

House of Representatives

Supplementary Order Paper

Thursday, 6 December 2007

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

Proposed amendments

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

Clause 2

Subclause (8): to omit “**247**,” (line 3 on page 21) and substitute “**247(1)**,”.

Subclause (11):

- (a) to omit “**149, 150**,” (line 10 on page 22) and substitute “**149(1), 150(1)**”:
- (b) to omit “**162, 164, 165, 168**,” (lines 10 and 11 on page 22) and substitute “**162(1) and (2), 164(1), 165(1) and (2), 168(1)**,”:
- (c) to omit “**193**,” (line 11 on page 22) and substitute “**193(1)**,”.

Subclause (13): to omit “**204, 205 to 205D**,” (line 16 on page 22) and substitute “**204(1), 205, 205B(1), 205C, 205D(1)**,”.

Subclause (14):

- (a) to omit “**108(1), 109**,” (line 23 on page 22):
- (b) to omit “**130**,” (line 25 on page 22):
- (c) to omit “**150C**,” (line 26 on page 22) and substitute “**150C(1), (2), and (3)**,”:
- (d) to omit “**157B, 157C**,” (line 26 on page 22) and substitute “**157B(1), (2), (3), (4), and (5), 157C(1)**,”.

New subclause (14B): to insert after *subclause (14)* (after line 28 on page 22) the following:

- (14B) **Section 545** is treated as coming into force on 1 November 2007.

Subclause (16):

- (a) to omit “**88(1), 89, 90, 91, 135(31),**” (line 31 on page 22):
- (b) to insert after “**147C,**” (line 32 on page 22) “**149(2) and (3), 150(2) and (3), 150C(2B) and (4), 154B, 155B(2), 156(1), 156B, 157(2) and (3), 157B(1A), (1B), (1C), (3B), and (6), 157C(2), 159B, 159C, 159D, 159E, 159F, 159G, 159H, 159I, 159J, 161B, 161C, 162(1B), (1C), and (3), 164(2), 165(1B), 168(2) to (4),**”:
- (c) to insert after “**192B,**” (line 33 on page 22) “**193(2),**”:
- (d) to insert after “**194D,**” (line 1 on page 23) “**194E,**”:
- (e) to insert after “**198,**” (line 1 on page 23) “**198BA(2), 198(3),**”:
- (f) to omit “**201(1), (2), (3), (5), (7), (9)(b), and (10),**” (line 1 on page 23) and substitute “**201(1), (2), (3), (4B), (5), (5B), (6B), (7), (8B), (9)(b), and (10),**”:
- (g) to insert after “**203,**” (line 2 on page 23) “**204(2), 205B(2), 205D(2),**”:
- (h) to omit “**218(2),**” and substitute “**218(1B) and (2),**”:
- (i) to insert after “**225,**” (line 2 on page 23) “**226B(2),**”:
- (j) to omit “**236(1B),**” (line 3 on page 23) and substitute “**236(1B) and (7),**”:
- (k) to insert after “**237,**” (line 3 on page 23) “**244(1B) and (3), 247(2), 251BA, 251B(2),**”:
- (l) to omit “**and 260**” (line 3 on page 23) and substitute “**260, 263B, 277 to 288, 291 to 298, 300 to 311, 313 to 406, 407(1), 408 to 507, 509 to 518, 519(2) to (41) and (43) to (68), 519B to 521, 522(1) and (2), and 523 to 529**”.

Subclause (17): to omit “**and 272**” (line 6 on page 23) and substitute “**272, 289, 290, 299, 312, 407(2), 508, 519(42), and 522(3)**”.

Clause 27

Subclause (1): to omit the subclause (lines 30 to 32 on page 42).

Subclause (3): to omit the subclause (line 34 on page 42).

Clause 64

Subclause (5): to omit the subclause (lines 1 to 13 on page 95).

Subclause (6): to omit the subclause (line 14 on page 95).

Clause 80

Subclause (1): to omit the subclause (lines 22 to 26 on page 116).

Subclause (4): to omit the subclause (line 3 on page 117).

Clause 85

Subclause (3): to omit the subclause (lines 4 to 8 on page 133).

Subclause (5): to omit the subclause (line 10 on page 133).

Clause 88

Subclause (1): to omit the subclause (lines 4 to 11 on page 134).

Subclause (3): to omit the subclause (line 17 on page 134).

Clause 89

To omit the clause (lines 20 to 25 on page 134).

Clause 90

To omit the clause (line 26 on page 134 to line 16 on page 135).

Clause 91

To omit the clause (lines 17 to 35 on page 135).

Clause 98

Subclause (1): to omit the subclause (lines 14 and 15 on page 144).

Subclause (3): to omit the subclause (line 19 on page 144).

Clause 100

To omit the clause (line 19 on page 164 to line 14 on page 189).

Clause 108

Subclause (1A): to omit the subclause (lines 24 to 26 on page 197).

Subclause (1): to omit the subclause (line 27 on page 197 to line 2 on page 198).

Subclause (3): to omit the subclause (lines 6 to 8 on page 198).

Subclause (5): to omit the subclause (lines 12 to 16 on page 198).

Clause 109

To omit the clause (lines 19 to 24 on page 198).

Clause 111

To omit the clause (lines 1 to 14 on page 200).

Clause 129

To omit the clause (lines 12 to 25 on page 207).

Clause 130

To omit the clause (line 6 on page 215 to line 13 on page 222).

Clause 135

Subclause (8): to omit the subclause (lines 4 to 7 on page 243).

Subclause (9): to omit the subclause (lines 8 to 12 on page 243).

Subclause (24): to omit the subclause (lines 27 to 31 on page 244).

Subclause (25): to omit the subclause (line 32 on page 244 to line 9 on page 245).

Subclause (29): to omit the subclause (lines 19 to 23 on page 245).

Subclause (31): to omit the subclause (line 27 on page 245 to line 16 on page 246).

Subclause (35): to omit the subclause (lines 28 to 32 on page 246).

Subclause (51): to omit the subclause (lines 21 to 25 on page 250).

Subclause (53): to omit the subclause (lines 29 to 34 on page 250).

Subclause (55)(c): to omit the paragraph (lines 12 to 15 on page 251).

Subclause (58): to omit the subclause (lines 20 to 24 on page 253).

Subclause (63): to omit the subclause (lines 3 to 7 on page 254).

Subclause (64): to omit the subclause (lines 8 to 11 on page 254).

Subclause (65): to omit the subclause (lines 12 to 15 on page 254).

Subclause (71): to omit the subclause (lines 1 to 3 on page 255).

Clause 138

Subclause (2): to omit the subclause (lines 1 to 3 on page 256).

Subclause (3): to omit the subclause (line 4 on page 256).

Clause 146(4)

definition of response period, paragraph (c)(ii): to replace “**section LH 1** of the Income Tax Act 2004” (lines 10 and 11 on page 277) with “**section LH 2** of the Income Tax Act 2007”.

definition of response period, paragraph (d): to replace “**section LH 1** of the Income Tax Act 2004” (line 14 on page 277) with “**section LH 2** of the Income Tax Act 2007”.

definition of response period, paragraph (e), words before subparagraph (i): to replace “**section LH 1** of the Income Tax Act 2004” (line 22 on page 277) with “**section LH 2** of the Income Tax Act 2007”.

Clause 147

Subclause (2): paragraph (cb): to replace the paragraph (lines 28 to 30 on page 278) with the following:

“(cb) is a person to whom the RSCT rules apply and who makes a retirement scheme contribution to a retirement savings scheme:” .

Subclause (3): paragraphs (eb) and (ec): to replace the paragraphs (line 32 on page 278 to line 2 on page 279) with the following:

“(eb) has a tax credit under **section LH 2** of the Income Tax Act 2007:

“(ec) is a listed research provider under **section LH 15** of that Act:” .

Subclause (4): paragraphs (kc) and (kd): to replace the paragraphs (lines 10 to 14 on page 279) with the following:

“(kc) the amount of the person’s tax credit under **section LH 2** of the Income Tax Act 2007; and

“(kd) the person’s compliance with **section LH 15(1)** of that Act, if the person is a listed research provider under **section LH 15** of that Act, to show—

“(i) they meet the start-up requirements and the other continuing requirements; and

“(ii) the amounts derived and incurred by them in performing the research and development activities on behalf of other persons; and” .

Clause 149

New subclauses (2) and (3): to add as subclauses (2) and (3) (after line 32 on page 280) the following:

- (2) In **section 29(1)(id)**, as inserted by **subsection (1)**, “retirement scheme contribution withholding tax” is replaced by “RSCT”.

- (3) In **section 29(1)(ie)**, as inserted by **subsection (1)**, “retirement scheme contribution withholding tax” is replaced by “RSCT”.

Clause 150

New subclauses (2) and (3): to add as subclauses (2) and (3) (after line 14 on page 281) the following:

- (2) In **section 31(1)(ed)**, as inserted by **subsection (1)**, “retirement scheme contribution withholding tax” is replaced by “RSCT”.
- (3) In **section 31(1)(ee)**, as inserted by **subsection (1)**, “retirement scheme contribution withholding tax” is replaced by “RSCT”.

Clause 150C

New subclause (2B): to insert after *subclause (2)* (after line 3 on page 282) the following:

- (2B) In section 33(1), as amended by **subsection (2)**, “section HL 21 or HL 23 of the Income Tax Act 2004” is replaced by “section HL 22 or HL 24 of the Income Tax Act 2007”.

New subclause (4): to add after *subclause (3)* (after line 9 on page 282) the following:

- (4) In **section 33(1C)**, as inserted by **subsection (3)**, “section HL 21 or HL 23 of the Income Tax Act 2004” is replaced by “section HL 22 or HL 24 of the Income Tax Act 2007”.

Clause 151

Subclauses (3) and (4): to replace the subclauses (line 19 on page 282 to line 11 on page 283) with the following:

- (3) Section 33A(2)(d)(i) is replaced by the following:
- “(i) a schedular payment, if it is not—
 - “(A) an amount or proportion of a schedular payment for which the Commissioner has made a determination under section RD 8(3) of the Income Tax Act 2007:
 - “(B) income that is a personal service rehabilitation payment for a claimant under the Injury Prevention, Rehabilitation, and Compensation Act 2001:
- (4) After section 33A(2)(d), the following is inserted:
- “(d) has an amount of tax credit under **section LH 2** of the Income Tax Act 2007; or”.

Clause 152

Section 33C(c): to replace the paragraph (lines 18 and 19 on page 284) with the following:

“(c) tax is withheld at the rate of 15% from the personal service rehabilitation payment; and

New clause 154B

To insert after *clause 154* (after line 13 on page 289) the following:

154B Returns to annual balance date

In section 38(1B), “section HL 22 of the Income Tax Act 2004” is replaced by “section HL 23 of the Income Tax Act 2007”.

Clause 155B

New subclause (2): to add as subclause (2) to clause 41B as inserted by SOP No 167 the following:

- (2) In section 41B, as inserted by **subsection (1)**, “section KC 6 of the Income Tax Act 2004” is replaced by “sections ML 1 to ML 3 of the Income Tax Act 2007” in all places in which it occurs.

Clause 156

Subclause (1): subparagraph (iib): to replace the subparagraph (lines 22 and 23 on page 289) with the following:

“(iib) give rise to an amount of tax credit under **section LH 2** of the Income Tax Act 2007; or” .

New clause 156B

To insert after *clause 156* (after line 24 on page 289) the following:

156B New section 47B inserted

After section 47, the following is inserted:

“47B RSCT statements provided by retirement scheme contributor or retirement savings scheme

- “(1) This section applies when a retirement scheme contributor or retirement savings scheme withholds an amount of RSCT from a retirement scheme contribution other than a contribution made by way of an imputation credit or Maori authority credit.
- “(2) The contributor or scheme must provide to the Commissioner a statement in a form acceptable to the Commissioner showing the amount of retirement scheme contribution, the amount of RSCT relating to the contribution, and any other particulars required by the Commissioner.
- “(3) The statement must be provided no later than the 20th of the month after the month in which the amount was withheld.

Compare: 2004 No 35 s NEB 3(1)(b)”.

Clause 157

New subclauses (2) and (3): to add as subclauses (2) and (3) (after line 2 on page 292) the following:

- (2) In **section 48B(2)**, as inserted by **subsection (1)**,—
 - (a) in paragraphs (a) to (f), (h), and (j) to (n), “retirement scheme contribution withholding tax” is replaced by “RSCT” in all places in which it appears:
 - (b) in paragraph (o), “non-resident withholding tax” is replaced by “NRWT”:
 - (c) in paragraph (p), “non-resident withholding income” is replaced by “non-resident passive income”.
- (3) In section 48B(3), as inserted by **subsection (1)**, in paragraphs (a) to (e), “retirement scheme contribution withholding tax” is replaced by “RSCT” in all places in which it appears.

Clause 157B

New subclause (1A): to insert after the heading (after line 4 on page 292) the following:

- (1A) In section 57B(1), in the words before paragraph (a), “section HL 22 or HL 23 of the Income Tax Act 2004” is replaced by “section HL 23 or HL 24 of the Income Tax Act 2007”.

New subclauses (1B) and (1C): to insert after *subclause (1)* (after line 7 on page 292) the following:

- (1B) In section 57B(2), “section HL 22 of the Income Tax Act 2004” is replaced by “section HL 23 of the Income Tax Act 2007”.
- (1C) In section 57B(3), in the words before paragraph (a), “section HL 23 of the Income Tax Act 2004” is replaced by “section HL 24 of the Income Tax Act 2007”.

New subclause (3B): to insert after *subclause (3)* (after line 23 on page 292) the following:

- (3B) In section 57B(4)(a)(ii),—
 - (a) “section HL 22 or HL 23 of the Income Tax Act 2004” is replaced with “section HL 23 or HL 24 of the Income Tax Act 2007”:
 - (b) “section HL 21(5)” is replaced with “section HL 22(5)”.

New subclause (6): to add after *subclause (5)* (after line 11 on page 293) the following:

- (6) In **section 57B(7)** as added by **subsection (5)**, in the words before paragraph (a), “section HL 23B of the Income Tax Act 2004” is replaced by “section HL 25 of the Income Tax Act 2007”.

Clause 157C

New subclause (2): to add as subclause (2) (after line 19 on page 293) the following:

- (2) In **section 61(1C)** as added by **subsection (1)**, “section HL 22 of the Income Tax Act 2004” is replaced by “section HL 23 of the Income Tax Act 2007”.

Clause 158

Section 68D(2): to replace “**section LH 1** of the Income Tax Act 2004” (lines 31 and 32 on page 293) with “**section LH 2** of the Income Tax Act 2007”.

Section 68D(3)(b)(ii): to replace “**section LH 1** of the Income Tax Act 2004” (lines 19 and 20 on page 294) with “**section LH 2** of the Income Tax Act 2007”.

Section 68D(4): to replace “**section LH 1(4)** of the Income Tax Act 2004” (line 22 on page 294) with “**section LH 2(1)(d)** of the Income Tax Act 2007”.

Section 68E(2): to replace “**section LH 1** of the Income Tax Act 2004” (line 33 on page 294 to line 1 on page 295) with “**section LH 2** of the Income Tax Act 2007”.

Section 68E(3)(b)(ii): to replace “**section LH 1** of the Income Tax Act 2004” (lines 3 and 4 on page 296) with “**section LH 2** of the Income Tax Act 2007”.

Section 68E(4): to replace “**section LH 1(4)** of the Income Tax Act 2004” (lines 7 and 8 on page 296) with “**section LH 2(1)(d)** of the Income Tax Act 2007”.

New clauses 159B to 159J

To insert after *clause 159* (after line 14 on page 296) the following:

159B What Commissioner must do on receipt of application

In section 80KD(2)(c)—

- (a) in subparagraph (ii), “family support” is replaced by “family tax credit”;
- (b) in subparagraph (iii), “in-work payment” is replaced by “in-work tax credit”;
- (c) in subparagraph (vi), “family tax credit” is replaced by “minimum family tax credit”.

159C Payment by instalment of family support (without abatement)

- (1) In the heading to section 80KK, “**family support**” is replaced by “**family tax credit**”, and in subsections (1), (2), (4), and (5), “family support” is replaced by “family tax credit” in all places in which it appears.
- (2) In section 80KK(3)(a)(ii), “family assistance credit” is replaced by “WFF tax credit”.

159D Payment of tax credit by chief executive

In section 80KN(1)(b) and (2), “family assistance credit” is replaced by “WFF tax credit” in all places in which it appears.

159E Determining family assistance credit

- (1) In the heading to section 80KO, “**family assistance credit**” is replaced by “**WFF tax credit**”.
- (2) In section 80KO, “family assistance credit” is replaced by “WFF tax credit”.

- (3) In section 80KO(b), “family support” is replaced by “family tax credit”.

159F When entitlement to income-tested benefit ends

In section 80KP, in subsections (1), and (2), “family support” is replaced by “family tax credit” in all places in which it appears.

159G No authority to pay family assistance credit

- (1) In the heading to section 80KQ, “family assistance credit” is replaced by “WFF tax credit”.
- (2) In section 80KQ(1), “family assistance credit” is replaced by “WFF tax credit”.

159H Request by chief executive to stop payment of family assistance credit

- (1) In the heading to section 80KR, “family assistance credit” is replaced by “WFF tax credit”.
- (2) In section 80KR(1)(b), “family assistance credit” is replaced by “WFF tax credit”.

159I Payment of tax credit taken over by Commissioner

- (1) In section 80KU(1)(b), “family assistance credit, family tax credit, or family support” is replaced by “WFF tax credit, family tax credit, or minimum family tax credit”.
- (2) In section 80KU(2), “in-work payment” is replaced by “in-work tax credit”.

159J Effect of extra instalment on entitlement to tax credit

- (1) In section 80KW(1)(a), “family assistance credit or family tax credit” is replaced by “WFF tax credit or minimum family tax credit”.
- (2) Section 80KW(2)(b) is replaced by the following:
“(b) when the person has received payments under section 80KI for the whole of a tax year in 27 instalments as described in subsection (1)(c)(i).”
- (3) In section 80KW(4)(a)(i), “family assistance credit” is replaced by “WFF tax credit”.
- (4) In section 80KW(4)(a)(ii), “family tax credit” is replaced by “minimum family tax credit”.
- (5) Section 80KW(5)(b) is replaced by the following:
“(b) when the person has received payments under section 80KN for the whole of a tax year in 53 instalments as described in subsection (1)(c)(ii).”

- (6) In section 80KW(7)(a)(i), “family assistance credit” is replaced by “WFF tax credit”.
- (7) In section 80KW(7)(a)(ii), “family tax credit” is replaced by “minimum family tax credit”.

New clauses 161B and 161C

To insert after *clause 161* (after line 9 on page 298) the following:

161B Disclosure of information for purposes of entitlement card

In section 83(2), “family assistance credit” is replaced by “WFF tax credit”.

161C Disclosure of information for family support double payment identification

- (1) In section 84(1)(a) and (4), “family assistance credit” is replaced by “WFF tax credit” in all places in which it appears.
- (2) In section 84(6), the defined term **family assistance credit** is replaced by the following:
“**WFF tax credit** means an interim instalment of WFF tax credit.”.

Clause 162

New subclauses (1B) and (1C): to insert after *subclause (1)* (after line 16 on page 298) the following:

- (1B) In section 85G(1)(a) and (4)(a) and (b), “family assistance credit” is replaced by “WFF tax credit” in all places in which it appears.
- (1C) In section 85G(6), the defined term **family assistance credit** is replaced by the following:
“**WFF tax credit** means an interim instalment of WFF tax credit.”.

New subclause (3): to add after *subclause (2)* (after line 17 on page 298) the following:

- (3) **Subsections (1B) and (1C)** apply for the 2008–09 and later income years.

Clause 164

New subclause (2): to insert (after line 19 on page 299) the following:

- (2) In section 90AC(1)(ba), as inserted by **subsection (1)**, “**section EW 15B(5)(c) or EW 15D(2)(d)** of the Income Tax Act 2004” is replaced by “**section EW 15E(2)(d) or EW 15I(2)(c)** of the Income Tax Act 2007”.

Clause 165

New subclause (1B): to insert after *subclause (1)* (after line 27 on page 300) the following:

(1B) Section 91AAO(2)(b)(i), as inserted by **subsection (1)**, is replaced by the following:

“(i) are loans, fixed-rate shares as defined in section LL 9 of the Income Tax Act 2007, or arrangements with a fixed economic return:

Clause 166(1)

Section 91AAP(1), words before paragraph (a): to replace “**section LH 1** of the Income Tax Act 2004” (line 6 on page 301) with “**section LH 2** of the Income Tax Act 2007”.

Section 91AAP(1)(a) to (c): to replace the paragraphs (lines 10 to 17 on page 301) with the following:

- “(a) a person meets the eligibility requirements in **section LH 3** of the Income Tax Act 2007:
- “(b) expenditure or depreciation loss meets the requirements of the definition of **eligible expenditure** in **section LH 4** of that Act:
- “(c) an activity meets the requirements of the definition of research and development activities in **section LH 7** of that Act.

Clause 167(3)

Section 91C(4)(a) to (c): to replace the paragraphs (lines 5 to 12 on page 303) with the following:

- “(a) whether a person meets the eligibility requirements in **section LH 3** of the Income Tax Act 2007:
- “(b) whether expenditure or depreciation loss meets the requirements of the definition of **eligible expenditure** in **section LH 4** of that Act:
- “(c) whether an activity meets the requirements of the definition of research and development activities in **section LH 7** of that Act.”

Clause 168

New subclauses (2) to (4): to add as subclauses (2) to (4) (after line 13 on page 304) the following:

(2) Section 98B(1), as inserted by **subsection (1)**, is replaced by the following:

“(1) The Commissioner may, for any person who is chargeable with RSCT under **section RH 2** of the Income Tax Act 2007, make an assessment of the amount of the retirement scheme contribution on which, in the Commissioner’s judgment, RSCT ought to be imposed and an assessment of that tax.”

(3) Section 98B(3)(a) and (b), as inserted by **subsection (1)**, is replaced by the following:

“(a) in those sections, the term ‘taxpayer’ included a person who is chargeable with RSCT; and

“(b) in section 113, the term “tax already assessed” included RSCT already assessed under **subsection (1)** of this section.”

- (4) In section 98B(4), as inserted by **subsection (1)**, “Income Tax Act 2004” is replaced by “Income Tax Act 2007”.

Clause 169(1)

Section 108(1B), words before paragraph (a): to replace “**section LH 1** of the Income Tax Act 2004” (lines 1 and 2 on page 305) with “**section LH 2** of the Income Tax Act 2007”.

Clause 172(1)

Section 113D: to replace “**section LH 1** of the Income Tax Act 2004” (line 30 on page 305) with “**section LH 2** of the Income Tax Act 2007”.

Clause 172B

Section 120KC(1)(b)(i) and (ii): to replace the subparagraphs (lines 8 and 9 on page 306) with the following:

- “(i) D and F, if section RC 9(9)(b)(i) applies; or
- “(ii) C and F, if section RC 9(9)(b)(ii) applies:”

Clause 172D

Subclause (2): to replace “section MB 20” (line 19 on page 306) with “section RC 21”.

Clause 173(1)

Section 120KE(6)(a)(i) and (ii): to replace the subparagraphs (line 30 on page 306 to line 1 on page 307) with the following:

- “(i) on which they notify the Commissioner under section RC 18(2); or
- “(ii) set out in section RC 18(3) (as the case may be):

Clause 177(1)

Paragraph (ab): to replace the paragraph (lines 13 to 23 on page 312) with the following:

- “(ab) for an instalment date and a taxpayer to whom section RC 11 of the Income Tax Act 2007 applies, means the lesser of—
- “(i) the amount calculated under section RC 11 of that Act:
 - “(ii) the amount calculated as payable under section RC 11 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:” .

Clause 179(1)

Section 140BB(1), words before paragraph (a): to replace “section ME 2 of the Income Tax Act 2004” (line 10 on page 313) with “section OA 3(3) and (4) of the Income Tax Act 2007”.

Section 140BB(1)(b): to replace “**section MZ 13** of the Income Tax Act 2004” (lines 2 and 3 on page 314) with “**section OZ 8** of the Income Tax Act 2007”.

Clause 181(1)

Section 140CA, heading: to replace “**Dividend withholding payment penalty tax**” (line 22 on page 314) with “**FDP penalty tax**”.

Section 140CA(1), words before paragraph (a): to replace the words (line 24 on page 314 to line 2 on page 315) with the following:

- “(1) This section applies when a company has an end of year debit balance under section OA 3(3) and (4) of the Income Tax Act 2007 for its FDP account as at 31 March 2010, if the company is treated, for the purposes of this section, as only having:

Section 140CA(1)(b): to replace the paragraph (lines 19 to 24 on page 315) with the following:

- “(b) debits and balances to the extent to which the company has, as provided by **section OZ 8** of the Income Tax Act 2007, attached imputation credits in excess of the 30/70 FDP ratio or the 30/70 combined imputation and FDP ratio.

Section 140CA(2): to replace the subsection (lines 25 and 26 on page 315) with the following:

- “(2) The company is liable to a special tax known as FDP penalty tax.

Clause 182(4)

Subsection (7C)(a): to replace the paragraph (lines 22 to 26 on page 316) with the following:

- “(a) the Commissioner makes an adjustment to a taxpayer’s tax position (**taxpayer A**) for a tax credit under **section LH 2** of the Income Tax Act 2007 relating to internal software development as that term is defined in **section LH 17** of that Act; and

Subsection (7C)(c): to replace the paragraph (lines 29 to 33 on page 316) with the following:

- “(c) the Commissioner makes an adjustment to another taxpayer’s tax position (**taxpayer B**) for a tax credit under **section LH 2** of that Act relating to internal software development as defined in **section LH 17** of that Act; and

Subsection (7C)(f): to replace “**section LH 12**” (line 4 on page 317) with “**section LH 17**”.

Subsection (7C)(g): to replace “**section LH 12**” (line 10 on page 317) with “**section LH 17**”.

Clause 193

New subclause (2): to add as subclause (2) (after line 22 on page 329) the following:

- (2) Section 143A(5)(g), as inserted by **subsection (1)**, is replaced by the following:
“(g) an amount of RSCT withheld.”

New clause 194E

To insert after *clause 194D* (after line 20 on page 330) the following:

194E Power to make interim payments of family assistance credit

- (1) In the heading to section 225A, “**family assistance credit**” is replaced by “**WFF tax credit**”.
- (2) In section 225A(2)(b)(iii), “family assistance credit” is replaced by “WFF tax credit”.
- (3) In section 225A(2)(b)(iv), “family assistance credit” is replaced by “WFF tax credit”.

Clause 198B

New subclause (3): to add after *subclause (2)* (after line 7 on page 336) the following:

- (3) In section 68C(4), as inserted by **subsection (2)**, “section KJ 1 of the Income Tax Act 2004” is replaced by “section MK 1(1) of the Income Tax Act 2007”.

Clause 201

New subclause (4B): to insert after *subclause (4)* (after line 16 on page 340) the following:

- (4B) In the definition of **employer**, as inserted by **subsection (4)**,—
 - (a) in paragraph (b), “section NC 16 of the Income Tax Act 2004” is replaced by “section RA 8, RA 10, or RD 4(2) of the Income Tax Act 2007”:
 - (b) in paragraph (c), “section NC 16 of the Income Tax Act 2004” is replaced by “section RA 8, RA 10, or RD 4(2) of the Income Tax Act 2007”.

Subclause (5): paragraph (a): to replace “specified superannuation contribution” (line 19 on page 340) with “employer’s superannuation contribution”.

New subclause (5B): to insert after *subclause (5)* (after line 29 on page 340) the following:

- (5B) After the definition of **employer’s chosen KiwiSaver scheme**, the following is inserted:
“**employer’s superannuation contribution** has the same meaning as in section YA 1 of the Income Tax Act 2007”.

Subclause (7): to replace the definition (lines 8 to 10 on page 341) with the following:

“**PAYE period** has the same meaning as in paragraph (a) of the definition of **payment period** in section MK 10 of the Income Tax Act 2007” .

New subclause (8B): to insert after *subclause (8)* (after line 14 on page 341) the following:

(8B) The definition of **private domestic worker**, as inserted by **subsection (8)**, is replaced by the following:

“**private domestic worker** has the same meaning as in section YA 1 of the Income Tax Act 2007”.

Subclause (9)(b): definition of salary or wages: paragraph (a)(i): to replace the subparagraph (lines 26 to 28 on page 341) with the following:

“(i) salary or wages described in sections RD 5(4), (6)(b), and (6)(c) and RD 68 of the Income Tax Act 2007; and

Subclause (9)(b): definition of salary or wages, paragraph (a)(iii): to replace “expenditures” (lines 31 and 33 on page 341) with “expenditure” in both places in which it appears.

Subclause (9)(b): definition of salary or wages: paragraph (a)(v)(A): to replace the subparagraph (lines 7 to 9 on page 342) with the following:

“(A) salary or wages described in section RD 5(1)(b)(iii) and (7) of the Income Tax Act 2007; and” .

Subclause (9)(b): definition of salary or wages: paragraph (b), words before subparagraph (i): to replace the words (lines 16 and 17 on page 342) with the following:

“(b) it includes extra pay (as defined in section YA 1 of the Income Tax Act 2007), unless—” .

Subclause (10): to omit the subclause (lines 21 to 24 on page 342).

Clause 204

New subclause (2): to add as subclause (2) (after line 6 on page 344) the following:

(2) Section 17(6), as inserted by **subsection (1)**, is replaced by the following:

“(6) For the purposes of sections 17 to 20, a PAYE intermediary (within the meaning of section YA 1 of the Income Tax Act 2007) acting under sections RP 2 and RP 6 to RP 16 of that Act is treated as an employer.”

Clause 205B

New subclause (2): to add as subclause (2) (after line 22 on page 344) the following:

- (2) Section 23A, as inserted by **subsection (1)**, is replaced by the following:

“23A PAYE intermediaries

For the purposes of sections 22 and 23, a PAYE intermediary (within the meaning of section YA 1 of the Income Tax Act 2007) acting under sections RP 2 and RP 6 to RP 16 of that Act is treated as an employer.”

Clause 205D

New subclause (2): to add as subclause (2) (after line 6 on page 345) the following:

- (2) Section 34(5), as inserted by **subsection (1)**, is replaced by the following:

“(5) For the purposes of sections 34 to 37, a PAYE intermediary (within the meaning of section YA 1 of the Income Tax Act 2007) acting under sections RP 2 and RP 6 to RP 16 of that Act is treated as an employer.”

Clause 215

Section 93(2), (3), and (3B): to replace the subsections (lines 16 to 28 on page 356) with the following:

“(2) The payment of an amount of employer contribution must be accompanied by a PAYE payment form.

“(3) If the employer is not a private domestic worker, the contribution must be paid to the Commissioner within the time prescribed in section RA 15 of the Income Tax Act 2007 for the payment of amounts of tax withheld relating to the payment of salary or wages to which the contribution relates, as if the contribution were an amount of tax.

“(3B) If the employer is a private domestic worker, the contribution must be paid to the Commissioner within the time prescribed in sections RA 8, RA 10, and RD 4(2) of that Act for the payment of tax relating to the payment of salary or wages to which the contribution relates, as if the contribution were tax.

Clause 217

Heading to section 98A: to replace “**Income Tax Act 2004**” (lines 3 and 4 on page 358) with “**Income Tax Act 2007**”.

Section 98A: words before paragraph (a): to replace “Income Tax Act 2004” (line 5 on page 358) with “Income Tax Act 2007”.

Section 98A(b): to replace “remittance certificate” (lines 13 and 14 on page 358) with “PAYE payment form”.

Clause 218

New subclause (1B): to insert after **subclause (1)** (after line 24 on page 358) the following:

(1B) In section 99(2), the words before the formula, as inserted by **subsection (1)**, are replaced by the following:

“(2) For the purposes of this subpart, the amount of employer contribution (gross of any ESCT) that the Commissioner is treated as receiving for any 1 employee is given by the following formula:”.

Subclause (2): subsection (4): to replace “**section KJ 6** of the Income Tax Act 2004” (lines 28 and 29 on page 358) with “**section MK 1(2)** of the Income Tax Act 2007”.

Clause 219

Section 101D(5)(c): to replace “specified superannuation contributions” (line 25 on page 367) with “employer’s superannuation contributions”.

Clause 222

Section 117A: to replace the section (line 30 on page 373 to line 21 on page 374) with the following:

“117A Restrictions on transactions

“(1) This section applies to a KiwiSaver scheme if the scheme has less than 20 members, treating all interests in the scheme held by persons associated under the 1988 version provisions of the Income Tax Act 2007 as being held by 1 person.

“(2) A transaction between a scheme’s provider, and a person associated (under the 1988 version provisions of the Income Tax Act 2007) with either a provider or a member must use arm’s length amounts of consideration.

“(3) Despite **subsection (2)**,—

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

“(i) a provider (other than in their capacity of provider):

“(ii) a member:

“(iii) a person associated (under the 1988 version provisions of the Income Tax Act 2007) with a provider or member; and

“(b) the provider must not lend money or provide financial assistance to—

“(i) a member:

“(ii) a person associated (under the 1988 version provisions of the Income Tax Act 2007) with a provider or member.”

Clause 224E

Section 128C(1): to replace “section OB 1 of the Income Tax Act 2004” (lines 33 and 34 on page 376) with “section YA 1 of the Income Tax Act 2007”.

Clause 226B

New subclause (2): to add as subclause (2) (after line 6 on page 379) the following:

- (2) In section 153(d), as amended by **subsection (1)**, “of the Income Tax Act 2004” is replaced by “of the Income Tax Act 2004, the Income Tax Act 2007.”.

Clause 236

New subclause (7): to add after *subclause (6)* (after line 9 on page 386) the following:

- (7) In clause 14(2), as amended by **subsection (6)**, “section KJ 1 of the Income Tax Act 2004” is replaced by “section MK 1 of the Income Tax Act 2007”.

Clause 244

New subclause (1B): to insert after *subclause (1)* (after line 31 on page 393) the following:

- (1B) Section 73(2)(m), as inserted by **subsection (1)**, is replaced by the following:
 - “(m) any gift to the trustee of the Tokelau International Trust Fund, as defined in section YA 1 of the Income Tax Act 2007, for the purposes of that trust.”

New subclause (3): to insert after *subclause (2)* (after line 5 on page 394) the following:

- (3) Section 73(2)(n), as inserted by **subsection (2)**, is replaced by the following:
 - “(n) any gift to the trustee of the Niue International Trust Fund, as defined in section YA 1 of the Income Tax Act 2007, for the purposes of that trust.”

Clause 247

New subclause (2): to add as subclause (2) (after line 20 on page 394) the following:

- (2) In section 10(7), as amended by section ZA 2 and schedule 49 of the Income Tax Act 2007, “sections CX 27” is replaced by “sections CX 20”.

New clause 251BA

To insert after *clause 251* (after line 34 on page 398) the following:

251BA Relief from tax where new start grant made

- (1) In section 48A(3)(a), “section CX 41B(4) or EW 47B(4) of the Income Tax Act 2004” is replaced by “section CX 48(4) or EW 46(4) of the Income Tax Act 2007”.
- (2) In section 48A(3), in the words after paragraph (c), “section CX 41B(4) and (5) or section EW 47B(4) and (5) of the

Income Tax Act 2004” is replaced by “section CX 48(4) and (5) or EW 46(4) and (5) of the Income Tax Act 2007”.

Clause 251B

New subclause (2): to add as subclause (2) (after line 18 on page 399) the following:

- (2) In section 55(1)(a), as inserted by **subsection (1)**, “section IG 1 of the Income Tax Act 2004” is replaced by “section IC 3 of the Income Tax Act 2007”.

New heading and clause 263B

To insert after *clause 263* (after line 2 on page 407) the following:

Health (Drinking Water) Amendment Act 2007

263B New Part 2A inserted

In section 7 of the Health (Drinking Water) Amendment Act 2007, in section 69H(3)(a), “section OB 1 of the Income Tax Act 2004” is replaced by “section YA 1 of the Income Tax Act 2007”.

Clause 270(1)

Clause 6: to replace the clause (lines 11 to 15 on page 408) with the following:

- “6 The Commissioner of Inland Revenue crediting, transferring, refunding, dealing with, or otherwise paying, a person’s tax credit under the Income Tax Act 2007 or the Tax Administration Act 1994, if that tax credit is one which the person has under **section LH 2** of the Income Tax Act 2007.”

New heading and clauses 276 to 545

To add after *clause 275* (after line 25 on page 410) the following:

Amendments to Income Tax Act 2007

276 Income Tax Act 2007

Sections 277 to 545 amend the Income Tax Act 2007.

277 Commencement

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

“*Charitable entities*

- “(1B) Despite subsection (1), sections CW 41(2) and CW 42(1)(b) come into force on 1 July 2008.”

278 Withholding liabilities

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

“Retirement scheme contributions

- “(5B) A person who makes a retirement scheme contribution to a retirement savings scheme must pay RSCT under the RSCT rules.”
- (2) In section BE 5, in the list of defined terms, “retirement savings scheme”, “retirement scheme contribution”, “RSCT”, and “RSCT rules” are inserted.

279 Disposal: amount from major development or division and not already in income

Section CB 13(2) is replaced by the following:

“Exclusions

- “(2) Subsection (1) is overridden by the exclusions for residential land in section CB 17, for business premises in section CB 20, for farm land in section CB 21, and for investment land in section CB 23.”

280 Residential exclusion from sections CB 12 and CB 13

In section CB 17(1), in the words before paragraph (a), “Section CB 12 does” is replaced by “Sections CB 12 and CB 13 do”.

281 Business exclusion from section CB 12

- (1) In the heading to section CB 20, “**section CB 12**” is replaced by “**sections CB 12 and CB 13**”.
- (2) In section CB 20, in the words before paragraph (a), “Section CB 12 does” is replaced by “Sections CB 12 and CB 13 do”.

282 Investment exclusion from section CB 12

- (1) In the heading to section CB 23, “**section CB 12**” is replaced by “**sections CB 12 and CB 13**”.
- (2) In section CB 23, in the words before paragraph (a), “Section CB 12 does” is replaced by “Sections CB 12 and CB 13 do”.

283 New section CB 23B added

After section CB 23, the following is added:

“CB 23B Land partially sold or sold with other land

Sections CB 6 to CB 23 apply to an amount derived from the disposal of land if the land is—

- “(a) part of the land to which the relevant section applies:
“(b) the whole of the land to which the relevant section applies:
“(c) disposed of together with other land.

“Defined in this Act: amount, dispose, land

Compare: 2004 No 35 s CB 5A”.

284 Certain disposals by portfolio investment entities

Section CB 26 is replaced by the following:

“CB 26 Certain disposals by portfolio investment entities

“When this section applies

“(1) This section applies when—

“(a) a portfolio investment entity or the New Zealand Superannuation Fund (the **entity**) disposes of a share in a company; and

“(b) section CX 55 (Proceeds from certain disposals by portfolio investment entities or New Zealand Superannuation Fund) applies to the income from the disposal; and

“(c) a dividend from the share is—

“(i) declared before the disposal; and

“(ii) paid to a holder of the share who, after the disposal, becomes entitled to the dividend.

“Income

“(2) The entity is treated as deriving an amount calculated using the formula—

(declaration shares – distribution shares) × distribution.

“Definition of items in formula

“(3) In the formula,—

“(a) **declaration shares** is the number of shares held by the entity when the dividend is declared:

“(b) **distribution shares** is the number of shares for which the entity derives a dividend:

“(c) **distribution** is,—

“(i) for a share issued by a company that has an imputation credit account, the amount of the dividend that is not fully imputed as described in section RF 9(2) (When dividends fully imputed or fully credited); or

“(ii) otherwise, the amount of the dividend.

“Positive result

“(4) The amount calculated using the formula must be more than zero.

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

Compare: 2004 No 35 s CB 4B”.

285 Foreign investment fund income

(1) Section CD 36(b) is replaced by the following:

- “(b) the person calculates their foreign investment fund (FIF) income or loss in relation to the interest and the period in which the amount is paid under—
- “(i) the comparative value method:
 - “(ii) the deemed rate of return method:
 - “(iii) the cost method:
 - “(iv) the fair dividend rate method; and
- “(c) for a calculation under **paragraph (b)(iv)**,—
- “(i) the FIF is not a grey list company:
 - “(ii) the person does not hold a direct income interest of 10% or more in the FIF at the beginning of the income year in which the period falls.”
- (2) In section CD 36, in the list of defined terms, “grey list company” and “income year” are inserted.

286 Available subscribed capital (ASC) amount

In section CD 43(27)(b), “dividend” is replaced by “dividend (**section 0Z 13** (Fully credited dividends: modifying actual ratio) may apply to modify this paragraph)”.

287 When does a person have attributed repatriation from a controlled foreign company?

In section CD 45(1)(b), “EX 16” is replaced by “EX 17”.

288 Prevention of double taxation of share cancellation dividends

In section CD 53(5)(b), “RSCT,” is inserted before “RWT,”.

289 Tax credits added to caregiver’s income

Section CE 12 is replaced by the following:

“CE 12 Tax credits for personal service rehabilitation payments

“When this section applies

- “(1) This section applies when a person has a tax credit in a tax year under **section LB 7** (Tax credits related to personal service rehabilitation payments: providers).

“Income

- “(2) An amount equal to the credit is income of the person in the corresponding income year.

“Defined in this Act: amount, corresponding income year, income, income year, personal service rehabilitation payment, tax credit, tax year

Compare: 2004 No 35 s CE 12”.

290 Benefits, pensions, compensation, and government grants

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

291 Adjustments under consecutive or successive finance leases

Section CH 6 is replaced by the following:

“CH 6 Adjustments for certain finance and operating leases

“When this section applies

- “(1) This section applies when an adjustment is made under **section FA 11 or FA 11B** (which relate to adjustments for leases that become finance leases and certain operating leases).

“Income: leases that become finance leases

- “(2) The amount of a positive adjustment under **section FA 11** is income of the lessor or the lessee, as applicable, in the income year in which the lease becomes a finance lease.

“Income: operating leases entered into before 20 June 2007

- “(3) The amount of the adjustment under **section FA 11B** is income of the lessor in the income year after the income year in which 20 June 2007 falls.

“Defined in this Act: amount, finance lease, income, income year, lease, operating lease

Compare: 2004 No 35 ss FC 8H(6), FC 8I(6)”. ”

292 When FIF income arises

- (1) In section CQ 5(1)(d) and (e), “any time during the year” is replaced by “any time in the year” in each place in which it appears.
- (2) After section CQ 5(1), the following is inserted:
- “Treatment of transaction under section EX 63, EX 65, or EX 67*
- “(1B) If a person is treated under section EX 63(5), EX 65, or EX 67 (which relate to changes in method or application of FIF rules) as disposing of or acquiring rights in an income year, the disposal or acquisition is ignored for the purposes of subsection (1)(d) and (e).”

293 New section CQ 7 added

After section CQ 6, the following is added:

“CQ 7 Treatment of attributing interests subject to returning share transfer

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

“Defined in this Act: attributing interest, fair dividend rate method, FIF income, original share, returning share transfer, supplier

Compare: 2004 No 35 s EX 44B(5)”.

294 Withdrawals

In section CS 1(6), “RSCT,” is inserted before “RWT,”.

295 Exclusions of withdrawals of various kinds

Section CS 2(5) is repealed.

296 Meaning of petroleum miner

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

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

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

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

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

(a) “petroleum mining operations” is inserted:

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

297 New section CT 6B inserted

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 those described in **subsection (2)** and not excluded by **subsection (3)**.

“Activities: inclusions

“(2) The activities are those carried out in connection with—

“(a) prospecting or exploring for petroleum:

“(b) developing a permit area for producing petroleum:

“(c) producing petroleum:

“(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

“(b) it is done—

“(i) by liquefaction or compression; or

“(ii) for the extraction of constituent products; or

“(iii) for the production of derivative products; and

“(c) it is not treatment at the production facilities.

“Defined in this Act: permit area, petroleum, removal or restoration operations
Compare: 2004 No 35 s CT 6B”.

298 Proceeds of share disposal by qualifying foreign equity investor

(1) In section CW 12(4), in the definition of **foreign exempt entity**,—

(a) paragraph (c) is replaced by the following:

“(c) under the laws of the territory, or part of the territory, is not subject to a tax on income other than as a body that handles income of the members; and”:

(b) in paragraph (f)(iii), “taxation laws” is replaced by “laws” in all places in which it appears:

(c) in paragraph (f)(iii), “subparagraph (ii)” is replaced by “subparagraph (ii); and” and the following is added:

“(g) does not have a holder of a direct or indirect interest in the capital of the legal entity who,—

“(i) is resident in New Zealand:

“(ii) when treated as holding the voting interests of a person associated under the 1990 version provisions with the resident, holds a voting interest of 10% or more”.

(2) In section CW 12(4), in the definition of **foreign exempt partnership**,—

(a) paragraph (c) is replaced by the following:

“(c) under the laws of the territory, or part of the territory, is not subject to a tax on income other than as a body that handles income of the members; and”:

(b) in paragraph (h)(ii), “taxation laws” is replaced by “laws” in all places in which it appears:

- (c) in paragraph (h)(ii), “subparagraph (i)” is replaced by “subparagraph (i); and” and the following is added:
- “(i) does not have a holder of a direct or indirect interest in the capital of the legal entity who,—
- “(i) is resident in New Zealand:
- “(ii) when treated as holding the voting interests of a person associated under the 1990 version provisions with the resident, holds a voting interest of 10% or more”.
- (3) In section CW 12(4), in the definition of **foreign exempt person**,—
- (a) paragraph (c) is replaced by the following:
- “(c) under the laws of the territory, or part of the territory, derives the proceeds from a disposal of shares or options that are held by the person; and”:
- (b) in paragraph (e)(ii), “taxation laws” is replaced by “laws” in all places in which it appears:
- (c) in paragraph (e)(ii), “subparagraph (i)” is replaced by “subparagraph (i); and” and the following is added:
- “(f) does not have a holder of a direct or indirect interest in the capital of the legal entity who,—
- “(i) is resident in New Zealand:
- “(ii) when treated as holding the voting interests of a person associated under the 1990 version provisions with the resident, holds a voting interest of 10% or more”.
- (4) In section CW 12(5)(a) and (b), are replaced by the following:
- “(a) under a double tax agreement that is in force between New Zealand and the territory, if there is an agreement and it provides for the residency of the person; or
- “(b) otherwise, under the laws of the territory.”

299 Payment to claimant of certain accident compensation payments

Section CW 35, together with its heading, is replaced by the following:

“CW 35 Personal service rehabilitation payments

An amount paid to a person for an income year as a personal service rehabilitation payment is exempt income of the person if—

- “(a) they are paid the amount under the Injury Prevention, Rehabilitation, and Compensation Act 2001; and
- “(b) they pay an amount to another person for providing them in the income year a key aspect of social rehabilitation referred to in the definition of **personal service rehabilitation payment**; and

“(c) the amount paid is equal to or more than the amount of personal service rehabilitation payment for the income year after taking into account any amount of tax withheld.

“Defined in this Act: amount, amount of tax, exempt income, income year, pay, personal service rehabilitation payment

Compare: 2004 No 35 s CW 28B”.

300 Local authorities

Section CW 39(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; or”.

301 Charities: non-business income

Section CW 41(4), other than the heading, is replaced by the following:

“(4) This section does not apply to an amount of income derived by—

“(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.”

302 Charities: business income

Section CW 42(2), other than the heading, is replaced by the following:

“(2) This section does not apply to an amount of income derived by—

“(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.”

303 New section CW 59B inserted

After section CW 59, the following is inserted:

“CW 59B Income of and distributions by certain international funds*“Trustees*

“(1) An amount derived by a person is exempt income of the person if they are—

“(a) the trustee of the Niue International Trust Fund:

“(b) the trustee of the Tokelau International Trust Fund.

“Distributions

“(2) An amount derived by a person is exempt income of the person 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.

“Defined in this Act: amount, distribution, exempt income, income, Niue International Trust Fund, Tokelau International Trust Fund, trustee

Compare: 2004 No 35 ss CW 49C, CW 49D”.

304 New section CX 50B inserted

After section CX 50, the following is inserted:

“CX 50B Contributions to retirement savings schemes*“Excluded income*

“(1) A retirement scheme contribution is excluded income of a person if they are—

“(a) the person for whose benefit the contribution is made to the extent to which the contribution is an amount of—

“(i) money:

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

“(b) the retirement savings scheme.

“Exclusions

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

“(a) is non-resident, and the contribution is non-resident passive income:

“(b) supplies to the retirement scheme contributor or the retirement savings scheme, a tax rate applying to the amount of tax withheld that is less than the retirement scheme prescribed rate for the person:

“(c) includes the amount of the contribution in a return of income for the income year in which the contribution is made.

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

Compare: 2004 No 35 s CX 42B”.

305 Proceeds from certain disposals by portfolio investment entities or New Zealand Superannuation Fund

(1) Section CX 55(1) is replaced by the following:

“What this section applies to

“(1) This section applies to an amount of income derived by an entity referred to in **subsection (1B)** from the disposal of a share, other than a non-participating redeemable share, issued by a company—

“(a) resident in New Zealand and not treated under a double tax agreement as not resident in New Zealand; or

“(b) resident in Australia and not treated as resident in a country other than Australia under an agreement that—

“(i) is between Australia and that other country; and

“(ii) would be a double tax agreement if negotiated between New Zealand and that other country.

“Entities

“(1B) The entities referred to in **subsection (1)** are—

“(a) a portfolio investment entity;

“(b) the New Zealand Superannuation Fund;

“(c) a life insurer in relation to that part of the life insurer that is a portfolio investment-linked life fund.

“When this section does not apply

“(1C) This section does not apply if the entity is assured, under an arrangement with another person, of having a gain on the disposal.”

(2) In section CX 55(2), “or life insurer” is inserted after “Fund”.

(3) In section CX 55, in the list of defined terms, “portfolio investment-linked life fund” is inserted.

306 Portfolio investor allocated income and distributions of income by portfolio investment entities

(1) Section CX 56(1) is replaced by the following:

“Portfolio investor allocated income

- “(1) Portfolio investor allocated income derived under section CP 1 (Portfolio investor allocated income) in a portfolio calculation period in an income year by an investor in a portfolio tax rate entity is excluded income of the investor if—
- “(a) the prescribed investor rate for the investor and the portfolio calculation period is more than zero; and
- “(b) the prescribed investor rate for the investor and the portfolio calculation period is not more than the portfolio investor rate for the investor and the portfolio calculation period when the entity calculates in relation to the portfolio investor allocated income—
- “(i) the portfolio entity tax liability of the entity; or
- “(ii) the amount of a payment under section HL 25 (Optional payments of tax by portfolio tax rate entities) that the entity intends to be a final payment of the portfolio entity tax liability of the entity in relation to the portfolio investor allocated income; and
- “(c) for a portfolio tax rate entity making payments of tax under section HL 22 (Payments of tax by portfolio tax rate entity making no election), the portfolio investor allocated income is not allocated to a portfolio allocation period that includes part of a portfolio investor exit period for the investor.”
- (2) In section CX 56(2), “distribution by” is replaced by “distribution or dividend of”.
- (3) In section CX 56(3), in the words before paragraph (a), “distribution by” is replaced by “distribution or dividend of”.
- (4) Section CX 56(3)(a)(i) is replaced by the following:
- “(i) is a natural person or a trustee; and”.
- (5) In section CX 56, in the list of defined terms, “dividend” is inserted.

307 Cost of revenue account property

- (1) Section DB 23(2)(a) is replaced by the following:
- “(a) the person is a portfolio investment entity or a life insurer in relation to that part of the life insurer that is a portfolio investment-linked life fund; and”.
- (2) In section DB 17, in the list of defined terms, “portfolio investment-linked life fund” is inserted.

308 Research or development

- (1) Section DB 34(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”.

- (2) Section DB 34(3) is repealed.
- (3) In section DB 34(4)(a), “of paragraph 2.3 of the reporting standard” is replaced by “it is an amount written off as an immaterial amount for financial reporting purposes”.
- (4) Section DB 34(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.”
- (5) Section DB 34(5)(b) is replaced by the following:
 - “(b) has written off the expenditure as an immaterial amount for financial reporting purposes; and”.

309 Some definitions

Section DB 35(1), other than the heading, is replaced by the following:

- “(1) In this section, and in section DB 34,—
 - “**development** is defined in paragraph 8 of the reporting standard
 - “**reporting standard** means the New Zealand Equivalent to International Accounting Standard 38, approved by the Accounting Standards Review Board, as amended from time to time, or an equivalent standard issued in its place
 - “**research** is defined in paragraph 8 of the reporting standard.”

310 Charitable or other public benefit gifts by company

- (1) Section DB 41(1) is repealed.
- (2) In section DB 41(2),—
 - (a) “The company” is replaced by “A company”.
 - (b) “described in section LD 3(2) (Meaning of charitable or other public benefit gift) or” is inserted after “any of the kinds”.
- (3) In section DB 41(3), “5% of” is omitted.

310B New heading and new section DB 51B inserted

After section DB 51, the following is inserted:

*“Adjustments for leases that become finance leases***“DB 51B Adjustments for leases that become finance leases**

“When this section applies

- “(1) This section applies when an adjustment made under **section FA 11** (Adjustments for leases that become finance leases) is negative.

“Deduction

- “(2) The amount of the adjustment is a deduction of the lessor or the lessee, as applicable, in the income year in which the lease becomes a finance lease.

“Link with subpart DA

- “(3) This section supplements the general permission. The general limitations still apply.

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

Compare: 2004 No 35 s FC 8H(7)”.

311 Portfolio investment entities: zero-rated portfolio investors and allocated losses

- (1) In section DB 53(2)(a), “or HL 23 (Payments of tax by portfolio tax rate entity choosing to pay provisional tax)” is omitted.
- (2) In section DB 53(2)(a), “the end of the portfolio calculation period” is replaced by “the end of the portfolio tax rate entity’s income year”.
- (3) In section DB 53, in the compare note, “DB 17” is replaced by “DB 43B”.

312 Accident compensation payment for attendant care

Section DF 4 is replaced by the following:

“DF 4 Payments for social rehabilitation

“When this section applies

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

“Deduction

- “(2) The person is allowed a deduction for an amount calculated using the formula—

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

“Definitions of items in formula

“(3) In the formula,—

“(a) **amount paid** is the amount paid by the person for a key aspect of social rehabilitation provided to them for the income year, to the extent to which the amount is less than the amount of personal service rehabilitation payment paid to them for the income year after taking into account any amount of tax withheld:

“(b) **tax rate** is the rate of tax applying to the personal service rehabilitation payment under schedule 4, part H, clause 1 (Rates of tax for schedular payments).

“Link with subpart DA

“(4) 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.

“Defined in this Act: amount, amount of tax, assessable income, capital limitation, general limitation, general permission, income year, pay, personal service rehabilitation payment, private limitation, tax

Compare: 2004 No 35 s DF 4”.

313 When FIF loss arises

- (1) In section DN 6(1)(d), “at any time during the income year” is replaced by “at any time in the year”.
- (2) In section DN 6(1)(e), “at any time during the year” is replaced by “at any time in the year”.
- (3) After section DN 6(1) the following is inserted:

“Treatment of transaction under section EX 63, EX 65, or EX 67

“(1B) If a person is treated under section EX 63(5), EX 65 or EX 67 (which relate to changes in method or application of FIF rules) as disposing of or acquiring rights in an income year, the disposal or acquisition is ignored for the purposes of subsection (1)(d) and (e).”

314 Acquiring film rights

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

“(c) **section DS 2B** applies to the expenditure.”
- (2) In section DS 1(4), “any other provision of this Act” is replaced by “a provision of this Act other than **section DS 2B**”.

315 Film production expenditure

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

“Exclusion

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

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

“(b) is intended to be shown as an advertisement:

“(c) **section DS 2B** applies to the film production expenditure.

“Timing of deduction

- “(4) The deduction is allocated under—

“(a) section EJ 4 (Expenditure incurred in acquiring film rights in feature films) or EJ 5 (Expenditure incurred in acquiring film rights in films other than feature films) if the film is one for which a large budget screen production grant is made; or

“(b) **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.”

- (2) In section DS 2(5), “any other provision of this Act” is replaced by “a provision of this Act other than **section DS 2B**”.

316 New section DS 2B inserted

After section DS 2, the following is inserted:

“DS 2B Expenditure when film or film right intended for disposal*“When this section applies*

- “(1) This section applies when—

“(a) a person incurs film production expenditure or expenditure in acquiring a film right; and

“(b) at the time of incurring the expenditure, the person intends to dispose of the film or film right.

“Deduction

- “(2) The person is allowed a deduction for the amount of the expenditure allocated under section EA 2 (Other revenue account property).

“Link with subpart DA

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

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

Compare: 2004 No 35 s DS 2B”.

317 Maori authorities: donations

- (1) In section DV 12(1)(b), “of any of the kinds listed in schedule 32 (Recipients of charitable or other public benefit gifts)” is replaced by “to which section LD 3(2) (Meaning of charitable or other public benefit gift) or schedule 32 (Recipients of charitable or other public benefit gifts) applies”.
- (2) In section DV 12(2), “5% of” is omitted.

318 Cost

- (1) In section EB 6(1), “or as described in **subsection (1B)(b)**” is inserted after “accounting practice”.
- (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
- “(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”.
- (4) After section EB 6(2), the following is inserted:

“Definition

- “(3) In this section, **NZIAS 41** means New Zealand Equivalent to International Accounting Standard 41, approved by the Accounting Standards Review Board as amended from time to time, or an equivalent standard issued in its place.”
- (5) In section EB 6, in the list of defined terms, “NZIAS 2” and “NZIAS 41” are inserted.

319 Discounted selling price

- (1) In section EB 9(3)(a), “Financial Reporting Standard No 4 (Accounting for Inventories) approved under the Financial Reporting Act 1993” is replaced by “NZIAS 2”.

- (2) In section EB 9, in the list of defined terms, “NZIAS 2” is inserted.

320 Valuing closing stock consistently

- (1) In section EB 12, “Financial Reporting Standard No 1 (Disclosure of Accounting Policies) approved under the Financial Reporting Act 1993” is replaced by “NZIAS 8”.
- (2) In section EB 12, in the list of defined terms, “NZIAS 8” is inserted.

321 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”.
- (2) In section EB 19, in the list of defined terms, “NZIAS 2” is inserted.

322 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 1983” is replaced by “NZIAS 8”.
- (2) In section EB 22, in the list of defined terms, “NZIAS 8” is inserted.

323 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:
“(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—
“(a) the other person transferred the bloodstock to person A under a matrimonial agreement to which section FB 18 (Bloodstock) applies:
“(b) the other person was a company in the same wholly-owned group as person A at the time person A acquired the bloodstock from the other person:
“(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—

- “(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.”

324 Valuation of excepted financial arrangements

- (1) In section ED 1(6), “Financial Reporting Standard No 1 (Disclosure of Accounting Policies) approved under the Financial Reporting Act 1993” is replaced by “NZIAS 8”.
- (2) In section ED 1, in the list of defined terms, “NZIAS 8” is inserted.

325 Special rate or provisional rate

After section EE 35(3), the following is added:

“Exception

- “(4) Section FA 11B(7) (Adjustments for certain operating leases) overrides this section.”

326 Meaning of adjusted tax value

In section EE 55, the following is added as subsection (2):

“Exception

- “(2) Section FA 11B(6) (Adjustments for certain operating leases) overrides this section.”

327 Meaning of annual rate

After section EE 61(7), the following is added:

“Exception

- “(8) Section FA 11B(7) (Adjustments for certain operating leases) overrides this section.”

328 Allocation of income and deductions by portfolio tax rate entity

- (1) In the heading to section EG 3, “**income and deductions**” is replaced by “**income, deductions, and tax credits**”.
- (2) After section EG 3(2), the following is added:

“Tax credits
- “(3) A tax credit received by a portfolio tax rate entity is allocated to the portfolio allocation period under subsection (2) of the income year to which the credit relates.”
- (3) In section EG 3, in the list of defined terms, “tax credit” is inserted.

329 Expenditure incurred in acquiring film rights in feature films

Section EJ 4(1), other than the heading, is replaced by the following:

- “(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—
- “(a) the deduction is allowed under section DS 1 (Acquiring film rights):
 - “(b) the deduction is allowed under section DS 2 (Film production expenditure) and the film is one for which a large budget screen production grant is made.”

330 Expenditure incurred in acquiring film rights in films other than feature films

Section EJ 5(1), other than the heading, is replaced by the following:

- “(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 allowed under section DS 1 (Acquiring film rights):
 - “(b) the deduction is allowed under section DS 2 (Film production expenditure) and the film is one for which a large budget screen production grant is made.”

331 Film production expenditure for New Zealand films

- (1) In the heading to section EJ 7, “**having no large budget screen production grant**” is added after “**New Zealand films**”.

- (2) Section EJ 7(1), other than the heading, is replaced by the following:

- “(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 has a final certificate under section EJ 6.”

332 Film production expenditure for films other than New Zealand films

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

- (2) Section EJ 8(1), other than the heading, is replaced by the following:

- “(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.”

333 What spreading methods do

- (1) Before section EW 14(2)(a), the following is inserted:
- “(aa) a method for IFRS, to which **sections EW 15B to EW 15I** relate; or”.
- (2) Section EW 14(2)(e) is repealed.

334 What is included when spreading methods used

- (1) In section EW 15(1)(a), “ignoring non-contingent fees; and” is replaced by “ignoring—”, and the following is added:
- “(i) non-contingent fees, if the relevant method is not the IFRS financial reporting method in **section EW 15D**;
 - “(ii) non-integral fees, if the relevant method is the IFRS financial reporting method in **section EW 15D**; and”.
- (2) 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 method is not the IFRS financial reporting method in **section EW 15D**;
 - “(ii) non-integral fees, if the relevant method is the IFRS financial reporting method in **section EW 15D**; and”.
- (3) In section EW 15, in the list of defined terms, “IFRS” and “non-integral fee” are inserted.

335 New sections EW 15B to EW 15I inserted

After section EW 15, the following is inserted:

“EW 15B Applying IFRSs to financial arrangements

“When sections EW 15C to EW 15I apply

- “(1) **Sections EW 15C to EW 15I** apply when a person who is a party to a financial arrangement uses IFRSs to prepare financial statements and to report for financial arrangements.

“Certain methods available for use and certain mandatory

- “(2) **Sections EW 15C to EW 15I** set out—
- “(a) the methods available to the person to use for calculating and allocating income and expenditure under a financial arrangement:
 - “(b) the circumstances in which a person must use certain other methods.

“Defined in this Act: financial arrangement, financial statements, IFRS, income
Compare: 2004 No 35 s EW 15B

“EW 15C Preparing and reporting methods

“Who this section applies to

- “(1) A person who uses IFRSs to prepare financial statements and to report for financial arrangements must use 1 of the following methods for the financial arrangement:
- “(a) the IFRS financial reporting method in **section EW 15D**:
 - “(b) a determination alternative in **section EW 15E**:
 - “(c) the expected value method in **section EW 15F**:
 - “(d) the modified fair value method in **section EW 15G**.

“Exclusions

- “(2) **Subsection (1)** does not apply in the circumstances set out in **sections EW 15H and EW 15I**.

“Defined in this Act: fair value method, financial arrangement, financial statements, IFRS

Compare: 2004 No 35 s EW 15B(6)

“EW 15D IFRS financial reporting method

“General IFRS rules

- “(1) Under the IFRS financial reporting method, a person must allocate an amount to an income year under IFRS rules modified, as applicable, under **subsection (2)**.

“Modifications

- “(2) The allocation is modified as follows:
- “(a) if the financial arrangement is a financial asset, an amount arising from an impaired credit adjustment under IFRSs is not allocated to an income year:
 - “(b) even though an amount arising from the use of the fair value method may be allocated to equity reserves under IFRSs, the amount must be allocated to an income year for tax purposes.

“Meaning of impaired credit adjustment

- “(3) For the purposes of this section, **impaired credit adjustment** means—
- “(a) for a financial arrangement accounted for under the fair value method, the movement in fair value through the decline in credit quality of the arrangement:
 - “(b) for a financial arrangement not accounted for under the fair value method, credit impairment adjustments made under IFRSs.

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

Compare: 2004 No 35 s EW 15C

“EW 15E Determination alternatives

“When this section applies

- “(1) This section applies when—
- “(a) a person chooses in a return of income to use a determination alternative to IFRS for a financial arrangement; and
 - “(b) the method is available under its terms for the person to use; and
 - “(c) the financial arrangement is not treated under IFRSs as a hedge of a financial arrangement (**financial arrangement A**), and—
 - “(i) **section EW 15D** applies or has applied to financial arrangement A; and
 - “(ii) the method used for financial arrangement A is or was the fair value method or a method that accounts for gains and losses related to the hedge.

“General IFRS rules

- “(2) The person must use 1 of the following methods modified, as applicable, under **subsection (3)**:
- “(a) *Determination G9C: Financial arrangements that are denominated in a currency other than New Zealand dollars: an expected value approach:*
 - “(b) *Determination G14B: Forward contracts for foreign exchange and commodities: an expected value approach:*
 - “(c) *Determination G27: Swaps:*
 - “(d) a determination made by the Commissioner under **section 90AC(1)(ba)** of the Tax Administration Act 1994:
 - “(e) a method other than those set out in **paragraphs (a) to (d)** if the alternative—
 - “(i) has regard to the purposes of the financial arrangements rules under section EW 1(3); and

- “(ii) is for a financial arrangement similar to 1 to which the methods set out in **paragraphs (a) to (d)** may apply; and
- “(iii) results in the allocation to each income year of amounts that are not materially different from those that would have been allocated using 1 of the methods set out in **paragraphs (a) to (d)**.

“Modifications

- “(3) For a determination alternative that is *Determination G9C or G14B*, the allocation is modified as follows:
 - “(a) the term **forward contract** is treated as including a conditional or unconditional agreement to pay or be paid an amount calculated by reference to the price of property or services, without the property being delivered or the services being performed:
 - “(b) a requirement that all companies in a group of companies to which the person belongs choose to use the determination alternative is treated as met if—
 - “(i) all companies in the group choose *Determination G9C or G14B* in writing on or before the 63rd day after the person enters into the financial arrangement, or a later time as the Commissioner allows; and
 - “(ii) the financial arrangement is the first financial arrangement of the group for which *Determination G9C or G14B* may be used.

“Succeeding determinations

- “(4) For the purposes of this section, the determinations set out in **subsection (2)(a) to (c)** include a determination that succeeds the determination.

“Defined in this Act: amount, company, financial arrangement, financial arrangements rules, group of companies, IFRS, income year, pay, return of income

Compare: 2004 No 35 s EW 15D

“EW 15F Expected value method

“When this section applies

- “(1) This section applies when—
 - “(a) a person has entered into a financial arrangement in the ordinary course of their business and the person is not in the business of dealing in relation to the financial arrangement; and
 - “(b) the financial arrangement is denominated in a currency other than New Zealand dollars or is a derivative instrument; and

- “(c) the financial arrangement is not treated under IFRSs as a hedge of a financial arrangement (**financial arrangement A**), and—
 - “(i) **section EW 15D** applies or has applied to financial arrangement A; and
 - “(ii) the method used for financial arrangement A is or was the fair value method or a method that accounts for gains and losses related to the hedge; and
- “(d) the person and all companies in a group of companies to which the person belongs have chosen to use the expected value method by notifying the Commissioner at the time of filing a return of income.

“Method chosen

- “(2) The person must use a method that—
 - “(a) has the features of an expected value approach described in *Determinations G9C and G14B*; and
 - “(b) allocates a reasonable amount for each income year of the term of the financial arrangement, having regard to the purposes of the financial arrangements rules under section EW 1(3).

“Meaning of derivative instrument

- “(3) For the purposes of this section and **section EW 15G**, **derivative instrument** has the same meaning as in NZIAS 39.

“Defined in this Act: amount, business, Commissioner, company, derivative instrument, financial arrangement, financial arrangements rules, group of companies, IFRS, notify, return of income

Compare: 2004 No 35 s EW 15E(1), (2)

“EW 15G Modified fair value method

“When this section applies

- “(1) This section applies when—
 - “(a) a person has entered into a financial arrangement in the ordinary course of their business and the person is not in the business of dealing in relation to the financial arrangement; and
 - “(b) the financial arrangement is denominated in a currency other than New Zealand dollars or is a derivative instrument; and
 - “(c) the financial arrangement is not treated under IFRSs as a hedge of a financial arrangement (**financial arrangement A**), and—
 - “(i) **section EW 15D** applies or has applied to financial arrangement A; and

- “(ii) the method used for financial arrangement A is or was the fair value method or a method that accounts for gains and losses related to the hedge; and
- “(d) the person and all companies in a group of companies to which the person belongs have chosen to use the fair value method by notifying the Commissioner at the time of filing a return of income.

“*Method chosen*

- “(2) The person must use a method that is the fair value method under IFRSs. However an amount allocated to equity reserves under IFRSs must not be allocated to an income year.

“Defined in this Act: amount, business, Commissioner, company, derivative instrument, fair value method, financial arrangement, group of companies, IFRS, notify, return of income

Compare: 2004 No 35 s EW 15E(1), (3)

“**EW 15H Mandatory use of some determinations**

“*Required methods*

- “(1) **Section EW 15C(1)** does not apply when any of the following determinations apply to a person and a financial arrangement:
 - “(a) *Determination G5C: Mandatory conversion convertible notes:*
 - “(b) *Determination G22: Optional conversion convertible notes denominated in New Zealand dollars convertible at the option of the holder:*
 - “(c) *Determination G22A: Optional convertible notes denominated in New Zealand dollars:*
 - “(d) *Determination G29: Agreements for sale and purchase of property denominated in foreign currency: exchange rate to determine the acquisition price and method for spreading income and expenditure:*
 - “(e) a method other than those set out in **paragraphs (a) to (d)** if the alternative—
 - “(i) has regard to the purposes of the financial arrangements rules under section EW 1(3); and
 - “(ii) is for a financial arrangement similar to 1 to which the methods set out in **paragraphs (a) to (d)** may apply; and
 - “(iii) results in the allocation to each income year of amounts that are not materially different from those that would have been allocated using 1 of the methods set out in **paragraphs (a) to (d)**.

“Succeeding determinations

- “(2) For the purposes of this section, the determinations set out in **subsection (1)(a), (c), and (d)** include a determination that succeeds the determination.

“Defined in this Act: amount, financial arrangement, financial arrangements rules, income year

Compare: 2004 No 35 s EW 15B(3)

“EW 15I Mandatory use of yield to maturity method for some arrangements

“When this section applies

- “(1) This section applies and **section EW 15C(1)** does not apply when—

“(a) a person is not required to use a method under **section EW 15H** for a financial arrangement; and

“(b) the financial arrangement—

“(i) includes in part an excepted financial arrangement; or

“(ii) is treated by the person or its issuer, all or in part, as an equity instrument under IFRSs; or

“(iii) is an agreement for the sale and purchase of property or services.

“Methods

- “(2) The person must use 1 of the following methods to allocate an amount to an income year if the method is available under its terms for the person to use:

“(a) the yield to maturity method:

“(b) *Determination G26: Variable rate financial arrangements* or a determination that succeeds it:

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

“(d) a method other than those set out in **paragraphs (a) to (c)** if the alternative—

“(i) has regard to the purposes of the financial arrangements rules under section EW 1(3); and

“(ii) is for a financial arrangement similar to 1 to which the methods set out in **paragraphs (a) to (c)** may apply; and

“(iii) results in the allocation to each income year of amounts that are not materially different from those that would have been allocated using 1 of the methods set out in **paragraphs (a) to (c)**.

“Meaning of equity instrument

- “(3) For the purposes of this section, **equity instrument** has the same meaning as in NZIAS 32.

“Defined in this Act: agreement for the sale and purchase of property or services, amount, Commissioner, equity instrument, excepted financial arrangement, financial arrangement, financial arrangements rules, IFRS, income year, issue

Compare: 2004 No 35 s EW 15B(4)”.

336 Yield to maturity method or alternative

- (1) In section EW 16(1), “method” is replaced by “method, if the person is not required to use a method under **section EW 15B**”.
- (2) In section EW 16(2), in the words before paragraph (a), “method” is replaced by “method, if the person is not required to use a method under **section EW 15B**”.
- (3) In section EW 16, in the list of defined terms, “IFRS” is inserted.

337 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:

“(c) the person is not required to use a method under **section EW 15B**.”
- (2) In section EW 17, in the list of defined terms, “IFRS” is inserted.

338 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 a method under **section EW 15B**.”
- (2) In section EW 18, in the list of defined terms, “IFRS” is inserted.

339 Choice among first 3 spreading methods

- (1) In the heading to section EW 19, “**first 3**” is replaced by “**some**”.
- (2) In section EW 19, “A person who” is replaced by “A person who is not required to use a method under **section EW 15B** and who”.
- (3) In section EW 19, in the list of defined terms, “IFRS” is inserted.

340 Determination method or alternative

- (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 a method under **section EW 15B.**”

- (2) After section EW 20(2)(b), the following is inserted:
“(bb) the person is not required to use a method under **section EW 15B**; and”.
- (3) In section EW 20, in the list of defined terms, “IFRS” is inserted.

341 Financial reporting method

Section EW 21 is repealed.

342 Default method

- (1) In section EW 22(c), “, or a financial reporting method” is omitted.
- (2) Section EW 22(d) is repealed.

343 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 in which it appears.
- (2) After section EW 23(3), the following is added:
“*IFRS financial reporting*”
- “(4) This section is modified by **section EZ 32B** (Transitional rule for IFRS reporting).”
- (3) In section EW 23, in the list of defined terms, “IFRS” is inserted.

344 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 a method for IFRS preparers.”
- (2) In section EW 24, in the list of defined terms, “IFRS” is inserted.

345 New section EW 25B inserted

After section EW 25, the following is inserted:

“EW 25B Consistency of use of IFRS method

“*Consistency*

- “(1) A person who uses a method for IFRS under **section EW 15C** for a financial arrangement must use the method for—
 - “(a) the remaining term of the arrangement until section EW 29 requires them to calculate a base price adjustment for the arrangement:

“(b) other financial arrangements that are the same as, or similar to, the arrangement unless a different accounting treatment under IFRSs is used.

“Exception

“(2) Despite **subsection (1)(a)**, a person may change a method for IFRS if—

“(a) the new method is available to them to use; and

“(b) the accounting treatment for the financial arrangement under IFRSs is changed in the same income year in which the method is changed for tax purposes.

“Spreading method adjustment

“(3) For the purposes of **subsection (2)**, section EW 26(3), (4), and EW 27 apply as if the change in method were a change under section EW 26(2). However, those sections do not apply if the change is from the fair value method, in which case **section EW 29(13)** applies.

“Defined in this Act: fair value method, financial arrangement, IFRS, income year
Compare: 2004 No 35 s EW 25B”.

346 Change of spreading method

(1) After section EW 26(5), the following is inserted:

“Exception for fair value method

“(6) Subsection (3) and (4) and section EW 27 do not apply to a financial arrangement if the person’s change of spreading method involves a change from the fair value method, in which case **section EW 29(13)** applies.

“Meaning of sound commercial reason

“(7) In this section, **sound commercial reason** includes—

“(a) starting or stopping the use of IFRSs to prepare financial statements:

“(b) starting to use a method for IFRS under **section EW 15B** for a financial arrangement for the first time.”

(2) In section EW 26, in the list of defined terms, “fair value method”, “financial statements”, “IFRS”, and “sound commercial reason” are inserted.

347 When calculation of base price adjustment required

(1) After section EW 29(12), the following is inserted:

“Changing from fair value method

“(13) A party to the financial arrangement who changes from the fair value method to another method must calculate a base price adjustment at the date of the change.”

- (2) In section EW 29, in the list of defined terms, “fair value method” is inserted.

348 Base price adjustment formula

- (1) In section EW 31(7), “ignoring non-contingent fees; and” is replaced by “ignoring—”, and the following is added:
- “(a) non-contingent fees, if the relevant method is not the IFRS financial reporting method in **section EW 15D**:
 - “(b) non-integral fees, if the relevant method is the IFRS financial reporting method in **section EW 15D**.”
- (2) In section EW 31, in the list of defined terms, “IFRS” and “non-integral fee” are inserted.

349 New section EW 46B inserted

After section EW 46, the following is inserted:

“EW 46B Consideration when party changes from fair value method

“When this section applies

- “(1) This section applies when a party to a financial arrangement—
- “(a) changes from the fair value method to another method; and
 - “(b) is required under **section EW 29(13)** to calculate a base price adjustment at the date of the change.

“Consideration

- “(2) The person is treated as having been paid an amount equal to the market value of the financial arrangement on the date of the change.

“Defined in this Act: amount, fair value method, financial arrangement

Compare: 2004 No 35 s EW 48B”.

350 Meaning of controlled foreign company

In section EX 1(2) “1 of the tests” is replaced by “a test”.

351 Options and similar rights in certain cases

In section EX 11(3)(b) “under sections EX 14 to EX 17” is inserted after “10%”.

352 Associates and 10% threshold

Section EX 15(1), other than the heading, is replaced by the following:

- “(1) For the purpose of applying the 10% threshold in section EX 14, a person’s income interest in a CFC is increased by each income interest in the CFC, for the relevant accounting period, of a person associated with the person.”

353 Taxable distribution from non-complying trust

In section EX 19(4) “RSCT,” is inserted before “RWT,”.

354 Exemption for ASX-listed Australian companies

- (1) Section EX 31, other than the heading and the list of defined terms, is replaced by the following:

“Exemption

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

- “(a) the rights are a share; and
- “(b) the share is not a share that may not, or ordinarily may not, be disposed of unless together with rights in another company; and
- “(c) the FIF is a company that meets the requirements of **subsection (2)**.

“Australian listed company on approved index

- “(2) The company must—

- “(a) at all times in the year when the person holds a right in the company, be resident in Australia; and
- “(b) at all times in the year when the person holds a right in the company, not be treated as resident in a country other than Australia under an agreement that—
 - “(i) is between Australia and that other country; and
 - “(ii) would be a double tax agreement if negotiated between New Zealand and that other country; and
- “(c) have shares included in an index that is an approved index under the ASX Market Rules, made under Chapter 7 of the Corporations Act 2001 (Aust),—
 - “(i) at the beginning of an income year, if **subparagraph (ii)** does not apply; or
 - “(ii) when the person acquires the shares, if the person does not own shares in the company earlier in the year; and
- “(d) at all times in the year when the person holds a right in the company, not be an entity described in schedule 25, part B (Foreign investment funds); and
- “(e) at all times in the year when the person holds a right in the company, be required under the Income Tax Assessment Act 1997 (Aust) and Income Tax Assessment Act 1936 (Aust) to maintain a franking account.”

- (2) In section EX 31, in the list of defined terms, “direct income interest” and “income tax” are omitted.

355 Exemption for Australian unit trusts with 25% turnover

Section EX 32 is replaced by the following:

“EX 32 Exemption for Australian unit trusts with adequate turnover or distributions

“Exemption

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

“(a) the rights are a direct income interest; and

“(b) the FIF is a unit trust; and

“(c) at all times in the year when the person holds a right in the unit trust, the unit trust is resident in Australia; and

“(d) at all times in the year when the person holds a right in the unit trust, the unit trust is not treated as resident in a country other than Australia under an agreement that—

“(i) is between Australia and that other country; and

“(ii) would be a double tax agreement if negotiated between New Zealand and that other country; and

“(e) the unit trust is, at all times in the year, not an entity described in schedule 25, part B (Foreign investment funds); and

“(f) at all times in the year when the unit trust makes a distribution to investors, there is an RWT proxy under section 15T of the Tax Administration Act 1994 for the unit trust and payments by the unit trust to the person; and

“(g) for the trust’s accounting year (the **trust’s year**) that ends in the person’s income year, the unit trust meets—

“(i) the 25% minimum share turnover test in **subsection (2)**:

“(ii) the 70% minimum distribution test in **subsection (7)**.

“25% minimum turnover test

“(2) The 25% minimum turnover test requires that, for the trust’s year, the amount of total net realised gains calculated under **subsection (3)** must be 25% or more of the amount of total net unrealised gains at the end of the year calculated under **subsection (5)**.

“Calculation of total net realised gains

“(3) The amount of total net realised gains is calculated using the formula—

total disposal gain – total cost.

“Definition of items in formula

- “(4) In the formula in **subsection (3)**,—
- “(a) **total disposal gain** is the total of amounts derived from disposal of shares by the unit trust during the trust’s year:
 - “(b) **total cost** is the total cost to the unit trust of those shares.

“Calculation of total net unrealised gains

- “(5) The amount of total net unrealised gains is calculated using the formula—
- total profitable shares – total cost.

“Definition of items in formula

- “(6) In the formula in **subsection (5)**,—
- “(a) **total profitable shares** is the total of the market values of shares of the unit trust that are—
 - “(i) held at the end of the trust’s year; and
 - “(ii) have a market value greater than or equal to their cost to the unit trust:
 - “(b) **total cost** is the total cost to the unit trust of those shares.

“70% minimum distribution test

- “(7) The 70% minimum distribution test requires that, for the trust’s year, the total amount of distributions by the unit trust during the trust’s year must be 70% or more of the total distributable gains for the trust’s year calculated under **subsection (8)**.

“Calculation of total distributable gains

- “(8) The amount of total distributable gains is calculated using the formula—
- closing equity + distributions – opening equity
– contributions.

“Definition of items in formula

- “(9) In the formula in **subsection (8)**,—
- “(a) **closing equity** is the amount by which, at the end of the trust’s year, the market value of the unit trust’s assets is more than the market value of the unit trust’s liabilities:
 - “(b) **distributions** is the total amount of distributions to investors by the unit trust during the trust’s year:
 - “(c) **opening equity** is the amount by which, at the beginning of the trust’s year, the market value of the unit trust’s assets is more than the market value of the unit trust’s liabilities:

“(d) **contributions** is the total amount of contributions by investors by the unit trust during the trust’s year.

“*Currency*

“(10) The calculations must be done in the currency of the unit trust’s financial accounts.

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

Compare: 2004 No 35 s EX 33D”.

356 Venture capital company emigrating to grey list country: 10-year exemption

(1) In section EX 36(d), the words before subparagraph (i) are replaced by the following:

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

(2) Section EX 36(e)(i) is replaced by the following:

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

(3) Section EX 36(h)(i) and (ii) are replaced by the following:

“(i) incurs in the year, expenditure other than interest of at least \$1,000,000 or, if less than \$1,000,000, at least 25% of the total expenditure, other than interest, incurred by the company in the year; and

“(ii) at all times in the year, engages at least 10 full-time employees or contractors or, if less than 10, at least 25% of the total number engaged by the company.”

357 Grey list company owning New Zealand venture capital company: 10-year exemption

(1) In section EX 37, paragraph (d) is replaced by the following:

“(d) 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”.

(2) Section EX 37(e) is replaced by the following:

“(e) at all times in the year, the grey list company holds more than 50% of the voting interests in a company (the **resident company**) that, for 12 months or more, has—

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

“(ii) had in New Zealand more than 50% of the resident company’s assets; and

“(iii) had in New Zealand more than 50% of the resident company’s employees; and”.

(3) Section EX 37(g)(i) and (ii) are replaced by the following:

- “(i) incurs in the year expenditure, other than interest, of at least \$1,000,000 or, if less than \$1,000,000, at least 25% of the total expenditure, other than interest, incurred by the company in the year:
- “(ii) at all times in the year, engages at least 10 full-time employees or contractors or, if less than 10, at least 25% of the total number engaged by the company.”

358 New section EX 37B inserted

After section EX 37, the following is inserted:

“EX 37B Share in grey list company acquired under venture investment agreement

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

- “(a) the FIF is a grey list company; and
- “(b) the person first acquires a share or option to buy a share in the company—
 - “(i) under a venture investment agreement; and
 - “(ii) at the same time and on the same terms as an acquisition of an interest in the FIF by the Venture Investment Fund or a company owned by the Venture Investment Fund.

“Defined in this Act: attributing interest, company, FIF, grey list company, income year, share

Compare: 2004 No 35 s EX 37(4B)”.

359 Exemption for employee share purchase scheme of grey list company

In section EX 38, paragraph (g) is replaced by the following:

- “(g) 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”.

360 Terminating exemption for grey list company with numerous New Zealand shareholders

- (1) Section EX 39(1), other than the heading, is replaced by the following:

- “(1) A person’s rights in a FIF are not an attributing interest if—
 - “(a) the rights are a direct income interest; and
 - “(b) the FIF is a grey list company; and
 - “(c) on 17 May 2006, the company—
 - “(i) was a grey list company; and
 - “(ii) was not an entity described in schedule 25, part B (Foreign investment funds); and

- “(iii) had more than 20,000 shareholders who had addresses in New Zealand on the company’s share register; and
 - “(iv) had shareholders referred to in **subparagraph (iii)** who between them held shares in the company carrying voting interests of more than 50%; and
 - “(v) had assets of which more than 50% in total value were shares in other companies carrying voting interest of more than 50%; and
 - “(d) on 17 May 2006, the shares were listed—
 - “(i) on a recognised exchange in New Zealand; and
 - “(ii) on a recognised exchange in a grey list country.”
- (2) In section EX 39(2), “subsection (1)(a) to (f)” is replaced by “**subsection (1)(b) and (c)**”.

361 Limits on choice of calculation methods

- (1) Section EX 46(6)(b) is replaced by the following:
- “(b) the person is the trustee of a trust that—
 - “(i) has no gifting settlor who is not a natural person or deceased person; and
 - “(ii) at all times in the income year, is a complying trust for a distribution made at the time; and
 - “(iii) is, at all times in the income year, mainly for the benefit of a natural person for whom the gifting settlors of the trust have natural love and affection (or had natural love and affection when alive) or is mainly for the benefit of an organisation or trust with income that is exempt income under section CW 41 or CW 42 (which relate to the income of charities):”.
- (2) Section EX 46(10)(c) is replaced by the following:
- “(c) an interest in a non-resident holding directly or indirectly assets of which 80% or more by value at a time in the income year—
 - “(i) consist of fixed-rate shares, or financial arrangements providing funds to a person; and
 - “(ii) are denominated in New Zealand dollars or, under NZIAS 39, are hedged items having a value in New Zealand dollars governed by a hedging instrument that is highly effective:”.
- (3) In section EX 46(11), including the heading, “(10)(d)” is replaced by “(10)(a) to (d)” in all places in which it appears.
- (4) After section EX 46(11), the following is added:
- “*Meaning of gifting settlor*
- “(12) A **gifting settlor**, for a trust (the **relevant trust**), means a person who—

- “(a) makes a transfer of value, by disposing of property, to the trustee of—
- “(i) the relevant trust:
 - “(ii) a trust with a trustee who settles property on the relevant trust, directly or through the trustees of other trusts; and
- “(b) is not the trustee of a trust.”

362 Comparative value method

In section EX 51(4), “tax that the person is allowed as a credit under section” is replaced by “amount that the person is allowed as a credit under section LE 1 (Tax credits for imputation credits) or”

363 Fair dividend rate method: usual method

- (1) Section EX 52(1)(b) is replaced by the following:
- “(b) is neither—
- “(i) a unit-valuing fund that is subject to section EX 53; nor
 - “(ii) another person that determines the market value of the attributing interest for each period of a day in the income year and that chooses to apply the method in section EX 53.”
- (2) In section EX 52(5), “that the person holds at the start of the income year.” is replaced by “that—” and the following is added:
- “(a) the person holds at the start of the income year; and
 - “(b) are not, at the beginning of the income year, included in a direct income interest of 10% or more in a grey list company.”
- (3) In section EX 52(11), “during the year in acquiring or increasing” is replaced by “in acquiring or increasing during the income year”.
- (4) In section EX 52(12), “cost” is replaced by “(interest × average cost)”.
- (5) Section EX 52(13)(b) is replaced by the following:
- “(b) **interest** is the amount of the shareholding acquisition or increase:
 - “(c) **average cost** is the total amount of expenditure that the person incurs during the year in acquiring or increasing the attributing interest in the FIF divided by the total for the income year of the shareholding increase in the interest for each acquisition or increase.”
- (6) After section EX 52(14), the following is inserted:

“Treatment of transaction under section EX 63 or EX 67

“(14B) For the purposes of subsection (7), if the person is treated as disposing of or acquiring an attributing interest in an income year under section EX 63(5) or EX 67, the disposal or acquisition is ignored.”

364 Fair dividend rate method for funds that value investors’ units

(1) In the heading to section EX 53, “**funds that value investors’ units**” is replaced by “**unit-valuing funds and others by choice**”.

(2) In the heading to section EX 53(1), “: *first case*” is added after “*applies*”.

(3) After section EX 53(1), the following is added:

“When this section applies: second case

“(1B) This section applies also when a person—

“(a) calculates FIF income or loss from an attributing interest in a FIF for an income year under the fair dividend rate method; and

“(b) the person is not subject to subsection (1); and

“(c) the person—

“(i) determines the market value of the attributing interest for each period of a day (the **unit valuation period**) in the income year; and

“(ii) chooses that this section applies.”

(4) In section EX 53(2), “fund’s total FIF income from its attributing interests” is replaced by “total FIF income of the fund or person (the **interest holder**) from their attributing interests”.

(5) In section EX 53(5), “that the fund holds at the start of the unit valuation period” is replaced by “that—” and the following is added:

“(a) the interest holder holds at the start of the unit valuation period; and

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

(6) In section EX 53(8), “fund” is replaced by “interest holder”.

(7) In section EX 53(13), “the person incurs during the period in acquiring or increasing” is replaced by “the interest holder incurs in acquiring or increasing during the period.

(8) In section EX 53(14), “cost” is replaced by “(interest × average cost)”.

(9) Section EX 53(15)(a) and (b) is replaced by:

- “(a) **gain** is the total amount that the interest holder derives during the unit valuation period from holding or disposing of the acquisition or increase:
- “(b) **interest** is the amount of the shareholding acquisition or increase:
- “(c) **average cost** is the total amount of expenditure that the interest holder incurs during the period in acquiring or increasing the attributing interest in the FIF divided by the total for the period of the shareholding increase in the interest for each acquisition or increase.”

(10) After section 53(16), the following is inserted:

“Deemed transaction under section EX 67 ignored

“(16B) For the purposes of subsection (9), if the person is treated as disposing of or acquiring an attributing interest in an income year under section EX 67, the disposal or acquisition is ignored.”

365 Cost method

(1) After section EX 56(3)(a), the following is inserted:

- “(ab) the amount that is shown as the net asset value of the interest in audited financial statements of the person for the relevant income year made available to the general public, if—
 - “(i) paragraph (a) does not apply; and
 - “(ii) the FIF makes available to the general public audited financial statements for its accounting year ending in the relevant income year; and
 - “(iii) the person chooses that this paragraph applies; or
- “(ac) the amount of the cost of the interest, if—
 - “(i) paragraphs (a) and **(ab)** do not apply; and
 - “(ii) the person acquires the interest in the 2005-06 or 2006-07 income year; or”.

- (2) In section EX 56(3)(b), in the words before subparagraph (i), “paragraphs (a), **(ab)** and **(ac)** do not apply and” is inserted after “if”.
- (3) In section EX 56(3)(b)(i), “for which the person has FIF income or loss” is inserted after “attributing interest”.
- (4) In section EX 56(3)(c), “paragraphs (a), **(ab)**, **(ac)**, and (b) do not apply and” is inserted after “if”.
- (5) In section EX 56(3)(d), “paragraphs (a), **(ab)**, **(ac)**, and (b) do not apply and” is inserted after “if”.
- (6) In section EX 56(3)(e), “paragraphs (a), **(ab)**, **(ac)**, and (b) do not apply and” is inserted after “if”.

- (7) In section EX 56(11)(a), “during the preceding income year in acquiring or increasing” is replaced by “in acquiring or increasing during the preceding income year”.
- (8) In section EX 56(18)(a), “during the year in acquiring or increasing” is replaced by “in acquiring or increasing during the relevant income year”.

366 Codes: comparative value method, deemed rate of return method, fair dividend rate method, and cost method

Section EX 59(1)(c) is replaced by the following:

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

367 Limits on changes of method

Section EX 62(8)(a) to (d) are replaced by the following:

- “(a) has no gifting settlor who is not a natural person or deceased person; and
- “(b) at all times in the income year, is a complying trust for a distribution made at the time; and
- “(c) is—
 - “(i) at all times in the income year, mainly for the benefit of a natural person for whom the gifting settlors of the trust have natural love and affection, or had natural love and affection when alive:
 - “(ii) mainly for the benefit of an organisation or trust with income that is exempt income under section CW 41 or CW 42 (which relate to the income of charities); and
- “(d) is not a superannuation scheme.”

368 Consequences of changes in method

After section EX 63(4), the following is added:

“Changes between comparative value method and fair dividend rate method

- “(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
- “(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.”

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

- (1) Section EX 67(1) is replaced by the following:

“When this section applies

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

- (2) In section EX 67(3),—

- (a) in the words before paragraph (a), “the disposal and acquisition referred to in subsection (2)” is replaced by “the disposals in an income year, and related acquisitions, treated as occurring under this section”;
- (b) in paragraph (a)(i), “disposal is” is replaced by “disposals are”;
- (c) in paragraph (a)(ii), “disposal is” is replaced by “disposals are”;
- (d) in paragraph (a)(iii), “disposal is” is replaced by “disposals are”;
- (e) in paragraph (b), “disposal” is replaced by “disposals”.

370 Measurement of cost

Section EX 68(2) and (3) are replaced by the following:

“FIFO cost flow identification

- “(2) If sections EX 52(14) and EX 53(16) 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.”

371 Policyholder income formula

(1) Section EY 43(1) is replaced by the following:

“Formula

“(1) The **policyholder income formula** is—

$$\frac{\begin{aligned} &\text{claim due} + (\text{closing actuarial reserves} \\ &\quad - \text{opening actuarial reserves}) \\ &- (\text{FDR adjustment} + \text{PILF adjustment}) \\ &- (\text{premium} - \text{underwriting result}) \end{aligned}}{(1 - \text{tax rate}).”}$$

(2) After section EY 42(5), the following is inserted:

“FDR adjustment

“(5B) **FDR adjustment** is the amount set out in **section EY 42B** to the extent to which it applies.

“PILF adjustment

“(5C) **PILF adjustment** is the amount set out in **section EY 42C** to the extent to which it applies.”

372 New sections EY 43B and EY 43C inserted

After section EY 43, the following is inserted:

“EY 43B Policyholder income formula: FDR adjustment

“What this section applies to

“(1) This section applies for the purposes of **section EY 42(5B)** to property that supports only actuarial reserves to the extent to which—

“(a) property is an attributing interest in a FIF held by a life insurer or by a portfolio tax rate entity that the life insurer has invested in, directly or indirectly; and

“(b) the life insurer or the portfolio tax rate entity uses the fair dividend rate method for the property; and

“(c) **section EY 42C** does not apply.

“When has life insurer indirectly invested in portfolio tax rate entity?”

“(2) For the purposes of **subsection (1)**, a life insurer is treated as investing indirectly in a portfolio tax rate entity (**PTRE A**) when a portfolio tax rate entity has invested in **PTRE A** and the investment may be traced through an unbroken chain of investments in portfolio tax rate entities to a direct investment by the life insurer in a portfolio tax rate entity.

“FDR adjustment

“(3) In using the policyholder income formula, the life insurer may calculate the item **FDR adjustment**—

“(a) using the formula in **subsection (5)**; or

“(b) by calculating, using a reasonable method for the information available to the life insurer, the amount credited to actuarial reserves in relation to the property, but excluding amounts that are related to FIF income under the fair dividend rate method.

“*Consistency requirement*

“(4) In using the policyholder income formula, the life insurer must calculate the item **FDR adjustment** by always applying whichever of **subsection (3)(a) or (b)** is first used.

“*Formula*

“(5) The formula referred to in subsection (3)(a) is—
$$0.6 \times (\text{FIF result} - \text{FDR income}).$$

“*Definition of items in formula*

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

“*FIF result*

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

“*FDR income*

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

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

Compare: 2004 No 35 s EY 42B

“**EY 43C Policyholder income formula: PILF adjustment**

“*What this section applies to*

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

- “(a) an attributing interest in a FIF,—
- “(i) held by the life insurer or a portfolio tax rate entity that the life insurer has invested in directly or indirectly; and
 - “(ii) for which the life insurer or portfolio tax rate entity uses the fair dividend rate method for the property:

“(b) shares described in section CX 55 (Proceeds from certain disposals by portfolio investment entities or New Zealand Superannuation Fund) held by the life insurer.

“When has life insurer indirectly invested in portfolio tax rate entity?”

“(2) For the purposes of **subsection (1)**, a life insurer is treated as investing indirectly in a portfolio tax rate entity (**PTRE A**) when a portfolio tax rate entity has invested in **PTRE A** and the investment may be traced through an unbroken chain of investments in portfolio tax rate entities to a direct investment by the life insurer in a portfolio tax rate entity.

“PIE adjustment”

“(3) In using the policyholder income formula, the life insurer may calculate the item **PILF adjustment**—

“(a) using the formula in **subsection (5)**; or

“(b) by calculating, using a reasonable method for the information available to the life insurer, the amount credited to actuarial reserves in relation to the property, but excluding amounts that are—

“(i) related to FIF income under the fair dividend rate method:

“(ii) dividends or distributions for shares described in **subsection (1)(b)** other than a distribution from a portfolio tax rate entity to which section CX 56(2) (Portfolio investor allocated income and distributions of income by portfolio investment entities) applies.

“Consistency requirement”

“(4) In using the policyholder income formula, the life insurer must calculate the item **PILF adjustment** by always applying whichever of **subsection (3)(a) or (b)** is first used.

“Formula”

“(5) In using the policyholder income formula, the life insurer must calculate the item **PILF adjustment** using the following formula:

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

“Definition of items in formula

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

“FIF result

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

“FDR income

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

“Excluded shares

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

“(a) the positive amount of income excluded by section CX 55(2):

“(b) the negative amount of a deduction not allowed by section DB 23(3)(b) (Cost of revenue account property):

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

“(i) amounts already accounted for under **paragraphs (a) and (b)** or under **subsection (7)**; and

“(ii) dividends and distributions for the shares, other than distributions from a portfolio tax rate entity to which section CX 56(2) applies.

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

Compare: 2004 No 35 s EY 42C”.

373 Terminating exemption for grey list FIF investing in Australasian listed equities

(1) Section EZ 32(1), other than the heading, is replaced by the following:

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

“(a) the rights are a direct income interest (the **shares**); and

“(b) on 17 May 2006, the company—

“(i) was a grey list company; and

“(ii) was not an entity described in schedule 25, part B (Foreign investment funds); and

- “(iii) had shareholders of which more than 40% had addresses in New Zealand on the company’s share register; and
 - “(iv) had shareholders referred to in **subparagraph (iii)** who between them held shares in the company carrying voting interests of more than 50%; and
 - “(v) had assets of which more than 50% in total value were shares in other companies that were resident in New Zealand or Australia and were listed on a recognised exchange in New Zealand or Australia; and
 - “(c) on 17 May 2006, the shares were listed —
 - “(i) on a recognised exchange in New Zealand; and
 - “(ii) on a recognised exchange in a grey list country.”
- (2) In section EZ 32(3), “subsection (1)(b) to (g)” is replaced “subsection (1)(b) and (c)”.

374 New section EZ 32B inserted

After section EZ 32, the following is inserted:

“EZ 32B Transitional rule for IFRS reporting

“When this section applies

- “(1) This section applies for an income year before the 2007–08 income year when—
- “(a) a person who is a party to a financial arrangement starts to use a spreading method in section EW 16, EW 18, or EW 20 for the financial arrangement before they adopt IFRSs for the purposes of financial reporting; and
 - “(b) the person is not required to use a method under **section EW 15B** (Preparing and reporting methods); and
 - “(c) as a result of adopting IFRSs, the method chosen does not comply with sections EW 16(2)(d), EW 18(f), and EW 20(2)(f), as applicable.

“Treatment

- “(2) For the purposes of the financial arrangements rules, the person is treated as complying with the relevant section.

“Defined in this Act: financial arrangement, financial arrangements rules, IFRS, income year

Compare: 2004 No 35 s EZ 50”.

375 Consecutive or successive finance leases

Section FA 11 is replaced by the following:

“FA 11 Adjustments for leases that become finance leases

“When this section applies

- “(1) This section applies when a lease is entered into on or after 20 May 1999 and—

- “(a) the lease is a consecutive or a successive lease—
 - “(i) that is treated as 1 lease under the definition of **lease**; and
 - “(ii) with a term of the lease that the lessor and lessee do not contemplate, at the start of the term, will be more than 75% of the personal property lease asset’s estimated useful life; and
 - “(iii) with a term of the lease that is more than 75% of the asset’s estimated useful life:
- “(b) the lease is an operating lease that becomes a finance lease under **paragraph (c)** of the definition of **finance lease**.

“Adjustment required

- “(2) The lessor and lessee must each adjust their income and expenditure calculated for the lease by including an adjustment in a return of income for the tax year corresponding to the income year in which the lease becomes a finance lease.

“Amount of adjustment

- “(3) The amount of the adjustment is calculated for the relevant person in relation to the period described in **subsection (5)** using the formula—

$$\begin{aligned} & \text{finance income} - \text{finance expenditure} \\ & - \text{unadjusted income} + \text{unadjusted expenditure.} \end{aligned}$$

“Definition of items in formula

- “(4) In the formula,—
 - “(a) **finance income** is the income that would have been derived by the person under the lease if the lease were a finance lease for the period:
 - “(b) **finance expenditure** is the expenditure that would have been incurred by the person under the lease if the lease were a finance lease for the period:
 - “(c) **unadjusted income** is the income derived by the person under the lease:
 - “(d) **unadjusted expenditure** is the expenditure incurred by the person under the lease.

“Adjustment period

- “(5) The period starts on the date on which the lease starts and ends on the last day of the income year in which the lease becomes a finance lease.

“Adjustment positive

- “(6) If the adjustment is positive, the amount is income of the relevant person under **section CH 6** (Adjustments for certain finance and operating leases).

“Adjustment negative

- “(7) If the adjustment is negative, the amount is a deduction of the relevant person under section DB 51B (Adjustments for leases that become finance leases).

“Defined in this Act: amount, estimated useful life, finance lease, income, income year, lease, lessee, lessor, operating lease, personal property lease asset, return of income, tax year, term of the lease

Compare: 2004 No 35 s FC 8H

“FA 11B Adjustments for certain operating leases

“When this section applies

- “(1) This section applies when a lease is an operating lease that—
- “(a) is entered into on or after 20 May 1999 and before 20 June 2007; and
 - “(b) is an arrangement, or part of an arrangement that, on 20 June 2007, meets the requirements of **paragraph (c)(i) to (iii)** of the definition of **finance lease**; and
 - “(c) has a term of the lease ending after the end of the income year in which 20 June 2007 falls (the **adjustment year**); and
 - “(d) does not meet the requirements of **section FA 11(1)** before the end of the income year after the adjustment year.

“Adjustment required

- “(2) The lessor must adjust their income and expenditure calculated for the lease asset by including an adjustment in a return of income for the tax year corresponding to the income year after the adjustment year.

“Amount of adjustment

- “(3) The amount of the adjustment is calculated using the formula—

$$\frac{\text{total depreciation losses}}{6}.$$

“Definition of item in formula

- “(4) In the formula, **total depreciation losses** is the total amount of depreciation loss for the lease asset for which the lessor is allowed a deduction in the period that begins with the start of the term of the lease and ends with the end of the adjustment year.

“Income

- “(5) The amount of the adjustment is income of the lessor under the lease under **section CH 6** (Adjustments for certain finance and operating leases) in the income year after the adjustment year.

“Adjusted tax value

- “(6) The adjusted tax value of the lease asset at the beginning of the income year after the adjustment year is the total of the amount of the adjustment and the adjusted tax value that the lease asset would have in the absence of this section.

“Depreciation loss

- “(7) For an income year beginning after 20 June 2007 in which the lease is an operating lease, the amount of depreciation loss allowed for the lease asset other than under section EE 48 (Effect of disposal or event) is five-sixths of the amount of depreciation loss that would be allowed for the lease asset in the absence of this subsection.

“Defined in this Act: adjusted tax value, amount, arrangement, deduction, depreciation loss, finance lease, income, income year, lease, lessee, lessor, operating lease, return of income, tax year, term of the lease

Compare: 2004 No 35 s FC 81”.

376 Attribution rule for income from personal services

- (1) After section GB 27(3), the following is inserted:

“Treatment of certain dividends

- “(4) If a company that is required to attribute an amount to the working person under this section pays a dividend, sections HA 14 to HA 19 (which relate to qualifying companies) are treated as applying to the company and the dividend if the company—

- “(a) has no net income for the tax year in which it pays the dividend other than income attributed under this section, ignoring interest income that is incidental to the company’s business; and
“(b) is not a qualifying company; and
“(c) chooses to have the dividend treated as if it were paid by a qualifying company.”

- (2) In section GB 27, in the list of defined terms, “amount”, “business”, “company”, “dividend”, and “qualifying company” are inserted.
- (3) In section GB 27, in the compare note, “, GC 14EB” is added.

377 Arrangements involving family support credits

- (1) The heading before section GB 44 is replaced by “*Arrangements involving tax credits for families*”.
- (2) In the heading to section GB 44, “**family support credits**” is replaced by “**tax credits for families**”.

378 Fully imputed distributions

- (1) In section HA 15(3)(c), “for the income year of the shareholder in which the dividend is derived” is replaced by “at the time the shareholder derives the dividend, modified as applicable by **section OZ 14** (Dividends from qualifying companies)”.
- (2) In section HA 15(4)(a), “modified as applicable by **section OZ 14**” is inserted after “ratios”.
- (3) In section HA 15(5)(a), “modified as applicable by **section OZ 14**” is inserted after “subsection (4)”.

379 Scheme of subpart

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

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

- “(d) the amount of fees paid to the entity by the investor on the day:
- “(e) the amount of rebates of fees credited to the investor by the entity on the day:
- “(f) the amount of expenditure, for the income year ending with the day, transferred under subpart DV (Expenditure specific to certain entities) to the entity by the investor.”

380 Section HL 3 replaced

Section HL 3 is replaced by the following:

“HL 3 Eligibility requirements for entities

“Eligibility requirements for entity electing to be portfolio tax rate entity

- “(1) An entity that is choosing under section HL 11 to be a portfolio investment entity and portfolio tax rate entity must meet the eligibility requirements described in **subsections (9), (10), and (11)**.

“Eligibility requirements for portfolio tax rate entity

- “(2) A portfolio tax rate entity must meet—
 - “(a) the eligibility requirements described in **subsections (9), (10), and (11)**; and
 - “(b) the further eligibility requirements described in sections **HL 5C**, HL 6, HL 7, HL 9, and HL 10.

“Eligibility requirements for entity electing to be portfolio listed company

- “(3) An entity that is choosing under section HL 11 to be a portfolio investment entity and portfolio listed company must meet the eligibility requirements described in **subsections (9), (10), and (11)**.

“Eligibility requirements for portfolio listed company

- “(4) A portfolio listed company must meet—
 - “(a) the eligibility requirements described in **subsections (9), (10), and (11)**; and
 - “(b) the further eligibility requirements described in sections **HL 5C**, HL 6, HL 8, HL 9, and HL 10.

“Eligibility requirements for entity electing to be portfolio defined benefit fund

- “(5) An entity that is choosing under section HL 11 to be a portfolio investment entity and portfolio defined benefit fund must meet the eligibility requirements described in **subsections (9), (10), and (11)**.

“Eligibility requirements for portfolio defined benefit fund

- “(6) A portfolio defined benefit fund must meet—
- “(a) the eligibility requirements described in **subsections (9), (10), and (11)**; and
 - “(b) the further eligibility requirements described in sections **HL 5C, HL 6, HL 9, and HL 10**.

“Eligibility requirements for separate identifiable fund electing to be portfolio investment-linked life fund

- “(7) An entity that is choosing under section HL 11 to be a portfolio investment entity and portfolio investment-linked life fund must meet the eligibility requirements described in **subsections (10) and (11)**.

“Eligibility requirements for portfolio investment-linked life fund

- “(8) A portfolio investment-linked life fund must meet—
- “(a) the eligibility requirements described in **subsections (10) and (11)**; and
 - “(b) the further eligibility requirements described in sections HL 6, HL 9, and HL 10.

“Business requirement

- “(9) The business requirement is that the entity must not carry on a business of life insurance.

“Residence requirement

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

“Entity history requirement

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

“Defined in this Act: company, double tax agreement, group investment fund, life insurance, portfolio defined benefit fund, portfolio investment entity, portfolio investment-linked life fund, portfolio listed company, portfolio tax rate entity, resident in New Zealand, superannuation fund

Compare: 2004 No 35 s HL 3”.

381 Effect of failure to meet eligibility requirements for entities

In section HL 4(2)(a), the words before subparagraph (i) are replaced by the following:

- “(a) a portfolio investor class of the entity fails to meet a requirement of section HL 6 or HL 9, or the entity fails to meet a requirement of section HL 10 on the last day of a quarter—”.

382 New sections HL 5B and HL 5C inserted

After section HL 5, the following is inserted:

“HL 5B Meaning of investor and portfolio investor class

“Meaning of investor

- “(1) An **investor**, in relation to a portfolio investment entity or foreign investment vehicle (the **entity**), means,—

“(a) if the entity is a company and **paragraph (d)** does not apply, a shareholder in the company:

“(b) if the entity is not a company and **paragraphs (c) and (d)** do not apply, a person who is entitled to a proportion of the funds available for distribution by the entity—

“(i) by reason of the rules of the entity or the terms of the trust under which the entity is established; and

“(ii) as if the entity were a company and the person were a shareholder in the company:

“(c) if the entity is a portfolio investment-linked life fund and **paragraph (d)** does not apply, a person whose benefits under the relevant life insurance policy are directly linked to the value of investments held in the portfolio investment-linked life fund:

“(d) for a share, entitlement, or life insurance policy held through a portfolio investor proxy by a person, the portfolio investor proxy.

“Meaning of portfolio investor class

- “(2) A **portfolio investor class** for a portfolio investment entity means a group of 1 or more investors in the entity with each investor having an entitlement to a distribution by the entity of proceeds from portfolio entity investments such that—

“(a) the portfolio entity investments are the same for all the investors in the group; and

“(b) each investor’s interest in a portfolio entity investment represents a proportion (the **investment proportion**) of the value of the investor’s entitlement; and

“(c) the investment proportion for each investor and each portfolio entity investment differs from the average value of the investment proportion, for the investors in

the group and the portfolio entity investment, by less than 2.5% of that average value except if **subsection (3)** applies.

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

“(3) The investment proportion for an investor in a group referred to in **subsection (2)** and a portfolio entity investment may differ by 2.5% or more from the average value for the group and the investment if—

“(a) the portfolio entity investment is an arrangement under which the entity is assured of receiving, from investments, sufficient proceeds for the entity to repay each investor in the group an amount contributed to the entity; and

“(b) the excess in difference between the investment proportion for the investor and the average value for the group arises from differences between the portfolio investor rates of members of the group.

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

Compare: 2004 No 35 s HL 5B

“**HL 5C Income interest requirement**”

“What this section applies to”

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

“Requirement”

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

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

Compare: 2004 No 35 s HL 5C”.

383 Investor membership requirement

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

“General investor membership requirement”

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

(2) In section HL 6(1),—

- (a) the heading is replaced by “*Investor membership requirement for portfolio investor class*”:
- (b) the words before paragraph (a) are replaced by “The investor membership requirement for a portfolio investor class is that the class must include—”:
- (c) in paragraph (j)(iii), “entity.” is replaced by “entity:” and the following is added:
 - “(k) Auckland Regional Holdings.”
- (3) In section HL 6(3), the words before paragraph (a) are replaced by “There is no investor membership requirement for a portfolio investor class that,—”.
- (4) In section HL 6(3)(c), “1956.” is replaced by “1956:” and the following is added:
 - “(d) is a superannuation fund that—
 - “(i) existed before 17 May 2006; and
 - “(ii) on or after 17 May 2006, if treated as a unit trust, would have met the requirements of 1 or more of paragraphs (a) and (c) to (e) of the definition of **public unit trust**; and
 - “(iii) has no investor, other than the fund’s manager or trustee, that can control the investment decisions relating to that class.”
- (5) Section HL 6(4)(c), is replaced by the following:
 - “(c) the investor has a portfolio investor interest fraction of 5% or more; and
 - “(d) the associated person has a portfolio investor interest fraction of 5% or more.”

384 Investor return adjustment requirement: portfolio tax rate entity

Section HL 7(3), other than the heading, is replaced by the following:

- “(3) An adjustment reflecting the effect of the investor’s portfolio investor rate must be made to—
 - “(a) the investor’s portfolio investor interest in the portfolio investor class or another portfolio investor class—
 - “(i) before the end of the second month after the portfolio calculation period, if the entity has made an election under section HL 22; or
 - “(ii) before the end of the third month after the end of the income year, if the entity has made an election under section HL 23; or
 - “(iii) before the end of the second month after the end of the tax year, if the entity has made an election under section HL 24:

- “(b) the amount of each distribution to the investor as a member of the portfolio investor class or another portfolio investor class:
- “(c) the amount of each payment required from the investor as a member of the portfolio investor class towards satisfying the entity’s portfolio entity tax liability.”

385 Imputation credit distribution requirement: portfolio listed company

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

“What this section applies to

- “(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.

386 Investor interest size requirement

- (1) In section HL 9(2), the words before paragraph (a) are replaced by “There is no investor interest size requirement for an investor in a portfolio investor class that,—”.
- (2) In section HL 9(2)(c), “1956.” is replaced by “1956.” and the following is added:
- “(d) is a superannuation fund that—
 - “(i) existed before 17 May 2006; and
 - “(ii) on or after 17 May 2006, if treated as a unit trust, would have met the requirements of 1 or more of paragraphs (a) and (c) to (e) of the definition of **public unit trust**; and
 - “(iii) has no investor, other than the fund’s manager or trustee, that can control the investment decisions relating to that class.”
- (3) In section HL 9(4)(i), “subsection (5).” is replaced by “subsection (5):” and the following is added:
- “(j) Auckland Regional Holdings.”
- (4) Section HL 9(6)(c), is replaced by the following:
- “(c) the investor has a portfolio investor interest fraction of 5% or more; and
 - “(d) the associated person has a portfolio investor interest fraction of 5% or more.”

387 Further eligibility requirements relating to investments

- (1) In section HL 10(1), the words before paragraph (a) are replaced by “The investment type requirement is that 90% or more by value of the entity’s assets must be—”.

- (2) In section HL 10(2)—
- (a) after paragraph (b)(i), the following is inserted:
“(ib) replacement payments:”;
 - (b) paragraph (b)(iii) is replaced by the following:
“(iii) income under a lease of land:”;
 - (c) in paragraph (b)(iv), “referred to in subsection (1)(a) to (d)” is inserted after “property”.
- (3) In section HL 10(4), the words before paragraph (a) are replaced by “The requirements of subsection (3)(a) and (b) do not apply to an investment consisting of shares in—”.

388 Election to become portfolio investment entity and cancellation of election

- (1) After section HL 11(2), the following is added:
“Exception to when election effective: certain elections relating to portfolio investment-linked life funds
- “(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
 - “(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.

389 Unlisted company choosing to become portfolio listed company

- (1) Section HL 12(1)(a) is replaced by the following:
“(a) has 100 shareholders; and”.
- (2) In section HL 12, in the list of defined terms, “shareholder” is inserted.

390 Becoming portfolio investment entity

- (1) In section HL 13(3)(a), the words before subparagraph (i) are replaced by—
- “(a) transferring to another person all shares held by the entity, or for which the entity is a share lender in a returning share transfer, that—”.
- (2) After section HL 13(3), the following is added:
“Refund of FDP made before election
- “(3B) If an FDPA company becomes a portfolio investment entity on a day in a tax year other than the end of the tax year, the balance of the company’s FDP account at the end of the tax year for the purposes of section RM 21(2)(c) (Refunds when

loss balances used to reduce net income) is equal to the balance of the FDP account immediately before the company becomes a portfolio investment entity.”

391 Tax consequences from transition

- (1) Section HL 14(1) is replaced by the following:

“When subsection (1B) applies

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

“No penalty or interest arising from transition

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

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

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

- (2) In section HL 14, in the list of defined terms, “pay” is inserted.

392 Treatment of income from interest when entitlement conditional or lacking

Section HL 17(2)(e) is replaced by the following:

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

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

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

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

393 Portfolio entity tax liability and tax credits of portfolio tax rate entity for period

- (1) In section HL 21(4), “fees” is replaced by “expenses”.

- (2) Section HL 21(11) is replaced by the following:

“Expenses

- “(11) **Expenses** is the total amount for the day in the portfolio allocation period of—

- “(a) fees for ongoing management and administration services paid from or charged to the account of the investor as a member of the portfolio investor class:
- “(b) expenditure of the investor transferred under subpart DV (Expenditure specific to certain entities) to the entity.”

394 Payments of tax by portfolio tax rate entity making no election

- (1) After section HL 22(2), the following is inserted:

“Income tax liability
- “(2B) The income tax liability of the entity for a tax year is equal to the total portfolio entity tax liability of the entity for the portfolio calculation periods in the tax year.”
- (2) In section HL 22(3)(a) “for the tax year” is inserted after “income tax”.

395 Payments of tax by portfolio tax rate entity choosing to make payments when investor leaves

- (1) After section HL 24(1), the following is inserted:

“Income tax liability
- “(1B) The income tax liability of the entity for a tax year is equal to the total portfolio entity tax liability of the entity for the portfolio calculation periods in the tax year.”
- (2) In section HL 24(2)(a) “for the tax year” is inserted after “income tax”.
- (3) Section HL 24(2)(b) is replaced by the following:

“(b) by the day that is—

 - “(i) the end of the month beginning from the end of the month in which the portfolio investor exit period ends, if **subparagraph (ii)** does not apply; or
 - “(ii) the 15 January following the end of the portfolio investor exit period, if the portfolio investor exit period ends in November.”

396 Optional payments of tax by portfolio tax rate entities

- (1) In section HL 25(1), “their portfolio investor interest in the entity” is replaced by “the portfolio investor interest for which the investor is a member of a portfolio investor class of the entity”.
- (2) Section HL 25(3) is replaced by the following:

“Time of optional payment

- “(3) A payment under this section must be made by—
- “(a) the end of the month beginning from the end of the month in which the portfolio calculation period ends, if **paragraph (b)** does not apply; or
 - “(b) the 15 January following the end of the portfolio calculation period, if the portfolio calculation period ends in November.”

397 Portfolio investor allocated income and portfolio investor allocated loss

- (1) In section HL 26(5), “fees” is replaced by “expenses”.
- (2) Section HL 26(6)(e) is replaced by the following:
 - “(e) **expenses** is the total amount for the day in the portfolio allocation period of—
 - “(i) fees for ongoing management and administration services paid from or charged to the account of the investor as a member of the portfolio investor class:
 - “(ii) expenditure of the investor incurred in the investor’s income year ending with the day and transferred under subpart DV (Expenditure specific to certain entities) to the entity:”.

398 Treatment of portfolio investor allocated loss for zero-rated portfolio investors and investors with portfolio investor exit period

- (1) In section HL 27(2), “income year corresponding to the tax year” is replaced by “income year including the end of the portfolio tax rate entity’s income year”.
- (2) In section HL 27, in the list of defined terms,—
 - (a) “portfolio allocation period” and “portfolio investor allocated income” are omitted:
 - (b) “income tax” and “portfolio tax rate entity” are inserted.

399 Credits received by portfolio tax rate entity or portfolio investor proxy

- (1) Section HL 29(6) is replaced by the following:

“Application of subsections (7) to (11)
- “(6) For an investor in a portfolio tax rate entity who is allocated under subsection (3) credits for a portfolio calculation period in an income year of the entity,—
 - “(a) **subsections (7)** and (8) apply to the credits, and the credits are allocated to the income year in which the entity’s income year ends, if—

- “(i) the investor is a zero-rated portfolio investor:
- “(ii) the investor is not a zero-rated portfolio investor and the entity makes payments of tax under section HL 21 and the portfolio calculation period includes part of a portfolio investor exit period:
- “(b) subsections (10) and (11) apply to the credits if **paragraph (a)** does not apply.”
- (2) Section HL 29(7) is replaced by the following:

“Zero-rated portfolio investors and certain investors having portfolio investor exit period: credit

“(7) The investor is treated as receiving for the allocated credits, for the tax year corresponding to the investor’s income year,—

 - “(a) a credit against income tax payable by the investor of the amount given by subsection (8) if—
 - “(i) the credits are under subpart LJ (Tax credits for foreign income tax); and
 - “(ii) the investor is not a portfolio tax rate entity or portfolio investor proxy; or
 - “(b) the allocated amount of each type of credit if—
 - “(i) the credits are not under subpart LJ;
 - “(ii) the investor is a portfolio tax rate entity or portfolio investor proxy.”
- (3) In section HL 29(8), the heading is replaced by “*Amount of credit for foreign tax: zero-rated portfolio investors, other than portfolio tax rate entities and portfolio investor proxies, and investors having portfolio investor exit period*”.
- (4) Section HL 29(9) is repealed.
- (5) In section HL 29(11)(a)(ii), “section HL 23 or HL 24” is replaced by “section HL 24”.
- (6) Section HL 29(11)(b) is replaced by the following:
 - “(b) the investor as a member of—
 - “(i) the portfolio investor class;
 - “(ii) another portfolio investor class, if the entity chooses such a use for the credit.”
- (7) In section HL 29(13)(a)(ii),—
 - (a) “in subsection (11)(b)” is replaced by “in subsection (12)(b):”
 - (b) “by subsection (11)” is replaced by “by subsection (12)”.

400 Portfolio investor proxies

In section HL 33(3)(d), “or the payments required from the investor,” is inserted after “distributions to the investor,”.

401 Common ownership: group of companies

- (1) After section IC 3(2), the following is inserted:

“When portfolio tax rate entities included in group

- “(2B) In relation to 2 or more companies of which 1 is a portfolio tax rate entity, the companies are treated as a group of companies at a particular time or for a particular period if—

“(a) the portfolio tax rate entity owns 100% of the voting interests in the other companies; and

“(b) the other companies in the group are portfolio land companies.”

- (2) In section IC 3, in the list of defined terms, “portfolio land company” is inserted.

402 Remaining refundable credits: PAYE, RWT, and certain other items

- (1) After section LA 6(1)(c), the following is inserted:

“(cb) **section LB 6** (Tax credits for RSCT):”.

- (2) After section LA 6(1)(d), the following is inserted:

“(db) **subpart LH** (Tax credits for expenditure on research and development), although modified by **section LH 2(4)** (Tax credits relating to expenditure on research and development):”.

- (3) In section LA 6, in the compare note, “LD 12(5), LH 1(6),” are inserted.

403 Remaining refundable credits: family scheme income

- (1) The heading to section LA 7 is replaced by “**Remaining refundable credits: tax credits for families**”.

- (2) In section LA 7(1), “family scheme income” is replaced by “families”.

404 Use of tax credits

In section LA 9, “**Section OZ 11** (Tax credits for imputation credits and FDP credits) may apply to modify this section.” is added after “extends.”

405 Heading: subpart LB

The heading to subpart LB is replaced by “Subpart LB—Tax credits for payments, deductions, and family payments”.

406 Tax credits for family scheme income

- (1) The heading to section LB 4 is replaced by “**Tax credits for families**”.

- (2) In section LB 4,—

(a) “family assistance credit” is replaced by “tax credit”:

- (b) “(Family assistance credit)” is replaced by “(Abating WFF tax credits)”.
- (c) “family tax credit” is replaced by “minimum family tax credit”:
- (d) “(Family tax credit)” is replaced by “(Minimum family tax credit)”.
- (3) In section LB 4, in the list of defined terms,—
 - (a) “minimum family tax credit” is inserted:
 - (b) “family assistance credit” and “family tax credit” are omitted.

407 Tax credits for caregivers

- (1) Section LB 6 is replaced by the following:

“LB 6 Tax credits for RSCT

“When this section applies

- “(1) This section applies when—
 - “(a) a person derives income as a retirement scheme contribution in an income year; and
 - “(b) the retirement scheme contributor pays RSCT for the contribution; and
 - “(c) the income is not excluded income of the person under **section CX 50B** (Contributions to retirement savings schemes).

“Tax credit: New Zealand resident

- “(2) If the person is resident in New Zealand, they have a tax credit for the tax year corresponding to the income year of an amount equal to the RSCT withheld.

“Tax credit: non-resident

- “(3) If the person is not resident in New Zealand, they have a tax credit for the tax year corresponding to the income year of an amount equal to the excess of RSCT withheld over NRWT paid in relation to the contribution.

“When contribution is taxable Maori authority distribution

- “(4) If the person is not resident in New Zealand and the retirement scheme contribution is a taxable Maori authority distribution, they have a tax credit for the tax year corresponding to the income year of an amount equal to the RSCT withheld.

“Defined in this Act: amount, excluded income, income, income year, non-resident, NRWT, pay, resident in New Zealand, retirement scheme contribution, retirement scheme contributor, RSCT, tax credit, tax year

Compare: 2004 No 35 s LD 12(1)–(4)”.

- (2) After section LB 6, the following are added:

**“LB 7 Tax credits related to personal service rehabilitation
payments: providers**

“When this section applies

“(1) This section applies when—

“(a) a person—

“(i) is paid under the Injury Prevention, Rehabilitation, and Compensation Act 2001 a personal service rehabilitation payment for a period for a key aspect of social rehabilitation referred to in the definition of **personal service rehabilitation payment**; and

“(iii) pays another person (a **provider**) for providing the key aspect to them for the period; or

“(b) the Accident Compensation Corporation pays a provider a personal service rehabilitation payment for a period for providing a key aspect of social rehabilitation to the person.

“Tax credit

“(2) The provider has a tax credit for the tax year corresponding to the income year in which the period falls.

“Amount

“(3) The amount of the tax credit is calculated using the formula—

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

“Definition of items in formula

“(4) In the formula,—

“(a) **amount paid** is the amount paid to the provider for providing a key aspect of social rehabilitation to the person for the period, to the extent to which the amount is equal to or less than the amount of the personal service rehabilitation payment for the period after taking into account any amount of tax withheld:

“(b) **tax rate** is the rate of tax applying to the personal service rehabilitation payment under **schedule 4, part H, clause 1** (Rates of tax for schedular payments).

“Defined in this Act: amount, amount of tax, income year, pay, personal service rehabilitation payment, tax credit, tax year

Compare: 2004 No 35 s LD 1B

“LB 8 Tax credits related to personal service rehabilitation payments: payers

“When this section applies

“(1) This section applies when—

- “(a) a person is paid under the Injury Prevention, Rehabilitation, and Compensation Act 2001 a personal service rehabilitation payment for a period for a key aspect of social rehabilitation referred to in the definition of **personal service rehabilitation payment**; and
- “(b) the person pays another person (the **provider**) for providing the key aspect to them for the period; and
- “(c) the amount paid to the provider is less than the amount of the personal service rehabilitation payment to the person for the period after taking into account any amount of tax withheld.

“Tax credit

“(2) The person has a tax credit for the tax year corresponding to the income year in which the period falls to the extent of the amount calculated using the formula—

$$\text{total tax withheld} - \frac{\text{amount paid} \times \text{tax rate}}{1 - \text{tax rate}}$$

“Definition of items in formula

“(3) In the formula,—

- “(a) **total tax withheld** is the total amount of tax withheld from the personal service rehabilitation payment paid to the person for the period:
- “(b) **amount paid** is the amount paid to the provider:
- “(c) **tax rate** is the rate of tax applying to the personal service rehabilitation payment under **schedule 4, part H, clause 1** (Rates of tax for schedular payments).

“Defined in this Act: amount, amount of tax, income year, pay, personal service rehabilitation payment, tax credit, tax year

Compare: 2004 No 35 s LD 1C”.

408 Tax credits for housekeeping

In section LC 6(4), “family scheme income” is replaced by “tax credits for families”.

409 Tax credits for charitable and other public benefit gifts

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

- “(1) A person who makes a charitable or other public benefit gift in a tax year and who meets the requirements of section 41A of the Tax Administration Act 1994 has a tax credit for the tax

year equal to the amount calculated using the formula in subsection (2).”

- (2) In section LD 1(2), “subsection (1)(b)” is replaced by “subsection (1)”.
- (3) In section LD 1(5), “family scheme income” is replaced by “tax credits for families”.

410 Tax credits for imputation credits

- (1) After section LE 1(4), the following is inserted:

“FIF income

- “(4B) For the purposes of this section, an amount that would, in the absence of section EX 59 (Codes: comparative value method, deemed rate of return method, fair dividend rate method, and cost method), be income of a person from an attributing interest in a FIF is treated as if it were assessable income of the person.”
- (2) In section LE 1, in the list of defined terms, “attributing interest”, “FIF”, and “income” are inserted.

411 New section LE 7B

After section LE 7, the following is inserted:

“LE 7B Credit of RSCT for imputation credit

“Retirement scheme contributions

- “(1) A retirement scheme contributor who attaches an imputation credit to a retirement scheme contribution for a person in an income year has a tax credit for the corresponding tax year of an amount equal to the lesser of—
 - “(a) the amount of the imputation credit;
 - “(b) the liability of the contributor for RSCT on the contribution.

“When credit more than liability

- “(2) If the amount of the imputation credit is more than the liability of the contributor for RSCT on the contribution,—
 - “(a) the amount of the excess is treated as an imputation credit attached to a distribution from the contributor to the person; and
 - “(b) the person responsible for withholding the RSCT must, within 30 days of the contribution, notify the person of the amount of the excess credit.

“Defined in this Act: amount, imputation credit, income year, notify, retirement scheme contribution, retirement scheme contributor, RSCT, tax credit, tax year

Compare: 2004 No 35 s LB 3”.

412 Application of imputation ratio

In section LE 8(1), “**Section OZ 10** (Modifying ratios for imputation credits and FDP credits) may apply to modify this section.” is added after “ratios).”

413 Application of combined imputation and FDP ratio

After section LE 9(2), the following is added:

“Relationship with section OZ 10

“(3) **Section OZ 10** (Modifying ratios for imputation credits and FDP credits) may apply to modify this section.”

414 Tax credits for FDP credits

In section LF 1(1), “**Section OZ 11** (Tax credits for imputation credits and FDP credits) may apply to modify this section.” is added after “income year.”

415 Application of FDP ratio

In section LF 6(1), “**Section OZ 10** (Modifying ratios for imputation credits and FDP credits) may apply to modify this section.” is added after “ratios).”

416 Application of combined imputation and FDP ratio

After section LF 7(2), the following is added:

“Relationship with section OZ 10

“(3) **Section OZ 10** (Modifying ratios for imputation credits and FDP credits) may apply to modify this section.”

417 New subpart LH inserted

After subpart LF, the following is inserted:

“Subpart LH—Tax credits for expenditure on research
and development

“LH 1 Who this subpart applies to

“Persons included

“(1) This subpart provides for a tax credit for eligible expenditure on research and development activities incurred by a person who—

“(a) carries on a business in New Zealand as a resident or through a fixed establishment in New Zealand:

“(b) is an industry research co-operative.

“Persons excluded

“(2) **Subsection (1)** does not apply to—

“(a) a person who is a Crown Research Institute, a tertiary institution, or a district health board:

“(b) a person associated with an entity referred to in **paragraph (a)**:

“(c) a person controlled by 1 or more of the entities referred to in **paragraph (a) or (b)**.

“Defined in this Act: associated person, business, control, Crown Research Institute, district health board, fixed establishment, industry research co-operative, New Zealand, research and development activities, resident, tax credit, tertiary institution

Compare: 2004 No 35 s LH 2(1)

“LH 2 Tax credits relating to expenditure on research and development

“*When this section applies*

“(1) This section applies when—

“(a) a person to whom **section LH 1(1)** applies meets the requirements of **section LH 3** for an income year or for a period in an income year; and

“(b) the income year is the 2008–09 income year or a later income year; and

“(c) the person incurs in the income year or period an amount of expenditure or depreciation loss on research and development activities that—

“(i) meets the requirements of **subsection (3)**; and

“(ii) is an amount related to research and development activities performed on their own behalf and not on behalf of another person; and

“(d) the person meets the requirements of **section 68D or 68E** of the Tax Administration Act 1994.

“*Tax credit*

“(2) The person has a tax credit for the tax year corresponding to the income year calculated under **section LH 4**.

“*Minimum requirements for expenditure*

“(3) For the purposes of this subpart, the eligible expenditure referred to in **section LH 4** incurred by the person in the income year must be an amount—

“(a) of \$20,000 or more, or the part-year equivalent amount calculated under **subsection (4)**:

“(b) paid under an agreement between the person (**person A**) and another person who, at the time of making the agreement, is a listed research provider who is not associated with person A.

“*Part-year calculations*

“(4) For the purposes of **subsection (3)(a)**, if the person meets the requirements of **section LH 1** for only part of an income year, the minimum amount is calculated using the formula—

$$\$20,000 \times \frac{\text{days in part-year}}{365}.$$

“When expenditure treated as incurred in income year

- “(5) In **subsections (1)(c) and (3) and sections LH 3(1)(e) and LH 5(2)**, for the purposes of a tax credit under this subpart, the following amounts are treated as expenditure incurred in the income year:
- “(a) the opening value of trading stock in the income year under section DB 49 (Adjustment for opening values of trading stock, livestock, and excepted financial arrangements):
 - “(b) an unexpired amount of expenditure in the income year under section DB 50 (Adjustment for prepayments):
 - “(c) an unpaid amount of expenditure on employment income in the income year under section DB 51 (Adjustment for deferred payment of employment income) in relation to research and development activities performed in the 2008–09 income year or a later income year:
 - “(d) an amount of overseas eligible expenditure under **section LH 6(5)**.

“Dealing with remaining tax credits: relationship with sections LA 5 and LA 6

- “(6) If the person has a tax credit under this section remaining for the tax year under **section LA 5(5)** (Treatment of remaining credits), **section LA 6(2)** (Remaining refundable credits: PAYE, RWT, and certain other items) applies to the use of that credit, but is modified by treating the following paragraph as inserted after subsection (2)(c):
- “(‘cb) pay an amount that is payable by the person under an Inland Revenue Act.’

“Defined in this Act: amount, associated person, depreciation loss, employment income, income year, Inland Revenue Acts, listed research provider, overseas eligible expenditure, pay, research and development activities, tax credit, tax year, trading stock

Compare: 2004 No 35 ss LH 1(1), (5), (7)(d), LH 3(4)

“LH 3 Requirements

“What is required of person?

- “(1) For the purposes of **section LH 2**, the person must, for the income year or period in the income year,—
- “(a) perform on their own behalf, or have another person perform, research and development activities related to—
 - “(i) the business referred to in **section LH 1(1)(a)**, or an intended business of the person:

- “(ii) for an industry research co-operative, the business of a person who is an industry member under **section LH 16**; and
- “(b) control the research and development activities; and
- “(c) bear the financial risk of the research and development activities; and
- “(d) effectively own the results of the research and development activities, if any; and
- “(e) have—
 - “(i) incurred expenditure described in **schedule 21, part A** (Expenditure and activities related to research and development) and not excluded under **schedule 21, part B**, for which they are allowed a deduction in the income year, or would be allowed a deduction if they derived income other than exempt income:
 - “(ii) an amount of depreciation loss described in **schedule 21, part A** and not excluded under **schedule 21, part B**, for depreciable property used in the research and development activities, for which they are allowed a deduction in the income year, or would be allowed a deduction if they derived income other than exempt income.

“What is excluded

- “(2) For the purposes of **section LH 2**, the person must not, for the income year, perform or have another person perform the research and development activities as a person in partnership with an entity referred to in **section LH 1(2)**.

“Partners in partnerships

- “(3) If 2 or more persons perform research and development activities as partners in a partnership, a partner is treated as—
 - “(a) meeting the business requirements of **subsection (1)(a)(i) and section LH 1(1)(a)** and the threshold set out in **section LH 2(3)** if the partnership, treated as an entity performing the research and development activities, would meet those requirements:
 - “(b) meeting the control and ownership requirements of **subsection (1)(b) to (d) and section LH 6(4)(a) and (d)** if—
 - “(i) the partnership, treated as an entity performing the research and development activities, would meet those requirements; and
 - “(ii) each partner meets the requirements of **section LH 1**.

“Joint ventures

- “(4) If 2 or more persons perform research and development activities as partners in a joint venture, a partner is treated as meeting the control and ownership requirements of **subsection (1)(b) to (d) and section LH 6(4)(a) and (d)** if the joint venture, treated as an entity performing the research and development activities, would meet those requirements.

“Activities performed on person’s behalf

- “(5) In **subsections (3) and (4)**, the performance of research and development activities by a person includes the circumstances where the activities are performed on behalf of the person.

“Defined in this Act: amount, business, capital limitation, corresponding income year, deduction, depreciable property, depreciation loss, exempt income, income year, industry research co-operative, research and development activities, tax year

Compare: 2004 No 35 s LH 2(2)–(4)

“LH 4 Calculation of amount of credit

“Formula

- “(1) The amount of a tax credit under **section LH 2(2)** is calculated using the formula—

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

“Definition of item in formula

- “(2) **Eligible expenditure** is the amount of expenditure or depreciation loss that meets the requirements of **section LH 3(1)(e)** in an income year, adjusted as required under **sections LH 5 and LH 6**.

“Defined in this Act: amount, depreciation loss, income year, tax credit

Compare: 2004 No 35 s LH 4

“LH 5 Adjustments to eligible expenditure

“Cases when adjustment may apply

- “(1) An amount of eligible expenditure under **section LH 4** is adjusted in the cases set out in **subsections (2), (4), (5), and (6)**.

“Treatment of prepayments and other timed amounts

- “(2) If an amount of expenditure or depreciation loss is incurred in an income year and subpart CH (Adjustments) applies, or would apply, to the expenditure or depreciation loss, the amount of eligible expenditure is adjusted in the same way.

“Trading stock and livestock

- “(3) Despite **subsection (2)**, no adjustment under section CH 1 (Adjustment for closing values of trading stock, livestock, and excepted financial arrangements) applies if—

- “(a) the expenditure or amount of depreciation loss is incurred in acquiring or producing an item that has a market value and that has been subjected to a process or transformation as part of the research and development activities; and
- “(b) **schedule 21, part A, clause 8** (Expenditure and activities related to research and development) applies to the expenditure or amount of depreciation loss.

“Capital expenditure

- “(4) The requirements of **section LH 3(1)(e)** do not apply to an amount of expenditure described in **schedule 21, part A** and not excluded under **schedule 21, part B** incurred by a person in an income year if—
 - “(a) the capital limitation applies to the amount; and
 - “(b) the amount is not a deduction under section DB 34 (Research and development), or would not be a deduction under the section if the person derived income other than exempt income; and
 - “(c) the expenditure is incurred by the person in the intended development of depreciable property that is—
 - “(i) intangible property;
 - “(ii) tangible property not intended for use other than in the research and development activities.

“Deferred expenditure

- “(5) If a deduction for an amount of expenditure or depreciation loss incurred in an income year is allocated under section EJ 23 (Allocation of deductions for research, development, and resulting market development), the amount is treated as if it were a deduction allowed in the income year in which it is incurred, and not allowed in the income year to which it is allocated.

“Internal software development

- “(6) If the expenditure or amount of depreciation loss relates to internal software development, the amount of eligible expenditure is adjusted under **sections LH 9 to LH 13**.

“Defined in this Act: amount, capital limitation, deduction, depreciable property, depreciation loss, exempt income, income, income year, internal software development, New Zealand, research and development activities, trading stock

Compare: 2004 No 35 s LH 3

“LH 6 Research and development activities outside New Zealand

“Expenditure not part of research and development project

- “(1) If a person incurs expenditure or an amount of depreciation loss in research and development activities performed outside New Zealand other than as part of a research and development project, the expenditure or amount is excluded from the calculation of eligible expenditure under **section LH 4**.

“Overseas expenditure on research and development project

- “(2) If a person incurs expenditure or an amount of depreciation loss in research and development activities performed outside New Zealand as part of a research and development project, the expenditure or amount is excluded from the calculation of eligible expenditure under **section LH 4** unless it is overseas eligible expenditure.

“Activities performed on person’s behalf

- “(3) In **subsections (1) and (2)**, the performance of research and development activities by a person includes the circumstances where the activities are performed on behalf of the person.

“Meaning of research and development project

- “(4) A **research and development project**, for a person, means a process—
- “(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
 - “(d) for which the person bears the financial risk and effectively owns the results, if any; and
 - “(e) for which the person incurs on research and development activities performed in New Zealand more than half of the total amount of expenditure and depreciation loss that would be eligible expenditure under **section LH 4** in the absence of **subsection (2)**.

“Meaning of overseas eligible expenditure

- “(5) **Overseas eligible expenditure**, for a person and an income year, means expenditure or an amount of depreciation loss that—
- “(a) would, in the absence of this subsection, be eligible expenditure under **section LH 4**; and

- “(b) is incurred by the person in research and development activities performed outside New Zealand in the 2008–09 income year or a later income year as part of a research and development project; and
- “(c) is limited to a maximum amount of 10% of the total eligible expenditure under **section LH 4** incurred in or before the income year on research and development activities performed in New Zealand in the 2008–09 income year or a later income year as part of the research and development project.

“Defined in this Act: amount, depreciation loss, income year, New Zealand, overseas eligible expenditure, research and development activities, research and development project, tax credit, tax year

Compare: 2004 No 35 s LH 7(2)(j), (k), (4)

“LH 7 Research and development activities and related terms

“*Research and development activities*

- “(1) In this subpart, **research and development activities** of a person are—
 - “(a) systematic, investigative, and experimental activities that are performed for the purposes of acquiring new knowledge or creating new or improved materials, products, devices, processes, or services and that—
 - “(i) are intended to achieve an advance in science or technology by resolving scientific or technological uncertainty:
 - “(ii) involve an appreciable element of novelty:
 - “(b) other activities that are wholly or mainly for the purpose of, required for, and integral to, the performing of the activities referred to in **paragraph (a)**.

“*Systematic, investigative, and experimental activities*

- “(2) In this subpart, **systematic, investigative, and experimental activities** of a person are activities that—
 - “(a) are planned activities directed towards a particular purpose and following a logical progression of work involving hypothesis, experiment, observation, and evaluation; and
 - “(b) are not excluded under **schedule 21, part C** (Expenditure and activities related to research and development).

“*Scientific or technological uncertainty*

- “(3) In this subpart, **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.

“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.

“Technology

- “(5) In this subpart, **technology** means 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

Compare: 2004 No 35 s LH 5

“LH 8 Orders in Council

The Governor-General may make an Order in Council—

- “(a) providing that a kind of expenditure included in the kinds of expenditure referred to in **schedule 21, part A, clauses 5 and 6** (Expenditure and activities related to research and development) does not give rise to a tax credit under this subpart:
- “(b) setting the date from which the exclusion applies.

“Defined in this Act: tax credit

Compare: 2004 No 35 s LH 7(5)

“LH 9 Internal software development: general

“When sections LH 10 to LH 13 apply

- “(1) **Sections LH 10 to LH 13** apply for a person and an income year if, in the absence of those sections, the person would have eligible expenditure relating to internal software development.

“Eligible expenditure

- “(2) The amount of eligible expenditure is adjusted to the following:
- “(a) the amount determined under **section LH 10** for the income year if the person has no associated internal software developer in the income year; or
- “(b) the amount determined under **section LH 11** for the income year if the person has throughout the income year an associated internal software developer with the same income year as the person, and no associated internal software developer with an income year that is different; or

- “(c) the amount determined under **section LH 12** for the income year if the person has throughout the income year an associated internal software developer with an income year that is different from the person’s income year; or
- “(d) the total of amounts determined under **sections LH 10 to LH 12** for each of the periods making up the income year, if **paragraphs (a) to (c)** do not apply.

“Defined in this Act: amount, associated internal software developer, income year, internal software development

Compare: 2004 No 35 s LH 10(1), (2)

“LH 10 Internal software development: no associated internal software developer

“Eligible expenditure

- “(1) If the person referred to in **section LH 9(1)** has no associated internal software developer in a period that is all or part of their income year, the person has eligible expenditure related to internal software development under **section LH 4** for the period equal to the smaller of—
 - “(a) the eligible expenditure related to internal software development that the person would have for the period in the absence of this section:
 - “(b) the amount for the period calculated using the formula—

$$\text{limit} \times \frac{\text{days}}{365}.$$

“Definition of items in formula

- “(2) In the formula,—
 - “(a) **limit** is the amount set out in **section LH 13**:
 - “(b) **days** is the number of days in the period.

“Defined in this Act: amount, associated internal software developer, income year

Compare: 2004 No 35 s LH 10(3), (4)

“LH 11 Internal software development: associated internal software developer with same income year

“Who this section applies to

- “(1) This section applies to a person referred to in **section LH 9(1)** if, throughout a period that is part or all of their income year, they have an associated internal software developer with the same income year as the person and have no associated internal software developer with a different income year.

“Eligible expenditure

- “(2) The person has eligible expenditure related to internal software development under **section LH 4** for the period equal to the smallest of—
- “(a) the eligible expenditure related to internal software development that the person would have for the period in the absence of this section:
 - “(b) the amount calculated under **subsection (3)** for the person for the period:
 - “(c) the part, allocated by the internal software development group to the person, of the amount determined under **subsection (5)** as available for allocation by the internal software development group for the tax year.

“Maximum amount for period

- “(3) The amount referred to in **subsection (2)(b)** is calculated using the formula—

$$\text{limit} \times \frac{\text{days}}{365}.$$

“Definition of items in formula

- “(4) In the formula in **subsection (3)**,—
- “(a) **limit** is the amount set out in **section LH 13**:
 - “(b) **days** is the number of days in the period.

“Amount available for allocation

- “(5) The amount referred to in **subsection (2)(c)** that may be allocated by the internal software development group to members of the group for the tax year corresponding to the person’s income year is the lesser of—
- “(a) the total eligible expenditure related to internal software development 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—

$$\text{group limit} \times \frac{\text{days}}{365}.$$

“Definition of items in formula

- “(6) In the formula in **subsection (5)(b)**,—
- “(a) **group limit** is the amount set out in **section LH 13**:

“(b) **days** is the number of days in the person’s income year for which there are 2 or more members of the internal software development group.

“Defined in this Act: amount, associated internal software developer, income year, internal software development group, tax year

Compare: 2004 No 35 s LH 10(5)–(10)

“**LH 12 Internal software development: associated internal software developer with different income year**

“*When this section applies*

“(1) This section applies to a person referred to in **section LH 9(1)** if, throughout a period that is all or part of their income year, the person has an associated internal software developer with a different income year from the person.

“*Eligible expenditure for period less than year*

“(2) If the period is less than the person’s income year, the person has no eligible expenditure related to internal software development under **section LH 4** for the period.

“*Eligible expenditure for income year*

“(3) If the period is the person’s income year, the person has eligible expenditure related to internal software development under **section LH 4** for the period equal to the lesser of—

“(a) the eligible expenditure related to internal software development that the person would have for the period in the absence of this section:

“(b) the part, allocated by the internal software development group to the person, of the amount determined under **subsection (4)** as available for allocation by the internal software development group for the tax year.

“*Amount available for allocation*

“(4) The amount referred to in **subsection (3)(b)** that may be allocated by the internal software development group to members of the group for the tax year corresponding to the person’s income year is the lesser of—

“(a) the total eligible expenditure related to internal software development 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 the limit set out in **section LH 13**.

“Defined in this Act: amount, associated internal software developer, income year, internal software development group, tax year

Compare: 2004 No 35 s LH 10(11)–(14)

“LH 13 Internal software development: limit

“Amount

- “(1) The item **limit** referred to in **sections LH 10(2)(a), LH 11(4)(a), and LH 12(4)(b)** and the item **group limit** in **section LH 11(6)(a)** is the amount of \$3,000,000 unless **subsection (2)** applies to increase the amount.

“Determination of amount by Minister

- “(2) The Minister may, by notice published in the *Gazette*, determine an amount of more than \$3,000,000 to be appropriate for the purposes of **subsection (1)** for a person or internal software development group who need not be named in the notice and an income year or period, if the Minister is satisfied that—
- “(a) the internal software development will be exploited mainly for the benefit of the New Zealand economy; and
- “(b) New Zealand will derive a substantial net benefit from the intended completion of the internal software development; and
- “(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.

“Requirements in determination

- “(3) A determination under **subsection (2)**—
- “(a) may include requirements that the Minister thinks are appropriate for the application of the determination; and
- “(b) does not apply to a person who does not meet a requirement of the determination.

“Defined in this Act: amount, business, income year, internal software development, internal software development controller, internal software development group, New Zealand, notice

Compare: 2004 No 35 s LH 10(15), (16)

“LH 14 Treatment of depreciation loss for certain depreciable property

“What this section applies to

- “(1) This section applies to a person who owns an item of depreciable property for which no deduction has been allowed for an amount of depreciation loss because the person derives exempt income. This section applies only for the purposes of calculating eligible expenditure under this subpart.

“Depreciation loss for tax credit

- “(2) For the purposes of calculating the amount of depreciation loss the person has for the item under section EE 1(2) (What this subpart does), the person is treated as—

- “(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
- “(b) allowed a deduction for depreciation loss for the item for the income years ending after the day on which the person is treated as acquiring it under this section.

“Market value and 20% loading

- “(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 of section EE 31(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—
 - “(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.

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

Compare: 2004 No 35 s LH 11

“LH 15 Listed research providers

“Application

- “(1) A person may apply to be a listed research provider by notifying the Commissioner that they—
 - “(a) meet the 2 start-up requirements of **subsection (2)**; and
 - “(b) undertake to meet the continuing requirements of **subsection (3)**.

“Start-up requirements

- “(2) The start-up requirements are that the person—
 - “(a) is capable of performing research and development activities on behalf of other persons; and
 - “(b) has in New Zealand the facilities needed to perform the research and development activities.

“Continuing requirements

- “(3) The continuing requirements are that the person—
 - “(a) charges market prices for performing the research and development activities; and
 - “(b) is available to perform research and development activities on behalf of persons not associated with them; and
 - “(c) keeps records as required by **section 22(2)(kd)** of the Tax Administration Act 1994.

“Published listing of applicants

- “(4) The Commissioner may list the person as a listed research provider if the Commissioner is satisfied that they meet the requirements of **subsection (2)**. The Commissioner must publish the names of the listed research providers appropriately. **Subsection (10)** applies in relation to an application to list when the person applying has previously been listed under this subsection and later been removed from the list.

“Period of listing

- “(5) A person listed under **subsection (4)** continues to be a listed research provider until removed from the list—
- “(a) under **subsection (6)**, following a request by the person:
 - “(b) under **subsection (7)**, by notice of the Commissioner.

“Request for removal from list

- “(6) If a listed research provider notifies the Commissioner that they wish to be removed from the list, they are removed from the list from the later of the following:
- “(a) the date set out in the notice:
 - “(b) the date on which the Commissioner receives the notice.

“Removal from list by Commissioner

- “(7) If the Commissioner is satisfied that a person is not meeting a requirement of **subsection (2) or (3)**, the Commissioner may notify the person that they are no longer a listed research provider, giving the reasons for the decision for removal. The person is then removed from the list from the later of the following:
- “(a) the date set out in the notice:
 - “(b) the date that is 1 month after the date of the notice.

“No challenge

- “(8) No challenge to a decision by the Commissioner under **subsection (7)** is available.

“When subsection (10) applies

- “(9) **Subsection (10)** applies when a person—
- “(a) has been listed under **subsection (4)**; and
 - “(b) has been removed from the list under **subsection (6) or (7)**; and
 - “(c) reapplies under **subsection (1)** to be a listed research provider.

“Conditions for relisting

- “(10) If the Commissioner is satisfied that the person meets the requirements of **subsection (2)** and will meet the requirements of **subsection (3)**, the Commissioner may list the person as a listed research provider.

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

Compare: 2004 No 35 s LH 8

“LH 16 Industry research co-operatives

An **industry research co-operative** is a person who performs or commissions 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 as a resident or through a fixed establishment in New Zealand; and
- “(b) would meet the requirements of **section LH 2** if—
- “(i) the person performed the research and development activities, or had the research and development activities performed on the person’s behalf; and
- “(ii) **section LH 2(3)(a)** did not apply; and
- “(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:
- “(iii) as a levy imposed under section 5 of the Building Research Levy Act 1969.

“Defined in this Act: business, Commissioner, fixed establishment, industry research co-operative, New Zealand, research and development activities, resident

Compare: 2004 No 35 s LH 9

“LH 17 Some definitions

In this subpart,—

“**associated internal software developer**, for a person (**person A**) who is performing, or having another person perform, internal software development at a time, means another person—

- “(a) who is performing, or having another person perform, 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 person A

“internal software development, for a person, means a research and development activity of developing software with—

- “(a) a purpose of having the software used in—
 - “(i) the internal administration of business activities of the person or of another person associated with them:
 - “(ii) providing services to customers of the person or another person associated with them whose main reason for using the services is to obtain a service other than the use of the person’s computer technology or software:
- “(b) the main purpose that is neither—
 - “(i) selling, renting, licensing, hiring, or leasing the software by the person to customers of which 2 or more are not associated with the person nor with each other:
 - “(ii) including the software as an integral part of an electrical or mechanical device for which the software is developed and that has for the person the main purpose of being sold, rented, licensed, hired, or leased to customers as part of the person’s business

“internal software development controller, for a person (**person A**) who is performing, or having another person perform, internal software development, means a group of 1 or more persons—

- “(a) having the power to govern, directly or indirectly, the financial and operating policies of person A to obtain benefits from person A’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—

- “(a) the controller is the internal software development controller of the entity; and
- “(b) the entity is performing, or having another person perform, 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

Compare: 2004 No 35 s LH 12”.

418 New section LO 2B

After section LO 2, the following is inserted:

“LO 2B Credit of RSCT for Maori authority credit

“Retirement scheme contributions

- “(1) A retirement scheme contributor who attaches a Maori authority credit to a retirement scheme contribution for a person in an income year has a credit of RSCT equal to the lesser of—
- “(a) the amount of the Maori authority credit:
 - “(b) the liability of the contributor for RSCT on the contribution.

“When credit more than liability

- “(2) If the amount of the Maori authority credit is more than the liability of the contributor for RSCT on the contribution,—
- “(a) the amount of the excess is treated as a Maori authority credit attached to a taxable Maori authority distribution from the contributor to the person; and
 - “(b) the person responsible for withholding the RSCT must, within 30 days of the contribution, notify the person of the amount of the excess credit.

“Defined in this Act: amount, income year, Maori authority credit, notify, retirement scheme contribution, retirement scheme contributor, RSCT

Compare: 2004 No 35 s LD 4”.

419 Tax credits for supplementary dividends

- (1) In section LP 2(2), the item “67/187” in the formula is replaced by “7/10”.
- (2) After section LP 2(6), the following is added:

“(7) **Section 0Z 12** (Tax credits for non-resident investors) may apply to modify subsection (2).”

420 Application of benchmark dividend rules and imputation credit ratio

After section LP 5(2), the following is added:

- “(3) **Section 0Z 12** (Tax credits for non-resident investors) may apply to modify this section.”

421 Relationship with exempt income rules

After section LP 8(4), the following is added:

- “(5) **Section 0Z 12** (Tax credits for non-resident investors) may apply to modify subsection (3)(c).”

422 What this subpart does

Section MA 1, other than the heading, is replaced by the following:

This Part identifies the tax credits to which a person is entitled—

- “(a) under the family scheme for a tax year, *see* subparts MA to MF and MZ (which relate to working for families tax credits):
- “(b) under the superannuation savings scheme for a year beginning on 1 July and ending on 30 June, *see* **subpart MK** (Tax credits for KiwiSaver schemes and complying superannuation funds):
- “(c) for a redundancy payment, *see* **subpart ML** (Tax credits for redundancy payments).”

423 Avoidance arrangements

In section MA 6, “family support credits” is replaced by “tax credits for families”.

424 Some definitions for family scheme

(1) In section MA 8,—

- (a) before the definition of **chief executive**, the following is inserted:

“**abating WFF tax credit** means a tax credit under section MD 1 (Abating WFF tax credit)”:

- (b) in the definition of **child tax credit**, “family assistance credit” is replaced by “WFF tax credit”:
- (c) the definition of **family assistance credit** is repealed:
- (d) in the definition of **family credit abatement**, “family assistance credit” is replaced by “abating WFF tax credit”:
- (e) the definition of **family plus** is repealed:
- (f) the definition of **family support** is replaced by the following:

“**family tax credit** means the component of the abating WFF tax credit calculated using the formula in section MD 3 (Calculation of family tax credit)”:

- (g) the definition of **family tax credit** existing before this Act is repealed:
- (h) the definition of **in-work payment** is replaced by the following:

“**in-work tax credit** means the component of the abating WFF tax credit calculated using the formula in section MD 10 (Calculation of in-work tax credit)”:

- (i) after the definition of **in-work tax credit**, the following is inserted:

“**minimum family tax credit** means a tax credit under section ME 1 (Minimum family tax credit)”:

- (j) the definition of **net family scheme income** is repealed;
- (k) in the definition of **parental tax credit**, “family assistance credit” is replaced by “abating WFF tax credit”;
- (l) after the definition of **social assistance payment**, the following is inserted:

“**WFF tax credit** means a tax credit under either section MD 1 (Abating WFF tax credit) or ME 1 (Minimum family tax credit)”.

- (2) In section MA 8, in the list of defined terms,—
 - (a) “abating WFF tax credit”, “minimum family tax credit”, and “WFF tax credit” are inserted;
 - (b) “family assistance credit” is omitted.

425 Adjustments for calculation of family scheme income

- (1) In section MB 1(5), “and (c)” is inserted after “section CX 56(1)(b)”.

- (2) After section MB 1(5), the following is added:

“Retirement scheme contributions

- “(5B) For the purposes of subsection (1), an amount of retirement scheme contribution that is not excluded income of the person and would be their excluded income in the absence of **section CX 50B(2)** (Contributions to retirement savings schemes) is not included in family scheme income.”

- (3) In section MB 1, in the list of defined terms, “retirement scheme contribution” is inserted.

426 New section MB 6

After section MB 5, the following is added:

“MB 6 Treatment of distributions from retirement savings schemes

“When this section applies

- “(1) This section applies when—
 - “(a) a person receives a distribution of a retirement scheme contribution from a retirement savings scheme in an income year; and
 - “(b) RSCT has been withheld from the contribution; and
 - “(c) at the time of the distribution, the person is—
 - “(i) not eligible for New Zealand superannuation; and
 - “(ii) eligible for a distribution of a retirement scheme contribution from a retirement scheme contributor.

“Assessable income

- “(2) For the purposes of calculating family scheme income, the distribution is assessable income of the person derived in the income year in which the distribution is made.

“Defined in this Act: assessable income, family scheme income, income year, New Zealand superannuation, retirement savings scheme, retirement scheme contribution, retirement scheme contributor, RSCT

Compare: 2004 No 35 s KD 1(1)(hb)”.

427 What this subpart does

- (1) In section MC 1(1), “family support and family plus” is replaced by “WFF tax credits”.
- (2) Section MC 1(2) to (4) is replaced by the following:

“WFF tax credits

- “(2) The WFF tax credit is the amount of a person’s entitlement and tax credit made up of—
- “(a) the family tax credit calculated under section MD 3 (Calculation of family tax credit):
- “(b) the in-work tax credit, *see* sections MD 4 to MD 10 (which relate to the entitlement to and calculation of the in-work tax credit), or the child tax credit continued under section MZ 1 (Entitlement to child tax credit):
- “(c) the parental tax credit, *see* sections MD 11 and MD 12 (which relate to the entitlement to and calculation of the parental tax credit):
- “(d) the minimum family tax credit, *see* section ME 1 (Minimum family tax credit).

“Classification of credits

- “(3) For the purposes of the calculation of an amount of a WFF tax credit, entitlements and tax credits under the family scheme are divided into—
- “(a) abating WFF tax credits, made up of the family tax credit, in-work tax credit or child tax credit, and the parental tax credit:
- “(b) the minimum family tax credit.”
- (3) In section MC 1, in the list of defined terms,—
- (a) “abating WFF tax credit”, “in-work tax credit”, “minimum family tax credit”, and “WFF tax credit” are inserted:
- (b) “family assistance credit”, “family plus”, “family support”, and “in-work payment,” are omitted.

428 Third requirement: residence

In section MC 5(2)(a), “Family assistance credit” is replaced by “Abating WFF tax credit”, and “Family tax credit” is replaced by “Minimum family tax credit”.

429 When person does not qualify

- (1) In section MC 6(a), “a family assistance credit” is replaced by “an abating WFF tax credit”.
- (2) In section MC 6(b), “a family tax credit” is replaced by “an in-work tax credit, parental tax credit, or minimum family tax credit”.
- (3) In section MC 6, in the list of defined terms,—
 - (a) “abating WFF tax credit”, “in-work tax credit”, “minimum family tax credit”, and “parental tax credit” are inserted:
 - (b) “family assistance credit” and “family tax credit,” are omitted.

430 When spouse or partner entitled under family scheme

In section MC 7(2)(b), “for all WFF tax credits other than the in-work tax credit,” is inserted before “the Commissioner”.

431 Continuing requirements

- (1) In section MC 8(e), “family assistance credit” is replaced by “WFF tax credit”.
- (2) In section MC 8(f), “protected family support” is replaced by “protected family tax credit”.
- (3) In section MC 8, in the list of defined terms,—
 - (a) “protected family tax credit” and “WFF tax credit” are inserted:
 - (b) “family assistance credit” and “protected family support” are omitted.

432 Credits for person aged 18

- (1) In section MC 9(1), “Family assistance credit” is replaced by “Abating WFF tax credit”, and “Family tax credit” is replaced by “Minimum family tax credit”.
- (2) In section MC 9(2), “a family assistance credit” is replaced by “an abating WFF tax credit”, and “family tax credit” is replaced by “minimum family tax credit”.
- (3) In section MC 9, in the list of defined terms,—
 - (a) “abating WFF tax credit” and “minimum family tax credit” are inserted:
 - (b) “family assistance credit” is omitted.

433 Principal caregiver

- (1) In the heading to section MC 10(2), “*family assistance credit*” is replaced by “*abating WFF tax credit*”, and “*family support*” is replaced by “*family tax credit*”.
- (2) In section MC 10(2), “family support” is replaced by “family tax credit”.

- (3) In the heading to section MC 10(3), “in-work payment” is replaced by “in-work tax credit”.
- (4) In the heading to section MC 10(4), “in-work payment” is replaced by “in-work tax credit”.
- (5) In section MC 10(4), “in-work payment” is replaced by “in-work tax credit”.
- (6) In section MC 10, in the list of defined terms,—
 - (a) “abating WFF tax credit”, “family tax credit”, and “in-work tax credit”, are inserted:
 - (b) “family assistance credit”, “family support”, and “in-work payment” are omitted.

434 Heading: subpart MD

The heading to subpart MD is replaced by “Subpart MD—Abating WFF tax credits”.

435 Family assistance credit

- (1) The heading to section MD 1 is replaced by “**Abating WFF tax credit**”.
- (2) In section MD 1(1), “**family assistance credit**” is replaced by “**abating WFF tax credit**”.
- (3) In the formula in section MD 1(2),—
 - (a) the item “family support” is replaced by “family tax credit”:
 - (b) the item “payment or credit” is replaced by “in-work tax credit or child tax credit”:
 - (c) the item “family credit abatement” is replaced by “credit abatement”.
- (4) In section MD 1(3)(a), “family support” is replaced by “family tax credit” in all places in which it appears.
- (5) In section MD 1(3)(b), “payment or credit” is replaced by “in-work tax credit or child tax credit”, and “in-work payment” is replaced by “in-work tax credit” in all places in which it appears.
- (6) Section MD 1(3)(d) is replaced by the following:
 - “(d) credit abatement is the total amount, for the entitlement period, of—
 - “(i) a family credit abatement calculated using the formula in section MD 13(2) other than an amount used as described in section MD 16(3)(b); and
 - “(ii) a parental tax credit abatement calculated using the formula in section MD 16(2).”
- (7) In section MD 1, in the list of defined terms,—
 - (a) “abating WFF tax credit”, “family tax credit”, and “in-work tax credit”, are inserted:

- (b) “family support” and “in-work payment” are omitted.

436 Calculating net contributions to credits

- (1) In section MD 2(1), “family support, the in-work payment” is replaced by “family tax credit, the in-work tax credit”.
- (2) In section MD 2(2)(a), “family support, in-work payment” is replaced by “family tax credit, the in-work tax credit”.
- (3) In section MD 2(2)(c)(i), “family support” is replaced by “family tax credit”.
- (4) In section MD 2(2)(c)(ii), “in-work payment” is replaced by “in-work tax credit”.
- (5) After section MD 2(2), the following is added:

“Credit abatements

- “(3) **Section MD 16** overrides this section in relation to the amount of the family credit abatement and the parental tax credit abatement. ”
- (6) In section MD 2, in the list of defined terms,—
 - (a) “family tax credit” and “in-work tax credit” are inserted:
 - (b) “family support’ and “in-work payment” are omitted.”

437 Calculation of family support

- (1) The heading before section MD 3 is replaced by “*Family tax credit*”.
- (2) In the heading to section MD 3, “**support**” is replaced by “**tax credit**”.
- (3) In section MD 3(1), “family support” is replaced by “family tax credit”.
- (4) In section MD 3(7), “Family support” is replaced by “A family tax credit”.
- (5) In section MD 3, in the list of defined terms,—
 - (a) “family tax credit” is inserted:
 - (b) “family support” is omitted.

438 Entitlement to in-work payment

- (1) The heading before section MD 4 is replaced by “*In-work tax credit*”.
- (2) In the heading to section MD 4, “**payment**” is replaced by “**tax credit**”.
- (3) In section MD 4(1), “payment” is replaced by “tax credit”.
- (4) In the heading to section MD 4(2), “*payment*” is replaced by “*tax credit*”.
- (5) In section MD 4(2), “payment” is replaced by “tax credit”.
- (6) In section MD 4, in the list of defined terms,—

- (a) “in-work tax credit” is inserted:
- (b) “in-work payment” is omitted.

439 First requirement: person’s age

- (1) In section MD 5, “payment” is replaced by “tax credit”.
- (2) In section MD 5, in the list of defined terms,—
 - (a) “in-work tax credit” is inserted:
 - (b) “in-work payment” is omitted.

440 Second requirement: principal care

- (1) In section MD 6(1), “payment” is replaced by “tax credit”.
- (2) In section MD 6, in the list of defined terms,—
 - (a) “in-work tax credit” is inserted:
 - (b) “in-work payment” is omitted.

441 Third requirement: residence

- (1) In section MD 7(1), “payment” is replaced by “tax credit”.
- (2) In section MD 7, in the list of defined terms,—
 - (a) “in-work tax credit” is inserted:
 - (b) “in-work payment” is omitted.

442 Fourth requirement: person not receiving benefit

- (1) In section MD 8, “payment” is replaced by “tax credit”.
- (2) In section MD 8, in the list of defined terms,—
 - (a) “in-work tax credit” is inserted:
 - (b) “in-work payment” is omitted.

443 Fifth requirement: full-time earner

- (1) In section MD 9(1), “in-work payment” is replaced by “in-work tax credit”.
- (2) In section MD 9, in the list of defined terms,—
 - (a) “in-work tax credit” is inserted:
 - (b) “in-work payment” is omitted.

444 Calculation of in-work payment

- (1) In the heading to section MD 10, “**payment**” is replaced by “**tax credit**”.
- (2) In section MD 10(1), “payment” is replaced by “tax credit”.
- (3) In section MD 10(3)(c)(ii), “payment” is replaced by “tax credit”.
- (4) In section MD 10, in the list of defined terms,—
 - (a) “in-work tax credit” is inserted:
 - (b) “in-work payment” is omitted.

445 Calculation of family credit abatement

- (1) The heading before section MD 13 is replaced by “*Credit abatement*”.
- (2) In section MD 13(3)(b), “support” is replaced by “tax credit”.
- (3) In section MD 13, in the list of defined terms,—
 - (a) “protected family tax credit” is inserted:
 - (b) “protected family support” is omitted.

446 Person receiving protected family support

- (1) In the heading to section MD 14, “support” is replaced by “tax credit”.
- (2) In section MD 14(1), “support” is replaced by “tax credit”.
- (3) In section MD 14, in the list of defined terms,—
 - (a) “protected family tax credit” is inserted:
 - (b) “protected family support” is omitted.

447 New section MD 16

After section MD 15, the following is added:

“MD 16 Calculation of parental tax credit abatement

“When this section applies

- “(1) This section applies when—
- “(a) a person is entitled under section MD 11 to a parental tax credit for a parental entitlement period; and
 - “(b) they choose to have the credit paid in a lump sum; and
 - “(c) the birth occurs within 56 days of the end of the tax year.

“Amount of abatement

- “(2) Despite section MD 2, the amount of the person’s parental tax credit abatement for the parental entitlement period is calculated using the formula—

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

“Definition of items in formula

- “(3) In the formula,—
- “(a) **full-year abatement** has the same meaning as the item **full-year abatement** in section MD 13(3)(a):
 - “(b) **amount used** means an amount of family credit abatement under section MD 13 for an entitlement period that ends on the last day of the tax year to the extent to

which the abatement would be applied under section MD 2(2)(c)(i) and (ii) in calculating a net contribution.

“Defined in this Act: amount, entitlement period, family credit abatement, parental entitlement period, parental tax credit, pay, tax year

Compare: 2004 No 35 s KD 2B”.

448 Heading: subpart ME

The heading to subpart ME is replaced by “Subpart ME—Minimum family tax credit”.

449 Family tax credit

- (1) The heading to section ME 1 is replaced by “**Minimum family tax credit**”.
- (2) In section ME 1(1), “**minimum**” is inserted before “**family**”.
- (3) In section ME 1(3)(b), “calculated using the formula in section ME 3,” is inserted after “net family scheme income,”.
- (4) In section ME 1, in the list of defined terms,—
 - (a) “minimum family tax credit” is inserted:
 - (b) “family tax credit” is omitted.

450 Meaning of employment for this subpart

- (1) In section ME 2(1), “minimum” is inserted before “family”.
- (2) In section ME 2, in the list of defined terms,—
 - (a) “minimum family tax credit” is inserted:
 - (b) “family tax credit” is omitted.

451 New section ME 3

After section ME 2, the following is added:

“ME 3 Meaning of net family scheme income

“When this section applies

- “(1) This section applies for the purposes of this subpart.

“Formula

- “(2) **Net family scheme income**, for a person and a relationship period, means the amount calculated using the formula—
- $$\text{adjusted income} \times \frac{52}{\text{weeks}} - \text{adjusted liability} + \text{amount received} - \text{amount paid}.$$

“Definition of items in formula

- “(3) In the formula,—
- “(a) **adjusted income** is—
 - “(i) the amount of the person’s net income under section MB 1 (Adjustments for calculation of family scheme income) for the tax year in which the relationship period falls to the extent to which

the amount is attributable to the weeks in the relationship period for which the person is a full-time earner; and

“(ii) calculated without reference to the amounts referred to in section MB 1(2) and (3):

“(b) **weeks** is the number of weeks in the relationship period for which the person is a full-time earner:

“(c) **adjusted liability** is the amount that would be the person’s income tax liability—

“(i) treating the amount of adjusted income under **paragraph (a)** as if it were the person’s net income; and

“(ii) taking into account any tax credit under section LC 1 or LC 2 (which relate to tax credits for persons on low incomes):

“(d) **amount received** is the amount referred to in section MB 1(2) for the tax year:

“(e) **amount paid** is the amount of the deduction referred to in section MB 1(3) for the tax year.

“Defined in this Act: amount, deduction, full-time earner, income tax liability, net income, pay, relationship period, tax credit, tax year

Compare: 2004 No 35 s OB 1 “net specified income””.

452 Application for payment of tax credit by instalment

In section MF 1(1)(a), “Family assistance credit” is replaced by “Abating WFF tax credit”, and “Family” is replaced by “Minimum family”.

453 When person not entitled to payment by instalment

- (1) In section MF 2(1)(b), “a family assistance credit” is replaced by “an abating WFF tax credit”.
- (2) In section MF 2, in the list of defined terms,—
 - (a) “abating WFF tax credit” is inserted:
 - (b) “family assistance credit” is omitted.

454 Calculating amount of interim family assistance credit

- (1) In the heading to section MF 3, “**family assistance credit**” is replaced by “**WFF tax credit**”.
- (2) In section MF 3(2)(c), “family assistance credit” is replaced by “WFF tax credit”.
- (3) In section MF 3, in the list of defined terms,—
 - (a) “WFF tax credit” is inserted:
 - (b) “family assistance credit” is omitted.

455 Requirements for calculating instalment of tax credit

- (1) In section MF 4(1), “Family assistance credit” is replaced by “Abating WFF tax credit”, and “Family tax credit” is replaced by “Minimum family tax credit”.
- (2) In section MF 4(1)(b)(ii), “family support” is replaced by “family tax credit”, and “in-work payment” is replaced by “in-work tax credit”, and “family tax credit” is replaced by “minimum family tax credit”.
- (3) In section MF 4, in the list of defined terms,—
 - (a) “in-work tax credit” and “minimum family tax credit” are inserted:
 - (b) “family support” and “in-work payment” are omitted.

456 Recovery of overpaid tax credit

In section MF 5(1), “Family assistance credit” is replaced by “Abating WFF tax credit”, and “Family tax credit” is replaced by “Minimum family tax credit”.

457 Overpayment of tax credit

In section MF 6(1), “Family assistance credit” is replaced by “Abating WFF tax credit”, and “Family tax credit” is replaced by “Minimum family tax credit”.

458 Orders in Council

- (1) In section MF 7(1)(a), “family support” is replaced by “family tax credit” in all places in which it appears.
- (2) In section MF 7(1)(b), “in-work payment” is replaced by “in-work tax credit” in all places in which it appears.
- (3) In section MF 7(1)(d), “family tax credit” is replaced by “minimum family tax credit” in all places in which it appears.
- (4) In the heading to section MF 7(4), “*in-work payment*” is replaced by “*in-work tax credit*”.
- (5) In section MF 7(4), “in-work payment” is replaced by “in-work tax credit”.
- (6) In section MF 7, in the list of defined terms,—
 - (a) “in-work tax credit” and “minimum family tax credit” are inserted:
 - (b) “family support” and “in-work payment” are omitted.

459 New subpart ML inserted

After section MK 8, the following is inserted:

“Subpart ML—Tax credits for redundancy payments

“ML 1 What this subpart does

“*Redundancy payments*

“(1) This subpart provides a tax credit for a person who derives a redundancy payment for loss of employment.

“*Exclusions*

“(2) Despite **subsection (1)**, no tax credit arises for a redundancy payment—

“(a) related to—

“(i) retirement from employment:

“(ii) loss of seasonal employment arising from the normal seasonal work cycle:

“(iii) a contract of employment for a fixed term or for the duration of a project:

“(iv) employment for a period following notice of termination of employment:

“(b) paid—

“(i) to a director of a company by the company or a person associated with the company under the 1988 version provisions:

“(ii) to a person by a person associated with them under the 1988 version provisions:

“(iii) by a person to an employee who has been paid a redundancy payment by a person associated with the person under the 1988 version provisions.

“Defined in this Act: 1988 version provisions, associated person, company, director, employee, employment, pay, tax credit

Compare: 2004 No 35 s KC 6(1), (3)

“ML 2 Tax credit for redundancy payments

A person who derives a redundancy payment for loss of employment has a tax credit for a tax year of an amount equal to the lesser of—

“(a) \$3600:

“(b) an amount of 6 cents for every complete dollar of the total amount of the redundancy payment derived by the person.

“Defined in this Act: amount, employment, pay, tax credit, tax year

Compare: 2004 No 35 s KC 6(1)

“ML 3 Payment by Commissioner

The person referred to in **section ML 2** must apply under **section 41B** of the Tax Administration Act 1994 to the Commissioner for payment of the tax credit.

“Defined in this Act: Commissioner, pay, tax credit

Compare: 2004 No 35 s KC 6(2)”.

460 Entitlement to child tax credit

- (1) In section MZ 1(1)(b), “in-work payment” is replaced by “in-work tax credit” in all places in which it appears.
- (2) In section MZ 1(3), “in-work payment” is replaced by “in-work tax credit”.
- (3) In section MZ 1, in the list of defined terms,—
 - (a) “in-work tax credit” is inserted:
 - (b) “in-work payment” is omitted.

461 Calculation of maximum permitted ratios

After section OA 18(3), the following is added:

“Relationship with sections OZ 8 and OZ 9

- “(4) **Sections OZ 8 and OZ 9** (which relate to the calculation of maximum permitted ratios in certain income years) may apply to modify this section.”

462 Australian companies with imputation credit accounts

- (1) In section OB 2(2)(a)(i), “(c) to (e)” is replaced by “(b) to (f)”.
- (2) Section OB 2(2)(a)(ii) is replaced by the following:

“(ii) is treated as resident in a country other than Australia under an agreement between Australia and the other country that would be a double tax agreement if negotiated between New Zealand and that other country; or”.

463 ICA payment of tax

After section OB 4(3)(e), the following is inserted:

“(eb) income tax paid by a tax credit under sections LA 2 and LH 2 (which relate to tax credits for research and development and their use); or”.

464 New sections OB 7B and OB 7C

After section OB 7, the following is inserted:

“OB 7B ICA payment of qualifying company election tax

“Credit

“(1) An ICA company has an imputation credit for an amount of qualifying company election tax paid under section HA 40 (Liability for qualifying company election tax).

“Table reference

“(2) The imputation credit in **subsection (1)** is referred to in table O1: imputation credits, row 5B (payment of qualifying company election tax).

“Credit date

“(3) The credit date is the day the qualifying company election tax is paid.

“Defined in this Act: amount, ICA company, imputation credit, pay, qualifying company election tax

Compare: 2004 No 35 s ME 4(1)(ae), (2)(ae)

“OB 7C ICA business expenditure on research and development

“Credit

“(1) An ICA company has an imputation credit for an amount of a tax credit that the company has under **section LH 2** (Tax credits relating to expenditure on research and development).

“Table reference

“(2) The imputation credit in **subsection (1)** is referred to in table O1: imputation credits, row 5C (tax credit for business expenditure).

“Credit date

“(3) The credit date is the day the Commissioner is notified in the company’s return of income of the entitlement to the credit.

“Defined in this Act: amount, Commissioner, ICA company, imputation credit, return of income, tax credit

Compare: 2004 No 35 s ME 4(1)(ib), (2)(g)”.

465 ICA attribution for personal services

In section OB 16(1), “49.25%” is replaced by “42.86%”.

466 Table O1: imputation credits

In table O1 after row 5, the following rows are inserted:

“5B	Payment of qualifying company election tax	day of pay- ment	section OB 7B
“5C	Tax credit for business expenditure	day return filed	section OB 7C”.

467 ICA on-market cancellation

- (1) In section OB 42(1), the item “RWT rate” in the formula is replaced by “tax rate” in all places in which it appears.
- (2) Section OB 42(2)(b) is replaced by the following:

“(b) **tax rate** is the basic rate of income tax set out in schedule 1, part A, clause 2 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits) for the tax year in which the acquisition occurs.”

468 Further income tax when company stops being ICA company

- (1) Section OB 66(2), other than the heading, is replaced by the following:

“(2) The company must pay the further income tax to the Commissioner—

 - “(a) by the day the company stops being an ICA company; or
 - “(b) for a company that is no longer an ICA company because it becomes a portfolio investment entity, by the end of the tax year in which it stops being an ICA company.”
- (2) In section OB 66, in the list of defined terms, “portfolio investment entity” is inserted.

469 Statutory producer boards attaching imputation credits to cash distributions

After section OB 73(8) the following is added:

“Relationship with section OZ 15

- “(9) **Section OZ 15** (Attaching imputation credits and notional distributions: modifying amounts) may apply to modify subsection (4).”

470 Statutory producer boards' notional distributions that are dividends

After section OB 75(5) the following is added:

“Relationship with section OZ 15

- “(6) **Section OZ 15** (Attaching imputation credits and notional distributions: modifying amounts) may apply to modify subsection (2).”

471 Co-operative companies attaching imputation credits to cash distributions

After section OB 78(7) the following is added:

“Relationship with section OZ 15

- “(8) **Section OZ 15** (Attaching imputation credits and notional distributions: modifying amounts) may apply to modify subsection (3).”

472 Co-operative companies' notional distributions that are dividends

After section OB 80(4) the following is added:

“Relationship with section OZ 15

- “(5) **Section OZ 15** (Attaching imputation credits and notional distributions: modifying amounts) may apply to modify subsection (2).”

473 FDP credits and imputation credits attached to dividends

After section OC 29(6) the following is added:

“Relationship with section OZ 8

- “(7) **Section OZ 8** (Attaching imputation credits and FDP credits: maximum permitted ratio) may apply to modify this section.”

474 General rules for companies with CTR accounts

After section OD 1(6) the following is added:

“Relationship with section OZ 17

- “(7) **Section OZ 17** (CTRA reductions) may apply to modify the credits and debits arising under this subpart.”

475 CTR credits and imputation credits attached to dividends

After section OD 22(6) the following is added:

“Relationship with section OZ 8

- “(7) **Section OZ 8** (Attaching imputation credits and FDP credits: maximum permitted ratio) may apply to modify this section.”

476 Branch equivalent tax accounts of companies

After section OE 2(6) the following is added:

“Relationship with section OZ 16

- “(7) **Section OZ 16** (BETA reductions) may apply to modify the application of sections OE 6 to OE 16.”

477 BETA payment of income tax

- (1) In section OE 7(2), “same consolidated group” is replaced by “same group of companies”.
- (2) After section OE 7(3), the following is inserted:

“Maximum amount

- “(3B) Despite subsection (3) and section OP 101(2) (Consolidated BETA payment of income tax), the amount that may be applied to satisfy the income tax liability must be no more than the amount calculated for the company that has the attributed CFC income under section OE 6(1), treating the item **debit balances** as zero.”

- (3) In section OE 7(4), “company’s branch equivalent tax account” is replaced by “branch equivalent tax account of the company that made the election under subsection (3)”.

478 BETA unused amount of debit balance

In section OE 8(1), “same consolidated group” is replaced by “same group of companies”.

479 MACA payment of tax

After section OK 2(3)(c), the following is inserted:

“(cb) income tax paid by a tax credit under sections LA 2 and **LH 2** (which relate to tax credits for research and development and their use); or”.

480 New section OK 4B

After section OK 4, the following is inserted:

“OK 4B MACA business expenditure on research and development

“Credit

- “(1) A Maori authority has a Maori authority credit for an amount of a tax credit that the authority has under **section LH 2** (Tax credits relating to expenditure on research and development).

“Table reference

- “(2) The Maori authority credit in **subsection (1)** is referred to in table O17: Maori authority credits, row 4B (tax credit for business expenditure).

“Credit date

- “(3) The credit date is the day the authority’s return of income is filed.

“Defined in this Act: amount, Commissioner, Maori authority credit, return of income, tax credit

Compare: 2004 No 35 s MK 4(1)(gb), (2)(db)”.

481 Table O17: Maori authority credits

In table O17 after row 4, the following row is inserted:

- “4B Tax credit for business expenditure – day return filed – section OK 4B.”

482 When credits and debits arise only in consolidated imputation group accounts

After section OP 5(2)(b), the following is inserted:

“(bb) section OP 11B, row 6B (tax credit for business expenditure):”.

483 Consolidated ICA payment of tax

After section OP 7(3)(f), the following is inserted:

“(fb) income tax paid by a tax credit under sections LA 2 and **LH 2** (which relate to tax credits for research and development and their use); or”.

484 New section OP 11B

After section OP 11, the following is inserted:

“OP 11B Consolidated ICA business expenditure on research and development

“Credit

- “(1) A consolidated imputation group has an imputation credit for an amount of a tax credit that a group company has under **section LH 2** (Tax credits relating to expenditure on research and development).

“Table reference

- “(2) The imputation credit in **subsection (1)** is referred to in table O19: imputation credits of consolidated groups, row 6B (tax credit for business expenditure).

“Credit date

- “(3) The credit date is the day the return of income relating to the amount is filed.

“Defined in this Act: amount, Commissioner, company, consolidated imputation group, imputation credit, return of income, tax credit

Compare: 2004 No 35 s ME 11(1)(ib), (2)(db)”.

485 Table O19: imputation credits of consolidated imputation groups

In table O19 after row 6, the following row is inserted:

- “6B Tax credit for business expen- day return filed section OP 11B.”
diture

486 CTR accounts of consolidated groups

After section OP 78(2), the following is added:

“Relationship with section OZ 17

- “(3) **Section OZ 17** (CTRA reductions) may apply to modify the credits and debits arising under sections OP 81 to OP 96.”

487 When credits and debits arise only in branch equivalent tax group accounts

After section OP 99(4), the following is added:

“Relationship with section OZ 16

- “(5) **Section OZ 16** (BETA reductions) may apply to modify the application of sections OP 100 to OP 108.”

488 Consolidated BETA payment of income tax

- (1) After section OP 101(2), the following is inserted:

“Maximum amount

- “(2B) Despite subsection (2) and section OE 7(3) (BETA payment of income tax), the amount that may be applied to satisfy the income tax liability must be no more than the amount calculated under section OE 6(1) for the company that has the attributed CFC income or under section OP 100(1) for the consolidated group, in both cases treating the item **debit balances** as zero.”

- (2) In section OP 101(3), “the group’s branch equivalent tax account” is replaced by “the branch equivalent tax account of the group or group company B, as applicable”.

- (3) In section OP 101, in the compare note, “MF 10(3),” is inserted.

489 New sections OZ 7 to OZ 17 added

After section OZ 6, the following is added:

“OZ 7 Memorandum accounts in transitional period

Sections OZ 8 to OZ 15 apply for a period (the **transitional period**)—

- “(a) beginning the first day of a person’s 2008–09 income year; and

“(b) ending on 31 March 2010.

“Defined in this Act: income year

Compare: 2004 No 35 ss MZ 10(1)(a), MZ 11(1)(a), MZ 12(1)(a), MZ 13(1)(a), MZ 14(1)(a), MZ 15(1)(a), MZ 16(1)(a), MZ 17(1)(a)

**“OZ 8 Attaching imputation credits and FDP credits:
maximum permitted ratio**

“*When this section applies*

“(1) This section applies when—

“(a) a company pays a dividend in the transitional period;
and

“(b) the company has a credit balance in its imputation credit account and FDP account from income, expenditure, memorandum account debits, credits, and balances, refunds, tax, tax credits, transfers, amounts withheld, or other items dealt with, arising, or calculated using an old company tax rate.

“*Rate applying for transitional period*

“(2) If the amount of the imputation credit or FDP credit attached to the dividend is limited by the maximum permitted ratio set out in section OA 18 (Calculation of maximum permitted ratios), the company may choose to treat the item **tax rate** in the formula in section OA 18(2) as 33%.

“Defined in this Act: amount, company, dividend, FDP account, FDP credit, imputation credit, imputation credit account, income, maximum permitted ratio, tax credit, tax year, transitional period

Compare: 2004 No 35 s MZ 13

“OZ 9 Benchmark dividends: ratio change

“*When this section applies*

“(1) This section applies when—

“(a) a company pays a dividend in the transitional period;
and

“(b) the dividend is a later dividend for the purposes of sections OB 61(4) and OC 28(4) (which relate to the benchmark dividend rules), as applicable; and

“(c) the relevant benchmark dividend—

“(i) was 1 to which **section OZ 8** applied; or

“(ii) has a ratio of 33/67, for a reason other than the application of **section OZ 8**.

“*When ratio treated as same as ratio for benchmark dividend*

“(2) If, in the cases set out in **subsection (3)**, the imputation ratio or FDP ratio of the later dividend is less than that of the relevant

benchmark dividend, the ratio is treated as the same as that of the relevant benchmark dividend.

“Cases

- “(3) The cases referred to in **subsection (2)** are the following:
- “(a) in the case of a benchmark dividend described in **subsection (1)(c)(i), section OZ 8** does not apply to the later dividend through the lack of a relevant credit balance described in **section OZ 8 (1)(b)**;
- “(b) in the case of a benchmark dividend described in **subsection (1)(c)(ii)**, the later dividend has a ratio of 30/70.

“Defined in this Act: benchmark dividend, company, dividend, FDP ratio, imputation ratio, transitional period

Compare: 2004 No 35 s MZ 14

“OZ 10 Modifying ratios for imputation credits and FDP credits

“When this section applies

- “(1) This section applies when—
- “(a) a person derives a dividend in the period from 1 October 2007 to 31 March 2010; and
- “(b) the dividend and the imputation credits and FDP credits attached to the dividend, as applicable, have —
- “(i) an imputation ratio greater than 30/70 and less than or equal to 33/67; or
- “(ii) an FDP ratio greater than 30/70 and less than or equal to 33/67; or
- “(iii) a combined imputation and FDP ratio greater than 30/70 and less than or equal to 33/67.

“Ratio applying

- “(2) For the purposes of section OA 5(2) and (3) (Credits), if the amount of the imputation credit or FDP credit, as applicable, is limited by the maximum permitted ratio set out in section OA 18 (Calculation of maximum permitted ratios), the relevant ratio is treated as 33/67.

“Defined in this Act: combined imputation and FDP ratio, dividend, FDP credit, FDP ratio, imputation credit, imputation ratio, maximum permitted ratio, transitional period

Compare: 2004 No 35 s MZ 15

“OZ 11 Tax credits for imputation credits and FDP credits

“When this section applies

- “(1) This section applies when—
- “(a) a person derives a dividend in the transitional period; and

- “(b) the dividend, and the imputation credits and FDP credits attached to the dividend, as applicable, have—
- “(i) an imputation ratio greater than 30/70 and less than or equal to 33/67; or
 - “(ii) an FDP ratio greater than 30/70 and less than or equal to 33/67; or
 - “(iii) a combined imputation and FDP ratio greater than 30/70 and less than or equal to 33/67; and
- “(c) the person is a new tax rate person in the period for the dividend.

“Imputation ratio and FDP ratio

- “(2) For a ratio described in **subsection (1)(b)(i) or (ii)**, the amount of the tax credit that the person has is calculated using the formula—

$$\text{dividend and credits} \times 0.30.$$

“Definition of item in formula

- “(3) In the formula in **subsection (2)**, **dividend and credits** is the amount of the imputation credit or FDP credit, as applicable, included in the person’s assessable income for the purposes of section LE 1(1) or LF 1(1) (which relate to tax credits for imputation credits and FDP credits), together with the amount of dividend to which the relevant credit is attached.

“Combined imputation and FDP ratio

- “(4) For a ratio described in **subsection (1)(b)(iii)**, the total amount of tax credit that the person has is calculated using the formula—

$$\text{dividend and credits} \times 0.30.$$

“Definition of item in formula

- “(5) In the formula in **subsection (4)**, **dividend and credits** is the total amount of the imputation credit and FDP credit included in the person’s assessable income for the purposes of section LE 1(1) and LF 1(1), together with the amount of the dividend to which the credits are attached. For the purposes of the calculation of the total tax credit, imputation credits are reduced before FDP credits.

“Defined in this Act: amount, assessable income, basic tax rate, combined imputation and FDP ratio, dividend, FDP credit, FDP ratio, imputation credit, imputation ratio, tax credit, total tax credit, transitional period

Compare: 2004 No 35 s MZ 16

“OZ 12 Tax credits for non-resident investors

“When this section applies

“(1) This section applies when—

- “(a) a company pays or derives a dividend with an imputation credit attached in the transitional period; and
- “(b) the dividend and imputation credit, to the extent to which, in the absence of subpart LP (Tax credits for supplementary dividends),—
 - “(i) the combined imputation and FDP ratio is greater than 30/70 and less than or equal to 33/67; or
 - “(ii) the imputation ratio is greater than 30/70 and less than or equal to 33/67; and
- “(c) section LP 2(1) (Tax credits for supplementary dividends) applies to the company, or the company is a supplementary dividend holding company.

“When ratio equal to old rate

“(2) For a ratio described in **subsection (1)(b)(i) or (ii)** that is equal to 33/67, then any tax credit that the company has is calculated using the formula in section LP 2(2), treating 7/10 as 67/120.

“When ratio less than old rate

“(3) For 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 amount of the dividend and imputation credit has a ratio of 33/67 through the application of **section OZ 8**, any tax credit that the company has is calculated using the formula in section LP 2(2), treating 7/10 as 67/120.

“Benchmark calculations

“(4) In the application of sections GB 35, GB 36, OA 18, OB 60, OB 61, OC 28 (which relate to imputation and FDP credit ratios) under section LP 5 (Application of benchmark dividend rules and imputation credit ratio), the provisions apply using the ratio 33/67 and the old company tax rates.

“Relationship with exempt income rules

“(5) If the company derives a dividend to which this section applies, item **tax rate** in the formula in section LP 8(2) (Relationship with exempt income rules) is treated as 33%, to the extent to which a part of the supplementary dividend was calculated as described in **subsection (2) or (3)**.

“Defined in this Act: amount, combined imputation and FDP ratio, company, dividend, imputation credit, imputation ratio, non-resident, pay, supplementary dividend, supplementary dividend holding company, tax credit, transitional period

Compare: 2004 No 35 s MZ 17

“OZ 13 Fully credited dividends: modifying actual ratio

“What this section applies to

- “(1) This section applies in the transitional period to a dividend for which, in the absence of this section, the actual ratio under section CD 43(26) (Available subscribed capital (ASC) amount) is greater than 30/70 and less than or equal to 33/67.

“Ratio for calculation

- “(2) In the calculation under section CD 43(26), the part of the dividend that is fully credited, the actual ratio is treated as 30/70.

“Defined in this Act: dividend, fully credited, transitional period

Compare: 2004 No 35 s MZ 18

“OZ 14 Dividends from qualifying companies

“When this section applies

- “(1) This section applies when—
- “(a) a qualifying company pays a dividend in the transitional period; and
 - “(b) **section OZ 8** applies to the dividend.

“Exempt income

- “(2) In the calculation under section HA 14 (Dividends paid by qualifying companies) the extent to which the dividend is exempt income of the person, item **tax rate** in the formula in section HA 15(2) (Fully imputed dividends) is treated as 0.33.

“Defined in this Act: dividend, exempt income, qualifying company, transitional period

Compare: 2004 No 35 s MZ 19

“OZ 15 Attaching imputation credits and notional distributions: modifying amounts

“When this section applies

- “(1) This section applies when—
- “(a) a statutory producer board or a co-operative company determines to pay a cash distribution or make a notional distribution in the transitional period; and
 - “(b) the board or company has a credit balance in its imputation credit account from income, expenditure, memorandum account debits, credits, and balances, refunds, tax, tax credits, transfers, amounts withheld, or other items dealt with, arising, or calculated using an old company tax rate.

“Statutory producer boards’ imputation credits

- “(2) In the calculation under section OB 73(4) (Statutory producer boards attaching imputation credits to cash distributions), the board may choose to treat item **tax rate** in the formula as 33%.

“Statutory producer boards’ notional distributions

- “(3) In the calculation under section OB 75(2) (Statutory producer boards’ notional distributions that are dividends), the board may choose to treat item **tax rate** in the formula as 33%.

“Co-operative companies’ imputation credits

- “(4) In the calculation under section OB 78(3) (Co-operative companies attaching imputation credits to cash distributions), the company may choose to treat item **tax rate** in the formula as 33%. This subsection does not apply to a Maori authority.

“Co-operative companies’ notional distributions

- “(5) In the calculation under section OB 80(2) (Co-operative companies’ notional distributions that are dividends), the company may choose to treat item **tax rate** in the formula as 33%. This subsection does not apply to a Maori authority.

“Defined in this Act: amount, co-operative company, imputation credit account, income, Maori authority, statutory producer board, tax credit, transitional period

Compare: 2004 No 35 s MZ 20

“OZ 16 BETA reductions

“What this section applies to

- “(1) This section applies to—
- “(a) a credit and a debit in the branch equivalent tax account of a company or a consolidated group before the first day of their 2008–09 income year:
 - “(b) a credit and a debit arising 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 credit and debit relate to their 2007–08 or earlier income years.

“Reduction

- “(2) The amount of the credit and debit are reduced by multiplying the amount by 30/33.

“Defined in this Act: amount, branch equivalent tax account, company, consolidated group, income year

Compare: 2004 No 35 s MZ 21

“OZ 17 CTRA reductions

“What this section applies to

- “(1) This section applies to—
- “(a) a credit and a debit in the CTR account of a company or a consolidated group before the first day of their 2008–09 income year:
 - “(b) a credit and a debit arising to the CTR account of a company or a consolidated group on or after the first day of their 2008–09 income year, if the credit and debit relate to their 2007–08 or earlier income years.

“Reduction

- “(2) The amount of the credit and debit are reduced by multiplying the amount by 30/33.

“Defined in this Act: amount, company, consolidated group, CTR account, income year

Compare: 2004 No 35 s MZ 22”.

490 What this Part does

- (1) After section RA 1(g), the following is inserted:
- “(gb) the payment of retirement scheme contribution tax (RSCT), *see* **subpart RH**; and”.
- (2) In section RA 1, in the list of defined terms, “retirement scheme contribution” and “RSCT” are inserted.

491 New section RA 6B

After section RA 6, the following is added:

“RA 6B Withholding and payment obligations for retirement scheme contributions

A person who makes a contribution to a retirement savings scheme must withhold and pay RSCT for the contribution to the Commissioner under **subpart RH** (Withholding tax on retirement scheme contributions) by the due dates.

“Defined in this Act: Commissioner, pay, retirement savings scheme, RSCT

Compare: 2004 No 35 s NEB 1”.

492 When obligations not met

- (1) In section RA 10(1)(a), “a retirement scheme contribution,” is inserted after “an employer’s superannuation contribution,”.
- (2) In section RA 10, in the compare note, “NEB 4(1),” is inserted.

493 Payment dates for interim and other tax payments

- (1) After section RA 15(1)(b), “provided by them.” is replaced by “provided by them; or” and the following is added:

- “(c) to withhold and pay under **section RA 6B** an amount of tax to the Commissioner for a retirement scheme contribution.”.
- (2) Section RA 15(3)(b), is replaced by the following is inserted:
“(b) for PAYE, RWT, NRWT, and RSCT payable monthly under section RD 4(1)(a), RE 21(2) and (7), RF 13(3), or RH 2(2) (which set out the basis for payment of PAYE, RWT, NRWT, and RSCT), as applicable, the last day of a month:”.
- (3) In section RA 15, in the list of defined terms, “retirement scheme contribution,” is inserted.
- (4) In section RA 15, in the compare note, “NEB 3(1),” is inserted.

494 Amalgamation of companies

In section RA 20, in the compare note, “NEB 3(2),” is inserted.

495 New section RA 24

After section RA 23, the following is added:

“RA 24 Application of other provisions for purposes of RSCT rules

For the purposes of the RSCT rules, sections 170(2), 171, and 172 of the Tax Administration Act 1994, modified as necessary, apply as if—

- “(a) a reference to an amount of tax withheld were a reference to RSCT:
“(b) a reference to the RWT rules were a reference to the RSCT rules.

“Defined in this Act: amount of tax, RSCT rules, RWT rules

Compare: 2004 No 35 s NEB 7(1)”.

496 Estimation method

Section RC 7(6), other than the heading, is replaced by the following:

- “(6) If, under section RC 18(5), a person 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 instalment dates for the income year occur after 30 days from their last ratio instalment date:
“(a) C and F for changes to a 6-monthly GST taxable period:
“(b) B, D, and F for other changes.”

497 GST ratio method

- (1) After section RC 8(3), the following is inserted:

“When no assessment for tax year before preceding tax year

“(3B) Subsection (3) does not apply and the GST ratio is the percentage based on the assessments of the base amounts for the year that is 2 years before the preceding tax year if—

“(a) for the year before the preceding tax year—

“(i) an assessment of a base amount has not been made and the absence of an assessment arises because of an extension of time for filing a return for the year, or a period in the year:

“(ii) an assessment of a base amount is the subject of a dispute or challenge under the Tax Administration Act 1994:

“(iii) the year is a transitional year; and

“(b) for the year that is 2 years before the preceding tax year—

“(i) the base amounts have been assessed; and

“(ii) the circumstances in paragraph (a)(ii) and (iii) do not exist.”

- (2) After section RC 8(7), the following is inserted:

“When no assessment for tax year before preceding tax year

“(7B) Subsection (7) does not apply and the GST ratio is the percentage based on the assessments of the base amounts for the year that is 2 years before the transitional year if—

“(a) for the year before the transitional year—

“(i) an assessment of a base amount has not been made and the absence of an assessment arises because of an extension of time for filing a return for the year, or a period in the year:

“(ii) an assessment of a base amount is the subject of a dispute or challenge under the Tax Administration Act 1994:

“(iii) the year is a transitional year; and

“(b) for the year that is 2 years before the transitional year—

“(i) the base amounts have been assessed; and

“(ii) the circumstances in **paragraph (a)(ii) and (iii)** do not exist.”

498 Provisional tax payable in instalments

- (1) In section RC 9(7), “section RC 7 or RC 10, as applicable” is replaced by “section RC 10”.

- (2) In section RC 9(9), the words before paragraph (a) are replaced by the following:

- “(9) A person with a new provisional tax liability who starts a taxable activity in a tax year is liable to pay interest calculated under section 120KC of the Tax Administration Act 1994 as if they were liable to pay provisional tax for the tax year—”.
- (3) Section RC 9(9)(b)(ii) is replaced by the following:
- “(ii) if they pay GST on a 6-monthly basis and start a taxable activity at some in the period that starts at the beginning of the corresponding income year and ends 30 days before the date of instalment C:”.

499 Calculating amount of instalment under standard and estimation methods

In section RC 10(1)(b), “section RC 9(3) and (7)” is replaced by “section RC 9(3) and (5)”.

500 Who may use GST ratio?

- (1) In section RC 16(2), “preceding tax year:” is replaced by “preceding tax year and corresponding income year:”.
- (2) In section RC 16(2)(b), “whole tax year” is replaced by “whole income year”.
- (3) In section RC 16(5), “the tax year before” is replaced by “a tax year earlier than”.

501 When GST ratio must not be used

In section RC 17(4)(a), “in writing or by telephone” is inserted after “apply”.

502 Changing calculation method

- (1) In section RC 18(2), “Subsection (3) and (4)” is replaced by “Subsection (4) or (5)”.
- (2) In section RC 18(4), “(5), as if the election to use the GST ratio had not been made” is replaced by “(5). The person is treated as never having chosen to use the GST ratio method and, for the purposes of section 120KE(5) of the Tax Administration Act 1994, as never having changed the way they determine an amount of provisional tax under this section”.

503 Disposal of assets

Section RC 19(2), other than the heading, is replaced by the following:

- “(2) The person may choose to take the disposal of the asset into account in adjusting their taxable supplies for the relevant taxable period and income year, by subtracting the value, including GST, of the asset from—

- “(a) the total taxable supplies for a taxable period for the purposes of the formula in section RC 11(1), in proportion to the output tax which is attributed under section 20(4) of that Act to that taxable period for the supply of the asset:
- “(b) the base amount of total taxable supplies for the corresponding income year under section RC 8(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.”

504 Paying provisional tax in transitional years

- (1) Section RC 21(2)(a) and (b) is replaced by the following:
 - “(a) the 28th day of the months set out in schedule 3 part B (Payment of provisional tax and terminal tax) unless **paragraph (b) or (c)** applies:
 - “(b) 15 January, when the month set out in schedule 3, part B is December and the year is a transitional year:
 - “(c) 7 May, when the month set out in schedule 3, part B is April and the year is a transitional year.”
- (2) In section RC 21(3)(b), “month.” is replaced by “month; or” and the following is added:
 - “(c) 7 May, when March is the final month and the year is a transitional year.”

505 Consequences of a change in balance date

- Section RC 25(6), other than the heading, is replaced by the following:
- “(6) The person must—
 - “(a) adjust their provisional tax liability for the part-period of 1 month before the start of the new income year; and
 - “(b) pay the instalment of provisional tax for the part-period as their final taxable period—
 - “(i) 28 days after the end of the part period, unless **subparagraph (ii) or (iii)** applies; or
 - “(ii) by 15 January if the part-period falls in November; or
 - “(iii) by 7 May if the part period falls in March.”

506 Registering for GST or cancelling registration

- Section RC 26(5), other than the heading, is replaced by the following:
- “(5) For the purposes of subsection (4) and the provisional tax rules, the date of cancellation is the later of the date on which—
 - “(a) the cancellation of GST registration is notified:

“(b) the person’s liability under section 52 of the Goods and Services Tax Act 1985 stops.”

507 What this subpart does

In section RD 1(c), “and RSCT rules” is inserted after “the ESCT rules”.

508 PAYE income payments

In section RD 3(1)(b)(ii), “subsection (2).” is replaced by “subsection (2):” and the following is added:

“(iii) a personal service rehabilitation payment under the Injury Prevention, Rehabilitation, and Compensation Act 2001.”

509 Private use of motor vehicle: when schedular value not used

- (1) In section RD 56(1), “clause 5” is replaced by “clause 9”.
- (2) In section RD 56(2), in the words before paragraph (a), “clause 4(a)” is replaced by “clause 8(a)”.
- (3) In section RD 56(3), “clause 4(a)” is replaced by “clause 8(a)”.

510 Private use of motor vehicle: when schedular value used

In section RD 57(1), “clause 5” is replaced by “clause 9”.

511 Resident passive income

- (1) In section RE 2(1)(c), “other than a retirement scheme contribution” is added after “distribution”.
- (2) In section RE 2(5)(g), “payment.” is replaced by “payment:” and the following is added:
 - “(h) a dividend that is excluded income under **section CX 50B** (Contributions to retirement savings schemes) or would be excluded income under that section in the absence of **subsection (2)(a) and (b)**:
 - “(i) a dividend other than a non-cash dividend that—
 - “(i) has an imputation ratio, FDP ratio, or combined imputation and FDP ratio of 30/70 or more; and
 - “(ii) is paid by a unit trust or group investment fund (or RWT proxy on their behalf) that has not withheld RWT from any earlier dividend.”
- (3) In section RE 2, in the list of defined terms, “combined imputation and FDP ratio”, “excluded income”, “FDP ratio”, “group investment fund”, “imputation ratio”, “non-cash dividend”, “RWT”, “RWT proxy”, “unit trust” are inserted.

512 When amount of tax treated as FDP credit

In section RE 23(2), “LE 9,” is omitted, and “LF 6 to” is omitted.

513 New section RF 16 inserted

After section RF 15, the following is inserted:

“RF 16 Relationship with RSCT rules

“When this section applies

“(1) This section applies when a retirement scheme contributor makes a retirement scheme contribution for a person who is non-resident and pays RSCT for the contribution.

“NRWT

“(2) The contributor is treated as having withheld from the contribution an amount of NRWT equal to the lesser of—

“(a) the amount of RSCT paid:

“(b) the NRWT payable in relation to the contribution.

“Treatment of balance

“(3) **Section LB 6** (Tax credits for RSCT) applies to any balance of RSCT paid.

“Defined in this Act: non-resident, NRWT, pay, retirement scheme contribution, retirement scheme contributor, RSCT

Compare: 2004 No 35 s NG 16B”.

514 New subpart RH inserted

After section RG 7, the following is inserted:

“Subpart RH—Withholding tax on retirement scheme contributions

“RH 1 RSCT rules and their application

“Meaning

“(1) The **RSCT rules** means—

“(a) this subpart; and

“(b) **section BE 1(5B)** (Withholding liabilities); and

“(c) **section CX 50B** (Contributions to retirement savings schemes); and

“(d) **section LB 6** (Tax credits for RSCT); and

“(e) **section LE 7B** (Credit of RSCT for imputation credit); and

“(f) **section LO 2B** (Credit of RSCT for Maori authority credit); and

“(g) **section MB 1(5B)** (Adjustments for calculation of family scheme income); and

“(h) **section MB 6** (Treatment of distributions from retirement savings schemes)

- “(i) **schedule 1, part D, clause 7**; and
- “(j) **sections 28C and 48B** and Part 9 of the Tax Administration Act 1994.

“Application

- “(2) The RSCT rules apply to a retirement scheme contributor who makes a retirement scheme contribution.

“Defined in this Act: retirement scheme contribution, retirement scheme contributor, RSCT rules

Compare: 2004 No 35 s OB 1 “RSCWT rules”

“RH 2 Retirement scheme contributions

“Contribution for benefit of members

- “(1) A **retirement scheme contribution** means a contribution in money by a retirement scheme contributor to a retirement savings scheme for the benefit of a person who is a member of, or who has an ownership interest in, the contributor.

“Tax credits

- “(2) For the purposes of **subsection (1)**, money includes an amount of an imputation credit or a Maori authority credit.

“Determining amount of contribution

- “(3) The amount of a retirement scheme contribution is the sum of—
 - “(a) the amount of the contribution received by the retirement savings scheme and not withheld under **subsection (5)** on behalf of the retirement scheme contributor; and
 - “(b) the amount of tax for the retirement scheme contribution.

“Payment of amount of tax

- “(4) A retirement scheme contributor who pays an amount that represents a retirement scheme contribution must withhold and pay to the Commissioner the amount of tax for the contribution. The amount is payable monthly under section RA 15 (Payment dates for interim and other tax payments).

“Appointment of agent

- “(5) For the purposes of **subsection (4)**, a contributor may appoint the retirement savings scheme as agent in relation to the calculation and payment of the amount of tax.

“Defined in this Act: amount, amount of tax, Commissioner, imputation credit, Maori authority credit, retirement savings scheme, retirement scheme contribution, retirement scheme contributor

Compare: 2004 No 35 ss NEB 1(2), NEB 2, NEB 3(1)(a), OB 1 “retirement scheme contribution”

“RH 3 Retirement savings schemes

“Requirements for entity

- “(1) An entity is a retirement savings scheme for a person if the entity—
- “(a) is a portfolio investment entity; and
 - “(b) holds funds from a retirement scheme contribution for the person; and
 - “(c) has rules (the **distribution rules**) governing the distribution by the entity of funds in which the person has an interest that—
 - “(i) are approved by the Commissioner as fair and reasonable; and
 - “(ii) meet the requirements of **subsection (2)**.

“Requirements for rules

- “(2) The rules must provide that—
- “(a) the availability of a distribution to the person is restricted before the person reaches an age of retirement set out in the rules:
 - “(b) the person is not permitted to make a withdrawal before the age of retirement other than a withdrawal—
 - “(i) to repay a student loan under the Student Loan Scheme Act 1992;
 - “(ii) to pay fees and expenses related to tertiary education;
 - “(iii) to buy a home if the person does not own one;
 - “(iv) that the person would be permitted to make if the scheme were a KiwiSaver scheme under the KiwiSaver Act 2006;
 - “(v) in circumstances set out in the distribution rules that have been approved under **subsection (1)(c)(i)**;
 - “(c) the entity may require the person to provide information to ensure that the requirements relating to a withdrawal are met.

“Defined in this Act: Commissioner, income year, portfolio investment entity, retirement savings scheme, retirement scheme contribution, retirement scheme contributor

Compare: 2004 No 35 s NEB 5

“RH 4 Retirement scheme contributors

An entity is a retirement scheme contributor for a person for an income year if—

- “(a) the entity is—
 - “(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:
- “(c) 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, pay, retirement savings scheme, retirement scheme contribution, retirement scheme contributor, shareholder, trustee, unit holder, unit trust, widely-held trust

Compare: 2004 No 35 s NEB 6

“Calculating amounts of tax

“RH 5 Calculating amounts of tax for retirement scheme contribution

The amount of tax for a retirement scheme contribution is the amount determined under schedule 1 part D, **clause 7** (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits).

“Defined in this Act: amount of tax, retirement scheme contribution

Compare: 2004 No 35 s NEB 1(1)

“RH 6 Calculating amounts of tax on failure to withhold

“When this section applies

- “(1) This section applies when a retirement scheme contributor or retirement savings scheme does not withhold an amount of tax for a retirement scheme contribution under **section RH 2(4)**.

“Calculation of amount

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

$$\frac{\text{tax rate}}{1 - \text{tax rate}} \times \text{contribution to scheme} - \text{tax already paid.}$$

“Definition of items in formula

- “(3) In the formula,—
- “(a) **tax rate** is the rate of RSCT for the person set out in schedule 1 part D, **clause 7** (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits):
- “(b) **contribution to scheme** is the amount of the retirement scheme contribution received by the retirement savings scheme excluding the amount of tax:
- “(c) **tax already paid** is any amount of tax for the contribution that has already been paid.

“Defined in this Act: amount, amount of tax, retirement savings scheme, retirement scheme contribution, retirement scheme contributor, RSCT

Compare: 2004 No 35 s NEB 4(1)”.

515 Using refund to satisfy tax liability

In section RM 10(4), “family scheme income” is replaced by “tax credits for families”.

516 Standard method: 2008–09 and 2009–10 income years

- (1) In section RZ 3(1), “portfolio tax rate entity’s” is replaced by “persons”, and “entity uses a 30% basic tax rate” is replaced by “person is a new tax rate person”.
- (2) In section RZ 3, in the list of defined terms, “new tax rate person” is inserted.
- (3) In section RZ 3, in the compare note, “ss” is replaced by “s”, and “, OB 1 ‘new tax rate person’” is omitted.

517 GST ratio method: 2008–09 and 2009–10 income years

- (1) In section RZ 4(1), “portfolio tax rate entity’s” is replaced by “persons”, and “entity uses a 30% basic tax rate” is replaced by “person is a new tax rate person”.
- (2) In section RZ 4, in the list of defined terms, “new tax rate person” is inserted.
- (3) In section RZ 4, in the compare note, “ss” is replaced by “s”, and “, OB 1 ‘new tax rate person’” is omitted.

518 Calculating amounts under standard method: 2008–09 and 2009–10 income years

- (1) In section RZ 5(1), “portfolio tax rate entity’s” is replaced by “persons”, and “entity uses a 30% basic tax rate” is replaced by “person is a new tax rate person”.
- (2) In section RZ 5, in the list of defined terms, “new tax rate person” is inserted.
- (3) In section RZ 5, in the compare note, “ss” is replaced by “s”, and “, OB 1 ‘new tax rate person’” is omitted.

519 Definitions

- (1) This section amends section YA 1.
- (2) After the definition of **1990 version provisions**, the following is inserted:

“**abating WFF tax credit** is defined in section MA 8 (Some definitions for family scheme) for the purposes of subparts MA to MF and MZ (which relate to tax credits for families)”
- (3) In the definition of **amount of tax**, “RSCT rules,” is inserted after “ESCT rules,”.
- (4) In the definition of **ancillary tax**, the following is inserted after paragraph (k):

“(kb) RSCT:”.
- (5) After the definition of **associated**, the following is inserted:

- “**associated internal software developer** is defined in **section LH 17** (Some definitions) for the purposes of **subpart LH** (Tax credits for expenditure on research and development)”.
- (6) In the definition of **basic tax rate**, in paragraph (a), “RSCT,” is inserted after “RWT,”.
- (7) In the definition of **charitable organisation**, “listed in schedule 32 (Recipients of charitable or other public benefit gifts)” is replaced by “to which section LD 3(2) (Meaning of charitable or other public benefit gift) or schedule 32 (Recipients of charitable or other public benefit gifts) applies”.
- (8) In the definition of **child**, paragraph (c), “Family assistance credit” is replaced by “Abating WFF tax credit”, and “Family tax credit” is replaced by “Minimum family tax credit”.
- (9) After the definition of **depreciation recovery income**, the following is inserted:
“**derivative instrument** is defined in **section EW 15F** (Expected value method) for the purposes of that section and **section EW 15G** (Modified fair value method)”.
- (10) In the definition of **development**, “for the purposes of sections DB 34, EE 1, EJ 22, and EJ 23 (which relate to deductions and allocation of deductions for development expenditure)” is replaced by “for the purposes of that section and section DB 34 (Research or development)”.
- (11) After the definition of **distribution**, the following is inserted:
“**district health board** means a district health board established by or under section 19 of the New Zealand Public Health and Disability Act 2000”.
- (12) In the definition of **employee**, paragraph (c)(i), “section RD 5(1)(b)(iii), (2),” is replaced by “section RD 5(1)(b)(iii), (3),”.
- (13) In the definition of **employment**, paragraph (b), “Family tax credit” is replaced by “Minimum family tax credit”.
- (14) After the definition of **environmental restoration account**, the following is inserted:
“**equity instrument** is defined in **section EW 15I(3)** (Mandatory use of yield to maturity method for some arrangements) for the purposes of that section”.
- (15) After the definition of **fair dividend rate method**, the following is inserted:
“**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 IFRSs”.
- (16) The definition of **family assistance credit** is repealed.
- (17) The definition of **family plus** is repealed.

- (18) The definition of **family support** is repealed.
- (19) In paragraph (b) of the definition of **finance lease**, “life)” is replaced by “life):” and the following is added:
- “(c) the person enters on or after 20 June 2007 and is, or is part of, an arrangement that, when the person enters the lease or when a change in the terms of the arrangement changes the allocation or size of the risks and rewards incidental to ownership of the lease asset,—
 - “(i) involves the use of the asset outside New Zealand for all or most of the term of the lease; and
 - “(ii) involves income of any person who is not the lessor, arising from the use of the asset by any person, that is exempt income, or excluded income, or non-residents’ foreign sourced income; and
 - “(iii) is a finance lease under NZIAS 17 for the lessor, or for a company that is in the same group of companies as the lessor and derives assessable income from the arrangement, or is an arrangement under which persons who do not include the lessor bear substantially all the risks and rewards incidental to ownership of the lease asset, determined as at the time the person enters the lease and taking into account later changes to the arrangement”.
- (20) In the definition of **financial statements**, “subpart EB (Valuation of trading stock (including dealer’s livestock))” is replaced by “subparts EB (Valuation of trading stock (including dealer’s livestock)) and EW (Financial arrangements rules)”.
- (21) After the definition of **geothermal well**, the following is inserted:
- “**gifting settlor** is defined in **section EX 46(12)** (Limits on choice of calculation methods)”.
- (22) In the definition of **group of companies**, “section IC 3(1)” is replaced by “section IC 3”.
- (23) After the definition of **identical share**, the following is inserted:
- “**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 15D(3)** (IFRS financial reporting method) for the purposes of that section”.

- (24) 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 16** (Industry research co-operatives)”.
- (25) After the definition of **intermediary**, the following is inserted:
- “**internal software development** is defined in **section LH 17** (Some definitions) for the purposes of **subpart LH** (Tax credits for expenditure on research and development)
- “**internal software development controller** is defined in **section LH 17** (Some definitions) for the purposes of **subpart LH** (Tax credits for expenditure on research and development)
- “**internal software development group** is defined in **section LH 17** (Some definitions) for the purposes of **subpart LH** (Tax credits for expenditure on research and development)”.
- (26) In the definition of **investor**, paragraphs (b) and (c) are replaced by the following:
- “(b) for a portfolio investment entity is defined in **section HL 5B** (Meaning of investor and portfolio investor class)”.
- (27) The definition of **in-work payment** is replaced by the following:
- “**in-work tax credit** is defined in section MA 8 (Some definitions for family scheme) for the purposes of subparts MA to MF and MZ (which relate to tax credits for families)”.
- (28) After the definition of **listed PAYE intermediary**, the following is inserted:
- “**listed research provider** means a person who is listed as a listed research provider under **section LH 15** (Listed research providers)”.
- (29) After the definition of **minibus**, the following is inserted:
- “**minimum family tax credit** is defined in section MA 8 (Some definitions for family scheme) for the purposes of subparts MA to MF and MZ (which relate to tax credits for families)”.
- (30) In the definition of **net family scheme income**, “section MA 8 (Some definitions for family scheme)” is replaced by “section ME 3 (Meaning of net family scheme income)”.
- (31) After the definition of **new start grant**, the following is inserted:
- “**new tax rate person**,—
- “(a) means a person who uses a 30% basic tax rate for 2008–09 and later income years:
- “(b) includes a portfolio tax rate entity”.

- (32) 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”.
- (33) After the definition of **non-filing taxpayer**, the following is inserted:
- “**non-integral fee** means a fee or transaction cost that, for the purposes of financial reporting under IFRSs, is not an integral part of the effective interest rate of a financial arrangement”.
- (34) After the definition of **notional sale price**, the following is inserted:
- “**novelty** is defined in **section LH 7(4)** (Research and development activities and related terms) for the purposes of **subpart LH** (Tax credits for expenditure on research and development)”.
- (35) 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
- “**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 17** means New Zealand Equivalent to International Accounting Standard 17, approved by the Accounting Standards Review Board and as amended from time to time, or an equivalent standard issued in its place
- “**NZIAS 32** means New Zealand Equivalent to International Accounting Standard 32, approved by the Accounting Standards Review Board and as amended from time to time, or an equivalent standard issued in its place
- “**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
- “**NZIAS 41** is defined in **section EB 6(3)** (Cost) for the purposes of that section”.
- (36) After the definition of **offshore permit area**, the following is inserted:
- “**old company tax rate** means a 33% basic tax rate applying before the 2008–09 income year”.

- (37) After the definition of **outstanding balance**, the following is inserted:
- “**overseas eligible expenditure** is defined in **section LH 6(5)** (Research and development activities outside New Zealand) for the purposes of **subpart LH** (Tax credits for expenditure on research and development)”.
- (38) After the definition of **personal property lease payment**, the following is inserted:
- “**personal service rehabilitation payment**, for a person, means an amount paid for the person’s benefit—
- “(a) under section 81(3) of the Injury Prevention, Rehabilitation, and Compensation Act 2001; and
- “(b) by the Accident Compensation Corporation or an employer that is an accredited employer as defined in section 181 of that Act; and
- “(c) in providing to the person a key aspect of social rehabilitation referred to in—
- “(i) section 81(1)(b), (c), (e), or (g) (relating to attendant care, child care, home help, and training for independence) of that Act:
- “(ii) section 81(1)(h) (relating to transport for independence) of that Act to the extent provided by paragraph (a)(i) of the definition of **transport for independence** in schedule 1, clause 12 of that Act”.
- (39) 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)”.
- (40) In the definition of **portfolio entity investment**, “a portfolio investment entity” is replaced by “an entity”.
- (41) 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”.
- (42) After the definition of **portfolio investment entity**, the following is inserted:
- “**portfolio investment-linked life fund** means a separate identifiable fund forming part of a life insurer, that—
- “(a) holds investments subject to life insurance policies under which benefits are directly linked to the value of the investments held in the fund; and
- “(b) has become a portfolio investment entity under section HL 13 (Becoming portfolio investment entity); and

- “(c) has not ceased to be a portfolio investment entity under section HL 15 (Ceasing to be portfolio investment entity)”.
- (43) The definition of **portfolio investor class** is replaced by the following:
“**portfolio investor class** is defined in **section HL 5B** (Meaning of investor and portfolio investor class)”.
- (44) In the definition of **portfolio investor exit period**, paragraph (b)(ii) is replaced by the following:
“(ii) ending on a day in the tax year on which the amount of the entity’s portfolio tax liability under section HL 21 reduced by any tax credits allocated to the investor, for the investor for the period equals or is more than the value of the investor’s portfolio investor interest; and”.
- (45) The definition of **portfolio investor rate** is replaced by the following:
“**portfolio investor rate**, for an investor in a portfolio tax rate entity and for a portfolio calculation period, means—
“(a) 33%, if **paragraphs (b) and (c)** do not apply; or
“(b) the rate, if **paragraph (c)** does not apply, that the investor notifies—
“(i) to the entity as the prescribed investor rate for the investor and the period; and
“(ii) in the latest notice before the time; or
“(c) 0%, if—
“(i) the entity makes payments of tax under **section HL 22** (Payments of tax by portfolio tax rate entity making no election); and
“(ii) the portfolio investor rate for the investor for the portfolio calculation period would, in the absence of this paragraph, be more than 0%; and
“(iii) the portfolio calculation period includes part of a portfolio investor exit period for the investor”.
- (46) In the definition of **portfolio land company**, in paragraph (b),
(a) in the words before subparagraph (i), “80%” is replaced by “80% or more”;
(b) in subparagraph (ii), “of the company” is replaced by “of the company; and” and the following is added:
“(c) meets the requirements of section HL 10(2) (Further eligibility requirements relating to investments) for the tax year”.
- (47) 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”.

- (48) 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”.
- (49) In the definition of **principal caregiver**, “family assistance credit, family support, in-work payment,” is replaced by “WFF tax credit, in-work tax credit,”.
- (50) The definition of **protected family support** is replaced by the following:
“**protected family tax credit**, for a person, means an amount of family scheme income derived in the way set out in section MD 14 (Person receiving protected family tax credit)”.
- (51) After the definition of **reduced deficit debit**, the following is inserted:
“**redundancy payment** means a PAYE income payment paid—
“(a) to a person whose employment is terminated because their employer no longer needs an employee to perform the duties performed by the person as an employee; and
“(b) in compensation for the loss of the employment”.
- (52) In the definition of **refundable tax credit**, paragraph (a), “family income assistance” is replaced by “family payments”, and the following is inserted after paragraph (b):
“(bb) a tax credit under **subpart LH** (Tax credits for expenditure on research and development)”.
- (53) In the definition of **reporting standard**, “that section and” is inserted after “the purposes of”.
- (54) In the definition of **research**, “for the purposes of sections DB 34, EE 1, EJ 22, and EJ 23 (which relate to deductions and allocation of deductions for development expenditure)” is replaced by “for the purposes of that section and section DB 34 (Research or development)”.
- (55) After the definition of **research**, the following is inserted:
“**research and development activities** is defined in **section LH 7(1)** (Research and development activities and related terms) for the purposes of **subpart LH** (Tax credits for expenditure on research and development)
“**research and development project** is defined in **section LH 6(3)** (Research and development activities outside New Zealand)”.
- (56) In the definition of **residual income tax**, in paragraph (b), the following are inserted:
“(iiib) **section LB 6** (Tax credits for RSCT):
“(vb) **section LH 2** (Tax credits relating to expenditure on research and development):”.

- (57) After the definition of **retained earnings**, the following is inserted:
- “**retirement savings scheme** for a person means an entity eligible under **section RH 3** (Retirement savings schemes)
 - “**retirement scheme contribution** is defined in **section RH 2** (Retirement scheme contributions)
 - “**retirement scheme contributor** means an entity eligible under **section RH 4** (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, means a rate of—
 - “(a) 0% if the person is a non-resident at the time and the contribution is non-resident passive income; or
 - “(b) 19.5% if the person—
 - “(i) has, in either of the 2 income years immediately before the year in which the contribution is made, taxable income of \$38,000 or less:
 - “(ii) is a non-resident and the retirement scheme contributor is a Maori authority, and the distribution is \$200 or less:
 - “(iii) is a non-resident and the retirement scheme contributor is a Maori authority and the person supplies the Maori authority with a notice under section 28C of the Tax Administration Act 1994;or
 - “(c) 33% if the person has, in either of the 2 income years immediately before the year in which the contribution is made, taxable income of \$60,000 or less; or
 - “(d) 39%”.
- (58) After the definition of **royalty**, the following is inserted:
- “**RSCT** means retirement scheme contribution tax
 - “**RSCT rules** is defined in **section RH 1** (RSCT rules and their application)”.
- (59) After the definition of **schedular taxable income**, the following is inserted:
- “**scientific or technological uncertainty** is defined in **section LH 7(3)** (Research and development activities and related terms) for the purposes of **subpart LH** (Tax credits for expenditure on research and development)”.
- (60) In the definition of **shareholder**, in paragraph (c), “(PDA)” is replaced by “(PCA)”.
- (61) After the definition of **social assistance suspensory loan**, the following is inserted:

“**sound commercial reason** is defined in **section EW 26(7)** (Change of spreading method) for the purposes of that section”.

- (62) After the definition of **supply**, the following is inserted:
“**systematic, investigative, and experimental activities** is defined in **section LH 7(2)** (Research and development activities and related terms) for the purposes of **subpart LH** (Tax credits for expenditure on research and development)”.
- (63) After the definition of **taxpayer**, the following is inserted:
“**technology** is defined in **section LH 7(5)** (Research and development activities and related terms) for the purposes of **subpart LH** (Tax credits for expenditure on research and development)”.
- (64) After the definition of **terminating share**, the following is inserted:
“**tertiary institution** means a body established under section 162 of the Education Act 1989”.
- (65) After the definition of **time of the sale**, 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”.
- (66) After the definition of **transferor**, the following is inserted:
“**transitional period** is defined in **section OZ 7** (Memorandum accounts in transitional period) for the purposes of **sections OZ 8 to OZ 15**”.
- (67) In the definition of **venture investment agreement**, “for the purposes of that section” is omitted.
- (68) After the definition of **voting interest**, the following is inserted:
“**WFF tax credit** means Working for Families tax credit and is defined in section MA 8 (Some definitions for family scheme)”.

519B Company and company’s associate: 1988 version provisions

After section YB 4(3), the following is inserted:

“*Exclusion: subpart LH*

- “(3B) Despite subsection (3), this section does not apply for the purposes of **subpart LH** (Tax credits for expenditure on research and development).”

520 Partnerships: partnership and associate of partner

After section YB 17(3)(c), “those provisions.” is replaced by “those provisions; and”, and the following is added:

“(d) for the purposes of the 1990 version provisions (which are certain provisions relating to petroleum mining and some other miscellaneous rules), the term **associated** has the meaning that it has for the purposes of those provisions.”

521 Some definitions

(1) After section YB 20(2)(o), the following is inserted:

“(ob) **sections LH 2 to LH 5 and LH 17** (which relate to tax credits for business expenditure):”.

(2) After section YB 20(2)(s), the following is inserted:

“(sb) **sections ML 1 to ML 3** (which relates to tax credits for redundancy payments):”.

522 Schedule 1—Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits

(1) In the heading to schedule 1, “**RSCT**,” is inserted before “**RWT**,”.

(2) In schedule 1, part A, clause 6 “**Taxable income: trustees of certain funds**” is inserted as a heading to the clause.

(3) After schedule 1, part D, clause 6, the following is added:

“Basic rates for RSCT

“7 **Retirement scheme contributions**

The payment rate for an amount of a retirement scheme contribution made by a retirement scheme contributor for a person is set out in **table 5**.

“**Table 5**

	“Row Conditions	Payment rate
“1	The person responsible for withholding RSCT—	
	(a) has been notified under section 28C of the Tax Administration Act 1994 that 19.5 cents in the dollar is the person’s retirement scheme prescribed rate; and	
	(b) has been supplied with the tax file number of the person	0.195
“2	The person—	
	(a) is a non-resident; and	
	(b) the retirement scheme contributor is a Maori authority; and	

		(c) the distribution is \$200 or less	0.195
“3		The person responsible for withholding RSCT—	
	(a)	has been notified under section 28C of the Tax Administration Act 1994 that 33 cents in the dollar is equal to or greater than the person’s retirement scheme prescribed rate	
	(b)	has been supplied with the tax file number of the person	0.330
“4		When rows 1 and 2 do not apply.	0.390

“How to use this table

“Find the applicable condition, in the middle column, in order to find the relevant rate to apply, in the right column.”

523 Schedule 2—Basic tax rates for PAYE income payments

In schedule 2, part B, table 1, row 3, “RD 11(2)(b) or RD 18(3)” is replaced by “RD 10(2)(b) or RD 17(3)”.

524 Schedule 4—Rates of tax for schedular payments

After schedule 4, part H, the following is added:

“Part I

“Personal service rehabilitation payments

- “1 A personal service rehabilitation payment for a person under the Injury Prevention, Rehabilitation, and Compensation Act 2001 has a 0.15 rate of tax for each dollar of the payment.”

525 Schedule 14—Depreciable intangible property

In the shoulder note for schedule 14, “EE 2” is replaced by “EE 62”.

526 New schedule 21

After schedule 20, **schedule 21** in **schedule 3** of this Act is inserted.

527 Schedule 32—Recipients of charitable or other public benefit gifts

To omit “Christian Children’s Fund of New Zealand Limited (CCFNZ)” and substitute “Childfund New Zealand Limited”.

To insert “Hamlin Charitable Fistula Hospitals Trust”, “Hope Foundation Development Trust”, “Hope International Charitable Trust”, “Limbs 4 All Charitable Trust”, “New Zealand Disaster Assistance Response Team Trust”, “Operation Restore Hope Charitable Trust”, and “The World Swim for Malaria Foundation (New Zealand)”.

528 Schedule 49—Enactments amended

In schedule 49, the 2 headings and related items after the item relating to the Income Tax (Social Assistance Suspensory Loans) Order 1995 (SR 1995/79) are replaced by the following:

“Injury Prevention, Rehabilitation, and Compensation (Work Account Levies) Regulations 2007 (SR 2007/70)

“Regulation 3, definition of **tax year**: ‘section OB 1 of the Income Tax Act 2004’ is replaced by ‘section YA 1 of the Income Tax Act 2007’.

“Injury Prevention, Rehabilitation, and Compensation (Earnings’ Levy) Regulations 2007 (SR 2007/71)

“Regulation 3, definition of **tax year**: ‘section OB 1 of the Income Tax Act 2004’ is replaced by “section YA 1 of the Income Tax Act 2007’.”

528B Schedule 50—Amendments to Tax Administration Act 1994

To omit the items relating to section 33A(1)(a)(iiic), 33C(1)(b), 120KE(6)(a), and 141B.

529 Consequential amendments to Income Tax Act 2007

The sections of the Income Tax Act 2007 listed in schedule 5 are amended in the way indicated by that schedule.

KiwiSaver-related amendments to Income Tax Act 2007

530 Income Tax Act 2007

Sections 531 to 545 amend the Income Tax Act 2007.

531 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

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

Compare: 2004 No 35 s CS 10B”.

532 Contributions to employees’ superannuation schemes

(1) After section DC 7(1), the following is inserted:

“Exclusion

- “(1B) The employer is denied a deduction for a contribution, to the extent of the amount of a tax credit under **section MK 9** (Eligibility requirements) for the payment period to which the contribution relates.”
- (2) In section DC 7, in the list of defined terms, “tax credit” is inserted.

533 What this subpart does

Section MK 1 is replaced by the following:

“MK 1 Tax credits for superannuation contributions

“Tax credits for members paid to fund providers

- “(1) A fund provider of a person’s KiwiSaver scheme or a complying superannuation fund has a tax credit equal to an amount calculated under section MK 4 for a member credit contribution to the scheme or fund. Section MK 2 imposes some eligibility requirements in relation to the person.

“Tax credits for employers

- “(2) An employer who makes an employer contribution on behalf of an employee to a KiwiSaver scheme or a complying superannuation fund for a payment period has a tax credit for the period equal to an amount calculated under **section MK 10** for the amount of their contribution. The employer must meet the requirements of **section MK 9**.

“Calculations: fund providers

- “(3) A tax credit referred to in **subsection (1)** is calculated for a year that begins on 1 July and ends on 30 June.

“Calculations: employers

- “(4) A tax credit referred to in **subsection (2)** is calculated for a payment period.

“Defined in this Act: amount, complying superannuation fund, employee, employer, employer contribution, fund provider, KiwiSaver scheme, member credit contribution, pay, tax credit, tax year

Compare: 2004 No 35 ss KJ 1, KJ 6, OB 1 “member credit year””

534 New cross heading

Before section MK 2, “*Tax credits for fund providers*” is inserted as a cross heading.

535 Eligibility requirements

- (1) In section MK 2(1), the heading and the words before paragraph (a) are omitted and are replaced by the following:

“Requirements for person

- “(1) For the purposes of section MK 1(1), the requirements for the person at the time the tax credit is calculated are the following:”.
- (2) In section MK 2(1), paragraph (b) is replaced by the following:
 - “(b) they must have a creditable membership of a complying superannuation fund or a KiwiSaver scheme; and”.
- (3) In section MK 2, in the list of defined terms, “creditable membership” is inserted.

536 Payment of tax credits

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

“When this section applies

- “(1) This section applies when a member credit contribution is made to a KiwiSaver scheme or a complying superannuation fund.”
- (2) In section MK 3(2), “Subsection (5) overrides this subsection.” is added after “section MK 4.”
- (3) In section MK 3(3), “Subsection (5) overrides this subsection.” is added after “the Commissioner.”
- (4) Section MK 3(4) is replaced by the following:

“Payment

- “(4) The Commissioner must pay the amount of the tax credit to the fund provider within 30 working days of the provider filing a claim form under section 68C(3) or (4) of the Tax Administration Act 1994.

“Exception: payment to person or another provider

- “(5) Despite subsections (2) and (3), the Commissioner may pay the amount of the tax credit as follows:
 - “(a) to the person, if it would be impossible or impractical to pay it to the person’s fund provider because either the person has no fund provider, or because the person has died or has suffered a serious illness as defined in schedule 1, clause 12(3) of the KiwiSaver Act 2006; or
 - “(b) to a fund provider (**provider B**) other than the fund provider referred to in subsections (2) and (3), if the fund provider asks for the payment to be made to provider B because the person is transferring or has transferred to provider B.”
- (5) In section MK 3, in the list of defined terms,—
 - (a) “employer contribution” and “member credit contribution” are inserted:

(b) “superannuation contribution” is omitted.

537 Amount of tax credit

Section MK 4 is replaced by the following:

“MK 4 Amount of tax credit

“What this section does

“(1) This section sets out how to calculate the amount of a tax credit paid to a fund provider under section MK 3(2) for a year described **in section MK 1(3)**.

“Amount of credit for year

“(2) The amount of the tax credit is an amount equal to a person’s total member credit contributions for the year for all of their complying superannuation funds and KiwiSaver schemes up to a maximum amount of \$1042.68.

“Part-year equivalents: amount of tax credit

“(3) Despite **subsection (2)**, if the person meets the requirements of section MK 2 for only part of the year, the amount of the tax credit is,—

“(a) for a person whose member credit contributions for the year are equal to or less than the part-year maximum amount calculated under **subsection (4)**, an amount equal to their total contributions for the year; or

“(b) for a person whose member credit contributions for the year are greater than the part-year maximum amount calculated under **subsection (4)**, the part-year maximum amount.

“Part-year equivalents: maximum amount

“(4) The part-year maximum amount referred to in **subsection (3)** is calculated using the formula—

$$\$1042.86 \times \frac{\text{days}}{365}.$$

“Definition of item in formula

“(5) In the formula, **days** is the number of days in the year in which the person meets the requirements of section MK 2.

“Parts of years

“(6) In **subsection (3)**, a part of the year may include 1 or more periods of the year in which the person meets the relevant requirements and, if there are several periods, for the purposes

of the item **days** in the formula, the days in those periods are added together.

“Defined in this Act: amount, employee, employer contribution, first payment period, fund provider, member credit contribution, salary or wages, second payment period, tax credit

Compare: 2004 No 35 ss KJ 3, OB 1 “member credit year”.

538 Credit given by fund providers

In section MK 6, “The amount must be credited” is replaced by “The provider must use the contribution allocation for a member to credit the amount of the tax credit”.

539 Treatment of tax credits on permanent emigration

In section MK 8(2)(a), “for the person” is replaced by “paid for the person and held by the provider”.

540 New sections MK 9 to MK 16 inserted

After section MK 8, the following is inserted:

“Tax credits for employers

“MK 9 Eligibility requirements

“What is required

“(1) For the purposes of **section MK 1(2)**, an employer must—

“(a) pay an amount of employer contribution in relation to an employee who—

“(i) is aged 18 or over; and

“(ii) is not entitled to withdraw an amount from a fund or scheme under schedule 1, clause 4(3) of the KiwiSaver scheme rules in the KiwiSaver Act 2006 or a rule that is the same as that clause; and

“(b) provide details of the amount of the tax credit relating to the employee in an employer monthly schedule or PAYE payment form; and

“(c) meet 1 of the requirements of section 6(2) of the KiwiSaver Act 2006.

“When details not required

“(2) **Subsection (1)(b)** does not apply if the employer has—

“(a) an unpaid amount of compulsory employer contribution referred to in a notice under **section 101I(5)** of the KiwiSaver Act 2006; or

“(b) an amount of short payment under Part 3, subpart 3 of that Act.

“Defined in this Act: amount, compulsory employer contribution, employee, employer, employer contribution, employer monthly schedule, PAYE payment form, tax credit

Compare: 2004 No 35 s KJ 7

“MK 10 Amount of credit*“Amount of contributions or calculation*

- “(1) For a payment period, the amount of a tax credit under **section MK 1(2)** is equal to the lesser of—
- “(a) the amount of the employer contributions for the employee for the period; and
 - “(b) the amount calculated using the formula—

$$\$20 \times \text{weeks in payment period.}$$

“Definition of item in formula

- “(2) In the formula, **weeks in payment period** is the number of weeks in the payment period for the payment of the employee’s salary or wages, in which the employee meets the requirements of **section MK 9(1)(a)**, including weeks in the payment period in which the employer does not pay an amount of employer contribution. Parts of a week are expressed as a decimal.

“Meaning of payment period

- “(3) In this section and in **sections MK 11 to MK 13**, **payment period** means a first payment period, a second payment period, or a month, as applicable, in which PAYE is withheld in relation to the employee.

“Defined in this Act: amount, employee, employer contribution, first payment period, salary or wages, second payment period

Compare: 2004 No 35 s KJ 8

“MK 11 When tax credits arise

A tax credit referred to in **section MK 10** arises—

- “(a) for an employer who provides details of the amount of the credit under **section MK 9(1)(b)**,—
 - “(i) on the end date for the payment period under section RA 15(3)(a) (Payment dates for interim and other tax payments) if the employer is not a private domestic worker:
 - “(ii) on the date referred to in section RA 10(3) (When obligations not met) if the employer is a private domestic worker:
- “(b) for an employer to whom **section MK 9(2)** applies, on the day the Commissioner—
 - “(i) receives the notice referred to in **section 101I(5)** of the KiwiSaver Act 2006; or
 - “(ii) determines that the employer has an amount of short payment under Part 3, subpart 3 of that Act.

“Defined in this Act: amount, Commissioner, employer, notice, private domestic worker, tax credit

Compare: 2004 No 35 s KJ 9(1)

“MK 12 Using tax credits

“Commissioner’s use of credits

“(1) The Commissioner must use a tax credit referred to in **section MK 10**—

“(a) first, to pay—

“(i) an amount of short payment under Part 3, subpart 3 of the KiwiSaver Act 2006 relating to a compulsory employer contribution for a payment period; or

“(ii) to the fund provider of the complying superannuation fund, an amount equal to an unpaid amount of a compulsory employer contribution referred to in a notice under **section 101(5)** of that Act:

“(b) second, to pay an employer contribution:

“(c) third, to pay an amount payable for the payment period by the employer to the Commissioner under an Inland Revenue Act:

“(d) fourth, to pay an amount that is payable by the employer to the Commissioner under an Inland Revenue Act:

“(e) fifth, to treat a tax credit as overpaid tax refundable under section RM 2 (Refunds for overpaid tax).

“Treatment of tax credit used

“(2) An amount of tax credit used or paid under **subsection (1)(a)** is treated as an amount of compulsory employer contribution—

“(a) received by the Commissioner for a payment period, for the purposes of calculating an amount of short payment under Part 3, subpart 3 of the KiwiSaver Act 2006:

“(b) consequentially reducing a relevant amount of a compulsory employer contribution remaining unpaid, for the purposes of **section 101K** of that Act:

“(c) received by the Commissioner for the purposes of section 74 of that Act.

“Defined in this Act: amount, Commissioner, complying superannuation fund, compulsory employer contribution, employer, fund provider, Inland Revenue Acts, tax, tax credit

Compare: 2004 No 35 s KJ 9(2), (3)

“MK 13 When short payment and unpaid compulsory employer contributions found after tax credit used

“When this section applies

“(1) This section applies when—

“(a) the Commissioner uses an amount of a tax credit under either or both **section MK 12(1)(b) and (c)**; and

“(b) following that use, for the payment period to which the amount of tax credit relates, there arises—

- “(i) an amount of short payment under Part 3, subpart 3 of the KiwiSaver Act 2006:
- “(ii) an unpaid amount of compulsory employer contribution referred to in a notice under **section 101(5)** of that Act.

“Employer’s liability

- “(2) The employer is liable to pay an amount equal to the lesser of—
 - “(a) the amount of the tax credit used:
 - “(b) the amount described in **subsection (1)(b)**.

“Treatment as amount of tax

- “(3) The amount is treated as an amount of tax for the payment period in which notification of the amount described in **subsection (1)(b)** is given to the employer, and an equal amount is treated as a tax credit for use under **section MK 12(1)(a)**.

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

Compare: 2004 No 35 s KJ 10

“MK 14 Employees opting out

When an employee opts out under the KiwiSaver Act 2006, the amount of a tax credit for an employer contribution for the employee’s salary or wages is treated as an amount of a tax credit paid in excess of that properly payable under this subpart.

“Defined in this Act: employee, employer contribution, salary or wages

Compare: 2004 No 35 s KJ 11

“MK 15 Groups of persons

For the purposes of this subpart, a group of persons described in 1 of the following paragraphs is treated as 1 employer:

- “(a) 2 or more companies, if the companies are a group of companies; and
- “(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 an estate of a deceased person, or a trust, or a company in liquidation, or an assigned estate, or other case in which property is vested or controlled in a fiduciary capacity.

“Defined in this Act: company, employer, group of companies, group of persons

Compare: 2004 No 35 s KJ 12

“MK 16 Private domestic workers

For the purposes of this subpart, a private domestic worker who is an employer under paragraph (c) of the definition of **employer** in section 4 of the KiwiSaver Act 2006 is treated as paying salary or wages to themselves in the capacity of employee.

“Defined in this Act: employee, private domestic worker, salary or wages

Compare: 2004 No 35 s KJ 6(4)”.

541 Salary or wages

In section RD 5(1)(c)(vi), “this Act.” is replaced by “this Act; and” and the following is added:

“(d) is defined in section RD 65(13) for the purposes of that section.”

542 Complying fund rules

Section RD 66 is replaced by the following:

“RD 66 Complying fund rules

The complying fund rules, for a superannuation fund and an employee’s superannuation accumulation, means rules that—

- “(a) meet all the requirements set out in **schedule 28** (Requirements for complying fund rules); and
- “(b) do not detract from those requirements.

“Defined in this Act: complying fund rules, employee’s superannuation accumulation, superannuation fund

Compare: 2004 No 35 s OB 1 “complying fund rules””.

543 Definitions

- (1) This section amends section YA 1.
- (2) After the definition of **complying trust**, the following is inserted:

“**compulsory employer contribution** has the same meaning as in the KiwiSaver Act 2006”.
- (3) After the definition of **credit transfer notice**, the following is inserted:

“**creditable membership**, for a person, —

 - “(a) means membership of a KiwiSaver scheme or a complying superannuation fund; and
 - “(b) includes the following periods:
 - “(i) the period beginning on the first day of a month in which a KiwiSaver contribution for the person is first deducted or first received by the Commissioner and ending on the day on which securities are first allotted by the scheme for the person:

- “(ii) the days in the month in which securities are first allotted by the scheme or fund for the person:
 - “(iii) for the period beginning on 1 July 2007 and ending on the day on which securities are first allotted by the scheme for the person, and for a person who contributes to the scheme before 1 November 2007, the days in the month on which the scheme receives a valid application for membership from the person and the days remaining in the period”.
- (4) In the definition of **employee’s superannuation accumulation**, paragraph (a) is replaced by the following:
- “(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”.
- (6) After the definition of **member**, the following is inserted:
- “**member credit contribution**, for a person, means the total of the following amounts:
- “(a) an amount of a superannuation contribution to the person’s KiwiSaver scheme or complying superannuation fund that is subject to the KiwiSaver scheme rules or complying fund rules, as applicable, other than—
 - “(i) an employer’s superannuation contribution for the person:
 - “(ii) a contribution withdrawn under a mortgage diversion facility provided for in regulations made under section 229 of the KiwiSaver Act 2006:
 - “(iii) an amount accounted for under **paragraph (b)**:
 - “(b) an amount received and held for the person by the Commissioner to which section 73, 74, or 75 of the KiwiSaver Act 2006 applies, other than—
 - “(i) an employer’s superannuation contribution for the person:
 - “(ii) an amount never paid by the Commissioner to the provider of the person’s KiwiSaver scheme unless the amounts are not paid because of the person’s death or because of a refund under section 113 of the KiwiSaver Act 2006”.
- (7) In the definition of **superannuation scheme**, paragraph (ii) is repealed.

544 New schedule 28 inserted

The new **schedule 28** in **schedule 4** of this Act is inserted after schedule 27 of the Income Tax Act 2007.

545 Schedule 49—Enactments amended

In schedule 49, the item relating to section 153(d) of the KiwiSaver Act 2006 is repealed.

New schedules 3 to 5

To insert after *schedule 2* (after line 24 on page 417), the following:

Schedule 3

s 526

New schedule 21 inserted in Income Tax Act 2007

Schedule 21

LH 3(1), LH 5(3), (4), LH
7(2), LH 8

**Expenditure and activities related to research and
development**

“Part A

“Eligible amounts of expenditure and depreciation loss

- “1 Expenditure in relation to an employee that is—
- “(a) for a period in which the employee performs the research and development activities; and
 - “(b) salary, wages, an allowance, a bonus, a commission, extra salary, overtime, holiday pay, long service pay, a fringe benefit or FBT, an employer’s super-annuation contribution or ESCT, or an insurance premium paid on behalf of the employee that is not a fringe benefit.
- “2 An amount of depreciation loss for an income year for property used in performing the research and development activities if—
- “(a) the property is not in a pool with other depreciable property, or is in a pool of depreciable property used wholly in performing research and development activities; and
 - “(b) for property produced by the research and development activities, the property is produced for a purpose other than use in the research or development activities, and all the activities involved in the construction of the property are research and development activities; and
 - “(c) for property produced by the research and development activities, the development costs of the property are not eligible expenditure under **section LH 4**.
- “3 Expenditure on employee training, recruitment, relocation, and travel, to the extent to which it is incurred directly for the research and development activities.
- “4 Expenditure on materials incorporated into a trial model or preliminary version of a product or plant in the research and development activities.

Schedule 21—*continued*

- “5 Expenditure on administration of internal business activities, administration of employment-related matters, repairs and maintenance, cleaning, and security—
- “*(a)* that is expenditure in relation to an employee that is listed in **clause 1(b)** or expenditure on items consumed or payments for services performed on behalf of the person; and
- “*(b)* to the extent to which it is incurred directly for the research and development activities; and
- “*(c)* that is not excluded by Order in Council under **section LH 8** from the application of this paragraph.
- “6 Expenditure on rates, utilities, insurance of buildings, plant, and equipment, or leasing of buildings, plant, and equipment—
- “*(a)* to the extent to which it is incurred directly for the research and development activities; and
- “*(b)* that is not excluded by Order in Council under **section LH 8** from the application of this paragraph.
- “7 Expenditure on items consumed in the research and development activities.
- “8 Expenditure or an amount of depreciation loss incurred in acquiring or producing items that have a market value after being subjected to a process or transformation as part of the research and development activities to the extent to which the expenditure or amount is more than the amount of—
- “*(a)* the sale proceeds of the items sold other than to an associated person:
- “*(b)* the market value of the items not sold or sold to an associated person.
- “9 Payments to another person for performance of the research and development activities on behalf of the person.

“Part B

- “Excluded amounts of expenditure and depreciation loss
- “1 Expenditure under a financial arrangement.
- “2 An amount of depreciation loss under section EE 11(3) to (5) or EE 39 for property unless the property is—
- “*(a)* produced by research and development activities for a purpose other than use in the research and development activities; and
- “*(b)* used wholly or mainly in the research and development activities; and
- “*(c)* not used after the research and development activities end.

Schedule 21—*continued*

- “3 Expenditure on property or services, other than a right to use property, bought directly or indirectly by the person (the **buyer**) from an associated person (an **associate**), to the extent to which the amount is more than the amount of expenditure or depreciation loss that—
- “(a) is incurred by the associate in obtaining the goods or services from a person who is not associated with the associate or the buyer and does not obtain the property or services from a person associated with the associate or the buyer; and
 - “(b) meets the requirements of **sections LH 3(1)(e) and LH 5** and is not excluded under **section LH 6**.
- “4 Expenditure on a right to use property of an associated person to the extent to which the amount is more than the market value of the right.
- “5 An amount of depreciation loss for property to the extent to which the amount, as a proportion of the total amount of depreciation loss for the property for the income year, is more than the proportion of the time for which the property is used in the income year that is the time for which the property is used in performing the research and development activities.
- “6 An amount of depreciation loss—
- “(a) for depreciable property bought by the person from an associated person who has used the property in research and development activities; and
 - “(b) to the extent to which the amount of depreciation loss arises from an excess of the purchase price over the adjusted tax value of the property for the associated person at the time of the purchase.
- “7 The part of expenditure or amount of depreciation loss incurred in acquiring or producing items having a market value after being subjected to a process or transformation as part of the research and development activities, that is not more than—
- “(a) the sale proceeds of the items sold other than to an associated person;
 - “(b) the market value of the items not sold or sold to an associated person.
- “8 Expenditure or an amount of depreciation loss incurred in buying, leasing, or obtaining a right to use core technology, being 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:

Schedule 21—*continued*

- “(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.
- “9 Expenditure or an amount of depreciation loss incurred in internal software development to the extent to which it is more than the eligible expenditure for the person under **sections LH 9 to LH 13**.
- “10 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.
- “11 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.
- “12 Expenditure or an amount of depreciation loss incurred as a condition of a grant to another person by a public authority or local authority.
- “13 Donations.
- “14 Professional fees incurred in determining whether activities are research and development activities, whether the person meets the requirements for the tax credit, or whether the expenditure is eligible.
- “15 Expenditure or an amount of depreciation loss incurred in buying, leasing, or obtaining a right to use intangible property.
- “16 Expenditure or an amount of depreciation loss of an industry research co-operative that is funded by a person who does not meet the requirements set out in **section LH 1(1)(a)** or who is referred to in **section LH 1(2)**.

“Part C

“Activities excluded from being systematic, investigative, and experimental activities

- “1 Prospecting for, exploring for, or drilling for, minerals, petroleum, natural gas, or geothermal energy.
- “2 Research in social sciences, arts, or humanities.
- “3 Market research, market testing, market development, or sales promotion, including consumer surveys.
- “4 Quality control or routine testing of materials, products, devices, processes, or services.
- “5 Making cosmetic or stylistic changes to materials, products, devices, processes, or services.

Schedule 21—*continued*

- “6 Routine collection of information.
- “7 Commercial, legal, and administrative aspects of patenting, licensing, or other activities.
- “8 Activities involved in complying with statutory requirements or standards.
- “9 Management studies or efficiency surveys.
- “10 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.
- “11 Pre-production activities, such as a demonstration of commercial viability, tooling-up, and trial runs.”

Schedule 4

s 544

New schedule 28 inserted in Income Tax Act 2007

Schedule 28

RD 66

Requirements for complying fund rules

KiwiSaver rules

- 1 The first requirement is that the rules are the same, though modified as necessary, as the rules for KiwiSaver schemes set out in—
 - (a) sections 101G and 196 of the KiwiSaver Act 2006; and
 - (b) schedule 1, clauses 2, 4(1) to (4), 7, 9, and 17 of that Act.

Withdrawals

- 2 The second requirement is that the rules—
 - (a) allow a withdrawal in some or all of the circumstances described in regulations made under section 229(1) of the KiwiSaver Act 2006 and the rules for KiwiSaver schemes in schedule 1, clauses 8 and 10 to 14 of the KiwiSaver Act 2006, modified as necessary, or in none of those circumstances; and
 - (b) do not allow a withdrawal under any circumstances other than those described in **paragraph (a)** or **clause 1**; and
 - (c) require the trustees, if the employee asks, to pay any withdrawal allowed under this clause and **clause 1** as a lump sum, as if the withdrawal were a permitted withdrawal to which schedule 1, clause 5 of the KiwiSaver Act 2006 applies, modified as necessary.

Transfers

Schedule 28—*continued*

- 3 The third requirement is that the rules require—
- (a) a transfer, if the employee asks, of some or all of an employee’s superannuation accumulation to another complying superannuation fund or to a KiwiSaver scheme, and for the latter when the requirements of the KiwiSaver Act 2006 are met; and
 - (b) that the complying fund rules apply to an employee’s superannuation accumulation if it is transferred to another complying superannuation fund under **paragraph (a)**; and
 - (c) a transfer of an employee’s superannuation accumulation to a KiwiSaver scheme, if the employee does not ask for a transfer under **paragraphs (a) and (b)**, and the employee—
 - (i) is not longer eligible to be a member of their complying superannuation fund;
 - (ii) may not remain a member for any reason, but this paragraph does not apply to a transfer under **paragraphs (a), (b), and (d)**, or a withdrawal of some or all of a employee’s superannuation accumulation under these rules; and
 - (d) a transfer of an employee’s superannuation accumulation to a KiwiSaver scheme, if the Government Actuary revokes approval of the superannuation fund as a complying superannuation fund and the accumulation is not transferred to another complying superannuation fund and is not subject to these rules.

Notification

- 4 The fourth requirement is that the rules require that—
- (a) the Commissioner is notified if the employee’s superannuation accumulation must be transferred under **clause 3(c) and (d)**;
 - (b) the fund provider is notified if the employee’s superannuation accumulation is transferred to another complying superannuation fund under **clause 3(a)**.

Notification details

- 5 For the purposes of **clause 4**,—
- (a) notification under **clause 4(a)** must include the name, address, and tax file number of the employee, the name and address of their employer, and the name and tax file number of the employee’s complying superannuation fund:

Schedule 28—*continued*

- (b) notification under **clause 4(b)** must include—
- (i) notice of any written evidence given to the old fund provider under section MK 2(2):
 - (ii) the amount of tax credits received by the old fund provider under subpart MK:
 - (iii) information held by the old fund provider that would be relevant to the new provider in making a claim under section 68C of the Tax Administration Act 1994, such as information about the periods for which claims have already been made.

Age restriction

- 6 The fifth requirement is that the rules prevent a person over the qualification age for New Zealand superannuation from joining.

Minimum contributions

- 7 The sixth requirement is that the rules require, as a minimum, the same contribution to be made for an employee as that provided by section 66 or 66A of the KiwiSaver Act 2006, ignoring the 8% contribution rate.

Funding benefits

- 8 The seventh requirement is that the rules require that an employee's superannuation accumulation is used to fund benefits that are calculated only by reference to the amount of the accumulation.

Continuation as member

- 9 The eighth requirement is that the rules commit an employee to continue to be a member unless otherwise provided by **clauses 1 to 8**.

Schedule 5

s 529

Consequential amendments to Income Tax Act 2007

In the Income Tax Act 2007, the reference to the title of schedule 1 “Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits” is replaced by “Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits” in the following sections:

CB 28(5)(a)	CD 53(5)(b)	CS 1(6)
EK 7(5)(a)	EK 8(5)(a)	EK 12(4)(b)(i)
EK 23(2)(b)(i)	EX 19(4)	EX 50(5)(c)
EY 43(8)	FE 22(3)	FF 6(3)(d)
FF 7(4)(b)	FM 26(3)(b)	FM 28(4)(b)
HA 15(3)	HA 41(6)	HC 22(3)(b)
HC 34(1)	HF 1(2)(f)	HL 29(8)(b)(ii)
LC 1(1)	LC 2(1)	LE 2(4)(b)

LJ 5(6)(c)	LL 2(4)(b)	LL 6(4)(d)
LP 8(3)(c)	LP 10(2)(d)	LQ 1(3)(b)
OA 18(3)	OB 19(2)(b)	OB 42(2)(b)
OB 46(2)(b)	OB 69(8)(b)	OB 73(5)(b)
OB 75(3)(b)	OB 78(4)(b)	OB 80(3)(b)
OC 36(3)(d)	OC 37(3)(c)	OC 38(3)(f)
OE 6(2)(c)(i)	OE 7(7)(a)	OE 8(3)(b)(i)
OP 100(2)(c)(i)	OP 102(3)(b)(i)	RD 50(3)(a)
RD 51(3)(b)	RD 69(1)	RD 70(3)(a)
RD 72(3)(a)	RE 11(3)	RE 12(3)(a)
RE 13(3)(a)	RE 14(3)(a)	RE 15(3)(a)
RE 16(4)(a)	RE 17(3)(a)	RE 18(2)(a)
RE 19(2)	RF 9(3)(c)	RG 4(2)(d)(i)
RG 6(3)(b)	RM 21(2)	YA 1: basic tax rate

Explanatory note

This Supplementary Order Paper amends the Taxation (Annual Rates, Business Taxation, KiwiSaver, and Remedial Matters) Bill by—

- inserting changes to the Income Tax Act 2004 that are made in the bill:
- inserting changes made in the bill that do not affect the 2007–08 and earlier income years:
- removing clauses of the bill that were intended to amend the Income Tax Act 2004 but are now not required because they do not affect the 2007–08 and earlier income years:
- adjusting cross-references in other Acts and making other consequential changes to reflect the application of the Income Tax Act 2007 for the 2008–09 and later income years.