the due date; and

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- “(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—
- “(a) \$250, if the registered person accounts for tax payable on an invoice basis on the due date for filing the GST return; or 5
 - “(b) \$50, if the registered person accounts for tax payable on a payments basis on the due date for filing the GST return. 10
- “(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— 15
 - “(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).**” 20
- (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. 25
- 176 Late payment penalty**
- (1) Section 139B(3) and (3A) are replaced by the following:
- “(3) An initial late penalty imposed on a taxpayer under subsection (2A) is added under **subsection (3A)** to the unpaid tax to which it relates if— 30
- “(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: 35
 - “(b) the taxpayer has paid on time all amounts of tax due for payment in the period referred to in **paragraph (a)** and—

- “(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.
- 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): 20
- “(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: 25
- “(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:”. 30
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 178 Imputation penalty tax payable where end of year debit balance** 35
- (1) The following is added to section 140B:

- “(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** 5
- (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: 10
- “(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 15
- “(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. 20
- “(2) The company is liable for a special tax known as imputation 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 **subsection (1)**.”
- (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** 30
- (1) The following is added to section 140C:
- “(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**.” 35
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

181 New section 140CA inserted

(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 2010, if the company is treated, for the purposes of this section, as only having: 5
- “*(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 10
- “*(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 dividend withholding payment ratio or the 30/70 combined imputation and dividend withholding payment ratio. 15 20
- “(2) The company is liable for a special tax known as dividend withholding payment 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)**.” 25
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

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,”. 30
- (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— 35
- “*(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
- “(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 5
- “(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:
- “(7C) **Subsection (7D)** applies if— 10
- “(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** of that Act; and 15
- “(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** of that Act; and 20
- “(d) the adjustment described in **paragraph (c)** is for the same tax year as the adjustment described in **paragraph (a)**; and
- “(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 25
- “(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** of that Act; and 30
- “(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** of that Act. 35
- “(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 40

amount of tax paid by taxpayer A. Treating the amount as tax paid by taxpayer A for the purposes of imposing a penalty reduces taxpayer A's shortfall."

- (5) **Subsection (3)** applies for tax positions taken on or after 1 April 2008. 5
- (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:

"(2B) A taxpayer who, in taking a tax position, relies on an action or advice of a tax advisor engaged by the taxpayer takes reasonable care in relying on the action or advice except if the taxpayer— 10

"(a) is the employer of the tax advisor:

"(b) does not provide to the tax advisor adequate information relating to the tax position: 15

"(c) does not provide to the tax advisor adequate instructions relating to the tax position:

"(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." 20

- (2) **Subsection (1)** applies for tax positions taken on or after 1 April 2008. 25

184 Unacceptable tax position

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

"(1C) A taxpayer does not take an unacceptable tax position if—

"(a) the taxpayer adopts IFRSs for the purposes of financial reporting before the 2007–08 income year; and 30

"(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

"(ii) finishing on and including the last day of the 2006–07 income year; and 35

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- “(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
- “(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 5
- “(e) the taxpayer has fully-disclosed the IFRS-related tax position.”
- (2) Section 141B(2) is replaced by the following: 10
- “(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—
- “(a) \$50,000: 15
- “(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.
- 185 Abusive tax position** 20
- (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. 25
- 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.” 30
- (2) **Subsection (1)** applies for tax positions taken on or after 1 April 2008.
- 187 New section 141ED inserted**
- (1) After section 141EC, the following is inserted: 35

- “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—
- “(a) the taxpayer— 5
 - “(i) completes an employer monthly schedule showing an amount (the **original amount**) payable by the taxpayer to the Commissioner for the return period; and
 - “(ii) provides the employer monthly schedule to the Commissioner by the due date; and 10
 - “(iii) fails to pay the original amount and any penalty under this section (the **due amount**) to the Commissioner by the due date; and
 - “(b) the Commissioner gives a notice to the taxpayer that the taxpayer is liable to pay a penalty. 15
- “(2) The penalty payable for notifying but not paying PAYE liability is—
- “(a) 20% of the due amount on the day that the Commissioner issues a notice under **subsection (1)(b)**, if the taxpayer on the 30th day after the day of the notice has— 20
 - “(i) failed to agree with the Commissioner an arrangement to pay the due amount; and
 - “(ii) failed to pay the due amount; or
 - “(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— 25
 - “(i) agreed with the Commissioner an arrangement to pay the due amount; and
 - “(ii) failed to honour the agreement; or 30
 - “(c) 10% of the due amount on the day that the Commissioner issues the notice, if—
 - “(i) the taxpayer on or before the 30th day after the day of the notice pays the due amount; and
 - “(ii) **paragraph (b)** does not apply. 35
- “(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.

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- “(4) The amount given by **subsection (2)** for a shortfall penalty on a due amount is added to the due amount for the purposes of a further shortfall penalty.
- “(5) The maximum amount of shortfall penalties under this section that may be added to the original amount is 150% of the original amount. 5
- “(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— 10
- “(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 15
- “(b) the Commissioner does not withdraw the earlier notice.”
- (2) **Subsection (1)** applies for tax positions taken on or after 1 April 2008. 20

188 Reduction in penalty for voluntary disclosure of tax shortfall

- (1) Section 141G(3)(a) is replaced by the following: 25
- “(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)** is treated as coming into force on **17 May 2007**. 30

189 Reduction where temporary shortfall

- (1) Section 141I(3)(d) is replaced by the following: 35
- “(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.
- 190 Limitation on reduction of shortfall penalty**
- (1) Section 141J(d) is replaced by the following: 5
- “(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 10
- “(ii) 75%, if **subparagraph (i)** does not apply.”
- (2) **Subsection (1)** is treated as coming into force on **17 May 2007**.
- 191 Section 141KB repealed**
- (1) Section 141KB is repealed. 15
- (2) **Subsection (1)** applies for tax positions taken on or after 1 April 2008.
- 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”. 20
- (2) After section 142(1A), the following is inserted:
- “(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— 25
- “(a) the 28th day of the month following the end of the taxable period, if **paragraph (b) or (c)** do not apply; or
- “(b) the 15th day of January, if the month following the end of the taxable period is December; or
- “(c) the 7th day of May, if the month following the end of the taxable period is April.” 30
- (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.

- 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.” 5
- 194 Imposition of civil and criminal penalties**
(1) In section 149(2), “, other than under **section 141ED**,” is inserted after “shortfall penalty”.
(2) In section 149(5), “, other than under **section 141ED**,” is inserted after “shortfall penalty”. 10
(3) **Subsections (1) and (2)** apply for tax positions taken on or after 1 April 2008.
- 195 New section 226B inserted**
After section 226, the following is inserted:
“226B Business group amnesties” 15
“(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— 20
“(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. 25
“(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— 30
“(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 35
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— 5
- “(a) stating that the person wishes to benefit from the amnesty; and
- “(b) stating that the person is carrying on the affected business; and 10
- “(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 15
- “(e) providing any other information required by the Commissioner.
- “(6) A person who is eligible under **subsection (4)** and gives a notice under **subsection (5)** is a person (an **affected person**) who benefits from the amnesty. 20
- “(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— 25
- “(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 30
- “(b) make an assessment or amended assessment of the affected person for the income years referred to in **paragraph (a)**.
- “(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)**,— 35
- “(a) begin an investigation of the income and deductions of the affected person relating to the affected business:

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- “(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. 5
- “(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—
- “(a) the affected person provides information relating to the action or omission to the Commissioner; and 10
- “(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)**. 15
- “(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. 20
- “(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*** 25
- 196 Tax Administration Act 1994**
Sections 197 to 199 amend the Tax Administration Act 1994.
- 197 Interpretation**
- In section 3(1), in the definition of **tax**— 30
- (a) the following is inserted after paragraph (a)(iii)(CB):
- “(CC) an amount of short payment under Part 3, subpart 3 of the KiwiSaver Act 2006 that relates to a compulsory employer contribution: 35

“(CD) an amount of compulsory employer contributions unpaid, specified in a notice under section 1011(5) of the KiwiSaver Act 2006.”:	5
(b) the following is inserted after paragraph (a)(vii):	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.”:	
(c) the following is inserted after paragraph (d)(iii)(C):	10
“(CB) an amount of short payment under Part 3, subpart 3 of the KiwiSaver Act 2006 that relates to a compulsory employer contribution:	10
“(CC) an amount of compulsory employer contributions unpaid, specified in a notice under section 1011(5) of the KiwiSaver Act 2006.”:	15
(d) the following is inserted after paragraph (d)(viii):	20
“(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.”:	20
198 Construction of certain provisions	
The following is inserted after section 4A(3)(bb):	
“(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 1011(5) of that Act; or”:	25
199 Persons excluded	
The following is inserted after section 120B(b):	30
“(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 1011(5) of that Act; or”:	35

Part 3 Amendments to other Acts and Regulations

Amendments to KiwiSaver Act 2006

- 200 KiwiSaver Act 2006**
Sections 201 to 237 amend the KiwiSaver Act 2006. 5
- 201 Interpretation**
- (1) This section amends section 4(1).
- (2) The definition of **deduction rate** is replaced by the following:
“**deduction rate** means the rate at which deductions must be made under **section 66 or 66A**, as the case may be”. 10
- (3) 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 15
“**(b)** includes a compulsory employer contribution under **subpart 3A of Part 3**; and
“**(c)** does not include a compulsory employer contribution for the purposes of **section 99**”.
- (4) The following is added to the definition of **salary or wages**: 20
“**(c)** **section 101B(4)** applies in **subpart 3A of Part 3**”.
- (5) After the definition of **salary or wages**, the following is inserted:
“**specified superannuation contribution** has the same meaning as in section OB 1 of the Income Tax Act 2004”. 25
- 202 Application**
In section 6(1)(a), “personally present” is replaced by “living”.
- 203 Temporary employment**
- (1) In section 12(1)(b), “or less.” is replaced by “or less; or”, and the following is added: 30
“**(c)** the employment is described in section 28(1)(a)(ii) of the Holidays Act 2003.”

-
- (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** 5
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.” 10
- 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”.
- 206 Commissioner must supply information pack**
(1) In section 40(1), “must supply” is replaced by “must initially supply” 15
(2) In section 40(2), “on request” is replaced by “on any reasonable request”.
- 207 Employer may choose scheme for employees**
In section 46(2), “new” is omitted. 20
- 208 Effect of employer choice of KiwiSaver scheme**
Sections 48(1) and (2) are replaced by the following:
“(1) This section applies when—
“(a) an employer’s choice of KiwiSaver scheme is effective under section 47; and 25
“(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
“(c) the employee is an employee— 30
“(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

- “(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—
- “(a) offered to be a member of the employer’s chosen KiwiSaver scheme; and 5
- “(b) subscribed for securities in that scheme.”
- 209 Commissioner provisionally allocates certain people to default KiwiSaver schemes and sends investment statement 10**
- (1) Section 50(1) is replaced by the following:
- “(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,— 15
- “(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).”
- (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,—” 20
- 210 Completion of allocation to default KiwiSaver scheme if person does not choose KiwiSaver scheme**
- (1) In section 51(4)(a), “3 months” is replaced by “as soon as practicable after 3 months” 25
- (2) In section 51(5), “Part 1 or 2” is replaced by “Part 2 or 3”.
- 211 Involuntary transfer**
- 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)” 30

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.

5

“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—

10

“(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

15

“(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.

20

“(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

25

“(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—

30

“(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

35

“(iii) are agreed, by the employee and the employer, to count towards the transitional contribution rate.”

- 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”. 5
- 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”.
- 215 Section 93 replaced** 10
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. 15
- “(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. 20
- “(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. 25
- “(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.” 30
- 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: 35

“(e) employer contributions that are not compulsory employer contributions.”

217 New section 98B inserted

After section 98, the following is inserted:

“98B Quantifying short payments for the purposes of Income Tax Act 2004 and Tax Administration Act 1994 5

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 or an employer monthly schedule in accordance with this subpart.” 15

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: 20

“(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:” 25

(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** of the Income Tax Act 2004 in relation to the contribution.” 30

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 5

“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. 10

“(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. 15

“(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— 20

“(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): 25

“(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— 30

“(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 35

“(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: 5
- (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: 10
- “**(b) compulsory rate** means, for the payment of salary or wages,— 15
- “**(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: 20
- “**(iv)** 4%, if the payment is made for a pay period that is in a year starting on or after 1 April 2011:
- “**(c) other contributions** means specified superannuation contributions that the employer makes for the employee for the period to which the payment of salary or wages relates, if— 25
- “**(i)** the employee is employed by the employer before 1 April 2008; and
- “**(ii)** the employer provides to the employee access to a registered superannuation scheme as at 17 May 2007; and 30
- “**(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 35

- “(iv) the specified superannuation contributions vest in the employee immediately after the contributions are paid:
- “(d) **db increase** 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— 5
- “(i) the scheme is a defined benefit scheme; and
- “(ii) the increase in value is attributable to employer contributions; and 10
- “(iii) the amount is not accounted for in **paragraph (c)**; and
- “(iv) the amount is determined actuarially; and
- “(v) the requirements of **paragraphs (c)(i) to (iii)** are met; and 15
- “(vi) the amount vests in the employee as it accrues.
- “101E Payment**
- “(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 and complying superannuation funds, the agreed proportion of compulsory employer contributions is for the relevant scheme or fund, as agreed. 20
- “(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— 25
- “(a) first, for the employee’s KiwiSaver scheme, up to the maximum required to meet an employer’s compulsory employer contribution obligations: 30
- “(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** 35
- “(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.

- “(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. 5

“**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. 10
- “(2) The contribution must vest in the member immediately after it is paid to the provider, despite any provision to the contrary.

“*Complying superannuation funds* 15

“**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. 20
- “(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. 25
- “(4) A notice under **subsection (3)** must show the following: 30
- “(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 35

- “(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
- “(f) other information required by the Government Actuary.” 5

220 New sections 101I to 101K inserted

The following is added to subpart 3A of Part 3:

“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. 10
- “(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)**. 15
- “(3) As soon as practicable, the Government Actuary must give a notice to the employer showing the information described in **subsection (4)**. 20
- “(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 25
 - “(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 30
 - “(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 35
 - “(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; 20
- and
- “(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 25
- objected, and the Government Actuary must immediately give the Commissioner the notice described in **subsection (5)**. 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

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. 20

“(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. 25

“(3) Despite **subsection (2)**,—

“(a) the KiwiSaver scheme must not have more than 5% of its assets in investments related to or managed by— 30

“(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
- “(b) the provider must not lend money or provide financial assistance to— 5
- “(i) a member:
- “(ii) a person associated (under section OD 8(3) of the Income Tax Act 2004) with a provider or a member.”
- 223 Further modifications to application of section 8 to 11 of Superannuation Schemes Act 1989** 10
- In section 121(3)(a), “registered superannuation scheme” is replaced by “KiwiSaver scheme”.
- 224 Requirement for annual report** 15
- 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.”
- 225 New section 128B inserted** 20
- Before the heading above section 129, the following is inserted:
- “128B Terms relating to compulsory employer contributions implied into trust deed**
- “(1) The terms relating to compulsory employer contributions are implied into a trust deed that establishes— 25
- “(a) a KiwiSaver scheme in relation to the KiwiSaver scheme:
- “(b) a complying superannuation fund in relation to the complying superannuation fund. 30
- “(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. 35

- “(3) If an employer may make specified superannuation contributions which meet the requirements described in **subparagraphs (i) to (iii)** of the definition of **other contributions** in **section 101D(2)(c)**, and the employer chooses that the specified superannuation contributions should meet the requirement described in **subparagraph (iv)** of that definition, then the contributions vest in the relevant employee immediately after the contributions are made—
- “(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.”
- 226 Amendment of trust deed governing KiwiSaver scheme**
- (1) In the heading to section 129, “**or participation agreement**” is inserted after “**trust deed**”.
- (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.
- 227 Objections and appeals against decisions of Government Actuary**
- In section 186(5), “High Court” is replaced by “High Court, unless the objection related to a decision under **section 1011**”.
- 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.
- 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”.
- (2) In section 211(2), “member’s interest” is replaced by “member’s accumulation”.

- 230 Penalty for employer to fail to provide information**
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—
 “(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) in the preceding 12 months; and”.
- 231 Section 216 repealed**
Section 216 is repealed.
- 232 Refunds made by direct credit to bank account**
(1) In section 221(1), “A refund” is replaced by “A refund by the Commissioner”.
(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.
- 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—
 “(i) is given notice that the person is a member of the KiwiSaver scheme:
 “(ii) otherwise knows that the person is a member of the KiwiSaver scheme.”
- 235 Regulations relating to mortgage diversion facility**
(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”.
- (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”. 5
- (3) In section 229(2)(b), “KiwiSaver” is replaced by “KiwiSaver and complying superannuation fund”.
- (4) Section 229(2)(c)(ii) is replaced by the following: 10
- “(i) 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:”.
- 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—
- “(i) half of the person’s contribution rate for their KiwiSaver scheme; and 25
- “(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:”.
- 236 Schedule 1—KiwiSaver scheme rules 30**
- (1) In clause 4(3), “equal to that” is replaced by “not more than the”.
- (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”. 35
- (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.”

237 New schedule 4—Transitional contribution rates 5
The following is added to the KiwiSaver Act 2006:

s 66A

**Schedule 4
Transitional rates**

- 1** The minimum amount required to be deducted from the payment of salary or wages is— 10
- (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. 15
- 2** 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,— 20
 - (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,— 25
 - (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: 30
 - (c) if the payment is made for a pay period that is in the year starting on 1 April 2011, 8% of the payment.
- 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: 35
 - (b) 3% of the payment, if the payment is made for a pay period that is in the year starting on 1 April 2010:

Schedule 4—continued

- (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.”

Superannuation Schemes Act 1989

- 238 Superannuation Schemes Act 1989** 5
Sections 239 and 240 amend the Superannuation Schemes Act 1989.
- 239 When Government Actuary may approve transfers without consent of members and beneficiaries** 10
 After section 9BAA(1), the following is inserted:
 “(1B) This section applies despite anything to the contrary in a scheme’s trust deed.”
- 240 Dealing with applications for complying superannuation funds**
- (1) Section 35(1)(e) is replaced by the following: 15
 “(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 and 20
 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 25
 prior agreement.”.
- (2) The following is added to section 35:
 “(5) For the purposes of this section, **participation agreement** includes a trust deed.”

KiwiSaver Regulations 2006 30

- 241 KiwiSaver Regulations 2006**
Sections 242 and 243 amend the KiwiSaver Regulations 2006.

- 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.” 5
- 243 Regulation 7 repealed**
Regulation 7 is repealed.
- Estate and Gift Duties Act 1968***
- 244 Exemption for gifts to charities and certain bodies**
- (1) In section 73(2)(l) of the Estate and Gift Duties Act 1968, 10
“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.”
- (2) In section 73(2)(m) of the Estate and Gift Duties Act 1968, 15
“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.”
- Goods and Services Tax Act 1985*** 20
- 245 Goods and Services Tax Act 1985**
Sections 246 to 251 amend the Goods and Services Tax Act
1985.
- 246 Interpretation**
- (1) This section amends section 2(1). 25
- (2) In the definition of **tax invoice**, “section 24” is replaced by
“sections 24 and 24BA”.
- 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 30
“sections CX 18”.

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:
- “(1) The goods supplied are consumable stores intended for use on— 5
- “(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” 10
- (2) In section 11(9), in the definition of **consumable stores**, paragraph (a), “intend to consume” is replaced by “have available to consume” 15
- (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:” 20

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. 25
- (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 **paragraph (b) or (c)** do not apply; or 30
- “(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.” 35
- (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”.	
251 New section 24BA inserted	
After section 24, the following is inserted:	5
“24BA Shared tax invoices	
“(1) A shared invoice is a tax invoice, if the invoice contains the following particulars—	
“(a) the words “tax invoice” in a prominent place:	
“(b) the name and registration number of the principal supplier:	10
“(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:	
“(f) the consideration for the supply, inclusive of tax charged, and—	15
“(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.	20
“(2) A tax invoice under this section is treated as provided by each supplier.	
“(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.	25
“(4) For the purposes of this section—	30
“ 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	35
“ 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—

“(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.” 5

Income Tax Act 1994

252 Income Tax Act 1994

Sections 253 to 258 amend the Income Tax Act 1994.

253 Public and local authorities’ exempt income

10

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:”.

15

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:

“(o) any amount derived by the trustee of the Tokelau International Trust Fund.”

20

(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:

25

“(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.”

30

(4) **Subsection (1)** applies for the 1999–2000 and later income years.

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

255 Other exempt income

- (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.” 5

- (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.” 10

- (3) **Subsection (1)** applies for the 1999–2000 and later income years.

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

256 Use of credit to reduce dividend withholding payment, or use of debit to satisfy income tax liability 15

- (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). 20

“(5C) An amount of election that is invalid under **subsection (5B)**— 25

“(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 in respect of which the election is made:

“(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)**. 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.

257 Use of consolidated group credit to reduce dividend withholding payment, or use of group or individual debit to satisfy income tax liability 5

- (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). 10

“(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). 15 20

“(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: 25

“(b) is not an amount of debit balance in respect of 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)**. 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. 35

258 Definitions

- (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”. 5
- (3) In the definition of **taxable bonus issue**, paragraph (b) is replaced by the following: 10
“(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— 15
“(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:”. 20
- (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”. 25
- (5) **Subsection (3)** applies for an issue of shares made on or after 16 November 2004.

Taxation Review Authorities Act 1994 30

259 Taxation Review Authorities Act 1994

Sections 260 and 261 amend the Taxation Review Authorities Act 1994.

260 New section 22B inserted

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.”

5

261 Regulations

In section 30(2)(d), “this Act.” is replaced by “this Act:”, and the following is added:

10

“(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.”

Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006

15

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.

20

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:

25

“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

30

“**Department** means the Inland Revenue Department

“**financial support debt** means an amount owing to the Commissioner of—

- “(a) financial support as defined in section 2 of the Child Support Act 1991:
- “(b) a penalty or interest under the Child Support Act 1991
- “**identifying information** means personal information that identifies an individual 5
- “**officer of the Department** has the meaning given to it by section 3(1) of the Tax Administration Act 1994
- “**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. 10
- “**280K Disclosure of arrival and departure information for purposes of Child Support Act 1991**
- “(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— 15
- “(a) locate any person who is in serious default in the payment of any financial support debt; and
- “(b) take appropriate debt recovery action against that person. 20
- “(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. 25
- “(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: 30
- “(a) the person’s name:
- “(b) the person’s date of birth:
- “(c) the person’s tax file number: 35
- “(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.
- “(5) The Chief Executive and the Commissioner may, for the purpose of this section, determine by written agreement between them— 5
- “(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 10**
- “(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—
- “(a) locate any person who is in serious default in the payment of any financial support debt: 15
- “(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. 20
- “(3) In accessing a database for the purpose of this section, the Commissioner—
- “(a) may only search for arrival or departure information relating to preselected persons who are of interest to the Commissioner; and 25
- “(b) must not search for—
- “(i) any information other than arrival or departure information: 30
- “(ii) any information about a person who is not in serious default.
- “(4) The Commissioner must take all reasonable steps to ensure that—
- “(a) only persons with appropriate powers delegated to them by the Commissioner— 35
- “(i) have access to the database; and
- “(ii) use the database; and

- “(b) a record is kept of—
- “(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
- 5
- “(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.”
- 10

Housing Restructuring and Tenancy Matters Act 1992

- 264 Amendments to Housing Restructuring and Tenancy Matters Act 1992 made in schedule 2** 15
- The amendments to the Housing Restructuring and Tenancy Matters Act 1992 specified in **schedule 2** are made in the manner shown in that schedule.

Privacy Act 1993

- 265 Privacy Act 1993** 20
- Sections 266 and 267** amend the Privacy Act 1993.
- 266 Notice of adverse action proposed**
- After section 103(1B), the following is inserted:
- “(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 **section 280K or 280L** of the Customs and Excise Act 1996.”
- 25
- 267 Schedule 3—Information matching provisions** 30
- In schedule 3, in the entry for the Customs and Excise Act 1996, “, **280K, and 280L**” is added after “280D”.

Rates Rebate Act 1973

- 268 Amendments to Rates Rebate Act 1973 made in schedule 2**
The amendments to the Rates Rebate Act 1973 specified in **schedule 2** are made in the manner shown in that schedule. 5

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. 10

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: 15
- “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.” 20
- (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. 25

Income Tax (Withholding Payments) Regulations 1979

272	Schedule—Tax deductions from withholding payments	5
	The following is added to the schedule of the Income Tax (Withholding Payments) Regulations 1979:	
	“Part F	
	Class of payment	Rate of tax deduction
	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”.	10
	15c per \$1	

Social Security (Temporary Additional Support) Regulations 2005

273	Amendments to Social Security (Temporary Additional Support) Regulations 2005 made in schedule 2	15
	The amendments to the Social Security (Temporary Additional Support) Regulations 2005 specified in schedule 2 are made in the manner shown in that schedule.	

Student Allowances Regulations 1998

274	Amendments to Student Allowances Regulations 1998 made in schedule 2	20
	The amendments to the Student Allowances Regulations 1998 specified in schedule 2 are made in the manner shown in that schedule.	

Holidays Act 2003 25

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:	
	“(iii) any payment of any employer contribution to a superannuation scheme for the benefit of the employee.”	30

s 86 **Schedule 1**
Amendments to subpart KD of the Income Tax Act
2004

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 “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)”. 10

Section KD 1A(2): repeal. 15

Section KD 2

Section KD 2(2), formula: the formula is replaced by “FTC + IWTCorCTC + PTC – FCA”.

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 replaced by “family tax credit”. 20

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 place where it appears. 25

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 replaced by “**ring-fenced family tax credit recipient**”. 35

Section KD 2AAA

Section KD 2AAA, heading: “**In-work payment**” is replaced by “**In-work tax credit**”.

Section KD 2AAA — <i>continued</i>	
Section KD 2AAA(1): “in-work payment” is replaced by “in-work tax credit”.	
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.	
Section KD 2AAAB	5
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”.	10
Section KD 2AA(3A): “in-work payment” is replaced by “in-work tax credit”.	
Section KD 2A	
Section KD 2A, heading: “ family support credit, in-work payment ” is replaced by “ family tax credit, in-work tax credit ”.	15
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.	
Section KD 2A(c)(i): “family support credit” is replaced by “family tax credit”.	20
Section KD 2A(c)(ii): “in-work payment” is replaced by “in-work tax credit”.	
Section KD 3	
Section KD 3, heading: “ family tax credit ” is replaced by “ minimum family tax credit ”.	25
Section KD 3A	
Section KD 3A, heading: “ family tax credit ” is replaced by “ minimum family tax credit ”.	
Section KD 5	30
Section KD 5(4)(c)(ii): “family support credit” is replaced by “family tax credit”.	
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”.	35

Section KD 5—*continued*

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”.

Section KD 5C

5

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**”.

10

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”.

15

Section KD 5C(1)(d): “family tax credit” is replaced by “minimum family tax credit”.

Section KD 5C(4): “in-work payment” is replaced by “in-work tax credit”.

Section KD 6

20

Section KD 6(1A)(b): “family support credit” is replaced by “family tax credit”.

Section KD 7

Section KD 7(2B): “family support credit” is replaced by “family tax credit”.

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Section KD 7A

Section KD 7A(1)(a): “family tax credit” is replaced by “minimum family tax credit”.

Section KD 7A(2), in the item a, paragraph (b): “family tax credit” is replaced by “minimum family tax credit”.

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Section KD 7A(3), in the item a, paragraph (b): “family tax credit” is replaced by “minimum family tax credit”.

Schedule 2 ss 264, 268, 269, 271, 273, and
274

Amendments to other Acts and Regulations

Public Acts

Housing Restructuring and Tenancy Matters Act 1992 (1992 No 76)	5
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.	
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.	10
Schedule 2, clause 4, heading: “ family support ” is replaced by “ family tax credit ”.	
Schedule 2, clause 5, heading: “ family support ” is replaced by “ family tax credit ”.	15
Schedule 2, clause 5: “child support” is replaced by “family tax credit”.	
Schedule 2, clause 9(c): “family tax credit” is replaced by “minimum family tax credit”.	20
Schedule 2, clause 10(a)(ii): “in-work payment” is replaced by “in-work tax credit”.	
Rates Rebate Act 1973 (1973 No 5)	
Section 2(1), definition of income , paragraph (d)(vi): “family support” is replaced by “family tax credit”.	25
Social Security Act 1964 (1964 No 136)	
Schedule 18, 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, 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.	30

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”.	35

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

Schedule 2

**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.

Regulation 13, example 2, items 1 and 4: “family support” is replaced by “family tax credit” in each place where it appears. 5

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)

Regulation 2(1), definition of **personal income**, paragraph (d): “family support” is replaced by “family tax credit”. 10

Regulation 2(1), definition of **spousal or partner’s income**, paragraph (d): “family support” is replaced by “family tax credit”.